

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Civil Action No. 1:12-cv-24400-FAM

UNITED STATES OF AMERICA et al.,)
)
Plaintiffs,)
)
v.)
)
MIAMI-DADE COUNTY, FLORIDA,)
)
Defendant.)
_____)

ORDER MODIFYING SECTION X OF CONSENT DECREE

Pursuant to Section XX (Modification) of the proposed Consent Decree lodged with this Court on June 6, 2013 (Doc. No. 25-1), the United States of America (“United States”), State of Florida (“Florida”), State of Florida Department of Environmental Protection (“FDEP”) and Miami-Dade County (“Miami-Dade”) (together, “the Parties”) have notified this Court of their written agreement to modify Section X (Stipulated Penalties), Subparagraphs 42(a)-(c) of the proposed Consent Decree as set forth below. The below modifications shall replace and supersede in their entirety the terms and provisions of Section X (Stipulated Penalties), Subparagraphs 42(a)-(c) of the proposed Consent Decree previously lodged with this Court on June 6, 2013.

X. STIPULATED PENALTIES

42. The following stipulated penalties shall accrue for each violation identified below:

(a). SSOs.

(i). For each SSO reaching waters of the United States due to a release of wastewater from the WCTS less than or equal to 10,000 gallons, a stipulated penalty of \$1,000 may be assessed.

(ii). For each SSO reaching waters of the United States due to a release of wastewater from the WCTS greater than 10,000 gallons but less than or equal to 250,000 gallons, a stipulated penalty may be assessed as follows:

<u>If SSO Occurs</u>	<u>Penalty Per SSO</u>
Within 2 years of Date of Entry	\$1,000
Between 2 years and 5 years from Date of Entry	\$2,000
More than 5 years from Date of Entry	\$4,000

(iii). For each SSO reaching waters of the United States due to a release of wastewater from the WCTS greater than 250,000 gallons but less than or equal to 1,000,000 gallons, a stipulated penalty may be assessed as follows:

<u>If SSO Occurs</u>	<u>Penalty Per SSO</u>
Within 2 years of Date of Entry	\$2,000
Between 2 years and 5 years from Date of Entry	\$5,000
More than 5 years from Date of Entry	\$10,000

(iv). For each SSO reaching waters of the United States due to a release of wastewater from the WCTS greater than 1,000,000 gallons, a stipulated penalty may be assessed as follows:

<u>If SSO Occurs</u>	<u>Penalty Per SSO</u>
Within 2 years of Date of Entry	\$4,000
Between 2 years and 5 years from Date of Entry	\$10,000
More than 5 years from Date of Entry	\$20,000

(v). For each SSO due to a release of wastewater from the WCTS of 1,000 gallons or more that does not reach waters of the United States, a stipulated penalty may be assessed by FDEP based on the tiered volume and time thresholds provided in Subparagraphs 42(a)(i) through (iv), provided, however, that the amounts that may be assessed shall be half of the amounts listed therein.

(vi) Miami-Dade shall not be liable for stipulated penalties under this Paragraph 42 if Miami-Dade demonstrates that the SSO was caused by an Act of God, vandalism, a non-County Contractor, or any act of a third party not working directly or indirectly on behalf of Miami-Dade, and Miami-Dade demonstrates that it has used all reasonable measures to prevent such SSO.

(b). Failure to Timely Submit Deliverable. For each day Miami-Dade fails to Timely submit any Deliverable, a stipulated penalty for each such Deliverable may be assessed as follows:

<u>Period of Noncompliance:</u>	<u>Penalty Per Deliverable Per Day:</u>
One (1) to thirty (30) days	\$2,000


More than thirty (30) days \$4,000

(c). Failure to Meet Deadlines in Appendix D. For each day Miami-Dade fails to complete the rehabilitation projects pursuant to and in accordance with the final deadlines set forth in **bold** in Appendix D, daily stipulated penalties may be assessed for each missed deadline as follows:

<u>Period of Noncompliance:</u>	<u>Penalty Per Violation Per Day:</u>
One (1) to fourteen (14) days	\$1,000
Fifteen (15) to thirty (30) days	\$2,000
Thirty-one (31) to sixty (60) days	\$3,000
Sixty-one (61) to one hundred-eighty (180) days	\$4,000
More than one hundred-eighty (180) days	\$5,000

DONE AND ORDERED in Chambers at Miami, Florida, on

April 9, 2014


FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE