

**RESOLUTION NO. 2017 - 13**

**A RESOLUTION ON MSD'S SEWAGE TANK PROJECT**

MSD is a political subdivision established by voters

WHEREAS, The Metropolitan St. Louis Sewer District (MSD) is a political subdivision established in 1954 by voters in St. Louis City and St. Louis County pursuant to Missouri Constitution, Art. 6, Section 30, to provide adequate sewer and drainage facilities within its boundaries; and

WHEREAS, under MSD's Charter (Plan) approved by voters, effective July 1, 1954, MSD took complete title, jurisdiction, control, possession, and supervision of all sanitary and storm water sewer systems and facilities of all municipalities, sewer districts and other public agencies for the collection and disposal of sanitary sewage and storm water; and

WHEREAS, MSD has the power under its Plan to maintain, operate, reconstruct, and improve the same as a comprehensive sewer and drainage system, and to make additions, betterments and extensions thereto; and

WHEREAS, all powers of MSD are vested in a Board of Trustees, which enacts ordinances, adopts budgets, determines policies and appoints an Executive Director, who executes the ordinances and administers the government of MSD; and

WHEREAS, the Board of Trustees consists of six members, three of whom are appointed by the Mayor of the City of St. Louis and three of whom are appointed by the County Executive of St. Louis County; and

WHEREAS, each Trustee is appointed for a term of four years and shall not serve for more than two full consecutive terms plus any unexpired portion of an unexpired term, and may be removed by said Mayor or County Executive, as the case may be, only upon charges and a finding of nonfeasance, malfeasance, or misfeasance in office and after a public hearing; and

WHEREAS, MSD's Plan is the organic law of the territory defined in the Plan, and takes the place of and supecedes all laws, charter provisions and ordinances inconsistent therewith relating to the territory; and

WHEREAS, MSD's Plan may be amended by a petition signed by registered voters residing within the District in such number as is equal to five percent of the total vote cast within St. Louis City and St. Louis County, respectively, at the last general election for governor, and approved by a majority of voters in each of the two jurisdictions at an election; and

Federal and State lawsuit against MSD for alleged violations of the Clean Water Act;  
Consent Decree

WHEREAS, on June 11, 2007, the United States of America, acting at the request of the United States Environmental Protection Agency (EPA), and the State of Missouri, acting at the request of the Missouri Department of Natural Resources (MDNR) jointly filed a lawsuit in the United States District Court for the Eastern District of Missouri (Case No. 4:07-CV-1120) seeking injunctive relief and civil penalties against MSD for MSD's alleged discharges of pollutants in violation of the federal Clean Water Act, including discharges of untreated sewage from its Combined Sewer Overflows and at least 300 Constructed Sanitary Sewer Overflows, and for alleged violations of conditions established in the National Pollutant Discharge Elimination System permits issued to MSD by the MDNR, as authorized by the EPA; and

WHEREAS, in addition, the United States alleged a claim under the Clean Water Act seeking to require MSD take such actions as may be necessary to abate the imminent and substantial endangerment to the health of persons presented by MSD's sewer system, resulting from discharges of untreated sewage to homes, yards, parks, playgrounds and streets; and

WHEREAS, the Missouri Coalition for the Environment Foundation was allowed to intervene in the lawsuit and filed a complaint for MSD's alleged violations of the Clean Water Act and certain National Pollutant Discharge Elimination System permits; and

WHEREAS, on April 27, 2012, the United States District Court entered a Consent Decree which imposed a \$1.2 million civil penalty on MSD, and ordered stipulated daily penalties in the event specified remedial measures are not completed by MSD by the deadlines that run through 2035 for such measures; and

WHEREAS, the terms of Consent Decree may be modified by written agreement of the parties or if a party is entitled to modification in accordance with Consent Decree provisions; and

WHEREAS, MSD is required to identify and implement all measures needed to ensure compliance with the federal Clean Water Act and the Missouri Clean Water Act and the regulations and policies promulgated thereunder, and MSD's plans, programs, and other submittals must be based upon good engineering practices and industry standards, using certain recognized industry documents as guidance; and

WHEREAS, MSD has stated that the Consent Decree requires MSD to spend a minimum of \$4.7 billion through 2035 to address the issue of overflows and other sewer system improvements; and

MSD Project Clear

WHEREAS, MSD has stated that Project Clear is a long-term effort undertaken by MSD as part of the Consent Decree to improve water quality for everyone, solve problems for some of its customers created by the very nature and design of St. Louis' wastewater system, and provide clear, up-to-date information to the public; and

WHEREAS, MSD has further stated that Project Clear focuses on preventing storm water from entering the sewer system; repairing, maintaining and renewing the existing sewer system; and new construction of wastewater management structures, including deep underground tunnels and above-ground storage tanks; and

Hafner Court Sanitary Storage Facility--MSD Project #11992

WHEREAS, on November 20, 2015 MSD met with University City staff to explain Project Clear and that an underground storage facility near Hafner Court in Ward 3 was being considered; and

WHEREAS, University City staff asked for a summary of Project #11992 that could be communicated to the City Council, but one was not provided by MSD; and

WHEREAS, MSD requested University City staff to keep their discussions confidential while the engineering was being refined and due diligence performed; and

WHEREAS, in subsequent meetings with MSD, on December 22, 2015 and March 7, 2016, MSD informed University City staff that the underground storage concept was being abandoned and above ground options were being pursued; staff expressed concerns to MSD about the impact on the residential area, and requested additional information and that MSD consider another site, in a commercial area south of Hafner Court; and

WHEREAS, in a meeting on November 22, 2016, MSD informed University City staff that the commercial area site was not feasible, and staff requested that MSD present the options and supporting information to the City Council; and

WHEREAS, MSD requested a closed meeting with the City Council, but University City staff informed MSD that a closed meeting was not appropriate under the Missouri Sunshine Law, so a study session with the City Council, open to the public, was scheduled for May 22, 2017; and

WHEREAS, at the study session on May 22, 2017, MSD informed the City Council and the public--for the first time--about Project #11992, and presented two site plan options--both in residential areas near Hafner Court--and told the City Council that it wanted the City Council to select one by the end of June 2017; and

WHEREAS, the first option is an area of approximately six acres where 31 residential parcels would either be voluntarily purchased by MSD or condemned and involuntarily taken by MSD, and two sewage tanks would be constructed, each having a capacity of 4.6 million gallons, 35 feet above ground and 13 feet below ground, and 180 feet wide, together with connecting sewers, a pump station, a control building and an odor control unit; and

WHEREAS, the second option is an area of approximately four acres where 20 residential parcels would either be voluntarily purchased by MSD or condemned and



involuntarily taken by MSD, and two sewage tanks would be constructed, each having a capacity of 4.6 million gallons, 35 feet above ground and 13 feet below ground, and 180 feet wide, together with connecting sewers, a pump station, a control building and an odor control unit; and

WHEREAS, both options assume Hafner Court Apartments would be acquired by University City and demolished with \$3.33 million in FEMA grant funds and used for construction staging; and

WHEREAS, the City Council finds that neither option is in the best interest of University City and therefore it rejects both; and

WHEREAS, at a community meeting held by MSD on June 20, 2017, MSD told University City residents that it can modify the two site plans so that the sewage tanks would be five feet above ground; and

WHEREAS, no such modified plan has been presented to the City Council, and in any case it is not in the best interest of University City and therefore is unacceptable; and

WHEREAS, the City Council requests that MSD work cooperatively with it, University City staff and residents, and other interested persons, to find an acceptable solution; and

MSD's failure to respond to University City's requests for information

WHEREAS, following the May 22, 2017 City Council meeting, University City staff made written requests to MSD for information on the project and relevant policies, and MSD has failed or refused to provide written or other responses to various information requests; and

