

Memorandum



Date: May 11, 2011

INLUC

To: Honorable Audrey M. Edmonson, Chairwoman
Infrastructure and Land Use Committee

Agenda Item No. 7(F)

From: Alina T. Hudak
County Manager

A handwritten signature in black ink, appearing to read "Alina T. Hudak".

Subject: Report on DERM Activity in 8.5 Square Mile Area

The attached report is provided in response to a request by Commissioner Jose "Pepe" Diaz at the April 27, 2011 CDMP hearing for a report on DERM's activity and assessment of fines on properties in the 8.5 Square Mile Area (SMA) of Miami-Dade County.

A handwritten signature in black ink, appearing to be a stylized name, positioned above a horizontal line.

Assistant County Manager

Memorandum



Date: May 4, 2011

To: Alina T. Hudak
County Manager

From:  Carlos Espinosa, P.E., Director
Environmental Resources Management

Subject: Report on DERM Activity in 8.5 Square Mile Area

The 8.5 Square Mile Area is a rural community located at the eastern edge of the East Everglades, consisting of mostly undrained, low lying, commonly flooded lands along the eastern boundary of Everglades National Park (ENP). The area is located outside of the regional flood control canal system. The majority of land uses within the 8.5 SMA are rural residential, agricultural or vacant. Due to the soils and hydrology of the area, coupled with its proximity to Everglades National Park (ENP), much of this area contains wetlands, as defined by Florida Statutes.

Pursuant to requirements of Chapter 24 of the Code of Miami-Dade County (Code), a Class IV permit from DERM is required for work in wetlands. Wetlands are defined pursuant to state law based upon site specific characteristics that include soil type, hydrology, and vegetation. Miami-Dade County is required to use the state's definition when identifying wetlands. On a countywide basis, most Class IV permits are issued for dredging and filling activities related to filling for development, rock mining, or agricultural uses. Through issuance of a Class IV permit, DERM works to minimize wetland impacts where feasible, and assures that unavoidable impacts are adequately mitigated to offset the permanent loss of wetlands that are authorized for dredging and filling. Wetlands are an important component of our natural system in Miami-Dade County. They provide habitat for our diverse wildlife and reduce flooding by providing storage of stormwater following storm events. More importantly, wetlands play a critical role in purifying water and recharging our drinking water aquifer. For this reason, much of DERM's involvement in the 8.5 SMA is related to implementation of wetlands regulations and addressing issues related to solid waste for protection of groundwater resources.

Following the 2005 hurricane season DERM received complaints that shredded solid waste, which can contaminate the groundwater, was being deposited in remote areas of the County, primarily the C-9 wetland basin (in far northwest Miami-Dade County) and the 8.5 SMA. Upon notification, DERM immediately investigated and issued notices to owners of property where mulched hurricane debris was found. While some property owners indicated that their intention had been to accept beneficial mulch, the properties were actually filled with unsorted mulched hurricane debris. In some cases, the material was placed more than six feet high in areas extending over many acres. DERM began an investigation in cooperation with the Miami-Dade County Police Department (MDPD) to determine the source and trucking companies involved in the illegal dumping of this debris. The County was able to identify specific companies responsible for debris hauling and required them to remove the material from 13 private properties at no cost to the property owners. The origin of the material was linked to contractors working for a few local municipalities and to contractors working for Monroe County. In every case where the property owner has been able to identify the company that delivered the material, DERM and MDPD have been successful in getting the company to remove and dispose of it properly. In cases where the property owner cannot or will not identify the source of the hurricane debris mulch, the property owner is liable for removal and proper disposal of this solid waste material in compliance with county code requirements. Many of these cases also involve the placement of this material in wetlands, which is also prohibited by the County Code.

