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VIA ELECTRONIC CORRESPONDENCE

August 13, 2021

CCN: 63926
File No: 8.DC.20.52

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
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P.O. Box 7611
Tom Mariani
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RE: DOJ No. 90-5-1-1-4022/1
Tom.Mariani@usdoj.gov

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Southeast District – West Palm Beach
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West Palm Beach, FL 33406
Attn: Compliance/Enforcement Section
Jason.Andreotta@dep.state.fl.us

**RE: Consent Decree (Case: No. 1:12-cv-24400-FAM),
Reference DOJ Case No. 90-5-1-1-4022/1,
Section XI, Paragraph 52 – Potential Force Majeure,
Section XVII, Paragraph 77 – Notices, Outstanding Force Majeure and Potential Delay
Notifications for Consent Decree Appendix D-2, Capital Improvement Projects**

Dear Sir or Madam:

In accordance with the provisions of Section XI, Paragraph 52 of the above-referenced Consent Decree (CD), on May 27, 2021, Miami-Dade County (County), the Department of Justice (DOJ), the United States Environmental Protection Agency (USEPA) and Florida Department of Environmental Protection (FDEP) met to discuss the Outstanding Force Majeure and Potential Delay Notifications for Consent Decree Appendix D-2, Capital Improvement Projects.

During the meeting, the County was asked to provide additional information as to why the delays should be excused, including identifying the reason for the delay and stating whether the County believes a Force Majeure event caused the delay. Furthermore, it was agreed that the County would indicate the length of the delay for each project and provide the County's rationale as to why the delay should be excused.

Section X, Paragraph 40 of the Consent Decree provides that "Miami-Dade shall be liable for stipulated penalties to the United States and FDEP for violations of this Consent Decree as specified below unless excused under Section XI (Force Majeure)." Force Majeure is defined by the Consent Decree as "any event arising from causes beyond the control of Miami-Dade, of any entity controlled by Miami-Dade, or of Miami-Dade's consultants and contractors that delay or prevents the performance of any obligation under this Consent Decree despite Miami-Dade's best efforts to fulfill the obligation." See Section XI, Paragraph 51, Consent Decree. In addition, Paragraph 51 of the Consent Decree further provides that, "Miami-Dade may seek relief under the provisions of this Section XI of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation to the extent that Miami-Dade has submitted timely and complete applications and has taken all other actions required by law to obtain all such permits or approvals." The United States and FDEP also have the option of waiving stipulated penalties in the "unreviewable exercise of its discretion and in accordance with" Paragraph 44 of the Consent Decree.

The subsequent sections address the notification letters transmitted by the County to USEPA, which establish that delays associated with the subject projects either should be excused due to Force Majeure within Section XI of the Consent Decree or should not result in the County paying stipulated penalties as they have been delayed for other valid reasons that merit consideration in accordance with Paragraph 44 of the Consent Decree. For ease of review, the 17 projects which the County is requesting USEPA's consideration have been grouped into four categories as follows:

- A. Projects completed prior to the Consent Decree Compliance Date where no action is required by USEPA.
- B. Projects completed after the County's Force Majeure or Delay Notification where the County is requesting that USEPA grant a time extension through the project completion date.
- C. Projects which are ongoing and have experienced delays beyond the Compliance Date where the County is requesting that the USEPA grant a time extension through the project's currently expected completion date.
- D. Projects that are ongoing and have experienced delays for which the County is requesting USEPA withhold action through completion of the projects to allow for a detailed review of factors contributing to delays and appropriate action thereafter.

The County would like to emphasize that none of the project delays below have caused or contributed to the endangerment of public health or the environment. Additionally, some of the modifications of project scopes that have contributed to delays are anticipated to enhance the operation, maintenance, and resilience of the infrastructure in question. Overall, the County has invested more than \$1 billion to ensure compliance with the Consent Decree and has completed over 60% of projects within Appendix

D, with most remaining projects currently in the construction or procurement phases. The County is committed to completing the program successfully with USEPA’s support and cooperation.