WHEREAS, MSD's failure or refusal to provide the requested information is inconsistent with its Project Clear promise to provide clear, up-to-date information to the public; and

WHEREAS, University City cannot effectively study the project and consider and offer alternative solutions without relevant information; and

MSD's failure to identify any environmental justice and nondiscrimination policies or actions with respect to the project

WHEREAS, University City Municipal Code Section 223.010 prohibits housing discrimination, which is defined to include unfair treatment based on race or color; and

WHEREAS, the United States Supreme Court recently held, in *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S.Ct. 2507 (2015), that the federal Fair Housing Act (FHA) encompasses disparate-impact claims based on race discrimination, and suits targeting policies that unfairly exclude minorities from certain neighborhoods without sufficient justification are at the heartland of disparate-impact liability; and

WHEREAS, by written communication to MSD on June 9, 2017, University City staff requested 1) MSD's public engagement plan for the project and if the public engagement will include an opportunity for questions and answers on whether Project Clear in general and the University City project in particular have a disproportionate impact on communities of color and low income communities, such as the two near Hafner Court, and 2) the actions MSD has taken in Project Clear in general and the University City project in particular to promote and ensure equitable treatment of communities of color and low income communities, and further, that there is no disproportionate impact on a community; and

WHEREAS, MSD has failed or refused to respond to such requests by staff; and

NAACP's request to the EPA to investigate environmental justice issues concerning MSD's project in University City

WHEREAS, by letter dated July 12, 2017 to the United States Environmental Protection Agency (EPA), attached and incorporated herein, the Missouri Conference of the National Association for the Advancement of Colored People (NAACP) and Great Rivers Environmental Law Center requested the EPA to investigate environmental justice issues concerning the MSD project in University City; and

WHEREAS, the EPA, in its Environmental Justice Strategic Plan for 2016-2020, defines environmental justice as "the fair treatment and meaningful involvement of all people, regardless of race, color, national origin or income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies;" and

WHEREAS, principal themes within the EPA's Environmental Justice Strategic Plan include working with local government to reduce adverse impacts and promoting meaningful public participation; and

WHEREAS, MSD has not worked with University City to reduce adverse impacts and promote meaningful public participation; and

WHEREAS, the City Council fully supports the NAACP's request to the EPA to investigate MSD's project in University City, especially given MSD's failure or refusal to identify any environmental justice policies or actions with respect to Project Clear in general and the University City project in particular; and

WHEREAS, University City residents are entitled to environmental justice; and

MSD's position that it does not have to comply with University City's Codes

WHEREAS, at a community meeting held by MSD on June 20, 2017, MSD told University City residents it did not have to comply with University City's Building and Zoning Codes and Right-of-Way Use Regulations; and

WHEREAS, MSD's position that it does not have to comply with municipal codes and may in effect ignore them in connection with its projects invites litigation with municipalities and does not promote good relations with municipalities throughout MSD's territory; and

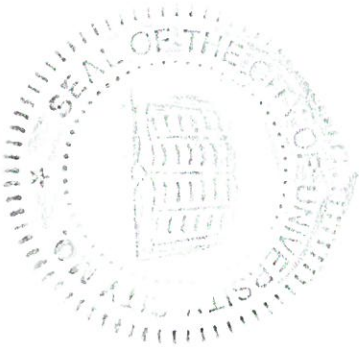
NOW THEREFORE, BE IT RESOLVED, that the City Council rejects the two project options presented by MSD on May 22, 2017 as not in the best interest of University City; requests that MSD work cooperatively with it, University City staff and residents, and other interested persons, to find an acceptable solution; fully supports the NAACP's request to the EPA to investigate environmental justice issues concerning the project; and requests that MSD change its position on University City's Codes and Regulations and agree to comply with them.

Adopted this 14<sup>th</sup> day of August, 2017.

