



Daniella Levine Cava, Mayor

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VIA ELECTRONIC CORRESPONDENCE

October 21, 2024

CCN: 65583

File No: 8.DC.20.52

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

Chief, Clean Water Enforcement Branch
Water Protection Division
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Atlanta, Georgia 30303
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Rachael Amy Kamons
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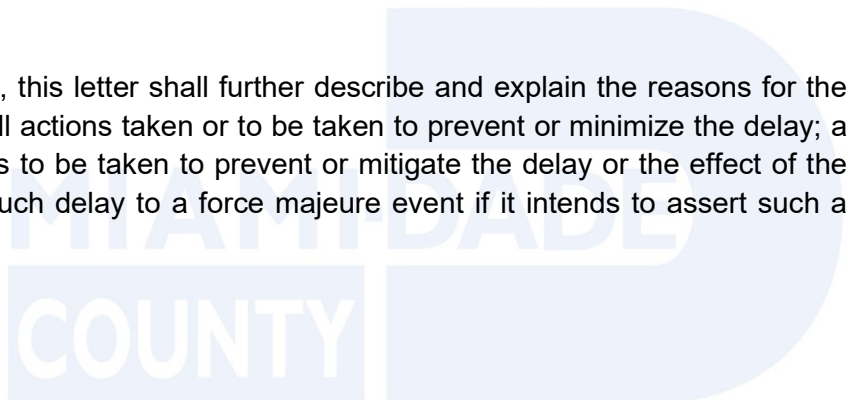
Florida Department of Environmental Protection
Southeast District – West Palm Beach
3301 Gun Club Road, MSC 7210-1
West Palm Beach, FL 33406
Attn: Compliance/Enforcement Section
Sirena.Davila@dep.state.fl.us

**RE: Consent Decree (Case: No. 1:12-cv-24400-FAM),
Reference DOJ Case No. 90-5-1-1-4022/1,
Section XI, Paragraph 51 – Force Majeure,
Section XVII, Paragraph 77 – Notices,
Force Majeure Notification for Consent Decree Appendix D-2, Capital Improvement Projects in
Construction due to Tropical Storm Warning associated with Hurricane Milton**

Dear Sir or Madam:

In accordance with the provisions of Section XI, Paragraph 52 of the above referenced Consent Decree (CD), on October 7, 2024, Miami-Dade County (County) electronically notified the United States Environmental Protection Agency (EPA) and Florida Department of Environmental Protection (FDEP) of a Potential Force Majeure of CD Capital Improvement Projects (CIPs) in construction due to the Tropical Storm Warning associated with Hurricane Milton.

In accordance with Section XI, Paragraph 51, this letter 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; the 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 or the environment, and documentation to support the force majeure claim.

Explanation and description of the reasons for the delay

The County's Water and Sewer Department (WASD) and their contractors have hurricane preparedness guidelines designed to maximize the safety of the public and employees and mitigate potential damage due to hurricanes/tropical storms. On October 6, 2024, the State of Florida Office of the Governor, Executive Order Number 24-215 (Emergency Management – Amending Executive Order 24-214 Tropical Storm Milton) was issued for Miami-Dade County. In addition, on October 6, 2024, the Miami-Dade County issued a Declaration of Local State of Emergency. Copies of the State of Florida Executive Order 24-215 and the Miami-Dade County Declaration of Local State of Emergency are provided in Attachments 1 and 2, respectively. Due to the threat of Hurricane Milton and its forecast to strengthen, WASD issued directives on October 7, 2024 to their contractors to have the construction sites secured to protect life and property per their Responsive Hurricane Preparedness Plan by the close of the business day.

As per the Miami-Dade County Declaration of Local State of Emergency, Hurricane Milton was expected to cross over Florida as a Category 3 Hurricane posing a risk of severe flooding in Miami-Dade County. Delays impacting CIP projects in construction at the three (3) regional Wastewater Treatment Plants (WWTP's) were incurred due to the hurricane preparation activities conducted to minimize the potential risk to public safety and damage to property.

Contractors have a right to claim delays in association with a Force Majeure event. Attachment 3 is a tabulated list of eight (8) CD projects with contractor claims for a Force Majeure delay due to the Hurricane Milton. The County has evaluated the time extension submittals from the contractors and concurs with the schedule impacts on the projects in construction.

Anticipated duration of the delay

Each claim for time was evaluated for merit on a case-by-case basis, and Attachment 3 provides a list of eight (8) CD Projects impacted by Hurricane Milton and the duration of the force majeure delay on each project. Six (6) of the projects experienced a delay of four (4) calendar days as a result of Hurricane Milton. In addition, two (2) of the projects, CD 1.6 Gravity Sludge Thickeners and CD 1.8 Dewatering Facility, experienced a delay of seven (7) days. The three (3) additional days of delay for the referenced projects, compared to the other projects, were due to a postponement of the scheduled shut-down of the Motor Control Center (MCC-B) at the Return Activated Sludge (RAS) Pump Station No.1 to install a new Variable Frequency Device (VFD) for the new Waste Activated Sludge (WAS) Booster Pump Station No.1 in the new Thickening and Dewatering Building. There was an increase in sewer flow due to Hurricane Milton at the South District Wastewater Treatment Plant (SDWWTP), and the installation of the VFD required the plant to return to normal sewer flow conditions to proceed with any shutdown at the SDWWTP. At this time, the County does not anticipate further delays stemming from the impact of Hurricane Milton.

