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## VIA ELECTRONIC CORRESPONDENCE

February 21, 2017

CCN: 60869

File No: 8.DC.52 & 77

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611  
RE: DOJ No. 90-5-1-1-4022/1  
[Tom.Mariani@usdoj.gov](mailto:Tom.Mariani@usdoj.gov)

Chief, Clean Water Enforcement Branch  
Water Protection Division  
Attn: Brad Ammons  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
[Ammons.Brad@epa.gov](mailto:Ammons.Brad@epa.gov)

Rachael Amy Kamons  
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Florida Department of Environmental Protection  
Southeast District – West Palm Beach  
3301 Gun Club Road, MSC 7210-1  
West Palm Beach, FL 33406  
Attn: Compliance/Enforcement Section  
[Diane.Pupa@dep.state.fl.us](mailto:Diane.Pupa@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 – Force Majeure**  
**Section XVII, Paragraph 77 – Notices**  
**Force Majeure Notification Letter for Consent Decree Appendix D-2, Capital Improvement Projects**

Dear Sir/Madam:

In accordance with the provisions of Section XI, Paragraph 52 of the above referenced Consent Decree (CD), Miami-Dade (County) notified EPA and FDEP, via email, on October 5, 2016 of a potential delay, related to the threat of Hurricane Matthew, of the Appendix D-2 Capital Improvement Projects (CIP).

In accordance with Section XI, Paragraph 52, which requires the County to subsequently provide details within 14 days of the initial notification, the County submitted to EPA and FDEP that information on the deadline of October 19, 2016. EPA, in a letter received on January 17, 2017, responded that the County shall further describe and explain the reasons for the delay; the anticipated duration of the delay; all

actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; County's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; a statement as to whether, in the opinion of the County, such event may cause or contribute to an endangerment to public health, welfare or the environment, and documentation to support the force majeure claim.

**Explanation and description of the reasons for the delay**

The County and Water and Sewer Department (WASD) have hurricane preparedness guidelines designed to maximize the safety of the public and employees and mitigate potential damages due to hurricanes. The threat of Hurricane Matthew and the associated activities conducted to minimize the potential risk to public safety and of damage to property caused a seven (7) day delay for CIPs 5.16 Upgrade of PS #0198, 0437, 0466, 0680 and CIP 2.17 Chlorination Facilities. Both projects are in construction.

On October 4, 2016, Mr. Hardeep Anand, WASD Deputy Director of Capital Improvement Program, instructed all contractors performing CIP construction work to immediately secure job sites and equipment (which can become potential projectiles) in preparation for the aforementioned storm (see Attachment A). Work activities on the construction sites resumed on Tuesday, October 11, 2016, resulting in a seven (7) day delay. Attachment B, is a table with the requested extension for each of the projects.

**Anticipated duration of the delay**

The County anticipates a seven (7) day delay for CIP 2.17 and has realized a seven (7) day delay for CIP 5.16 as a result of Hurricane Matthew.

**Actions taken or to be taken to prevent or minimize the delay**

As detailed in the First Status Report to the Court dated August 29, 2014, there was a lengthy delay in procuring the Program Management and Design Professional Firms. This resulted in a late start in the validation and design of several projects, specifically those with CD compliance dates ending 2016 through 2018, which include the projects referred to above.

The construction schedules provided by the respective Contractors, for each project, consist of a critical path schedule for the completion of the project without construction float, i.e., there is no buffer between substantial completion of the project and the EPA CD compliance date. Therefore, there are no measures or mitigation actions to be taken to prevent any unforeseen delays. The projects, however, are closely managed to facilitate meeting the deadline.

The County believes the emergency preparation activities were appropriate. The Miami-Dade area was fortunate in that the Hurricane stayed well off shore and local effects were minimal. However, had that not been the case, the preparatory efforts likely would have prevented damage and mitigated further delays.

**Schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay**

In the case of CIP 5.16, the project has missed the CD compliance date and has been delayed as a result of other circumstances indicated in the correspondence submitted to EPA and FDEP on January 27, 2017. As of the date of this correspondence, the Contractor has submitted plans to rectify safety concerns and a revised Maintenance of Traffic (MOT) for the site. A schedule to complete this project, however, has yet to be received by the County from the Contractor.

As for CIP 2.17 Chlorination Facilities, WASD is negotiating with the Contractor to mitigate the delay as described below.

In order to meet the intent of the CD, WASD must be in a position to decommission the current gas chlorine system. There are two (2) "sites" that make up the scope of this project. Site 1 consists of a bulk storage facility, primary disinfection metering pumps and site 2 transfer pumps. Site 2 is a satellite facility that provides day storage and metering pumps for ancillary services in Plant 1 consisting of RAS, scum and plant water chlorination. RAS and scum chlorination are not critical services and WASD has indicated they can operate without the satellite facility for a period of two months. Plant water is collected from the clarifier effluent trough following the dose point for primary disinfection and is therefore already chlorinated. A change has been issued to the Contractor to decouple the satellite facility (Site 2) from the main storage facility (Site 1). On completion of Site 1, WASD will be in a position to decommission the gas chlorine facility thereby achieving the intent of the CD. Site 2 will be completed by end of November, 2017, two months after the CD completion date for this project. As more information is obtained, the County will update EPA and FDEP on both projects.