  
Shelley Welsch, Mayor

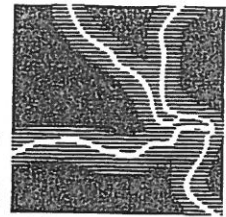
ATTEST:

  
LaRette Reese, Interim City Clerk



July 12, 2017

GREAT  
RIVERS



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*Lawyers for the Environment*

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Re: MSD Proposal for Raw Sewage Storage Tanks

Founding President  
Lewis C. Green, 1924-2003

Dear Ms. Moses:

On behalf of the Missouri State Conference of the National Association for the Advancement of Colored People ("Missouri NAACP"), Great Rivers Environmental Law Center ("Great Rivers") writes to request that EPA investigate an environmental justice issue concerning a proposal by the St. Louis Metropolitan Sewer District (MSD) to locate two raw sewage storage tanks within a densely populated minority community in Ward 3 of the City of University City, St. Louis County, Missouri. At its June 3, 2017 quarterly meeting, upon a motion made, seconded and carried, the members of the Missouri NAACP determined to request EPA to undertake the environmental justice investigation.<sup>1</sup>

#### Environmental Justice

In its 2020 Action Agenda, EPA defines environmental justice "as the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies."<sup>2</sup> Principal themes within EPA's current

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<sup>1</sup> The mission of the NAACP is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination. The NAACP has an Environmental and Climate Justice Program ("ECJ") that addresses environmental injustices that have a disproportionate impact on communities of color and low-income communities.

<sup>2</sup> EJ 2020 Action Agenda, The U.S. EPA's Environmental Justice Strategic Plan for 2016 – 2020, p. 1 ("Action Agenda").



Environmental Justice Action Agenda include working with local government to reduce adverse impacts and promoting meaningful public participation.<sup>3</sup>

The Missouri NAACP believes that fair treatment and meaningful community involvement have been lacking in connection with MSD's proposed sewage storage tanks.

#### Factual Background

On May 31, 2017, the undersigned attended a community meeting of University City Ward 3 residents concerning the proposed sewage tanks. Apparently, nine days earlier, on May 22, 2017, MSD had announced to the community its plan to construct the sewage tanks above ground in the midst of a densely populated residential neighborhood in the City's 3rd Ward in a predominantly African American community.<sup>4</sup> Before May 22, 2017, MSD had held no public meetings and otherwise had not engaged the public with regard to its plans to locate these sewage storage tanks above ground.

At the May 22, 2017 public meeting, MSD gave the community two options. Both options put the tanks in a densely populated, minority, residential neighborhood. MSD represented that there was no other feasible alternative and directed the City to choose either "Option 1" or "Option 2" by the end of June, 2017.

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<sup>3</sup> See e.g., Action Agenda, p. 4 ("Work with co-regulators to reduce adverse impacts and promote meaningful involvement in overburdened communities"); p. 9 ("EPA seeks the fair treatment and meaningful involvement of all people . . . , in coordination with local, state, tribal and federal partners."); p. 19 ("EPA will also enhance communication and transparency with affected communities . . . so that community input can inform our work"); p. 27 ("The objectives reflect the shared responsibilities of EPA, states and local governments to gain significant environmental and public health improvements in the places and communities where these are needed most, and to meaningfully involve people as we set priorities and make decisions.")

<sup>4</sup> Until May 22, 2017, the City's governing body was under the impression that MSD was planning to construct a below ground tunnel. In fact, City Council members were led to believe that the only surface disruption in the area would be minimal surface disruption surrounding "drop shafts." Thus, if a member of the community had asked his or her councilmember about MSD's plans, the community member would receive information about a remedy to be located completely underground.



MSD's ultimatum generated intense public surprise and outcry. University City officials promptly held the May 31, 2017, community meeting mentioned above. Approximately two hundred community residents were in attendance. By a show of hands, not one had any prior knowledge of the MSD proposal to locate the raw sewage storage tanks above ground before May 22, 2017. By a show of hands, all were in favor of EPA investigating environmental justice concerns.