A. Projects completed prior to the Consent Decree Compliance Date where no action is required by USEPA

The following five (5) projects were completed prior to the USEPA compliance dates modified through a Schedule Modification request submitted by the County on December 22, 2017 and approved on April 11, 2018. The notification letters were sent as required; however, the County made every effort to maintain pace and closely manage these projects and completed them ahead of their Schedule Modification Compliance Date. Therefore, no further action is required for the following projects and corresponding letters.

No.	Date of Request/ Notification	Project No.	Completion Date	Compliance Date
1	1/10/2018	CD 5.17 Upgrade of PS #0037, 0351, 0370, 0403	6/15/2018	4/12/2019
2	2/1/2018	CD 4.10 Opa-Locka Airport 48” PCCP force main replacement	5/11/2018	10/25/2018
3	2/13/2018	CD 2.5 CDWWTP Oxygenation Trains Plant 1	4/30/2018	11/20/2018
4	2/23/2018	CD 5.18 Upgrade of PS #0441, 0491, 0710, 0827, 0852, 1236	11/18/2019	12/13/2019
5	2/11/2021	CD 2.11 CDWWTP Effluent Pump Station	6/17/2021	6/21/2021

B. Projects completed after the County Force Majeure or Delay Notification, where the County is requesting USEPA grant a time extension through the project completion date.

The following four (4) projects were completed after the Compliance Date. Detailed information and justification for delays are presented in detail below.

No.	Date of Request/ Notification	Project No.	Completion Date	Compliance Date	Days
1	3/28/2018	CD 5.1 Upgrade of P.S. #0418	11/8/2019	10/22/2019	-11
2	11/29/2018	CD 5.2 Upgrade of P.S. #0691	11/6/2019	1/27/2019	-284
3	1/22/2019	CD 2.2 CDWWTP Building Improvements	1/17/2020	9/26/2019	-103
4	5/5/2020	CD 5.3 Upgrade of P.S. #0692	11/18/2019	12/13/2019	-153

1. CD 5.1 Upgrade of P.S. #0418 – Notification sent on 3/28/2018

Compliance Date: October 22, 2019

Status: Completed November 8, 2019, project was completed with an 11-day delay.

Force Majeure Delay: This project was impacted by Hurricane Irma for a total of eight (8) out of the 11-days of delay. In preparation for the storm, the County issued a directive to the Contractors to begin storm preparedness on September 6, 2017. Remobilization was accomplished by September 13, 2017. Hurricane Irma is an “event arising from causes beyond the control of Miami-Dade” and, therefore, the County requests that penalties associated with eight (8) days of the delay be excused due to Force Majeure.

Other delays: The project experienced significant unforeseen field condition delays during construction; however, efforts were made to minimize these delays and accelerate critical path work. For instance, while exercising the exterior valves and experiencing sewage infiltration, the Engineer of Record (EOR) and the County determined that the existing bypass system, including the piping, valves, and accessories, needed to be replaced. Due to operational needs and cost-effectiveness, the County added this work to the project’s original scope, including replacing the Venturi flowmeter. This addition provides the County more reliable means to monitor and account for sanitary sewer flows from Volume Sewer Customers. In total, mainly due to the mitigation efforts taken, these delays account for only three (3) days.

Justification for waiving stipulated penalties in accordance with Paragraph 44 of the Consent Decree: The County believes that due diligence was performed during the design. Even though unforeseen field conditions were encountered, the additional work performed is beneficial to the optimum operation of the Pump Station. The conditions which contributed to the 3-day delay were mitigated to the best of our ability to minimize schedule impact. Therefore, the County respectfully requests consideration is given based on the mitigations efforts and reasons

listed above, for an 11-day project extension (Force Majeure: 8-days and Other Delays: 3-days), thus resulting in no penalties assessed against the County.

2. CD 5.2 Upgrade of P.S. #0691 – Notification sent on 11/29/2018

Compliance Date: January 27, 2019

Status: Completed November 6, 2019, project was completed with a 284-day delay.