Action taken or to be taken to prevent or minimize the delay and schedule

The County believes that the implementation of hurricane preparation activities was appropriate to ensure safety, prevent damage to life and property and minimize the delay. Contractors were able to return to their respective construction sites on October 11, 2024. The County will continue to work closely with their contractors to evaluate any further claims for damage and/or time impacts.

Rational for attributing such delay to a force majeure event

As defined in CD Section XI, Paragraph 51, a force majeure is defined 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 delays or prevents the performance of any obligation under this Consent Decree despite Miami-Dade's best efforts to fulfill the obligation. The requirement that Miami-Dade exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible.

The aforementioned weather event is beyond the control of the County and therefore meets the definition of a force majeure event.


Cause or contribution to an endangerment to public health, welfare, or the environment

There is no indication that the preventative hurricane preparation activities presented an immediate endangerment to the public health, welfare, or the environment.

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.

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

Sincerely,



FR
Marisela J. Aranguiz-Cueto, P.E.
Deputy Director
Miami-Dade Water and Sewer Department

Force Majeure Delay Notification for Tropical Storm Warning due to Hurricane Milton

October 21, 2024

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Attachments: Attachment 1 – State of Florida Office of the Governor, Executive Order Number 24-215 (Emergency Management – Amending Executive Order 24-214 Tropical Storm Milton)
Attachment 2 – Miami-Dade County Declaration of Local State of Emergency
Attachment 3 – Consent Decree Projects in Construction with Force Majeure Delays Claims due to Hurricane Milton

ec:

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Billie Jo McCarley (WASD)
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Francois Saint-Phard (WASD)
Carlos A. Castro (WASD)
Miguel Jimenez (WASD)
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Jose Ortega (CAO)
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Galo Pacheco (RER-DERM)
Rashid Istambouli (RER-DERM)
Roger Williams (CD PMCM)

Attachment 1

STATE OF FLORIDA

OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NUMBER 24-215

(Emergency Management – Amending Executive Order 24-214 – Tropical Storm Milton)

WHEREAS, on October 5, 2024, I issued Executive Order 24-214, declaring a state of emergency for thirty-five counties across the State of Florida due to the dangers presented by Tropical Storm Milton; and

WHEREAS, on October 6, 2024, Tropical Storm Milton continues to strengthen, and is forecast to undergo significant to rapid intensification over the next seventy two hours as it moves eastward over the central and eastern Gulf of Mexico; and

WHEREAS, the forecast indicates that Tropical Storm Milton will be at or near a catastrophic major hurricane upon landfall along the Florida West Coast, accompanied by life-threatening storm surge and severe wind gusts for the Florida Gulf Coast; and

WHEREAS, an amendment to Executive Order 24-214 is necessary because recovery efforts and those affected by this disaster require the continued support of the State of Florida; and

WHEREAS, as Governor of Florida, I am responsible to meet the dangers presented to the State of Florida and its people by this emergency.

NOW, THEREFORE, I, RON DESANTIS, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section 1(a) of the Florida Constitution and by the Florida Emergency Management Act, as amended, and all other applicable laws, promulgate the following Executive Order, to take immediate effect:

Section 1. Section 1 of Executive Order 24-214 is amended to read as follows:

Because of the foregoing conditions, which are projected to constitute a major disaster, I declare that a state of emergency exists in Alachua, Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Columbia, DeSoto, Dixie, Duval, Flagler, Gilchrist, Glades, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lafayette, Lake, Lee, Levy, Madison, Manatee, Marion, Martin, Miami-Dade, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, Suwanee, Taylor, Union, and Volusia counties.

Section 2. Except as amended herein, Executive Order 24-214 is ratified and reaffirmed.

Section 3. This Executive Order is effective immediately and shall expire upon the expiration of Executive Order 24-214.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 6th day of October, 2024.

A handwritten signature in blue ink, appearing to read 'Ron DeSantis', is written over a horizontal line.

RON DESANTIS, GOVERNOR

ATTEST:

A handwritten signature in blue ink is written over a horizontal line.