**Rationale for attributing such delay to a force majeure event**

As defined in Section XI, Paragraph 51, "Force Majeure," is defined as any event arising from causes beyond the control of the County such as the aforementioned weather event.


**Cause or contribute to an endangerment to public health, welfare or the environment**

There is no indication that the delay caused by the preventative hurricane preparedness activities present an immediate endangerment to the public health, welfare or the environment.

Should you have any questions regarding this matter, please call me at (786) 552-8571.

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 gathering such information, the information submitted 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 fine and imprisonment for knowing violations.

Sincerely,



Hardeep Anand, PE  
Deputy Director of Capital Improvement Program

Attachments: **Attachment A** – Communication – Mr. Hardeep Anand’s Email to Contractor to Initiate the Preventative Hurricane Preparedness Activities.  
**Attachment B** – Force Majeure Delay Impact on CIPs Table

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David Wood (CD PMCM)  
Maricela Fuentes (CD PMCM)  
Abby Diaz (CD PMCM)

**Attachment A**  
**Mr. Hardeep Anand's Email to Contractor to Initiate the Preventative  
Hurricane Preparedness Activities**

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## Doyon, Cynthia (Consultant)

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**From:** Diaz, Abby (Consultant)  
**Sent:** Thursday, October 13, 2016 9:20 AM  
**To:** Doyon, Cynthia (Consultant)  
**Subject:** FW: Action Required: Hurricane Matthew Preparations

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**From:** Fuentes, Maricela [<mailto:Maricela.Fuentes@aecom.com>]  
**Sent:** Tuesday, October 04, 2016 4:19 PM  
**To:** Diaz, Abby (Consultant) <[Abby.Diaz@miamidade.gov](mailto:Abby.Diaz@miamidade.gov)>  
**Cc:** Wood, David M (Miami) <[David.M.Wood@aecom.com](mailto:David.M.Wood@aecom.com)>  
**Subject:** FW: Action Required: Hurricane Matthew Preparations

Abby, see below. I would suggest a call to Brad for potential Force Majeure notification.

M

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**From:** Anand, Hardeep (WASD) [<mailto:hardeep.anand@miamidade.gov>]  
**Sent:** Tuesday, October 04, 2016 4:12 PM  
**To:** Fernandez, Vicente (WASD); Roque, Rolando M. (WASD); Ferguson, James (WASD); Smith, Isaac (WASD); Edwards, Daniel J. (WASD); An, Huren (Jeff) (WASD); Goldenberg, Bertha M. (WASD); Concepcion, Harold (WASD); Fuentes, Maricela; Wood, David M (Miami); Evelio Agustin; Molina, Maria J. (Consultant); Franklin Torrealba  
**Cc:** Cotarelo, Antonio (WASD); Morejon, Maria (WASD)  
**Subject:** Action Required: Hurricane Matthew Preparations

Good Afternoon,

Please share the following with your respective staff and ensure we implement the following:

As Hurricane Matthew approaches we need to ensure that all contractors performing work within the public right of way shall immediately secure their job sites and equipment which can become potential projectiles (e.g., barricades, traffic control devices, etc.) during the storm event. Please ensure that these directives are given to all contractors on all of our active construction projects throughout the county. No work shall commence until we have provided them the "All Clear". WASD Inspection staff / PM-CM staff (as applicable) shall personally visit and inspect each of our active construction sites to ensure that we have taken all precautionary



measures to secure our sites and render them safe. Let's take pre-storm photographs of our sites as well for record purposes after they have been properly secured.

Construction Inspectors who perform site inspections may take the county vehicle home until we are back to normal after the storm event. We need to also make sure that all vehicles are fueled up and ready to be deployed as needed. Please verify and confirm all telephone numbers are accurate in your calling tree within your Natural Disaster Plan.

Finally, take the time to ensure that you are "storm ready" on the family front and Be Safe! Let's keep our fingers crossed that this will be a low impact storm which we have to deal with.

Note: By Noon tomorrow or as soon as your teams have accomplished the above, please send Harold and myself an email that you have completed the above so that we can report up accordingly. If you need assistance, this is the time for other staff members to step up as needed (Construction Managers 2, and 3, Engineers, PE's and Sr. PE's).

Should you have any questions, please reach out to myself or Harold directly.

Thanks,

**Hardeep Anand, P.E.**, Deputy Director  
Capital Improvement Program  
Miami-Dade Water and Sewer Department  
3071 SW 38<sup>th</sup> Avenue, Miami, FL 33146

Phone: 786-552-8571 | Fax: 786-552-8639

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*Miami-Dade County is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and thus subject to disclosure.*

**Attachment B**  
**Force Majeure Delays on CIPs Table**

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## Force Majeure Delays Impact on CIPs Table

Parent Project Phase	Project	Delay in Days	Current EPA Compliance Date	Requested EPA Compliance Date
CONSTRUCTION	2.17 Chlorination Facilities	7	9/29/2017	10/6/2017
	5.16 Upgrade of PS#0198, 0437, 0466, 0680	7	12/31/2016	1/7/2017