



We Are Columbia

February 2, 2021

BY U.S. MAIL TO:

Chief, Water Programs Enforcement Branch
Water Protection Division
U.S Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

Mr. Randy Stewart
SCDHEC-Bureau of Water
Water Pollution Control Division
2600 Bull Street
Columbia, SC 29201

William Weinischke, Esquire
Environmental Enforcement Section
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, DC 20044-7611
Re: DOJ No. 90-5-1-1-09954

AND BY ELECTRONIC MAIL TO:

Nathan M. Haber, Esquire (habernm@dhec.sc.gov)
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Re: Interim Report on Force Majeure Event due to COVID-19
*The United States of America and State of South Carolina by and
through the Department of Health and Environmental Control vs.
The City of Columbia; Civil Action No. 3:13-2429-TLW
DOJ Case Number 90-5-1-1-00954*

Teresa Wilson • City Manager
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Dear Sirs and Madams:

On April 7, 2020, the City of Columbia notified the U.S. Department of Justice, the U.S. Environmental Protection Agency, and the South Carolina Department of Health and Environmental Control of a *force majeure* event which is expected to delay the City's performance of certain obligations under the Consent Decree. Specifically, the City provided notice that the impacts of the COVID-19 pandemic were expected to result in delays in the City's ability to meet certain deadlines for the performance of its obligations under the Consent Decree. Since the COVID-19 pandemic has not yet been contained in South Carolina, the City cannot provide a final report with details regarding the expected delays in meeting Consent Decree deadlines or the duration of such delays. To date, the City has been able to meet the deadlines in the Consent Decree and the deadlines in the approved programs under the Consent Decree. However, even though the City is working to mitigate the impacts of the pandemic, there is no doubt that this unprecedented crisis will result in delays in the City's performance of its long-term obligations under the Consent Decree. The City is providing this interim report to further explain the conditions which will likely result in such delays and to generally identify those programs which might be affected.

Since mid-March 2020, the State has remained under a state of emergency due to the COVID-19 pandemic. COVID-19 infections and deaths increased rapidly throughout South Carolina in June and July, and after a brief decline in late July and August, have steadily increased in recent months with the highest level of confirmed cases in the last month. As of January 24, 2021, the South Carolina Department of Health and Environmental Control reports more than 381,000 confirmed cases of COVID-19 with 5,944 confirmed COVID deaths in South Carolina. In Richland County, there have been more than 31,000 confirmed positive cases, with a positive rate of 8,257 per 100,000 persons tested as of January 24, 2021. Since early December, the State has experienced a significant spike in cases which have exceeded the previous high level of cases in early summer with more than 125,000 confirmed cases reported in the last month.

Both the State and the City have implemented measures to minimize the spread of the COVID-19 disease, including closures and restrictions on operation of restaurants and bars, retail establishments, public recreational area, fitness facilities, entertainment venues, and other non-essential services. The financial impacts of COVID-19 on the businesses and residents of the City have been significant. In the six-month period prior to the imposition of the first COVID-related business closures in March 2020, the unemployment rate in Richland County was consistently below 3 percent with a 2.0% unemployment rate in September 2019 being the lowest in that six-month period. Unemployment in Richland County rose to 9.0% in April 2020 and has remained substantially higher than pre-COVID rates: 10.1% in May; 8.7% in

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June; 8.7% in July; 6.9% in August; 5.1% in September; 4.3% in October; 4.4% in November; and 4.8% in December. The recent increase in COVID cases could result in the imposition of additional restrictions on business operations which might be expected to negatively impact employment in the coming months. For small businesses in the City, the closures or restricted operations have threatened the continuing viability of many businesses. For those businesses which survived the business closures and restrictions in the spring, the ongoing nature of the pandemic and the possibility of new shutdowns to address the recent spike in cases may present challenges which result in permanent closure. As discussed below, the City has committed resources to addressing some of the economic hardship on its citizens and small businesses. However, the City's response to address this unprecedented crisis has necessitated the reallocation of resources which are also limited by the COVID-19 impacts to the City's revenue sources. As such, the demands on the City's resources have increased while the availability of resources are decreasing and the City's ability to incur further debt is also negatively impacted by the pandemic.

