Memorandum

MIAMI-DADE COUNTY

Date: January 22, 2009

Agenda Item No. 8(R)(1)(G)

To: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

From: George M. Burgess County Manager

Subject: Settlement of Enforcement Actions Against Miami-Dade County Resulting from the Operation of the County's Water and Sewer System

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RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) adopt the attached resolution authorizing the execution of two settlements totaling $41,000 with the Florida Department of Environmental Protection (FDEP) related to unauthorized discharges from the Miami-Dade Water and Sewer Department's (WASD) wastewater treatment facilities.

SCOPE

This agenda item is countywide as the South District Wastewater Treatment Plant (SDWWTP), located in District 8, serves the southern part of the County and the North District Wastewater Treatment Plant (NDWWTP), located in District 4, serves the northern part of County.

FISCAL IMPACT/FUNDING SOURCE

The execution of both settlements total $41,000. The funding source is WASD's operating revenues.

TRACK RECORD/MONITOR

WASD's Deputy Director for Capital Improvements and Regulatory Compliance will oversee the execution of both settlements.

BACKGROUND

WASD operates three regional wastewater treatment plants which currently treat approximately 290 million gallons per day. Despite due diligence on the part of WASD, treatment plant bypasses or overflows can still occur due to unforeseen events, equipment failure, and/or inclement weather conditions.

In the first settlement, Consent Order File Number OGC 08-0049, FDEP is assessing $20,000 in penalties plus $500 for FDEP costs, please see Exhibit A. The settlement is for a discharge that occurred at WASD's NDWWTP on September 30, 2007 when 1.7 million gallons of treated effluent was released to the Oleta River for approximately 19 minutes due to equipment failure during a heavy rain event.

In the second settlement, Consent Order File Number OGC 08-0084, FDEP is assessing $20,000 in penalties plus $500 for FDEP costs, please see Exhibit B. The settlement is for a discharge which occurred over a three day period (October 1-3, 2007) at WASD's SDWWTP. In this instance, partially treated effluent was diverted to the overflow ponds during and after a heavy rain event in which flows exceeded the Plant's available capacity.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: January 22, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(R)(1)(G)

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
Veto _____
Override _____

Agenda Item No. 8(R)(1(G)
1-22-09

RESOLUTION NO. _____

RESOLUTION APPROVING SETTLEMENT OF ENFORCEMENT ACTIONS BY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AGAINST MIAMI-DADE COUNTY IN THE AMOUNT OF $41,000 AS A RESULT OF MIAMI-DADE COUNTY'S OPERATION OF THE WATER AND SEWER SYSTEM AND AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE SAME

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the settlement of enforcement actions brought by the State of Florida Department of Environmental Protection against Miami-Dade County as a result of the County's operation of its water and sewer utility in the amount of $41,000; in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor or Mayor's designee to execute same.

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:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 22nd day of January, 2009. 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:

Henry N. Gillman

EXHIBIT A

Florida Department of Environmental Protection

Southeast District
400 N. Congress Ave., Suite 200
West Palm Beach, FL 33401

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

AUG 1 5 2008

RETURN RECEIPT REQUESTED

Mr. John W. Renfrow, P.E., Director
Miami-Dade Water & Sewer Department (MDWASD)
P.O. Box 330316
Miami, FL 33233-0316
renfrj@miamidade.gov

Miami-Dade County, Florida

SUBJECT: Proposed Settlement of DEP vs. Miami-Dade Water & Sewer Department
OGC File No.: OGC 08-0049

Dear Mr. Renfrow:

The purpose of this letter is to complete the resolution of the matter previously identified by the Department in the Warning Letter dated October 16, 2007, a copy of which is attached. All corrective actions required to bring your facility into compliance have been completed. The Department finds that you are in violation of the rules and statutes cited in the attached Warning Letter. In order to resolve the matters identified in the attached Warning Letter, you are assessed Civil Penalties in the amount of $20,000.00 along with $500.00 to reimburse the Department costs, for a total of $20,500.00.

The Department acknowledges that the payment of these civil penalties by you does not constitute an admission of liability. The payment must be made payable to the Department of Environmental Protection by cashier's check or money order and shall include the OGC File Number assigned above with the notation "Ecosystems Management and Restoration Trust Fund." Payment shall be sent to the Department of Environmental Protection, Southeast District, 400 North Congress Avenue, Suite 200, West Palm Beach, Florida 33401 within 30 days of your signing this letter.

Your signing this letter constitutes your acceptance of the Department's offer to resolve this matter on these terms. If you elect to sign this letter, please return it to the Department at the address indicated above. The Department will then countersign the letter and file it with the Clerk of the Department. When the signed letter is filed with the Clerk, the letter shall constitute final agency action of the Department, which shall be enforceable pursuant to Section 120.69 and 403.121, Florida Statutes.

If you do not sign and return this letter to the Department at the Southeast District address within 15 days of receipt, the Department will assume that you are not interested in settling this matter on the above described terms, and will proceed accordingly. None of your rights or substantial interests is determined by this letter unless you sign it and it is filed with the Department Clerk.

Sincerely,

8/14/08

Jack Long
District Director
Southeast Florida District

Date

JL/LAB/TRB/bb

Attachments: Warning Letter: WL 07-0118DW13SED

Enclosure (all)

cc:	Carlos L. Hernandez, P.E., Chief Plan Review Division – DERM	hernac@miamidade.gov
	Agustin Socarras, P.E. – DERM	SocarA@miamidade.gov
	Richard M. O'Rourke – MDWASD	ROROU01@miamidade.gov
	Thomas C. Maxwell, Assistant Plant Superintendent – MDWASD	tmaxw@miamidade.gov
	Tim Powell – DEP/WPB	Tim.Powell@dep.state.fl.us
	Maurice Barker - DEP/TAL	Maurice.Barker@dep.state.fl.us
	Lisa Self - DEP/WPB	Lisa.M.Self@dep.state.fl.us

I, Mr. John W. Renfrow, P.E., Director, on behalf of Miami-Dade Water & Sewer Department hereby accept the terms of the settlement offer identified above.

FOR THE RESPONDENT:

By:_____

Mr. John W. Renfrow, P.E. Date
Director
Miami-Dade Water & Sewer Department
P.O. Box 330316
Miami, FL 33233-0316

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

_____

Jack Long Date
District Director
Southeast District

DONE AND ORDERED this _____ day of _____, 2008, in West Palm Beach, Florida

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to §120.52 Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged:

_____

Clerk Date

7

NOTICE OF RIGHTS

Persons who are not parties to this Consent Order, but whose substantial interests are affected by this Consent Order, have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:
(a) The name, address, and telephone number of each petitioner; the Department's Consent Order identification number and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of the Consent Order; (c) A statement of how each petitioner's substantial interests are affected by the Consent Order; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Consent Order; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order; (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.

Florida Department of Environmental Protection

Southeast District
400 North Congress Avenue, Suite, 200
West Palm Beach, Florida 33401

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

OCT 16 2007

RETURN RECEIPT REQUESTED
7006 2760 0005 5726 5611

WARNING LETTER
WL 07-0118 DW13SED

Mr. John Renfrow, Director
Miami-Dade Water and Sewer Department
P.O. Box 330316
Miami, Florida 33233-0316

Miami-Dade County, Florida

SUBJECT: Unauthorized Wastewater Discharge at MDWASD North District Wastewater Treatment Facility

Dear Mr. Renfrow:

The purpose of this letter is to advise you of possible violations of law for which you may be responsible, and to seek your cooperation in resolving the matter. Department staff have received notification that treated effluent was discharged to the Oleta River from the North Distcrict wastewater treatment facility. The discharge quantity was estimated as 1.7 million gallons. No discharge to the Oleta River or its wetlands is permitted. The reported estimate of the chlorine residual in the effluent was 1.0 milligrams/liter, in excess of the 0.01 mg/l limit for surface water discharges.

Section 403.021(2), Florida Statutes, states that no wastes shall be discharged to waters of the state without first being given the degree of treatment necessary to protect those waters. Rule 62-620.300(1), Florida Administrative Code, states that no person shall discharge wastes to waters without a permit from the Department, unless exempted by Department rule or statute. Chapter 62-302, F.A.C., prohibits pollution of surface water bodies causing exceedance of surface water quality criteria.

