

**OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA**

MEMORANDUM

Agenda Item No. 8(D)(1)(D)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners


DATE: July 7, 2011

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

SUBJECT: Resolution authorizing the
execution of a specific operating
Agreement with the Florida
Department of Environmental
Protection for cooperative air
pollution control program
management in Miami-Dade County

Resolution No. R-519-11

The accompanying resolution was prepared by the Department of Environmental Resources Management and placed on the agenda at the request of Prime Sponsor Vice Chairwoman Audrey M. Edmonson.



R. A. Cuevas, Jr.
County Attorney

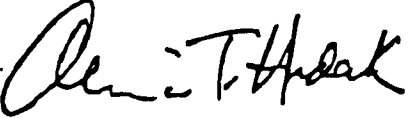
RAC/cp

Memorandum



Date: July 7, 2011

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Alina T. Hudak
County Manager 

Subject: Resolution Authorizing the Execution of a Specific Operating Agreement with the Florida Department of Environmental Protection for Cooperative Air Pollution Control Program Management in Miami-Dade County

Recommendation

It is recommended that the Board of County Commissioners approve the attached resolution authorizing the execution of an Air Pollution Control Specific Operating Agreement with the Florida Department of Environmental Protection for cooperative air pollution control program management in Miami-Dade County.

Scope

This agreement will involve countywide environmental permitting and regulation.

Fiscal Impact/Funding Source

Permit fees will be collected by MDC and will cover the costs of the administrative tasks required to implement the agreement.

Track Record/Monitor

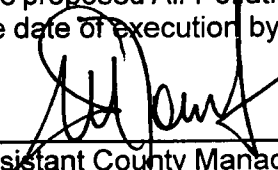
The Director of the Department of Environmental Resources Management will monitor this agreement.

Background

Since the 1970s, Miami-Dade County, through the Department of Environmental Resources Management (DERM), has been designated as an approved local environmental program pursuant to state law. In 1981, a general agreement was executed by the Florida Department of Environmental Protection (FDEP) and Miami-Dade County specifying cooperative arrangements for enforcing state and local environmental laws. The general agreement was subsequently updated in 1989, with expressed intent of developing additional, specific operating agreements relating to air programs. The attached Air Pollution Control Specific Operating Agreement (Attachment A) defines the roles of FDEP and Miami-Dade County through DERM and pursuant to state law.

The attached resolution seeks to continue with the cooperative agreement between the FDEP and Miami-Dade County relating to the delegation of state air pollution control programs to Miami-Dade County, which was initiated in 1995 and renewed previously in 2007. The agreement establishes the basis upon which FDEP and Miami-Dade County work together to protect air quality. The agreement provides that Miami-Dade County will continue to be delegated certain state permitting activities and will retain 80% of the state air permit fees collected. Permitted facilities will continue to realize savings in their combined state and county permit fees as a result of the delegation. The program delegation also streamlines the permitting process as well as maximizes the impacts of both state and local efforts pursuant to state air rules.

The proposed Air Pollution Control Specific Operating Agreement will have a term of three (3) years from the date of execution by both parties.


Assistant County Manager

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MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: July 7, 2011

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

SUBJECT: Agenda Item No. 8(D)(1)(D)

Please note any items checked.

- _____ **“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**
- _____ **Ordinance creating a new board requires detailed County Manager’s report for public hearing**
- _____ **No committee review**
- _____ **Applicable legislation requires more than a majority vote (i.e., 2/3’s _____, 3/5’s _____, unanimous _____) to approve**
- _____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(D)(1)(D)
7-7-11

RESOLUTION NO. R-519-11

RESOLUTION AUTHORIZING THE EXECUTION OF A
SPECIFIC OPERATING AGREEMENT WITH THE
FLORIDA DEPARTMENT OF ENVIRONMENTAL
PROTECTION FOR COOPERATIVE AIR POLLUTION
CONTROL PROGRAM MANAGEMENT IN MIAMI-
DADE COUNTY

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 hereby approves the Air Pollution Control Specific Operating Agreement between Miami-Dade County and the Florida Department of Environmental Protection for cooperative air pollution control program management in Miami-Dade County, in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County, execute amendments to this agreement for time extension, and to exercise the cancellation and renewal provisions contained herein.

The foregoing resolution was offered by Commissioner **Sally A. Heyman** who moved its adoption. The motion was seconded by Commissioner **Jose "Pepe" Diaz** and upon being put to a vote, the vote was as follows:

	Joe A. Martinez, Chairman	aye
	Audrey M. Edmonson, Vice Chairwoman	aye
Bruno A. Barreiro	absent	Lynda Bell absent
Esteban L. Bovo, Jr.	aye	Jose "Pepe" Diaz aye
Sally A. Heyman	aye	Barbara J. Jordan aye
Jean Monestime	aye	Dennis C. Moss aye
Rebeca Sosa	aye	Sen. Javier D. Souto aye
Xavier L. Suarez	aye	

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of July, 2011. 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: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Thomas H. Robertson

AIR POLLUTION CONTROL
SPECIFIC OPERATING AGREEMENT

BETWEEN THE
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP)

AND

MIAMI DADE COUNTY

PART I
BACKGROUND

- 1) Prior Operating Agreements. On July 7, 1981, The Department of Environmental Protection (DEP or Department) and Miami-Dade County (MDC) entered into a General Operating Agreement (GOA). It was superseded by another GOA executed on February 8, 1990 which is the current GOA. A copy of the GOA is on file at the Miami-Dade County Department of Environmental Resources Management (DERM) and the DEP's Division of Air Resource Management (DARM).

