



**UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY**

**REGION 6  
1201 ELM STREET, SUITE 500  
DALLAS, TEXAS 75270-2102**

November 20, 2020

TRANSMITTED VIA EMAIL

Ann Wilson  
Chief, Environmental Affairs  
The Sewerage & Water Board of New Orleans  
625 St. Joseph Street  
New Orleans, LA 70165  
awilson2@swbno.org

Re: East Bank Sewage Treatment Plant, 6501 Florida Blvd, New Orleans, LA, 70165 - Fluidized Bed Incinerator (FBI) – Performance Testing Extension Request and Force Majeure Claim - 40 Code of Federal Regulations (CFR) Part 62 Subpart LLL - Federal Plan Requirements for Sewage Sludge Incineration Units Constructed on or Before October 14, 2010 - FRS (Facility Registry Service) ID 110022408278, Louisiana Department of Environmental Quality (LDEQ) Agency Interest Number 4859

Dear Ms. Wilson:

This letter is in response to your request, dated November 2, 2020, for an extension of time for the Sewerage & Water Board of New Orleans (SWBNO) to complete annual performance testing required by 40 CFR Part 62 Subpart LLL at the East Bank Sewage Treatment Plant. In making its request for extension, SWBNO provided notification for a claim of *force majeure* under 40 CFR 62.16030(f). SWBNO also provided additional information in an email response on November 16, 2020, regarding a pending replacement of the heat exchanger. Based upon a review of all available information that you have submitted, the United States Environmental Protection Agency (EPA) disagrees that the conditions which have been described meet the definition of *force majeure* and disapproves this claim. However, your request for an extension of time to conduct required performance testing is granted under 40 CFR Part §60.8(a)(3) and (4), and §60.8(c) and (d), as explained in this response.

In its testing extension request, SWBNO indicated that the previous annual performance test on the FBI was conducted on October 29, 2019. In accordance with 40 CFR 62.16000(a), the next test must be completed between 11 and 13 calendar months following the previous performance test, or no later than November 29, 2020. As justification for the testing extension request under a claim of *force majeure*, SWBNO explained that the current FBI heat exchanger, which was installed in 2012, is nearing the end of its 8 to 10-year life expectancy. As a result, despite numerous attempts at repair since April 2020, the heat exchanger has continued to deteriorate. SWBNO has concluded that the instability of the heat exchanger's operation could

cause a decrease in combustion level or unit efficiency, and that the results of a performance test conducted at this time would not be representative of normal operations. SWBNO decided to order a new heat exchanger on October 14, 2020, and the new unit will be installed in April 2021. SWBNO requested to delay performance testing until after the new heat exchanger is installed.

Part 62 Subpart A Definitions (§62.01) clearly states that “*As used in this part, all terms not defined herein shall have the meaning given to them in the Clean Air Act and in part 60 of this chapter.*” The definition of *force majeure* in §60.2 states that: “*Force majeure means, for purposes of §60.8, an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the affected facility's best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility.*” Because SWBNO clearly stated in its request that it is aware that the heat exchanger is nearing the end of its normal life expectancy, and because SWBNO has made numerous attempts at repair in consideration of the unit’s age prior to its decision to replace it, EPA has determined that the equipment failure was not beyond the facility’s ability to anticipate and control, and thus, does not meet the definition of *force majeure*.


EPA agrees that conducting the next required performance testing under the deteriorating unstable operation of the current heat exchanger would not represent normal operating conditions, as required by §60.8(c) and §62.16015(a)(1). SWBNO provided additional information on the current and new heat exchangers to demonstrate that the like-for-like replacement will not result in an emission increase of any air pollutant, and does not meet the definition of modification under §62.15855(b) or §60.14(a), and that the capital cost for the heat exchanger replacement does not exceed the threshold for reconstruction outlined in §60.14(b). Therefore, since the FBI will continue to be subject to the federal plan under Part 62 Subpart LLL, EPA approves a request for performance testing extension to June 30, 2021, or within 60 days after the new heat exchanger is installed, in accordance with provisions of §60.8(a)(3) and (4), pertaining to granting extensions to performance testing deadlines, and §60.8(c) and (d), pertaining to representative conditions for performance testing and required testing notification.

SWBNO must continue to meet its LDEQ permit limits and other applicable requirements of Part 62 Subpart LLL until the new heat exchanger is installed, and must provide advance testing notification to EPA and LDEQ in accordance with §60.8(d) and §62.16015(a)(8). Additionally, even though SWBNO does not believe that the heat exchanger replacement triggers an amendment of its LDEQ air permit, information on the new heat exchanger unit must be provided to LDEQ so that the facility’s air permit may be modified appropriately to reflect the date and other conditions of the heat exchanger replacement, consistent with requirements of Part 62 Subpart LLL and LDEQ’s delegated air program.

This response is consistent with previous other similar determinations coordinated with EPA headquarters for claims of *force majeure* made for testing extension requests. The EPA acknowledges that the COVID-19 pandemic may impact your business. If that is the case, please contact us regarding any specific issues you need to discuss. Questions regarding EPA's response to SWBNO's request may be directed to Diana Lundelius, 214-665-7468, or [Lundelius.diana@epa.gov](mailto:Lundelius.diana@epa.gov).

Sincerely,

**STEVEN  
THOMPSON**

 Digitally signed by STEVEN THOMPSON  
DN: c=US, o=U.S. Government, ou=Environmental  
Protection Agency, cn=STEVEN THOMPSON,  
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Steve Thompson  
Chief  
Air Enforcement Branch

Ecc: Lourdes Iturralde, LDEQ, [lourdes.iturralde@la.gov](mailto:lourdes.iturralde@la.gov)  
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