Force Majeure Delay: This project was impacted by delays during construction attributed to the City of Homestead Contractor's lack of performance. These delays were outside the County's control, and therefore, the County believes these delays are excused under the Consent Decree's definition of Force Majeure. On February 1, 2016, the County submitted a Request for Non-Material Change for scope change related to project CD 5.2 Upgrade of P.S. #0691. The request was submitted since the City of Homestead was in the process of upgrading their Wastewater Treatment Plant headworks and building a new Pump Station (P.S. 1) near the current location of WASD P.S. #0691. Once completed, Homestead's P.S. 1 would discharge directly into a 42-inch force main within WASD's Wastewater Collection and Transmission System. The City of Homestead's P.S. 1 would perform the same hydraulic function as the existing P.S. #0691, thereby eliminating the need for WASD's pump station. With P. S. #0691 nearing the end of its useful life and no longer necessary, the project's scope was revised to decommission the WASD pump station. When the change was proposed, the City of Homestead anticipated that the P.S. 1 would be online by the end of December 2016. The County received the Non-Material Change Request approval on April 19, 2016. The Consent Decree milestones are shown below. It should be noted that even though engineering design and permitting began late, the delays were mitigated during procurement, and the project construction phase was started 11 months ahead of schedule.

Activity Name	Amended Interim Milestone Start Date	Actual Milestone Start Date	Amended Interim Milestone Finish Date	Actual Milestone Finish Date
Design	07-Oct-14	05-Jan-15 A	09-Sep-16	31-Mar-15 A
Permitting	10-Aug-14	01-Apr-15 A	08-Mar-17	30-Jul-15 A
Procurement	09-Mar-17	31-Jul-15 A	03-Dec-17	15-Jan-16 A
Construction	04-Dec-17	03-Jan-17 A	27-Jan-19	08-Nov-19 A

Justification for waiving stipulated penalties in accordance with Paragraph 44 of the Consent Decree: Since the County was not in privity with the Contractor, the delay was beyond the County’s control, and this delay falls under the description of Force Majeure. In addition, the County maintained constant communication with the City of Homestead to obtain monthly updates. As soon as the County knew of the delays that would impact the Compliance date, the County asked the City to submit the project construction schedule to it immediately and continue to do so on a bi-weekly basis. The County also performed bi-weekly site visits to monitor construction progress. Finally, the County met with the City to discuss the mitigations steps required to complete the construction. Therefore, the County respectfully requests that any stipulated penalties associated with this delay be excused under the Consent Decree’s Force Majeure provisions because the 284-day delay was caused by reasons outside of the County’s control and the County acted in good faith to try to avoid the delay to the extent possible.

- 3. CD 2.2 CDWWTP Building Improvements** – Notification sent on 1/22/2019
 Compliance Date: September 26, 2019
 Status: Completed January 17, 2020, project was thus completed with a 103-day delay.

Force Majeure Delay: This project was impacted by Hurricane Dorian for a total of three (3) days. On August 29, 2019, WASD issued a directive to all Contractors to have the construction sites secured per the Responsive Hurricane Preparedness Plan. The activities conducted to prepare the site for Hurricane Dorian were performed on August 29, 2019, and remobilization was performed on September 3, 2019. Regular construction activity reconvened on September 4, 2019. Therefore, the County believes that Hurricane Dorian falls under the description of Force Majeure and requests it be excused from three (3) days of stipulated penalties.

Other delays: During the execution of construction, several challenges impacted the project completion, including but not limited to differing site conditions, construction sequencing changes, permitting and attrition of subcontractors. The differing conditions encountered required upgrades to the electrical and plumbing systems, which had to be incorporated to provide a complete project and a safe environment for plant personnel to use the facilities. Due to these challenges, the Contractor was falling behind and would not have the ability to comply with the schedule. Therefore, the County terminated the Contractor for convenience on June 7, 2018. Subsequently, the County moved forward

with an updated design, permitting, procurement and new construction contract award to complete the project. The redesign was fast-tracked and completed in late July 2018. The project was re-advertised on November 14, 2018, and a Notice to Proceed (NTP) was issued to the new Contractor on April 15, 2019. Accordingly, the project has been delayed by 282 days due to the redesign, re-permitting, and re-procurement. In addition, during design, the County completed and prepared a Limited Asbestos Survey Report; the report identified the asbestos contained around the windows as Non-Friable and had to be abated. However, in May 2019, the WASD Environmental Compliance Section updated the Limited Asbestos Survey Report to indicate that asbestos around the windows was Friable. Therefore, it was necessary for the Contractor to use appropriate abatement procedures for Friable materials that require more stringent handling and disposal methods than Non-Friable asbestos, such as negative pressure containment and a decontamination chamber.