The GOA, executed pursuant to s. 403.182, Florida Statutes (F.S.), specifically requires that the Secretary of the Department must further authorize the duties a local program will undertake in accordance with a Specific Operating Agreement (SOA). The SOA must specify the DEP programs or duties to be conducted by MDC and will include such specifics terms as are necessary to clearly delineate each party's rights and obligations. Therefore, this SOA constitutes the sole agreement defining the rights and responsibilities of MDC regarding the air program under ss. 403.182 and 403.087, F.S. and the GOA. This SOA recognizes MDC as an "approved local air pollution control program" for purposes of ss. 320.03 and 376.60, F.S. In the event the Department disapproves the local air pollution control program, for cause as provided in s. 403.182(4), F.S., the Local Agency reserves the rights under the law to pursue all rights the Local Agency may be entitled to under ss. 320.03 and 376.60, F.S.

This SOA supersedes all provisions relating to air pollution control of all prior SOA's in Miami-Dade County. A copy of the GOA and SOA are on file at DERM and the DEP's Division of Air Resource Management (DARM)

- 2) County Authority. Pursuant to Article VIII, Section 6, of the Constitution of the State of Florida and Sections 1.01 A (8) and (9) of the Miami-Dade County Home Rule Charter (1957), the Miami-Dade Pollution Control Office was created in 1963 when its duties and powers were established by ordinance. That and subsequent ordinances have been codified as Chapter 24, Environmental Protection Ordinance of the Miami-Dade County Code. In 1974, the Department of Environmental Resources Management (DERM) was created, combining functions previously housed in the Pollution Control Office, Health Department, and Public Works Department, centralizing environmental decision-making and programs in the county. Pursuant to s. 403.182(9), F.S., nothing in this agreement will diminish MDC's independent authority as established by law, nor hinder MDC from independently enforcing MDC's own rules, regulations, or orders.

- 3) General Nomenclature. Throughout this document, “county” will mean Miami-Dade County. Likewise, “DEP” will mean the Florida Department of Environmental Protection and “DARM” will mean DEP’s Division of Air Resource Management. “EPA” will mean the U.S. Environmental Protection Agency.
- 4) DEP’s Role. DEP administers the following U.S. Environmental Protection Agency approved or EPA delegated programs: the State Implementation Plan (SIP), the Title V permit program and programs related to sections 7411 and 7412 of Title 42, United States Code (U.S.C.). Pursuant to the EPA delegations or approvals, DEP cannot delegate or sub-delegate such authorities to any approved local air pollution control program. However, DEP, collectively through this SOA, the ambient monitoring contract, and the Title V contract (as applicable) may authorize MDC to act on DEP's behalf for purposes of federally-delegated or approved programs. Furthermore, this SOA and the contracts mentioned above constitute the principal agreement between MDC and DEP in regard to air pollution control responsibilities. Compensation for services under the ambient monitoring and Title V contracts is contingent upon annual legislative appropriations. Pursuant to s. 403.182, F.S., DEP may assume and retain jurisdiction over a particular area, category, or program of air pollution control.
- 5) Objective. The intent of this SOA is to establish the basis upon which DEP and MDC shall work together to protect the air quality of the county according to the provisions of s. 403.182, F.S., which are incorporated herein by reference.

PART II **ADMINISTRATION OF THE SOA**

- 1) Commencement. This SOA shall become effective on the date this document is signed by both DEP and MDC. Notwithstanding the provisions of the GOA, this SOA is entered into by the DEP’s Director, Division of Air Resource Management, and the Mayor of Miami-Dade County or the Mayor's designee, both of whom have the authority to execute this SOA and satisfy its terms and conditions.
- 2) Expiration. This SOA will expire at midnight on June 30th three years after this agreement is signed by both DEP and MDC. It is the expectation of the parties that SOA renewals will be negotiated timely well in advance of the expiration deadline. However, if parties are in good faith negotiations to renew the SOA at the time of the expiration date, the SOA will be automatically extended during the period of negotiation and will remain in effect until negotiations have ended and a new SOA has been signed, or the parties do not reach agreement on a new SOA in which case the termination procedures of this Part, paragraph 3), will be followed.
- 3) Termination Procedures.
 - a) Termination of SOA. MDC or DEP may terminate this SOA without cause by providing written notice to the other party at least ninety (90) days prior to the effective date of such termination.
 - b) Distribution of Funds. Within ninety (90) days of termination, MDC shall refund to DEP any financial support provided by DEP for air pollution control which has not been obligated or expended by MDC for that purpose. Conversely, DEP will pay MDC a pro

rata share of any such financial support due during that budgetary period which has been obligated or funded by MDC for air pollution control before the effective date of termination.

- 4) Modification. This SOA may be modified in writing at any time by mutual consent of DEP and MDC. The modification will become effective on the date executed by both parties.
- 5) Agreement Conflicts. If this SOA conflicts with any part of the GOA, then that part of the GOA will not apply to DEP or MDC with respect to the air pollution control program in the county.
- 6) Severability. If any part of this SOA is found invalid or unenforceable by any Court or any administrative proceeding, the remaining parts of this SOA will not be affected if DEP and MDC agree that the rights and duties of both parties contained in this SOA are not materially prejudiced, and if the intentions of the parties can continue to be effective.
- 7) Interpretation of Laws, Ordinances, Rules, and Regulations.
 - a) Interpretation of Rules. The governmental agency responsible for promulgating a law, ordinance, rule or regulation shall be the primary interpretative authority for that law, ordinance, rule or regulation. In the event there is litigation concerning interpretation of a DEP or MDC rules, the governmental agency responsible for promulgation of the questioned rule shall provide testimony concerning the interpretation. All requests for interpretation shall be answered as expeditiously as possible. The term "rule" as applied to MDC refers to MDC's duly adopted ordinances, regulations, rules or other local law.
 - b) Federally-Delegated or Approved Programs. It is recognized by MDC that EPA has approved or delegated to DEP all of the federal programs listed in Part I, paragraph 4). MDC recognizes that DEP shall take final responsibility for any actions or activities related to these federally-delegated or approved programs. DEP has overriding authority regarding any conflicts arising from MDC acting on behalf of DEP in the administration of these federally-delegated or approved programs. For these reasons and to ensure consistent state-wide implementation, DEP has a responsibility to oversee the dissemination of information related to these federally delegated and approved programs and shall be disseminated as follows:
 - i) DARM is responsible for disseminating official policy and guidance regarding the implementation of these federally-delegated or approved programs to the DEP district offices and approved local air pollution control programs.
 - ii) MDC may distribute pre-existing state or federal documents (e.g., EPA guidance documents or applicability determinations) regarding federally-delegated or approved programs to the public or regulated entities operating in MDC's jurisdiction. MDC shall provide a copy of such information to DARM if requested.
 - iii) To the extent MDC has adopted rules more stringent than a federally-delegated or approved program as set forth in this Part, MDC may distribute information to the public, or regulated entities operating in MDC's jurisdiction relating to the applicability, interpretation, or implementation of the Local Agency's own rule.

When distributing this information, MDC shall provide a copy to DARM if requested.

- iv) MDC may create informational material related to the applicability, interpretation, or implementation of federally- delegated or approved programs for the purposes of assisting MDC's regulated community, or other DEP district or approved local air pollution control offices. When distributing this information, MDC shall provide a copy to DARM if requested.
 - c) EPA Regulations. EPA shall interpret EPA's regulations such as National Ambient Air Quality Standards (NAAQS), New Source Performance Standards (NSPS), and National Emission Standards for Hazardous Air Pollutants (NESHAP). In the event MDC and DARM disagree about the applicability or requirements of an EPA Regulation, MDC may request that DARM seek clarification from EPA and DARM shall be the agency responsible for coordinating contact by both parties with EPA regarding such requests for clarification. Whether the request is verbal or in writing, DARM shall coordinate the contact with MDC so that neither party works unilaterally with EPA.
 - d) SIP Revisions. SIP revisions developed by DEP are considered state-originated rules, except when EPA language is used verbatim.
- 8) Approval of County Rules. DEP has determined that MDC's existing rules pertaining to air pollution control, Chapter 24, Article 1, Section 24-25, of Miami-Dade County Code, are compatible with or stricter or more extensive than those imposed by Chapter 403, F.S., and rules issued there under. This determination is not applicable to rules not listed above; to administration or enforcement of any authority other than DEP's Chapter 403, F.S. and EPA's Clean Air Act (CAA) authority; or pertaining to noise pollution.
- a) Future County Rules. If MDC amends any existing ordinances or rules pertaining to air pollution control, or adopts any new rules, DEP will not enforce such amended or new rules unless and until DEP has determined that such rules are compatible with, or stricter or more extensive than those imposed by Chapter 403, F.S., and rules adopted there under. If MDC attempts to implement or enforce such rules, MDC cannot assert it is acting on behalf of DEP in such circumstances. Nothing in this SOA shall limit MDC from adopting more stringent local rules. After such adoption, the rule must be submitted to DEP as set forth in this Part.
 - b) Remaining Current with DEP Referenced Rules. In the event DEP renumbers, amends, adds or deletes F.A.C. regulations referenced by MDC, MDC understands that failure to incorporate the changes in the local rules or ordinances within twelve (12) months from the time the state makes such changes may result in DEP determining that such local rules or ordinances are incompatible with state requirements.
- 9) Adequate Administrative and Judicial Processes. DEP has determined that MDC provides for enforcement of MDC's requirements by appropriate administrative and judicial processes. DEP remedies remain available to MDC as an alternative to MDC's own procedures.
- 10) Adequate Staff. DEP has determined that MDC has the adequate and appropriate administration, staff, and financial resources to effectively and efficiently carry out an "approved local air pollution control program" in Miami-Dade County.

PART III
AIR PROGRAM MANAGEMENT

- 1) Budget. DARM and MDC shall, upon request, exchange summaries of their respective approved budgets, outlining funding and staffing for the respective air programs.
- 2) Adequate Staff. MDC shall maintain an adequate permitting, ambient monitoring, mobile source, emissions monitoring, compliance and enforcement staff to satisfy the requirements of this SOA. DERM's organizational chart shall be periodically updated or supplemented by DERM when there are changes of key personnel or organizational structure.
- 3) Plans. DARM and MDC shall coordinate and annually exchange, or otherwise make available, their respective EPA 105 air planning agreements, upon request of the other party.
- 4) SIP and 111(d) Plan Revisions. MDC shall coordinate with and assist DARM in the preparation and submittal to EPA of all SIP and 111(d) plan revisions which may affect MDC. DARM shall be responsible for determining the need and relative priority for SIP revisions.
- 5) Proposed Federal Air Rules. MDC shall copy DARM, and vice versa, on all responses to proposed federal air rules published in the Federal Register.
- 6) Evaluations and Audits. DEP shall periodically conduct program performance evaluations, financial audits, and Title V audits of MDC's implementation of air programs and activities. The ambient monitoring program activity evaluations are addressed in Part VII.
 - a) Performance Evaluations. DARM may conduct performance evaluations to determine if permit application reviews, permit issuance, emissions inventory, mobile-source activities, compliance activities, and enforcement actions are being effectively conducted in accordance with state requirements and DEP policies.
 - b) Financial Audits. The DEP's Office of Inspector General (OIG) may conduct financial audits to determine if state funds received by MDC for MDC's air program have been properly accounted for and funds have been spent appropriately. Upon request of DEP's OIG, MDC shall be responsible for providing county financial records relating to expenditures from tag fees received under s. 320.03 (6), F.S., asbestos fees received under s. 376.60, F.S., and reimbursements from the Title V and Ambient Monitoring contracts entered into between DEP and MDC.
 - c) Title V Program Audit. Pursuant to s. 403.0872(11)(c), F.S., DEP is required to audit DEP's Title V Program once every two years. The purpose of the audit is to determine whether the annual operation license fees collected by the department are used solely to support any reasonable direct and indirect costs listed in 403.0872(11)(b), F.S.
 - d) Coordination of Evaluations and Audits. To the extent practicable, DEP and MDC shall coordinate as necessary during evaluations and audits. Where possible, DEP shall provide MDC with the opportunity to prepare MDC's response and comment on draft findings. In instances when DEP is subject to an evaluation or audit by a federal agency, and DEP requests MDC's participation, MDC shall provide MDC's responses through

DEP. In the event MDC is contacted directly by a federal agency regarding any program listed in Part I, paragraph 3), MDC shall coordinate MDC's response with DEP. MDC shall provide DEP with a copy of MDC's response.

- 7) Records. After the effective date of this SOA, air program records associated with this SOA or contracts between DEP and MDC shall be made available to DEP upon request and shall be retained by MDC in accordance with, and for the duration specified in: Chapter 119, F.S., DEP's and the Department of State's records retention schedules, any DEP and MDC contracts, and the Department of State's regulations regarding electronic records (if applicable). If not otherwise specified, air program records shall be maintained for a minimum of five (5) years. MDC may reach agreement with the DEP district office such that the DEP district office shall retain MDC's air program records in accordance with the above requirements.
- 8) Electronic Communications. Any reference in this SOA to "mail" includes electronic mail as described at Chapter 668, F.S. All reference to "certified mail" includes electronic mail with a receipt notification. All electronic communications relating to a permitting activity shall be considered part of the permitting file and shall be retained as part of the file. All electronic communications relating to a compliance or enforcement activity shall be considered part of the compliance or enforcement file and shall be retained as part of the file. Nothing in this SOA shall preclude use of electronic files or electronic communications provided that such files and communications are easily identifiable and publicly accessible and provided that such files meet all formatting requirements detailed elsewhere in this SOA or by contract.
- 9) General Information Requests. As time and resources allow, MDC shall respond to and attend meetings with individual citizens, the news media, schools, civic groups, and other organizations to provide information about air pollution or about specific program activities.
- 10) Training and Meetings. MDC shall ensure that MDC's employees have the requisite training to properly accomplish their work assignments. Appropriate MDC staff shall attend the following specific training events and meetings:
 - a) Annual Air Meeting;
 - b) Air Permit Engineers' Specialty Meeting;
 - c) Air Compliance and Enforcement Specialty Meeting;
 - d) Asbestos Inspector Training Course (EPA or TREEO or equivalent);
 - e) Visible Emissions Observation Training;
 - f) Ambient Monitoring and Quality Assurance Workshops;
 - g) Air Monitoring Advisory Committee Meeting;
 - h) DEP's Compliance & Enforcement Meeting or Workshop;
 - i) Air Council Meetings;
 - j) Monthly Air Specialty Teleconferences; and
 - k) Others as may be requested by DEP.

As time and resources allow, MDC staff shall also attend training sessions offered by DEP regarding significant program changes, as well as EPA APTI training courses and SESARM/Metro4 training courses.

- 11) Legal. MDC shall have access to adequate legal staff to comply with the permitting and enforcement requirements of this SOA.

- 12) Use of Tag Fees. Use of tag fees by MDC shall be provided by s. 320.03(6), F.S. To provide consistency with implementing program requirements, MDC agrees to work closely with DEP to address questions, as they arise, regarding the use of tag fees for program activities. MDC shall summarize MDC's activities that have been funded by tag fees in a report to DARM submitted with the tag fee certification, sixty (60) days after the end of each county fiscal year.
- 13) Collection of Title V Emission Fees. Any payments for Title V annual emission fees and forms submitted to MDC shall be promptly returned to the applicant with a notice to submit the payment directly to DARM. A copy of the notice shall be provided to DARM.
- 14) Local Fee Prohibited for Title V Sources. In accordance with s. 403.873, F.S., MDC shall collect no fees from Title V sources, except asbestos fees collected pursuant to s. 376.60, F.S.
- 15) Distribution of Title V Fees. MDC shall enter into a Title V contract with DARM each state fiscal year to receive compensation for the Title V Program work that is referenced in this SOA. Funding for the annual Title V Contract is contingent upon the availability of legislative budget authority each state fiscal year.
- 16) Emergency Situations. In emergency situations, MDC shall defer to DEP's decisions regarding enforcement discretion and interpretations of DEP air program rules and permit conditions, shall abide by any air related portions of a DEP Emergency Order issued by DEP, and shall not take action contrary to DEP's decisions. This does not preclude MDC from taking independent action on MDC's own unique local rules (those that are not simply duplicative of DEP requirements).

PART IV **PERMITTING RESPONSIBILITIES**

- 1) General Requirements.
 - a) Local Air Permitting. By this SOA, DEP authorizes MDC to process federally-delegated air permits on DEP's behalf, and delegates the authority to process or issue state air permits in accordance with the procedures and conditions of this Part. The federally-delegated permit programs mentioned above have been delegated to DEP and are not considered as delegations to MDC under s. 403.182(2), F.S. DEP retains the authority to take final action on all permit applications.
 - b) Roles and Responsibilities. Pursuant to this SOA, MDC assumes the responsibility to receive, process and take final agency action on air permit applications within Miami-Dade County that otherwise would be administered by DEP's district office, except for applications for the following permits or categories of air sources:
 - i) Electrical power plants and waste-to-energy facilities.
 - ii) Permits for which local air pollution programs are precluded from taking final agency action under 403.0872, F.S.
 - iii) County-owned or operated facilities.

- iv) Prevention of Significant Deterioration (PSD) and New Source Review (NSR) construction permits.
 - v) General Permit facilities.
 - vi) Construction permits subject to processing under state “expedited permitting” statutes.
- c) Variances and Waivers. MDC shall not issue variances and waivers from state permitting requirements.
- d) PSD Determinations. MDC shall consult with DARM when establishing operational and emission limits to avoid PSD, or making determinations that facility changes are not subject to PSD.
- e) EPSAP. MDC shall use the Electronic Permit Submittal and Processing System (EPSAP) database (or subsequent data systems) when processing permitting applications electronically.
- f) Public Comments. MDC shall accept and respond to public comments and requests for public meetings as required by DEP rules and statutes.
- g) Misdirected Applications. Except as noted in this Part, when MDC receives an application for a state air permit for which DEP is to take final agency action, MDC shall return the application to the applicant with instructions to submit the application and fees to DEP and vice versa when DEP receives an MDC permit application.
- h) Permit Fees. MDC shall retain eighty (80) percent of the state fees for non-Title V permits. The remaining twenty (20) percent of the fees will be returned to DEP Tallahassee on a monthly basis by means of a single check and an attached “Permit Revenue Roster” (see Attachment 1), twenty (20) days following the previous month. Permit fee refunds to the applicant may be deducted from the subsequent month’s submittal and will be adequately reflected on the permit revenue roster.
- 2) Specific Conditions of Local Air Permitting. In addition to the other provisions of this SOA regarding air permitting, MDC shall comply with the following specific requirements as a condition of maintaining this air permitting authority:
- a) Professional Engineer Requirement. MDC shall review permit applications and draft specific permit conditions under the oversight of a professional engineer licensed by the State of Florida. The professional engineer will provide a professional engineering certification of all technical evaluations of permit applications as required by Florida law, as well as certifications consistent with DARM guidance.
 - b) Permitting Provisions. MDC shall comply with applicable permitting provisions of the Florida Air and Water Pollution Control Act, Chapter 403, F.S., the Florida Administrative Procedures Act (APA), Chapter 120, F.S.; and DEP permitting and air pollution control rules regarding permit processing, permit content and timeframes for Title V and non-Title V permit applications. MDC shall follow the DARM permitting guidance procedures, including DEP’s procedures for electronic submittals when available, and shall copy the appropriate district office on all permit related actions.

- c) Exemptions. MDC is authorized to make determinations of exemption pursuant to DEP rule 62-4.040, F.A.C. A copy of all pertinent correspondence related to such exemption shall be submitted to DEP's district office.
- d) Forms. MDC shall use permitting forms adopted by DEP. MDC may affix MDC's name and logo on the forms.
- e) ARMS Database. MDC shall have full access to the DEP Air Resource Management System (ARMS) database and shall enter all permit-related data as required by Part VIII and DARM guidance.
- f) Legal Resources. MDC shall have the legal resources to defend MDC permitting decisions in Administrative Hearings under Chapter 120, F.S., or any other legal proceedings. Laws, ordinances, rules and regulations shall be interpreted according to Part II of this SOA.
- g) Administrative Hearings and Final Agency Actions for Permits. All air permitting decisions made by MDC on behalf of DEP shall be subject to the provisions of the Florida Administrative Procedures Act (APA), Chapter 120, F.S., as if these decisions had been made by DEP.
 - i) Petitions. All petitions for formal administrative hearings on air permitting applications processed by MDC shall be processed pursuant to Sections 120.569 and 120.57, F.S. and the applicable rules of the Administration Commission and DEP. MDC shall use the Florida Division of Administrative Hearings (DOAH) as fact-finder for all air permitting formal administrative hearings, unless otherwise explicitly directed by DEP. At the time of referral of a petition to DOAH, a copy of the notice of referral, the petition, and the challenged permitting decision will be mailed to DEP's Office of General Counsel (OGC). To the extent that DEP's technical or rule interpretation or guidance is at issue, DEP will provide technical assistance to the Local Agency. DEP retains the right to be a party to any hearing or to intervene in the DOAH proceeding.
 - ii) Hearings. For all hearings challenging agency action on air permits, MDC shall be responsible for preparation for the hearings, appearance at the hearings, and preparation and submittal of the proposed recommended orders to the assigned administrative law judge. No agreement for mediation pursuant to s.120.573, F.S., or for summary hearing pursuant to s.120.574, F.S., will be made by MDC unless DEP has been joined as a party to the dispute and has also agreed to the mediation or summary hearing. Prior to all final hearings, MDC's attorneys shall consult with DEP's OGC regarding significant issues. All recommended orders resulting from DOAH hearings shall be referred to DEP's OGC for preparation of final agency action. Exceptions and responses to exceptions shall be filed with DEP's OGC within the times set forth in rule 28-106, F.A.C.
 - iii) Final Orders. DEP retains sole authority to issue final orders resulting from DOAH hearings. Appeals of final orders entered following a DOAH hearing shall be the responsibility of DEP. MDC may join the appeal as a party, upon coordination with DEP's OGC.

- 3) Additional Title V Program Requirements.
 - a) MDC shall provide a statement of basis and a final determination for each Title V permit, and shall provide notification to EPA as required by DEP rule 62-213.450, F.A.C. MDC requirements approved in Part II shall be included in the Title V air permit if the requirements apply to such sources that are required to obtain a Title V permit.
 - b) Concurrent processing of the construction permit and any related Title V permits shall be done if requested by the applicant, pursuant to DEP rule 62-213, F.A.C.
- 4) Additional Non-Title V Requirements.
 - a) MDC shall write a technical evaluation, including at a minimum a brief project description, a rule applicability determination, and a summary description of the allowable and estimated emissions, and final determination for each construction permit. The final determination shall identify public comments received during the public comment period and changes made to the final permit pursuant thereto.
 - b) All operating permits shall include applicable permit conditions from previously issued construction permits. MDC has the authority to change a construction permit except where the construction permit is required by law to be issued by DEP. If any change is warranted to a PSD permit, such change shall be made in consultation with DARM.
- 5) General Permits. All general permit notification forms shall be received and reviewed by DARM's air general permit section. When MDC receives a notification form, the form shall be forwarded by MDC within three (3) working days to DARM's air general permit section. If fees are enclosed, MDC shall forward the form along with the fees to FDEP Receipts, P.O. Box 3070, Tallahassee, Florida 32399-3070. DARM's general permits section shall forward a scanned copy of the notification form to MDC within three (3) working days of receipt.
- 6) Copies to Local Agency. DEP shall provide MDC with a copy of any application, request for additional information and response thereto, and notice of DEP-proposed agency actions for an air source within the county for which DEP has permitting authority.