As discussed more fully below, the ongoing COVID-19 pandemic has had a direct impact on the City's day-to-day operations as employee absenteeism is higher than usual due to COVID illnesses or other COVID-related reasons. Additionally, the direct financial impact on the City has been significant with substantial decreases in revenue, increased expenditures for COVID-related goods and services provided to citizens, and re-allocation of these more limited resources. As noted above, the City has thus far been able to meet all of the deadlines in the Consent Decree as well as the deadlines established in the programs previously submitted and approved under the Consent Decree. However, as the COVID-19 pandemic continues, the impacts on the City's resources and its citizens are expected to increase exponentially and therefore prolong the period required to recover from those impacts. While the full impact and expected recovery period cannot be assessed until the pandemic is contained and a comprehensive recovery plan is developed and implemented, the impacts of the pandemic will undoubtedly delay the City's performance of some of its long-term obligations under the Consent Decree.

A. Impact on City Management and Staff

The COVID-19 pandemic has impacted the staffing levels for the Wastewater Maintenance Division and Metro WWTP Division (collectively, the Wastewater Division) and other City departments, such as Engineering and Procurement, which are essential to the work of the Wastewater Division. To date, twenty-four Wastewater Division employees have tested positive for COVID-19. Additionally, in accordance with CDC guidelines, the City implemented a policy on COVID testing and quarantine for employees who may have tested positive or been in contact with someone who has tested positive for coronavirus. To date, more than 100 employees have quarantined in accordance with this policy. For employees who travel outside

the State, the City has in many instances requested the employee obtain a negative COVID test prior to returning to work. Since March, employees of the Wastewater Division alone have been absent 550 workdays due to COVID illness and quarantine policy requirements.

In addition to the employee absences due to coronavirus and the City's quarantine recommendations, COVID-19 has resulted in higher levels of absenteeism for many other employees affected by measures implemented to slow the spread of the disease. In mid-March, the City implemented a number of human resources policies in response to the pandemic. By order of the Governor, all South Carolina public schools were closed effective March 16, 2020, and remained closed for the remainder of the 2019/2020 school year. In response, the City allowed telecommuting and extended leaves of absence for employees with children who were home because of daycare or school closures. Similarly, the City also provided these options to City employees who have underlying health issues or are over the age of sixty. For all of these COVID-related absences, the City has provided employees with paid leave in excess of that required under the federal Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act.

While the COVID-related absences have impacted almost every City department, the absences are substantially higher for the Wastewater Division because a large majority of the staff cannot work remotely. For example, the Wastewater Maintenance Division (WMD) has been operating with approximately 50 percent of its full-time field employees. The impact of COVID-19 on smaller crews illustrates the staffing challenges for the WMD and other divisions in the Department of Utility Operations. The City normally operates three sewer pipe cleaning crews. However, two employees have taken extended leaves of absence due to COVID-19. One employee is remaining at home to care for children because his wife is a nurse. Another employee is on leave due to underlying health issues. With these absences, the City was down to one cleaning crew. In order to address the need to operate additional cleaning crews, the City halted normal operation of its CCTV crews to train the employees to operate the Vactor trucks utilized for pipe cleaning. Similar reallocations of resources have been essential to maintaining operations in the Wastewater Division as City management addresses the unique challenges of the COVID pandemic. This higher rate of absenteeism was also exacerbated by the implementation of a temporary hiring freeze in the early weeks of the pandemic. While the City has modified its COVID-19 hiring freeze to allow hiring to fill positions vacated by resignations and terminations, this policy continues to impact all departments of the City.

Since the City management team has greater capacity to work remotely, the COVID-19 pandemic has not resulted in the levels of absenteeism experienced among the Wastewater Division staff. However, COVID-19 has substantially increased the

