



MEMORANDUM

Agenda Item No. 8(S)(1)(A)

TO: Honorable Chairperson Barbara Carey-Shuler, Ed.D. **DATE:** **October 7, 2003**
Members, Board of County Commissioners

FROM: George M. Burgess
County Manager



SUBJECT: Resolution Ratifying the County Manager's Action of Executing a Consent Agreement and Final Order (CAFO) with the United States Environmental Protection Agency Resolving Alleged Violation of Reporting Requirements for The North Dade Landfill Gas Flare

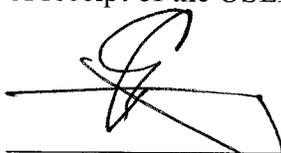
RECOMMENDATION

It is recommended that Board ratify the County Manager's action of executing the Consent Agreement and Final Order with the United States Environmental Protection Agency (USEPA) to resolve alleged violation of the Clean Air Act (CAA) for failure to submit the Title V Certification Report directly to USEPA.

BACKGROUND

The North Dade Landfill's landfill gas flare is permitted to operate through a Title V operating permit issued by the Florida Department of Environmental Protection (FDEP) under the Federal Clean Air Act. This permit requires certain reports to be issued periodically. Among these is the Title V Certification Report. The purpose of this report is to disclose the compliance status of a permitted air emission source.

The Department of Solid Waste Management (DSWM) received notice from the USEPA on August 20, 2003 that it (DSWM) had failed to file this report and disclose the status of the permitted facility to USEPA. DSWM records indicate that it filed the report in a timely manner with FDEP, the permitting agency, but had failed to submit an original (i.e. duplicate copy of said report) by certified mail to USEPA. USEPA has offered to settle the matter in an expeditious fashion in lieu of filing a formal complaint and possibly protracted litigation, through entry into the CAFO and payment of \$2,000.00 in penalties within fifteen (15) days of receipt of the USEPA correspondence.



Assistant County Manager
Pedro G. Hernandez



MEMORANDUM

(Revised)

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

DATE: October 7, 2003

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No.8(S)(1)(A)

Please note any items checked.

- “4-Day Rule” (“3-Day Rule” for committees) applicable if raised**
- 6 weeks required between first reading and public hearing**
- 4 weeks notification to municipal officials required prior to public hearing**
- Decreases revenues or increases expenditures without balancing budget**
- Budget required**
- Statement of fiscal impact required**
- Bid waiver requiring County Manager’s written recommendation**
- Ordinance creating a new board requires detailed County Manager’s report for public hearing**
- Housekeeping item (no policy decision required)**
- No committee review**

Approved _____ Mayor

Agenda Item No. 8(S)(1)(A)

Veto _____

10-7-03

Override _____

RESOLUTION NO. _____

RESOLUTION RATIFYING THE COUNTY MANAGER'S ACTION OF EXECUTING A CONSENT AGREEMENT AND FINAL ORDER WITH THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY RESOLVING ALLEGED VIOLATION OF REPORTING REQUIREMENTS FOR THE NORTH DADE LANDFILL GAS FLARE AND AUTHORIZING THE MANAGER TO EXERCISE PROVISIONS THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference; and

WHEREAS, the Department of Solid Waste Management has recommended that this Consent Agreement and Final Order be approved to resolve a matter in mutual dispute between the County and the United States Environmental Protection Agency, without resorting to litigation,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby ratifies the County Manager's action of executing a Consent Agreement and Final Order with the United States Environmental Protection Agency, to resolve issues related to violation of reporting requirements for the North Dade Landfill gas flare; and authorizes the County Manager to exercise the provisions therein.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Dr. Barbara Carey-Shuler, Chairperson	
Katy Sorenson, Vice-Chairperson	
Bruno A. Barreiro	Jose "Pepe" Diaz
Betty T. Ferguson	Sally A. Heyman
Joe A. Martinez	Jimmy L. Morales
Dennis C. Moss	Dorrin D. Rolle
Natacha Seijas	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of October, 2003. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Thomas H. Robertson





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

RECEIVED
AUG 20 2003
Environmental
Compliance Division

AUG 15 2003

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Lee Casey, Chief
Environmental Compliance Division
Miami-Dade Solid Waste Management
8675 NW 53rd Street, Suite 201
Miami, FL 33166

Re: Miami-Dade Solid Waste Management – Title V Certification
Docket No. CAA-04-2003-1514(b)

Dear Mr. Casey:

The United States Environmental Protection Agency (EPA) has determined that Miami-Dade Solid Waste Management (Miami-Dade SWM) has failed to comply with Clean Air Act (CAA), Title V operating permit regulations requiring all Title V facilities to certify compliance with the terms and conditions contained in the permit and promptly report deviations from the permit requirements. In addition, the regulations require the permittee to submit a copy of the compliance certification to the Director of the Air, Pesticides and Toxics Management Division, EPA Region 4, who has been lawfully delegated this authority. Our information shows that you have failed to meet these requirements in violation of the CAA. The purpose of this letter is to provide Miami-Dade SWM with an opportunity to fully resolve this violation prior to the filing of a complaint by signing the enclosed Consent Agreement and Final Order (CAFO) and returning it to EPA within fifteen (15) days of receipt of this correspondence. The basis upon which EPA made its determination is as follows.