Justification for waiving stipulated penalties in accordance with Paragraph 44 of the Consent Decree: The County implemented immediate actions to fast-track the redesign, re-permitting, re-procurement, and reassessment of the asbestos abatement to mitigate the delays. Additionally, the completed project included additional scope for the benefit of the wastewater treatment plant facility; moreover, this project does not affect any treatment process at the plant. Therefore, the County respectfully request that any stipulated penalties associated with this delay be waived under the Consent Decree's Paragraph 44.

4. CD 5.3 Upgrade of P.S. #0692 – Notification sent on 5/5/2020

Compliance Date: June 17, 2020

Status: Completed November 17, 2020, project was completed with a 153-day delay.

Force Majeure Delay: This project was impacted by delays during construction because the building department was closed due to an outbreak of COVID-19 and that closure hindered permit inspections. The total associated delay was 14 days.

Other delays: The County issued a scope modification for the control and electrical disciplines to facilitate operations and improve safety. These included redundancy for Program Logic Control (PLC) systems and Pump Emergency Stop safety equipment implemented as lessons learned during construction on other pump station projects at the start of P.S. #0692 construction. Also, due to operational needs, the construction sequence had to be modified from the Contract Documents. For example, instead of the Contractor working on two pumps at a time, there was an operational limitation that required work on one pump at a time, therefore delaying the work in the critical path. The change in the sequence was due to construction at the start of the 2019 rainy season, where P.S. #0692 is of vital importance for the wastewater system, and the availability of at least three pumps was essential.

Justification for requesting waiving stipulated penalties in accordance with Paragraph 44 of the Consent Decree: The County coordinated with the project engineer to expedite the issuance of the revised specifications and drawings to mitigate delays. The County also strongly believes that the change in construction sequence was necessary to ensure a safe and responsible protocol for the operation of the pump station. Therefore, the County respectfully requests that any stipulated penalties associated with this delay be waived based on the mitigations efforts and reasons listed above.

C. Projects which are ongoing and have experienced delays beyond the Compliance Date where the County is requesting that the USEPA withhold action through the completion of the project to allow for a detailed review of factors contributing to delays and appropriate action thereafter.

The following five (5) projects will be completed after the Compliance Date. Detailed information and justification for delays are presented herewith.

No.	Date of Request/ Notification	Project No.	Projected Completion Date	Compliance Date
1	6/28/2019, 1/15/2021, 3/17/2021	CD 1.11 SDWWTP General Electrical	9/14/2022	3/26/2021
2	10/13/2020, 6/14/2021	CD 2.1 CDWWTP Electrical Improvements	11/14/2022	6/14/2021
3	1/10/2020	CD 2.19 CDWWTP Co-generation Facility	11/9/2021	5/21/2020
4	6/1/2017, 3/6/2019, 4/24/2020	CD 2.22 CDWWTP Master Pump Station No. 2	10/1/2021	5/20/2019
5	5/5/2020, 9/9/2020	CD 3.06 NDWWTP Disinfection Facility	10/8/2021	9/9/2020

1. **CD 1.11 SDWWTP General Electrical** – Notifications sent on 6/28/2019, 1/15/2021, 3/17/2021
 Compliance Date: 3/26/2021
 Projected Completion Date: September 14, 2022, estimated 537-day delay
 - **Other delays:** The project initially experienced delays during the procurement phase for Child Project 1.11(1.1) Substations 9-12. The County was required to cancel the bids on May 28, 2019 due to a duplication of a portion of the work included in another contract. After canceling the bids, the lowest bidder also filed a protest on May 31, 2019, and on June 14, 2019, the protest was rescinded. After revising the bid package and re-advertisement, and going through the bidding process, a notice to proceed was issued to the Contractor on September 8, 2020. Currently, substantial completion for this Child Project is expected on April 30, 2022. The County attributes a delay of 113 days to this event. On January 15, 2021, additional delays were reported during the procurement phase of Child Project 1.11(1.2) Generator Repairs. The County rescinded their Recommendation for Award on December 24, 2020, due to post-bid conditions required by the

second-lowest bidder that were inconsistent with the terms and conditions of the bid solicitation. Therefore, the project was rebid and advertised on March 18, 2021. Currently, notice to proceed is projected to be issued on September 15, 2021, and Substantial Completion is expected for September 14, 2022. The County is currently attributing 284 days to this delay. In case additional delays are encountered, the County would immediately notify DOJ/EPA/FDEP to consider additional time. If the project is completed earlier, the County will provide notification of project completion.

The County regularly reviews means to expedite the project while mitigating the schedule delays. Progress updates will be provided in the Quarterly Report, and a Notification of Delays letter will be submitted once the project achieves substantial completion.

2. CD 2.1 CDWWTP Electrical Improvements – Notifications sent on 10/13/2020, 6/14/2021
Compliance Date: June 14, 2021
Projected Completion Date: November 14, 2021, estimated 153-day delay

- **Force Majeure Request:** The project schedule was impacted during construction due to an outbreak of COVID-19 resulting in a delayed mobilization. The Force Majeure delay totaled three (3) days. Additionally, further delays were encountered due to impacts to the global supply chains that have led to high levels of supply disruption of raw materials, extending duration in fabrication and affecting the delivery of the Low Voltage busway. The County is currently evaluating the time impact due to this additional delay.
- **Other delays:** Delays associated with an unforeseen field condition that required the relocation of an 8-inch potable water pipeline to avoid a conflict with the new building foundation. This unforeseen field condition impacted this project by 15 days. An additional delay was encountered for an unforeseen field condition that required the design and installation of neutral landing inside the new electrical motor control centers (MCCs) and modifications to existing low-voltage switchgear 9A and 10A to meet Building Code requirements. This unforeseen field condition continues to impact this project. Currently, it is expected for a 132-day time extension to be granted to the Contractor. In case additional delays are encountered, the County will immediately notify DOJ/EPA/FDEP of the additional delay. If the project is completed earlier, the County will provide notification of project completion.

The County regularly reviews means to expedite the project while mitigating the schedule delays. Progress updates will be provided in the Quarterly Report, and a Notification of Delays letter will be submitted once the project achieves substantial completion.

3. CD 2.19 CDWWTP Co-generation Facility – Notification sent on 1/10/2020
Compliance Date: May 21, 2020
Projected Completion Date, November 9, 2021, estimated 537-day delay

Other delays: This project experienced a delay due to unavailable biogas for performing the required acceptance and performance testing. The biogas for this project will be generated by the digesters being completed as part of CD 2.15 Clusters 1 and 2, which are the root cause for the project delay. It is worth noting that the construction of the new Biogas Facility was completed

in October 2019 and is only waiting for enough biogas production to perform acceptance and performance testing to complete. The County is coordinating with the Contractor and the project engineer to expedite needed design modifications to minimize additional delays that might arise for Clusters 1 and 2 to mitigate the delays. Currently, the County is finalizing startup and commissioning activities for Cluster 1. The County anticipates sufficient gas will be available following the Cluster 1 commissioning to perform partial testing of the Biogas equipment.

The County regularly reviews means to expedite the project while mitigating the schedule delays. Progress updates will be provided in the Quarterly Report, and a Notification of Delays letter will be submitted once the project achieves substantial completion.

4. CD 2.22 CDWWTP Master Pump Station No. 2 – Notifications sent on 6/1/2017, 3/6/2019, 4/24/2020

Compliance Date: May 25, 2019

Projected Completion Date: October 1, 2021, estimated 865-day delay.