#### MSD Reveals a Third Alternative

Three weeks later, on June 20, 2017, MSD held a community meeting within the City's 3rd Ward. At this meeting, MSD revealed to the public that there was another feasible alternative not disclosed to the community previously. MSD then announced that it would put the two tanks below ground, except for the upper five feet of each tank, which supposedly would be concealed by landscaping.<sup>5</sup>

#### Meaningful Public Participation Is Lacking

MSD presented the community with two options at a public meeting in May, 2017, and directed the City to choose one of the two options before the end of June, 2017. Three weeks later, MSD revealed that there was a third, feasible alternative. Presenting these alternatives to the community in a piecemeal fashion thwarts meaningful public participation. MSD should disclose to the community, upfront, all of the alternatives it has evaluated. Further, if the community comes forward with other feasible alternatives, MSD should evaluate these alternatives as well and involve the community in the evaluation process.<sup>6</sup> The problem MSD faces is a region-wide problem. This particular minority community should not be forced to bear a disproportionate share of the adverse impacts.

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<sup>5</sup> Although visually not as offensive as the two options MSD had presented to the public on May 22, 2017, community members continue to express outrage over MSD's plan to locate the tanks in their residential neighborhood.

<sup>6</sup> We understand that the City has submitted to MSD a request for public information pursuant to Missouri's Open Records law. The City is awaiting a response. The City also had submitted a list of questions to MSD in advance of the June, 20, 2017, public meeting. We understand that, as of the date of this letter, MSD has declined to answer these questions.

### The Disparate Treatment

With regard to MSD's Project Clear, it appears that MSD is treating the City's 3rd Ward differently compared to other communities in MSD's service area. To date, MSD has constructed one other above ground sewage storage facility. It is located in an industrial setting, adjacent to Interstate 70 in St. Louis County. It is not located in a residential neighborhood. MSD also plans to locate a second above ground sewage storage tank in Crestwood, St. Louis County, Missouri. That tank also will not be in the middle of a residential neighborhood.<sup>7</sup> In contrast, if constructed, these tanks will be located within a dense residential neighborhood, within approximately 100 feet of other residential properties, in close proximity to a public school, and in close proximity to a park.

### The Sewage Storage Tanks Will Destabilize the Community

If constructed, the sewage storage tanks also will have the effect of destabilizing the subject community. According to EPA's Action Agenda (p. 5), "environmental justice requires not only reducing disproportionate burdens but also creating opportunities to build healthy, wholesome, sustainable and resilient communities." The action agenda further sets out as one of its goals (p.5), "promoting community revitalization."

We understand that the particular neighborhood where MSD proposes to construct the tanks is one of the more stable neighborhoods within that part of the City's 3rd Ward. MSD's proposal will have the effect of destabilizing the community instead of promoting community revitalization.

### Community Demographics and Contact Information

The City now is in the process of identifying persons to serve as community contacts for EPA. We will transmit that contact information to you when we receive it.

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<sup>7</sup> See also MSD's proposed underground Maline Creek Storage facility at [http://www.projectclearstl.org/wp-content/uploads/2015/07/pc\\_maline-creek\\_fact-sheet\\_073015\\_01.pdf](http://www.projectclearstl.org/wp-content/uploads/2015/07/pc_maline-creek_fact-sheet_073015_01.pdf).

The City also is gathering information about the demographics within the affected community. We will transmit that information to you as well.

Conclusion

Although we are continuing to investigate the facts on behalf of the Missouri NAACP, we believe that sufficient information exists at this juncture to ask EPA to investigate the environmental justice issues surrounding MSD's proposal to locate the raw sewage storage tanks in the midst of this residential community.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce A. Morrison", with a long horizontal flourish extending to the right.

Bruce A. Morrison