On October 25, 2000, the Florida Department of Environmental Protection (FDEP) issued a Title V air operating permit to Miami-Dade SWM for its North Dade Landfill facility located in Dade County, Florida. The Title V permit required Miami-Dade SWM to certify its status of compliance with the terms and conditions of the permit for the period covered by the certification. Miami-Dade SWM was required to submit a certification for calendar year 2002 to FDEP and EPA by March 1, 2003. During the reporting period, on November 12, 2002, Respondent was issued a Warning Letter by the State of Florida, because Respondent had failed to conduct required emission testing for non-methane organic compounds at its North Dade Landfill by September 30, 2002. Representatives of FDEP identified the deficiency during a review of FDEP files and correspondence. A failure to conduct emission testing is considered a High Priority Violation under EPA policy. Miami-Dade SWM failed to submit a Title V certification report to EPA, and failed to disclose its status of compliance with the terms and conditions of its permit for the period covered by the certification. Therefore, EPA has reason to

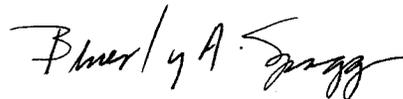
believe that Miami-Dade SWM violated Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), Section 502(a) of the CAA, 42 U.S.C. § 7661a(a).

Violations of the CAA carry an assessment of an administrative penalty of up to \$27,500 per day for each day of violation. The process of assessing an administrative penalty generally is commenced with the filing of a Complaint with the Regional Hearing Clerk, after which the recipient has the right to a hearing and other procedural provisions pursuant to Section 113(b), 42 U.S.C. § 7413(b), and the "*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*" ("*Consolidated Rules*"), 40 C.F.R. Part 22. If the parties agree to resolve violations prior to the filing of a Complaint, however, the *Consolidated Rules* permit the proceeding to be commenced and concluded simultaneously by the issuance of a consent agreement signed by both parties and an accompanying final order. 40 C.F.R. § 22.13(b).

In lieu of filing a formal complaint in this matter or entering into protracted litigation, EPA is willing to resolve this matter for \$2000. If you are interested in resolving this matter quickly, sign the enclosed CAFO where we have marked "sign here," and send the entire original back to Jason Dressler at EPA **within fifteen (15) days after receipt** of this correspondence. Your signature on this CAFO resolves the violation which would be alleged in a Complaint. It does not mean you either admit or deny the factual allegations on which a Complaint would be based, and preserves your right to contest the underlying allegations. After EPA receives the signed CAFO, it will be signed and approved by the appropriate officials and a final document will be sent to you upon filing with the Regional Hearing Clerk. EPA will take no further civil penalty action against you for the violation recited in the CAFO.

Since we are offering this CAFO as an expeditious means of resolving this matter, EPA's offer of settlement will be automatically withdrawn within 15 days of receipt of this letter if we have not heard from you prior to that time. EPA may then pursue enforcement actions for the violations listed in this letter, including the filing of an administrative complaint for penalties. If you have any questions regarding this letter or the enclosures, please call Jason Dressler at (404)562-9208.

Sincerely,



Beverly Spagg, Chief
Air and EPCRA Enforcement Branch

Enclosure

cc: Jim Pennington, FDEP

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
Miami-Dade Solid Waste Management) Docket No. CAA-04-2003-1514(b)
Miami, Florida)
)
)
Respondent.)
_____)

CONSENT AGREEMENT AND FINAL ORDER

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d).
2. The authority to take action under Section 113(d) of CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of the Environmental Protection Agency (EPA). The Administrator of EPA has lawfully delegated this authority under the CAA to the Regional Administrators by EPA Delegation 7-6-A, last updated on August 4, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 7-6-A, dated November 15, 1993. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter. The Respondent is Miami-Dade Solid Waste Management, a county-government owned entity doing business in Florida.
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

Statutory and Regulatory Background

4. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), provides that each state must submit a permit program to the Administrator of EPA that meets the requirements of Subchapter V of the CAA, 42 U.S.C. §§ 7661 *et. seq.* (Title V).