PART V **COMPLIANCE AND ENFORCEMENT RESPONSIBILITIES**

- 1) General Requirements. By this SOA, DEP establishes how air program compliance and enforcement will be conducted by DEP or MDC.
 - a) County Authority. MDC shall use MDC's remedies and procedures in MDC's authorizing act(s) and ordinances. DEP remedies remain available to MDC as an alternative to MDC's own procedures.
 - b) Roles and Responsibilities. Subject to Part II, and except as provided below, MDC shall conduct compliance and enforcement activities within Miami-Dade County. MDC shall provide the necessary support for DEP's compliance and/or enforcement actions as requested. DEP's district office shall conduct compliance and enforcement activities for county-owned or operated facilities.

- c) DEP Action in County. Nothing herein prohibits DEP from initiating compliance and/or enforcement activity for any facility within MDC's geographical boundaries. In the event DEP initiates an enforcement activity within MDC's geographical boundaries, DEP shall provide MDC with notice unless circumstances make notice inappropriate. MDC's rules shall be enforced by DEP if DEP elects to exercise DEP's jurisdiction over air pollution sources within the jurisdiction of MDC. If enforcement actions are initiated by DEP and MDC against the same source for the same violations, then the actions shall be combined as a joint consolidated enforcement action where possible. Any penalty fees or damages collected as a result of joint action shall be divided equitably between the two agencies.
- d) Federal Facilities. If federal facilities are not responsive to enforcement action initiated pursuant to local rules reflecting federal NSPS or NESHAP requirements and further action is necessary to achieve compliance, MDC shall consult with DARM (not EPA) to determine the appropriate enforcement approach.
- 2) Citizen Complaints. In a timely fashion, MDC shall respond to, and investigate complaints from citizens and any such complaints forwarded by DEP. If there is a compliance issue, MDC shall attempt to bring about compliance in accordance with this SOA when appropriate and inform the complainant (if not anonymous) of the action taken.
- 3) Sampling of Fuels and Materials. MDC shall collect or assist DEP in collecting and analyzing fuel and material samples for air sources within the county, as needed, to determine compliance with DEP's air pollution control rules or permit conditions.
- 4) Open Burning. MDC has adopted and enforces open burning requirements at least as stringent as DEP open burning rules and may enter into agreements with local fire control authorities or the Division of Forestry to assist in the enforcement of these requirements.
- 5) Stack Tests. (For purposes of this paragraph, "stack tests" are not considered to include determinations of visible emissions.) MDC shall witness a minimum of fifty (50) percent of the pollutant stack tests performed in the county, including relative accuracy test audits (RATAs) other than those for Acid Rain CEMS certification tests. Witnessing stack tests shall at a minimum include witnessing the equivalent of one complete stack test run, and may include witnessing any required laboratory procedures preserving a suitable chain of evidence. For all stack tests, MDC shall be responsible for monitoring compliance with stack test methods that are required by state rules or federal regulations.

Where audit samples are required by the stack test method, MDC shall obtain audit samples from EPA when available, provide the audit samples to those conducting compliance tests, and determine the acceptability of the audit sample results. Audit sample cylinders should be returned directly to EPA. (EPA is currently re-evaluating EPA's audit sample program, and may stop providing samples in the future, or may make such samples available to the stack test firms at a cost. In either event, the requirement for MDC to obtain the samples shall no longer apply.)

- 6) Continuous Emissions Monitoring Systems (CEMS). MDC is not required to observe any Title IV Acid Rain CEMS certification tests. MDC shall be responsible for monitoring compliance with appropriate quality assurance procedures for CEMS that are required by state rules or federal regulations.

- 7) Review of Reports. MDC shall receive and review all of the following reports for completeness, accuracy and compliance with applicable state rules or federal regulations, and take appropriate compliance and enforcement action: excess emission, stack test, visible emissions test, RATA, and relative accuracy audit (RAA). For each report that is deficient or requires additional information, MDC shall send a timely letter to the source owner or operator requesting additional information necessary to make the report complete.
- 8) Alternatives to Testing and Monitoring. All requests for alternative testing and monitoring requirements, and determinations of MACT minor source status, shall be handled in accordance with DARM guidance.
- 9) Inspections. MDC shall perform a biennial full compliance evaluation as defined in and in accordance with EPA's Stationary Source Compliance Monitoring Strategy and DEP guidance for all Title V major and synthetic minor sources permitted within MDC's geographical boundaries. MDC shall inspect all other air permitted facilities and general permitted facilities at least once every five (5) years. Inspections results shall be entered into the DEP database and DEP encourages MDC to utilize portable field computers to document inspection results.
 - a) Follow-Up Inspections. MDC shall conduct follow-up inspections as necessary to determine if a facility has returned to compliance.
 - b) Identification of Unpermitted Facilities. MDC shall identify facilities that are operating without a permit and take appropriate enforcement.
- 10) Compliance Activities.
 - a) Compliance Monitoring. Compliance monitoring shall be done according to applicable federal and state statutes, rules, and guidelines. In accordance with the EPA's Stationary Source Compliance Monitoring Strategy and DARM guidance, MDC shall complete and submit to DARM biennial compliance monitoring plans. MDC shall abide by MDC's biennial compliance monitoring plan and shall notify DARM if it is unable to meet the requirements contained therein.
 - b) Annual Statement of Compliance. By May 1 of each calendar year, MDC shall identify facilities which did not submit the annual statement of compliance by March 1 of that calendar year. In addition, MDC shall complete the reviews of the annual statements and make a compliance determination by August 31 of each calendar year and take appropriate enforcement action, as needed, in accordance with Part V, paragraph 1), above.
 - c) Semi-Annual Monitoring Reports. MDC shall review each semi-annual monitoring report within sixty (60) days of the specified due date for the report.
 - d) Compliance Assistance and Pollution Prevention. MDC shall conduct compliance assistance and pollution prevention outreach as time and resources allow.
- 11) Enforcement Activities. MDC shall: follow the EPA Guidance for timely and appropriate enforcement response to high priority violations, follow MDC's penalty guidelines and