demands on City management in terms of allocation of limited resources (human and financial) and strategic planning and problem-solving required to maintain normal operations during the pandemic. Accordingly, the time devoted to COVID-related issues and planning has reduced the availability of City management to provide necessary oversight and decision-making for the development and implementation of the programs required by the Consent Decree. As such, even for programs and projects which are being developed by third-party contractors, there have been delays in the progress for these programs and projects where the input of City management is required at various stages of development. For example, the City's contractor has made substantial progress in developing the Capacity Assurance Program (CAP) required under the Consent Decree; however, the development of the CAP requires extensive input and coordination with the City management and staff and has thus been delayed due to their limited availability since March. One of the key features of the CAP is the CAP tool, an information management system which will be used to track the available capacity in the City's wastewater collection and treatment system. This CAP tool will be used to perform the threshold analysis of capacity on an application for a new sewer connection or an increase in the discharge of an existing sewer customer. While the City's contractor is responsible for creating the basic operating system for this interactive web-based tool, the development of the CAP tool has required numerous meetings and consultation with the City management and staff. Additionally, as the development of the CAP tool progresses, the contractor must rely on the City to establish the processes for interface of the CAP tool with the sewer mapping program and other databases maintained by the City. The limited availability of the City management and staff during the COVID-19 crisis has therefore slowed the progress on the development of the CAP. While the CAP development and other similarly-affected programs were on schedule prior to the COVID pandemic, the limited availability of City management and staff to assist and advise consultants could result in delays in the completion of these programs as the COVID pandemic continues to impose additional demands on their time.

B. Financial Impact

Following the Governor's declaration of a state of emergency on March 13, 2020, the State implemented a series of state-wide measures to slow the spread of COVID. In addition to the closure of public schools discussed above, the Governor issued a series of executive orders, prohibiting on-premises consumption at restaurants and bars, limiting the size of public gatherings, and closing recreational facilities, entertainment venues, hair and nail salons, and other non-essential businesses. City Council also declared a state of emergency in the City on March 17, 2020, and implemented additional measures to limit the spread of infection in the City, including a "Stay Home Stay Safe" Ordinance which restricted business operations and non-essential travel within the City and a mask ordinance.

Like many other municipalities throughout the country, the City took immediate action to provide relief to mitigate the economic hardship to residents and small businesses affected by these measures. For residents with financial hardships, City has a number of long-standing programs to assist these residents. For example, low-income residential customers are eligible for the City's Change-Up Program which provides payment of up to 75% of a water or sewer bill, including past-due balances or fees. In response to COVID, the City implemented additional programs to assist residents and small businesses. In April, the City increased funding for grants to non-profit organizations which serve seniors, the homeless, and other vulnerable individuals impacted by the COVID-19 pandemic. For businesses, the City extended the deadline for payment of annual business license renewal fees and waived late fees on payment of hospitality and accommodation taxes. The City also allocated \$2 million dollars to establish a Small Business & Non-Profit Stabilization Package, which included grants to small business owners through the City's Small Business Stabilization Forgivable Loan Program. These grants were structured as a loan with the loan forgiven if used in accordance with established criteria. The City's allocation of funds to this program was later increased and supplemented with a federal grant. City Council also increased funding for law enforcement and first responders to ensure preparedness to meet public safety needs during the pandemic. The additional funding for these programs required adjustments to the FY 2019/2020 budget, including the transfer of \$6.25 million from the water and sewer operating budget to the general fund.

At the same time that COVID-19 pandemic required the re-allocation of funds within the City's operating budget, the City experienced an immediate and continuing decrease in City revenues. On March 12, 2020, the City suspended disconnection of water and sewer service for non-payment in an attempt to be compassionate to our citizens. On March 14, 2020, the Governor subsequently issued a request that utilities refrain from suspending or disconnecting essential services for non-payment during the state of emergency. As of mid-December, the past due amount on water/sewer services had increased by more than \$7.5 million over pre-pandemic amounts. Water and sewer revenues also decreased due to reduction in usage by some of the City's largest customers. On March 19, 2020, the University of South Carolina announced remote learning for the 35,000 students at its Columbia campus, closure of residence halls, and telecommuting for non-essential employees. Benedict College, Allen University, Columbia College, and Columbia International University also transitioned to remote learning and closed residence halls. Although hotels were deemed an essential business and could remain open, government-imposed restrictions on travel, a decline in business travel, and the stay-at-home orders resulted in a sharp decline in hotel occupancies which remain lower than normal. Water/sewer usage in the City was also reduced for private and governmental offices which allowed non-essential workers to telecommute. While some of these

customers have increased usage since the early months of the COVID shutdown, the water/sewage usage has not yet returned to pre-COVID levels.