- **Force Majeure request:** The project experienced a delay during the Construction Phase when soil and groundwater contamination due to petroleum compounds were encountered during the initial excavation of the 54-inch pipe required to be demolished. The County did not foresee contamination at the construction site and therefore believes this event falls under the definition of Force Majeure and is requesting 103 days to be considered. In addition, the project experienced COVID-19 impacts that delayed programming of the odor control unit panel and affected productivity due to labor and material availability. As a result, even though the County is still evaluating the total impact of COVID-19, the delay in programming the odor control unit panel was 71 days.
- **Other delays:** This project experienced additional delays due to a termination for default issued to the Contractor on February 21, 2019. After the termination, the County executed a Memorandum of Understanding with the Surety on April 15, 2019, that resulted in a delay of 53 days. If additional delays are encountered, the County will immediately notify DOJ/EPA/FDEP to consider additional time. If the project is completed earlier, the County will provide notification of project completion.

The County implemented immediate action and meetings to engage the Contractor's Surety and determine the best course of action to complete the project using the Contractor's staff. However, despite the County's best effort to mitigate the delays, additional challenges have been encountered during the execution of the Construction Phase (i.e., Contractor deficiencies, leaking issues in the scrubber unit, differing site conditions in pipe material at the location of the flowmeter within Biscayne Boulevard, residents had significant issues with noise, during the installation of sheet piles for Biscayne Boulevard, with exploratory excavation work being performed at night as part of the permit requirements, among others).

The County regularly reviews means to expedite the project while mitigating the schedule delays. Progress updates will be provided in the Quarterly Report, and a Notification of Delays letter will be submitted once the project achieves substantial completion.

5. CD 3.06 NDWWTP Disinfection Facility Notifications sent on 5/5/2020, 9/9/2020

Compliance Date: September 9, 2020

Projected Completion Date: October 8, 2021. Estimated 393-day delay.

- **Force Majeure request:** This project experienced delays due to COVID-19 impacts that affected the availability of labor (including subcontractors), professional services and materials. Currently, the Contractor has not made a formal claim for COVID-19 impacts.
- **Other delays:** The Contractor also encountered multiple unforeseen field conditions with the existing underground utilities, which conflicted with the scope of work and resulted in delays. In addition, the unforeseen complexity of the Electrical and Mechanical switchover after the new Electrical Building was built warranted a careful, more phased approach of a longer duration than anticipated during the planning and design phases of this project. Switchover activities are currently ongoing. If additional delays are encountered, the County will immediately notify DOJ/EPA/FDEP to consider additional time. If the project is completed earlier, the County will provide notification of project completion.

The County requested the Contractor locate all existing utilities in the work area to detect any potential conflicts. The County also coordinated with the Contractor, WASD Operations and the EOR to implement a solution to reduce the risk of the electrical and mechanical switchover. Due to the risk these components could create during the switchover, and in the future, the County considered the time needed to ensure a good solution was provided for the project's success and ease any additional problems.

The County regularly reviews means to expedite the project while mitigating the schedule delays. Progress updates will be provided in the Quarterly Report, and a Notification of Delays letter will be submitted once the project achieves substantial completion.

D. Projects that are ongoing and have experienced delays for which the County is requesting that USEPA withhold action through the completion of the project to allow for a detailed review of factors contributing to delays and appropriate action thereafter.

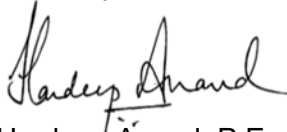
Since these projects are ongoing and have not yet missed the Compliance Date, final delay impacts are unknown. For that reason, this letter does not intend to ask for relief of penalties but respectfully requests to address these projects when and if the Compliance Date is missed. Progress updates for these projects will be provided in the Quarterly Report send to USEPA and FDEP, beginning with the 2021 Quarterly Report No. 3.

No.	Date of Request/ Notification	Project No.	Projected Completion Date	Compliance Date
1	6/6/2018	CD 1.6, 1.8, 2.12, 2.13, 2.16 SDWWTP and CDWWTP Thickening/Dewatering	7/12/2023, 2/26/2023	1/6/2023, 1/13/2023
2	5/21/2018	CD 2.14 CDWWTP Digesters Plant 1	Pending decision to cancel project	1/19/2026
3	9/10/2020	CD 2.15(3) CDWWTP Digesters Plant 2	9/4/2023	6/18/2023

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for collecting such information, the information presented is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations.

Should you have any questions regarding this matter, please call me at (786) 552-8894.

Sincerely,



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