consult the DEP enforcement manual and the appendices to the enforcement manual, including the DARM's Air Penalty Guidelines, and any other DARM guidance documents or reference materials in determining appropriate enforcement responses and penalty calculations. MDC shall maintain all penalty calculations for each enforcement action in the appropriate enforcement file, and shall provide information regarding those calculations to DEP upon request.

- 12) Small Business Environmental Assistance Program. MDC shall assist in the development of the Small Business Environmental Assistance Program (SBEAP) and provide ongoing support of activities associated with the mission and directives of that program as time and resources allow.
- 13) Asbestos Compliance. Inspections by MDC shall be conducted at a minimum frequency as specified by the EPA Section 105 Air Planning Agreement. Upon determining that a violation has occurred, MDC shall initiate appropriate enforcement action that is consistent with state and federal requirements. MDC shall receive asbestos notifications for facilities located within MDC's geographical boundaries and shall input the notification and compliance data into the DEP asbestos database. Notwithstanding exclusions noted in this Part, MDC may inspect any asbestos activity within MDC's geographical boundaries, and take enforcement action pursuant to MDC's local authority. DEP and MDC shall coordinate on inspections of MDC-owned or operated facilities to the extent possible to avoid duplication of effort and conflicting results.
- 14) Misdirected Asbestos Notifications. Asbestos notifications received by MDC which should have been sent instead to DEP shall be redirected to DEP no later than two working days of receipt by MDC, in a format acceptable to DEP or vice versa.

PART VI

MOBILE SOURCE CONTROL RESPONSIBILITIES

- 1) Mobile Source Control Coordination. MDC shall coordinate MDC's efforts with DARM in operating a mobile source control program within MDC's geographical boundaries. Such coordination shall include, but is not limited to, the following activities: Development of Regional Impact (DRI) reviews, public information presentations, and Metropolitan Planning Organization (MPO) Technical Coordinating Committee activities, and activities to promote clean fuels and motor vehicles.
- 2) Metropolitan Planning Organization (MPO). MDC shall seek to maintain MDC's status as an advisor to the MPO Technical Coordinating Committee(s). MDC shall also be active in the state, county, and local community transportation planning process and shall participate in mobile source meetings, public information presentations, and training sessions, as time and resources allow.
- 3) Mobile Source Emissions Inventory. In cooperation with the Metropolitan Planning Organizations (MPO) and the Florida Department of Transportation (FDOT), MDC shall update emissions estimates for mobile sources within MDC's geographical boundaries as required by the SIP or EPA 105 Air Planning Agreement.

- 4) Gasoline Marketing and Distribution. MDC shall assist DEP by inspecting facilities as requested for compliance with DEP's rules that apply to gasoline marketing and distribution, and performing follow up compliance or enforcement as necessary. Such assistance is expected to be occasional and infrequent, as resources will allow. A regular inspection schedule is not required.
- 5) Vehicle Emission Controls. MDC shall refer complaints about tampering as defined by DEP Rule 62-243, F.A.C., to the Department of Highway Safety and Motor Vehicles or the Department of Agriculture and Consumer Services, or shall consult with DARM regarding referral to DEP.

PART VII

AMBIENT AIR MONITORING RESPONSIBILITIES

- 1) Ambient Air Monitoring Program. MDC shall be responsible for calibrating, operating, maintaining, and repairing all ambient air monitoring, calibration, and data acquisition equipment utilized in the State and Local Air Monitoring Station (SLAMS) and Special Purpose Monitoring (SPM) networks, including the N-Core site (if applicable), within MDC's geographical boundaries. MDC shall also be responsible for operating and maintaining a laboratory, or contracting for laboratory services to perform any needed analyses or air samples, and operating any Episode Monitoring Sites (EMS) designated for the county and approved by EPA. SPM desired by MDC shall be the responsibility of MDC. SPM desired by DEP shall be the responsibility of DEP but may be negotiated between MDC and DEP and performed by MDC where availability of equipment, staffing, and state funding allow.
 - a) Coordination. Other than for routine day-to-day operational functions, MDC shall coordinate MDC's ambient air monitoring activities with DEP. Program decisions requiring EPA approval, such as the addition, deletion, or relocation of a monitor or the exclusion of SLAMS data, shall be submitted to EPA through, and with the approval of DARM.
 - b) Air Monitoring Procedures. All SLAMS ambient air monitoring activities and SPM activities (from which data are to be used for official purpose) conducted by MDC shall be performed in accordance with applicable federal regulations and the appropriate Statewide Quality Assurance Project Plans (QAPPs), using EPA and DEP-approved standard operating procedures. DEP shall provide technical assistance to MDC, to the extent that DEP's resources allow.
 - c) Data Automation. MDC shall obtain and maintain data automation equipment that can communicate with, and be linked to, the DEP Florida Air Monitoring Assessment System (FAMAS) database. MDC shall enter and verify all valid data into the database in accordance with technical and schedule guidelines provided by DEP.
 - d) Forms. MDC shall use EPA's Air Quality Subsystem (AQS) data forms or formats, as well as other DEP or EPA-required or approved forms or formats for ambient air monitoring activities as necessary.