In addition to the reduction in revenue for the Utilities Department, the City also experienced a reduction in revenues from other sources. As noted above, on March 26, 2020, the City enacted the Stay Home Stay Safe Ordinance which drastically reduced business operations within the City. In addition to the reduction in water and sewer revenues, the restrictions of retail businesses also resulted in a loss of revenue from local option sales tax. Travel restrictions and a state-wide ban on indoor dining significantly reduced the revenue from local hospitality and accommodation taxes. The City also experienced substantial reductions in other revenue sources, such as service fees, parking fees, and court fines. The pandemic is also expected to result in an increase in the delinquencies in property tax payments. As noted above, the City was able to manage this decrease in revenue and increasing COVID-related demands by transferring funds within the FY 2019/2020 budget; however, the most significant impact of the known and projected reductions in revenue was seen in the budgeting process for FY 2020/2021.

As described more fully in the approved Financial Analysis Program required under the Consent Decree, the City's fiscal year runs from July 1st through June 30th with the budget planning for the upcoming fiscal year beginning in January each year. A proposed budget is typically developed in the first quarter of the calendar year with approval by City Council before the June 30th deadline. As such, City Council had been working to meet the demands of the COVID-19 pandemic for approximately three months when the budget for FY 2020/2021 was finalized and approved. As discussed above, during that time, City Council had already re-allocated funds in the FY 2019/2020 budget to meet the COVID-related needs of small businesses, citizens, and City operations. These continuing COVID-related demands and the projected decrease in revenues were taken into consideration in developing the budget for FY 2020/2021 and resulted in a substantial reduction in total approved budget compared to the FY 2019/2020 budget. Additionally, as the COVID-19 pandemic continues and the economic impacts continue to affect the City's residents and businesses, this approved budget for FY 2020/2021 may require further revision. As the City prepares to begin the planning process for the FY 2021/2022 budget, these conditions are expected to continue to impact the City's financial resources, and accordingly, the City's revenues would not be expected to return to the FY 2019/2020 budget level without significant aid from the federal and state governments.

The financial impacts of COVID have also affected the City's CIP budget for the sewer system. Based on the projected 10-year CIP budget for the sewer system, which includes capacity-enhancing and rehabilitation projects identified in programs required under the Consent Decree, the proposed CIP budget for FY 2020/2021 was \$80 million. Among the unavoidable reductions in the budget for FY 2020/2021, the

allocation for sewer system CIPs was reduced to \$25 million. This reduced CIP budget required the City to adjust the schedules for completion of capacity-enhancing and rehabilitation projects. This reduction alone is not expected to immediately result in the City's failure to meet the deadlines under the Consent Decree because many of these projects had been scheduled for completion prior to the deadline. However, as discussed below, any future reductions in CIP funding will almost certainly result in project scheduling adjustments that will have cascading impacts and push project completions beyond current schedules developed to meet the long-term CIP requirements under the Consent Decree programs.

The reduction in the sewer CIP budget for FY 2020/2021 will require a proposed CIP budget of \$135 million in FY 2021/2022 in order to keep the capacity-enhancing and rehabilitation sewer projects on schedule. Given the recent resurgence in COVID-19 infections, the City is not likely to have the resources to increase the sewer CIP to this level. Indeed, the ongoing economic impacts of the continuing COVID crisis are likely to keep the budget for FY 2021/2022 at a level comparable to the current fiscal year budget (i.e., below the FY 2019/2020 budget). Moreover, as discussed below, the COVID pandemic has also disrupted the City's plan for water/sewer rate increases. These rate increases are necessary to demonstrate adequate revenue to service new debt to fund CIP for the sewer system. Moreover, in establishing the 10-year CIP budget for the sewer improvements needed to meet the Consent Decree requirements, the City considered the availability of qualified contractors to design and construct these improvements and proposed an approximately \$80 million per year CIP budget. As this work is pushed forward, the contracting industry may not have the capacity to support the compression of the work on these projects into a shorter timeframe. Therefore, the reduction of the annual CIP budget for two years could result in a delay in completion of the capacity-enhancing and rehabilitation projects even if the City can substantially increase the CIP budget thereafter to include the shortfall in FY 2020/2021 and FY 2021/2022.

In addition to the substantial reduction in the FY 2020/2021 budget, the pandemic also necessitated deferral of the proposed water/sewer rate increase for FY 2020/2021. Additionally, given the current surge of COVID cases and the projected long-term financial impact on residents and business, any proposed rate increase for FY 2021/2022 may also be deferred or significantly adjusted downward from the recommendation of the most recent rate study. In accordance with the approved Financial Analysis Program, the City has conducted a rate study annually to evaluate and recommend rate adjustments needed to meet budget obligations for operation of the City's water and wastewater systems and to fund capital improvement projects required under the Consent Decree programs. With the exception of 2016 (the year following the historic October 2015 flood), City Council has approved substantial annual rate increases since the Consent Decree was entered in 2014:

June 16, 2015 (FY 2015/2016)	- 9.50%
June 20, 2017 (FY 2017/2018)	- 4.75%
June 19, 2018 (FY 2018/2019)	- 9.76%
June 18, 2019 (FY 2019/2020)	- 7.06%

On February 4, 2020, the City's consultant presented a preliminary analysis of the projections for the 2020 Water and Wastewater Rate Study to City Council. The presentation summarized the preliminary analysis of proposed future rate increases as follows:

FY 2020/2021	- 9.15%
FY 2021/2022	- 8.96%
FY 2023/2023	- 7.82%
FY 2023/2024	- 5.98%

When Council met in May to begin the budget approval process, the proposed rate increase for FY2020/2021 was not considered for approval due to the economic impact of COVID-19. On May 19, 2020, the City's consultant advised Council that a projected increase to 10.15% would be needed in FY2021/2022 in order to continue to meet the financial planning requirements for the operation of the City utilities and to fund the additional obligations of the Consent Decree. With the continuing spread of COVID-19 and the resulting economic impacts to the City's residents and businesses, a rate increase may not be possible in June 2021. Even if economic conditions improve by the end of 2021 or early 2022, a two-year gap in water/sewer rate increases will substantially impair the City's ability to incur new debt for the capital improvement projects through the issuance of bonds, and as discussed above, would likely be expected to result in a delay in the scheduled completion for projects required under the Consent Decree.

III. Potential Delays

Like every other local and state government, the City has faced the difficult decisions to implement measures to safeguard its citizens against the coronavirus threat even though such measures directly impact local businesses and their employees. The City has committed resources to assist businesses and residents who are negatively impacted by these measures and the economic downturn triggered by the COVID-19 pandemic. The City management and staff have worked diligently to maintain basic services despite the numerous challenges created by the COVID-19 crisis. To date, the City has been able to meet all of the deadlines in the Consent Decree and in the programs required by the Consent Decree. However, as the COVID-19 crisis continues into 2021, the strains on the City's resources will be cumulative and the City's performance under the Consent Decree will undoubtedly be affected. According to current projections from the federal government, the public health crisis will

continue at least through the second quarter of 2021 and the economic impacts from COVID-19 may continue long after the COVID-19 pandemic is contained.

Based on the City's current understanding of the known and potential COVID-related impacts on its operations and financial resources, the City expects possible delays in the current deadlines for completion of capacity-enhancing and rehabilitation capital improvement projects identified to meet the requirements of the Consent Decree. The City also expects potential delays in the completion of upcoming Consent Decree program requirements, such as Sewer Mapping deadlines, deadlines related to the Capacity Assurance Program, deadlines in the Continuing Sewer Assessment Program, and deadlines in the Gravity Sewer Operation and Maintenance Program. The City is not yet able to identify the specific deadlines which will be delayed or determine the duration of any such delays. The City will supplement this report with the information required under Paragraph 56 of the Consent Decree as the City's performance under specific programs is unavoidably delayed. The City does not believe any such delays in the performance of its obligations under the Consent Decree will endanger public health, welfare or the environment, and the City will continue to take steps to minimize any delays and to mitigate the effect of any delays.

The City appreciates the agencies' continuing cooperation as the City addresses the extraordinary needs of its citizens during this unprecedented crisis. If additional information is needed regarding the circumstances described in this interim report, please feel free to contact me or Clint Shealy, Assistant City Manager for Columbia Water at (803) 733-8682 or clint.shealy@columbiasc.gov.

Sincerely,



Teresa B. Wilson
City Manager

APPROVED AS TO FORM



Legal Department City of Columbia, SC

2/3/2021