Clinton wastewater, CSO file

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FROM: DAVE SHERIDAN

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321 E. 12th St., Ground Level, Room 018
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COMMENTS/REQUESTS FROM SENDER:

CZ74 OF CLINTON EXTENSION REQUEST

PLEASE REVIEW AND LET ME KNOW.

DAVE

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May 21, 2009

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HAND DELIVERED
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Iowa Department of Natural Resources
Wallace Building
502 East 9th Street
Des Moines, Iowa 50319

Re: City of Clinton
Notice of Force Majeure
Consent Decree CV35791

Dear Mr. Sheridan and Ms. Hansen:

Pursuant to the terms of the Consent Decree, the City of Clinton is placing you and your client on notice that it is invoking the Force Majeure provisions of the Decree with regard to the May 28, 2009 deadline for award of construction bids for the new treatment plant outfall.

As you are aware, on March 17, 2009 the Iowa Department of Natural Resources sent a letter addressed to Gary Schellhorn, which indicated that the state would be requiring a mussel survey of the area where the new outfall pipe for the current treatment plant will be placed. Although the letter was addressed to Mr. Schellhorn, City records do not indicate that a copy was ever received by the City. The City first became aware of this letter at a meeting with Stanley Consultants, and a copy was first provided to the City Attorney on May 4, 2009 by Stanley Consultants.

At that same meeting, the City learned that the Army Corps of Engineers had sent an email to Stanley Consultants on March 26, 2009, which suspended its permit until a mussel survey was completed. Because this is a survey which is not always required and is a regulatory requirement over which the City has no control, the City believes that this qualifies as a force majeure event.

The City has already taken steps to minimize the impact of this new requirement. A mussel survey is scheduled to occur on May 30, 2009. The City anticipates that the delay caused by this survey requirement will set the City behind on its compliance with the above deadline until July 15, 2009. In addition, this will likely impact the final construction of the outfall, which currently has a completion date requirement of October 31, 2009. The City anticipates that a final completion date of November 30, 2009 is achievable. It is the City's position that this is a reasonable allowance of time for compliance with this requirement which has been imposed by your client.

If you have any additional questions or concerns, please do not hesitate to contact me.

Very truly yours,

AHLERS & COONEY, P.C.

Jane B. McAllister

Jane B. McAllister

JBM:jv
Cc: Mr. Paul Walter
Mr. Gary Schellhorn
Jay Brady

Jvanrysw/ 618584.1 /MSWord13545044