Chapters 373 and 403, Florida Statutes (F.S.), provide that it is a violation to fail to obtain any permit or to violate or fail to comply with any rule, regulation, order, permit, or certification adopted or issued by the Department pursuant to its lawful authority. Any activities at your facility that may be contributing to violations of the above-described statutes or rules should be ceased.

Violations of Florida Statutes or administrative rules may result in liability for damages and restoration, and the judicial imposition of civil penalties up to $10,000.00 per violation per day, pursuant to Sections 403.141 and 403.161, Florida Statutes.

You are requested to contact **Lisa Self at (561) 681-6699** within fifteen (15) days of receipt of this Warning Letter to arrange a meeting to discuss this matter. The Department is interested in reviewing any facts you may have that will assist in determining whether any violations have occurred. You may bring anyone with you to the meeting that you feel could help resolve this matter.

Please be advised that this Warning Letter is part of an agency investigation, preliminary to agency action in accordance with Section 120.57(5), Florida Statutes. We look forward to your cooperation in completing the investigation and resolution of this matter.

Sincerely,

10/12/07

Jack Long
District Director
Southeast District

Date

JL/LAH/TRB/lms

cc:

Agustin Socarras, Miami-Dade County DERM	SocarA@miamidade.gov
Mike Tanski, DEP/TLH	Mike.Tanski@dep.state.fl.us
David O'Brien, DEP/TLH	David.O'Brien@dep.state.fl.us
Tim Powell, DEP/WPB	Tim.Powell@dep.state.fl.us

EXHIBIT B

Florida Department of Environmental Protection

Southeast District
400 N. Congress Ave., Suite 200
West Palm Beach, FL 33401

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

RETURN RECEIPT REQUESTED

AUG 1 5 2008

Mr. John W. Renfrow, P.E., Director
Miami-Dade Water & Sewer Department (MDWASD)
P.O. Box 330316
Miami, FL 33233-0316
renfrj@miamidade.gov

Miami-Dade County, Florida

SUBJECT: Proposed Settlement of DEP vs. Miami-Dade Water & Sewer Department
OGC File No.: OGC 08-0084

Dear Mr. Renfrow:

The purpose of this letter is to complete the resolution of the matter previously identified by the Department in the Warning Letter dated October 25, 2007, a copy of which is attached. All corrective actions required to bring your facility into compliance have been completed. The Department finds that you are in violation of the rules and statutes cited in the attached Warning Letter. In order to resolve the matters identified in the attached Warning Letter, you are assessed Civil Penalties in the amount of $20,000.00 along with $500.00 to reimburse the Department costs, for a total of $20,500.00.

The Department acknowledges that the payment of these civil penalties by you does not constitute an admission of liability. The payment must be made payable to the Department of Environmental Protection by cashier's check or money order and shall include the OGC File Number assigned above with the notation "Ecosystems Management and Restoration Trust Fund." Payment shall be sent to the Department of Environmental Protection, Southeast District, 400 North Congress Avenue, Suite 200, West Palm Beach, Florida 33401 within 30 days of your signing this letter.

Your signing this letter constitutes your acceptance of the Department's offer to resolve this matter on these terms. If you elect to sign this letter, please return it to the Department at the address indicated above. The Department will then countersign the letter and file it with the Clerk of the Department. When the signed letter is filed with the Clerk, the letter shall constitute final agency action of the Department, which shall be enforceable pursuant to Section 120.69 and 403.121, Florida Statutes.

If you do not sign and return this letter to the Department at the Southeast District address within 15 days of receipt, the Department will assume that you are not interested in settling this matter on the above described terms, and will proceed accordingly. None of your rights or substantial interests is determined by this letter unless you sign it and it is filed with the Department Clerk.