Table 1 below provides a summary of DERM's enforcement activities within the 8.5 SMA over the past 10-year period. Our records indicate that DERM has had a total of 90 enforcement cases within the 8.5 SMA over this timeframe. Most cases involve violations of wetlands regulations for work without obtaining required permits and some cases also included placement of solid waste in wetlands. A total of 11 cases did not involve work in wetlands but were related to other regulations administered by DERM which included solid waste, air, and tree violations. Of the 90 enforcement cases over the past 10 years, 39 cases were related specifically to placement of mulched hurricane debris in this area following the 2005 hurricane season. As noted above, where the property owner identified the waste hauler responsible for depositing the material, DERM worked to have the contractor remove and properly dispose of this material. When no contractor was identified, DERM pursued compliance directly with the responsible property owner. Table 1 also shows that 42 of the total number of enforcement cases in the 8.5 SMA have been resolved. Of the 42 cases resolved to date, more than half (25) were resolved with no penalty or fines paid by the property owner. It is also important to note that while there are 853 parcels within this area, there have only been a total of 90 enforcement cases (10.6%) over the past ten years, which shows that this area is not specifically targeted for enforcement.

Table 1: Summary of DERM's Enforcement Activity Within the 8.5 SMA for the 10-Year Period 4/2001 – 4/2011

	Open Cases	Resolved/Closed Cases	Total
Total Number of Enforcement Cases	48	42	90
Number of Enforcement Cases Not Related to Wetlands Regulations	2	9	11
Number of Enforcement Cases Resolved with No Penalty or Fine	Pending case resolutions	25	25
Amount of Penalties or Fines Assessed Administratively ⁽¹⁾	\$10,102	\$20,591 ^a	\$30,693 ^a
Amount of Penalties or Fines Assessed in Court ⁽²⁾	\$467,412	\$16,154	\$483,566
Total Penalties and Fines Paid	\$19,135	\$25,425 ^a	\$44,560 ^a

a: Does not include \$72,130 penalty paid by waste hauling contractor to settle hurricane waste dumping violation cases.

1: Represents penalties from administrative Consent Agreements and issuance of UCVNs (tickets)

2: Represents penalties overseen or imposed by a Judge

It is important for property owners to obtain permits when required. Review and issuance of permits allow projects to be completed with minimizing avoidable impacts to important air, land, and water resources and with providing mitigation necessary to offset unavoidable impacts. Obtaining permits not only protects important resources, but it can also protect property owners. For example, in cases related to placement of mulched hurricane debris, had property owners sought permits prior to placement of this material in wetlands, they would have been advised of the unsuitability of the mulch and of the Code prohibitions against its use.

When work is performed without permits and a violation of the Code is reported or discovered, DERM initiates a dialog with the property owner to have the violation corrected. DERM's goal in these situations is to have the work be in compliance with Code requirements. This can be achieved through restoration of the site or through obtaining a permit to authorize the work. Most violations are resolved

simply and expediently in this manner. However, when a property owner does not respond to the department or does not otherwise express a willingness to resolve the violation expediently, DERM follows a process of progressive enforcement to gain compliance. This may include issuance of a Uniform Notice of Civil Violation (UCVN, "ticket"), further dialog and offering an administrative Consent Agreement with conditions that identify a path to resolution, or in some circumstances, it may involve forwarding the case to the County Attorney's Office to initiate civil proceedings. Since taking legal action to resolve violations is the least desirable option, DERM frequently provides an extended period of time in negotiating with property owners to resolve violations.

Aside from issuance of a UCVN ("ticket", for which a recipient can request a hearing if so desired), DERM cannot independently impose penalties or fines against property owners. Penalties are only assessed through an agreement with the property owner to a penalty amount identified in a Consent Agreement, or penalties are imposed by a judge as part of a civil proceeding. In general, penalties exist as a deterrent to non-compliance and work to promote expedient compliance with the County Code. As noted in Table 1, most of the assessed penalties remain uncollected, consistent with DERM's emphasis on compliance for environmental protection rather than collection of penalties and fees. In addition, since protection of the environment and compliance with Code requirements is the department's ultimate goal, it is also important to note that DERM frequently negotiates with property owners to reduce penalties upon reaching compliance or at resolution of a case.

DERM continues to work with property owners in the 8.5 SMA to provide additional time to resolve outstanding violations.

Please let me know if you have any questions.