5. EPA promulgated final approval of the Florida Title V program on October 1, 2001 (66 Fed. Reg. 49,837), and the program became effective on that date.
6. Pursuant to the authority granted under Section 502(b) of the CAA, 42 U.S.C. §7661a(b), the Administrator promulgated regulations providing for the establishment of Title V permitting programs, effective July 21, 1992 (57 Fed. Reg. 32,295). The regulations are codified at 40 C.F.R. Part 70.
7. Section 503(b) of the CAA, 42 U.S.C. § 7661b(b), provides that the regulations promulgated under section 502(b) of the CAA must require the permittee to periodically certify that the facility is in compliance with applicable requirements of the permit and to promptly report any deviations from the permit requirements to the permitting authority.
8. Pursuant to 40 C.F.R. § 70.6(a)(3)(iii)(B), each Title V permit must require prompt reporting of deviations from permit requirements.
9. Pursuant to 40 C.F.R. § 70.6(c)(5), all Title V permits must require the permittee to certify compliance with the terms and conditions contained in the permit and to submit a copy of the compliance certification to: (1) the Director of the Air, Pesticides and Toxics Management Division, EPA Region 4, who has been lawfully delegated this authority, and (2) the Florida permitting authority.
10. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that it is unlawful for any person to violate any requirement of a permit issued under Title V of the CAA. The Administrator of U.S. EPA may assess a civil penalty of up to \$27,500 per day of violation pursuant to Section 113(d)(3) of the CAA, 42 U.S.C. § 7413(d)(3), and 40 C.F.R. Part 19.

Allegations

11. On October 25, 2000, the Florida Department of Environmental Protection (FDEP) issued a Title V permit to Respondent.
12. The Title V permit issued to Respondent required Respondent to certify whether it was in compliance with each term or condition of the permit.
13. Respondent was required to submit a certification to EPA, Region 4 on March 1, 2003.
14. During the calendar year 2002 reporting period, on November 12, 2002, Respondent was issued a Warning Letter by FDEP, because Respondent had failed to conduct required emission testing for non-methane organic compounds at its North Dade Landfill by September 30, 2002. Representatives of FDEP identified the deficiency during a review of FDEP files and correspondence. A failure to conduct emission testing is considered a High Priority Violation under EPA policy.

15. Respondent failed to submit a Title V certification report to EPA, and failed to disclose violations that occurred in reporting year 2002.

Consent Agreement

16. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.
17. Respondent waives its right to a hearing on the allegations contained herein.
18. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.
19. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with the compliance certification requirements of Title V of the CAA for reporting year 2002.
20. Compliance with this CAFO shall resolve the allegations of violations contained herein and known to the EPA at this time. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement for allegations of violations not contained in this CAFO.
21. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CAA.

Final Order

22. Respondent is assessed a civil penalty of **TWO THOUSAND DOLLARS (\$2,000)**.
23. Respondent shall pay the penalty by forwarding a cashier's or certified check in the amount specified in paragraph 22, payable to: "Treasurer, United States of America," to the following address:

U.S. EPA - Region 4
P.O. Box 100142
Atlanta, Georgia 30384

The check shall reference on its face the name and the Docket Number of the CAFO (Miami-Dade Solid Waste Management Docket number CAA-04-2003-1514(b)).
Payment shall be made within 15 days of receipt of this CAFO.

9

24. At the time of the payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960

Jason Dressler (AEEB)
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Saundi Wilson (EAD)
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303

25. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
26. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
27. This CAFO shall be binding upon the Respondent, its successors and assigns.
28. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.
29. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Beverly A. Spagg
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9170

Effective Date

30. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

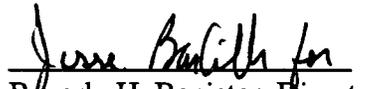
For Miami-Dade Solid Waste Management



Date: 8/27/03

Name: GEORGE M. BURGESS
for
Title: COUNTY MANAGER

For U.S. Environmental Protection Agency



Beverly H. Banister, Director
Air, Pesticides & Toxics
Management Division
Region 4

Date: 8/15/03

APPROVED AND SO ORDERED this _____ day of _____, 2003.

Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Miami-Dade Solid Waste Management; Docket No. CAA-04-2003-1514(b), on the parties listed below in the manner indicated:

Complainant/Designee Authorized to Receive Service (Via EPA's internal mail)

Lynda Crum
US EPA, Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303

Respondent (Via Certified Mail - Return Receipt Requested)

Miami-Dade Solid Waste Management
Environmental Compliance Division
8675 NW 53rd Street, Suite 201
Miami, FL 33166

Date _____

Patricia A. Bullock, Regional Hearing Clerk
United States Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, GA 30303
(404) 562-9511