Sincerely,

8/14/08

Jack Long
District Director
Southeast Florida District

Date

JL/LAB/TRB/bb

Attachments: Warning Letter: WL 07-0095DW13SED

Enclosure (all)

cc:	Carlos L. Hernandez, P.E., Chief Plan Review Division – DERM	hernac@miamidade.gov
	Agustin Socarras, P.E. – DERM	SocarA@miamidade.gov
	Richard M. O'Rourke – MDWASD	ROROU01@miamidade.gov
	Thomas C. Maxwell, Assistant Plant Superintendent – MDWASD	tmaxw@miamidade.gov
	Tim Powell – DEP/WPB	Tim.Powell@dep.state.fl.us
	Maurice Barker - DEP/TAL	Maurice.Barker@dep.state.fl.us
	Lisa Self - DEP/WPB	Lisa.M.Self@dep.state.fl.us

12

I, Mr. John W. Renfrow, P.E., Director, on behalf of Miami-Dade Water & Sewer Department hereby accept the terms of the settlement offer identified above.

FOR THE RESPONDENT:

By:_____

Mr. John W. Renfrow, P.E. Date
Director
Miami-Dade Water & Sewer Department
P.O. Box 330316
Miami, FL 33233-0316

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

_____

Jack Long Date
District Director
Southeast District

DONE AND ORDERED this _____ day of _____, 2008, in West Palm Beach, Florida

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to §120.52 Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged:

_____

Clerk Date

NOTICE OF RIGHTS

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The petition shall contain the following information:
(a) The name, address, and telephone number of each petitioner; the Department's Consent Order identification number and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of the Consent Order; (c) A statement of how each petitioner's substantial interests are affected by the Consent Order; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Consent Order; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order; (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

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Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.

Florida Department of Environmental Protection

Southeast District
400 North Congress Avenue, Suite, 200
West Palm Beach, Florida 33401

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

OCT 25 2007

RETURN RECEIPT REQUESTED

WARNING LETTER
WL 07-0095 DW13SED

Mr. John Renfrow, Director
Miami-Dade Water and Sewer Department
P.O. Box 330316
Miami, Florida 33233-0316

Miami-Dade County, Florida
Facility ID: FLA042137

SUBJECT: Treatment Bypass and Wastewater Discharge to Ponds at MDWASD South District Wastewater Treatment Facility

Dear Mr. Renfrow:

The purpose of this letter is to advise you of possible violations of law for which you may be responsible, and to seek your cooperation in resolving the matter. Department staff have received notification that wastewater received by the South District Wastewater Treatment Facility bypassed part of the treatment process, and that some partially treated wastewater was discharged to the unlined ponds at the Facility on multiple days during or around the first week of October, 2007. The ponds may be connected to or influence Black Creek, which discharges directly to surface waters of the state through Biscayne National Park.

Rule 62-604.130(1), Florida Administrative Code, prohibits the release or disposal of excreta, sewage, or other wastewaters or residuals without providing proper treatment approved by the Department. Section 403.021(2), Florida Statutes, states that no wastes shall be discharged to waters of the state without first being given the degree of treatment necessary to protect those waters.

Chapters 373 and 403, Florida Statutes (F.S.), provide that it is a violation to fail to obtain any permit or to violate or fail to comply with any rule, regulation, order, permit, or certification adopted or issued by the Department pursuant to its lawful authority. Any activities at your facility that may be contributing to violations of the above-described statutes or rules should be ceased.

Violations of Florida Statutes or administrative rules may result in liability for damages and restoration, and the judicial imposition of civil penalties up to $10,000.00 per violation per day, pursuant to Sections 403.141 and 403.161, Florida Statutes.

15

You are requested to contact **Lisa Self at (561) 681-6699** within fifteen (15) days of receipt of this Warning Letter to arrange a meeting to discuss this matter. The Department is interested in reviewing any facts you may have that will assist in determining whether any violations have occurred. You may bring anyone with you to the meeting that you feel could help resolve this matter.

Please be advised that this Warning Letter is part of an agency investigation, preliminary to agency action in accordance with Section 120.57(5), Florida Statutes. We look forward to your cooperation in completing the investigation and resolution of this matter.

Sincerely,

10/24/07

Jack Long
District Director
Southeast District

Date

JL/LAH/TRB/lms

cc:

Agustin Socarras, Miami-Dade County DERM	SocarA@miamidade.gov
Mike Tanski, DEP/TLH	Mike.Tanski@dep.state.fl.us
David O'Brien, DEP/TLH	David.O'Brien@dep.state.fl.us
Tim Powell, DEP/WPB	Tim.Powell@dep.state.fl.us