- 2) Ambient Air Monitoring Quality Assurance Program. MDC shall coordinate all air monitoring quality assurance activities with DEP.
- a) Quality Assurance Procedures. MDC shall conduct all ambient monitoring activities in accordance with the Statewide QAPPs, incorporated herein by reference. This includes use of DEP's Standard Operating Procedures (SOPs), which include approved Local Agency SOPs that have been incorporated into DEP's SOPs, and all applicable state and federal regulations and policies to ensure the acceptability of analytical results.
 - i) All MDC monitoring SOPs shall be approved by DEP and EPA, and be incorporated into the Statewide QAPPs, before they are used for operational purposes, except as may be provided for in the current version of those plans. DEP shall provide "Quality Assurance Standards Laboratory" services on request, as resources allow. DEP shall provide other technical assistance to MDC as resources allow.
 - ii) MDC shall participate in the Florida Air Monitoring Advisory Committee meetings and assign one MDC employee as the quality assurance coordinator for their program.
 - b) Systems and Instrument Performance Audits. DEP shall conduct a triennial or more frequent ambient air monitoring management systems audit for MDC and utilize the process and schedule as outlined in the "Quality Assurance Systems Audit Protocol." As resources allow, DEP shall accomplish performance audits on continuous SLAMS (and SPM used for official purposes) instruments and manual PM_{2.5}, lead and collocated PM₁₀ samplers to meet minimum federal regulations. Written notice shall be given if DEP is unable to continue conducting the performance audits. MDC shall be responsible for conducting performance audits on all other manual samplers.
 - c) Electronic Record Archiving. MDC shall create an archive in electronic form of sufficient documentation and records to provide legal defensibility for all of the ambient monitoring data submitted to the EPA database which address the criteria pollutants and which could be used to determine the attainment status of the county. This archive shall be maintained on a calendar year basis, with the annual records being closed and finalized no later than ninety (90) days after the end of the calendar year.
- 3) Ambient Monitoring Reporting Requirements.
- a) Ambient Air Data Reporting Requirements. MDC shall enter all valid ambient air data collected each month into DEP's FAMAS database according to the schedule given below. MDC shall also adhere to the schedules given below for submitting missing data forms/information and for verifying data.
 - i) MDC shall transmit valid ambient monitoring data to DEP's FAMAS database within thirty (30) days after the end of the month in which they were recorded, unless transmission problems make this impossible.
 - ii) Missing data forms/information shall be submitted to DARM within thirty (30) days following the month of record.

- iii) All data shall be verified in DEP's FAMAS database to ensure that the data were transmitted without errors. A verification notice shall be transmitted to DEP within fifty (50) days following the quarterly period of record.
- b) Quality Assurance Reporting Requirements. MDC shall use DEP-approved forms and/or formats and shall comply with DARM's reporting guidance when submitting data and performing ambient air monitoring and quality assurance activities. All precision, bias and accuracy data shall be submitted to DARM within thirty (30) days after the end of the quarterly reporting period.
- c) Air Quality Reporting Requirements. MDC shall report to the general public prominent notice of the Air Quality Index in accordance with federal regulations. MDC shall correct the concentration values reported to be used in Florida's Air Quality System (FLAQS) and the Spatial Air Quality System (SAQS) as soon as practical after discovery of any errors.

PART VIII
DATA MANAGEMENT RESPONSIBILITIES

- 1) Air Resource Management System (ARMS), and DEP's Asbestos Database. In addition to ambient monitoring data and the Florida Air Monitoring Assessment System (FAMAS) data system, MDC shall access ARMS and DEP's asbestos database to accomplish the various updates required under this SOA. MDC shall notify DARM of any systems-related problems or training needs.
- 2) ARMS/Asbestos Database Contact. MDC shall designate an employee (or employees) to serve as MDC's database contact. The contact shall be the primary person (or persons) who DEP will contact on issues related data entered into ARMS or the asbestos database by MDC. MDC shall respond promptly to requests from DEP for information, correction and clarification of any database entry in ARMS and the asbestos database.
- 3) Data Updates.
 - a) Permitting Data. Where MDC is authorized to process permits on behalf of DEP, MDC shall enter data elements derived from permit applications and permits into ARMS within thirty (30) days of permit issuance.
 - b) Compliance Verification Data. MDC shall update ARMS for compliance data, excess emission reports, CEMS data, and stack test and visible emission test results. All applicable inspection and source compliance activity data for NSPS, NESHAP, Title V, non-Title V minor source facilities, and asbestos renovation/demolition data shall be entered into ARMS and DEP's asbestos database, as applicable, no later than the 10th of the month following any federally reportable action during the previous month. All other compliance data, including stack test results and excess emission reports, shall be entered into the ARMS database no later than thirty (30) days after receipt. CEMS data, including RATA and RAA results, shall be entered no later than forty-five (45) days after receipt; visible emission results shall be entered no later than ninety (90) days after receipt.

- c) Semi-Annual Monitoring Reports. MDC shall review and enter semi-annual monitoring reports into ARMS within sixty (60) days of the specified due date for reports.

- d) Annual Operating Report Data. MDC shall verify timely receipt of required annual operating reports from facilities within the geographical boundaries of MDC. By June 1 of each year, MDC shall enter any hard-copy annual operating report submittals they receive into either the Electronic Annual Operating Report (EAOR) system (preferred) or ARMS. If MDC opts to review the submitted reports in the EAOR system prior to DEP review, MDC shall establish a schedule with DEP for DEP's review to ensure that all data is uploaded into ARMS by June 30 of each year. DEP shall perform all upload of EAOR data into ARMS. MDC shall complete MDC's quality assurance review of the data in ARMS (i.e., the "edit check" process) by September 30 of each year. If DEP finds items of incompleteness or error in the submitted reports during either the report review or edit check process, MDC shall take the lead on any necessary follow up with the facility.

SIGNATURES

State of Florida
Department of Environmental Protection

By _____
Joseph Kahn
Director, Division of Air Resource Management

Date: _____

Miami-Dade County
A Political Subdivision of the
State of Florida

By _____

Date: _____