SECRETARY OF STATE

2024 OCT 06 10:01 AM
STATE OF FLORIDA
TALLAHASSEE

Attachment 2



MIAMI-DADE COUNTY DECLARATION OF LOCAL STATE OF EMERGENCY

WHEREAS, section 252.38.(3)(a), Florida Statutes, grants authority to political subdivisions to exercise certain emergency management powers to provide for the health and safety of persons and property; and

WHEREAS, in connection with those emergency management powers, section 252.38(3)(a), Florida Statutes, further grants authority to political subdivisions to declare and enact a Local State of Emergency for a period of up to seven days, thereby waiving the procedures and formalities otherwise required of the political subdivision by law; and

WHEREAS, chapter 8B of the Code of Miami-Dade County grants the County Mayor the authority to declare a Local State of Emergency and authorizes the County Mayor to issue executive orders and take various other actions to address such emergency; and

WHEREAS, Hurricane Milton has formed in the Gulf of Mexico, and is expected to cross over Florida as a Category Three hurricane; and

WHEREAS, Governor Ron DeSantis has issued Executive Order 24-214 declaring a State of Emergency for various Florida counties in response to the threat posed by Hurricane Milton; and

WHEREAS, Miami-Dade County is included in Executive Order 24-214; and

WHEREAS, the projected path of Hurricane Milton may include Miami-Dade County, and could pose a risk of severe flooding in Miami-Dade County even if it does not directly strike South Florida,

THEREFORE, as County Mayor of Miami-Dade County, I hereby declare a State of Local Emergency, effective immediately, that will continue for seven days unless cancelled before that period of time or extended by further action. This Local State of Emergency includes all of Miami-Dade County, both incorporated and unincorporated areas.

Pursuant to this Declaration, further orders may be issued to protect the health, safety, and welfare of the community. Such orders specifically include, but are not limited to, orders related to the items listed in 1.a-n attached. The County Mayor's Executive Chiefs, through the Director of the Office of Emergency Management, are hereby ordered to take whatever prudent actions are necessary to effectuate such orders and to otherwise protect the health, safety, and welfare of the community.

Miami-Dade County Declaration of Local State of Emergency

Enacted:
Signed:

Daniella Lennie Carr

COUNTY MAYOR

Date: 10/6/24

Time: 11:03

Witness: *[Signature]*

Cancelled:
Signed:

Daniella Lennie Carr

COUNTY MAYOR

Date: 10/10/24

Time: 7:57

Witness: *Narcia Freyjas*

Action Options for State of Local Emergency

1. Executive Orders of the Mayor to include:
 - a) Employee Recall Order: An order recalling Miami-Dade County employees from vacation, canceling days off, and mobilizing all personnel required for disaster response;
 - b) Authorize the Internal Services Department or its successor departments to suspend normal leasing and bid procedures to procure space, structures or other items under their normal authority for disaster response determined necessary by the Director;
 - c) Authorize procurement of supplies, equipment, and services without formal bidding procedures;
 - d) Evacuation Order: A mandatory order(s) directing the evacuation of appropriate area(s) of the County deemed to be in imminent danger from disaster;
 - e) Curfew: In the period before, or during and immediately after an event, an order imposing a general curfew applicable to the County as a whole, or to geographical area(s) of the County and during hours the Mayor deems necessary, and from time to time, to modify the hours the curfew will be in effect and what area(s) it applies to;
 - f) An order requiring any and all commercial establishments located in area(s) of imminent or actual danger to close and remain closed until further order;
 - g) An order requiring the closure of any or all bars, taverns, liquor stores, and other business establishments where alcoholic beverages are predominantly sold or otherwise dispensed; provided that with respect to those business establishments which are not primarily devoted to the sales of alcoholic beverages, and in which such alcoholic beverages may be removed or made secure from seizure by the public, the portions thereof utilized for the sale of items other than alcoholic beverages may, at the discretion of the Mayor, be allowed to remain open;
 - h) An order requiring the discontinuance of the sale, distribution or giving away of alcoholic beverages in any or all parts of Miami-Dade County;
 - i) An order requiring the discontinuance of the sale, distribution or giving away of gasoline or other liquid flammable or combustible products in any container other than a gasoline tank properly attached to a gas powered vehicle;

Miami-Dade County Declaration of Local State of Emergency

- j) An order closing to the public any or all public places including streets, alleys, public ways, schools, parks, beaches, amusement areas and public buildings;
- k) In addition to the provisions of section 8A-5 of the Code of Miami-Dade County, orders to prevent price gouging for any essential commodity, dwelling unit, or storage facility;
- l) Orders requesting the conservation of water supplies;
- m) Such other orders as are immediately necessary for the protection of life and property; provided, however, that any such orders shall, at the earliest practicable time, be presented to the Board for ratification or confirmation in accordance with this chapter; and
- n) The Mayor shall cause any proclamation ordered by the Mayor or the Board pursuant to the authority in this chapter to be delivered to all news media within the County, and shall utilize whatever available means to give public notice of such proclamation.

Attachment 3

**Consent Decree Projects In Construction with Force Majeure Delay Claims
due to Tropical Storm Warning (Hurricane Milton)**

South District Wastewater Treatment Plant		Number of Force Majeure Days Delayed on the Project
1.6 Gravity Sludge Thickeners		7 days
1.8 Dewatering Facility		7 days
Central District Wastewater Treatment Plant		Number of Force Majeure Days Delayed on the Project
2.12 Gravity Sludge Thickeners Plant 1		4 days
2.13 Gravity Sludge Thickeners Plant 2		4 days
2.16 Dewatering Building		4 days
2.18 Odor Control Systems		4 days
2.19 Co-Gen Improvements		4 days
North District Wastewater Treatment Plant		Number of Force Majeure Days Delayed on the Project
3.3 Oxygenation Trains		4 days