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Environmental Resources Management

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VIA ELECTRONIC CORRESPONDENCE

September 22, 2020

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File No: 8.DC.20.52

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division

Attn: Tom Mariani

U.S. Department of Justice

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RE: DOJ No. 90-5-1-1-4022/1

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Attn: Compliance/Enforcement Section

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[Jason.Andreotta@dep.state.fl.us](mailto: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 VI, - Fats, Oils and Grease (“FOG”) Control Program Paragraph 19(a)  
Section XI – Force Majeure, Paragraph 52  
Revised Abeyance of Requirements under Section 24-42.6 of the Code of Miami-Dade  
County**

Dear Sir/Madam:

This revised request for Abeyance of Requirements under Section 24-42.6 of the Code of Miami-Dade County (County) updates the August 27, 2020 request by including **“abeyance criteria”** pursuant to the September 21, 2020 teleconference between the Environmental Protection Agency (EPA), Florida Department of Environmental Protection (FDEP) and County.

In accordance with the Federal Consent Decree (**Case: No. 1:12-cv-24400-FAM**), Paragraph 19(a), the County revised its Grease Trap Ordinance and Fats, Oils, and Grease (FOG) Control Program pursuant to approvals by the EPA and FDEP. Said Ordinance became effective March 5, 2018, and included

provisions for requiring food service establishments to upgrade their FOG Control Devices (e.g., grease interceptors). Section 24-42.6(7)(c) of the Code of Miami-Dade County provides that:

For changes in ownership or other changes that require the issuance of a certificate of use, municipal occupational license, or equivalent municipal approval to operate or use a business, the Director or the Director's designee shall not issue a written approval until the Director or Director's designee finds that:

- (i) The prior use had a valid FOG operating permit within the last 12 months.
- (ii) There is no construction proposed or required.
- (iii) There are no changes to the back of house.
- (iv) No changes have been made, or are proposed, to the plumbing system, use, or facility operations that will impact the FOG control device.
- (v) A FOG control device condition assessment is performed by a licensed plumber or Florida Professional engineer and the findings, submitted to the Department in a form prescribed by the Director or the Director's designee, show that the FOG control device is functioning in accordance with the manufacturer's specifications and instructions and that the sampling point complies with Section 24-42.6(8).

The above criteria was developed to allow the upgrade of FOG control devices in a gradual manner that would not be excessively burdensome on businesses. However, its development, and in particular the requirement in Section 24-42.6(7)(c)(i) above, did not anticipate the emergence of a world pandemic and the impact it would have on our entire community, including businesses and more specifically, food service establishments. Not only has the pandemic severely affected the viability of food service establishments, but the provisions in Section 24-42.6(7)(c)(i) will potentially have the unintended effect of hindering food service establishments from re-opening now and into next year (i.e., 2021).

The County's first and foremost priority with the COVID-19 pandemic has been protection of the health and safety of the public, businesses and County staff. Now we are confronted with an unimaginable situation that requires immediate action. To this end, we are proposing holding in abeyance the requirement in Section 24-42.6(7)(c)(i) above subject to the **"abeyance criteria"** summarized below, commencing when EPA and FDEP approve or offer no objections to this request and ending on December 31, 2021. At the conclusion of this abeyance period, the requirements of Section 24-42.6(7)(c)(i) will be fully reinstated.

Abeyance Criteria		
Facility Criteria	Applicability	Upgrade Period
New Facility	Abeyance <i>NOT</i> applicable	Fully comply with Code prior to operating and/or making changes to operations.
Change in Use or Expansion		
Change in Ownership/Tenant Only	Abeyance Applicable	Facility with FOG Control Device Approved by DERM on or after January 1, 2015:
		<ul style="list-style-type: none"> <li>Comply with FOG 2.0 within 36 months of CU approval.</li> </ul>
		Facility with FOG Control Device NOT Approved by DERM on or after January 1, 2015:
		<ul style="list-style-type: none"> <li>Comply with FOG 2.0 within 24 months of CU approval.</li> </ul>
FOG2.0: FOG Control Device shall comply with requirements stipulated in Section 24-42.6 of the Miami-Dade County Code, as approved by FDEP/EPA. DERM: Division of Environmental Resources Management.		

This temporary abeyance would help to reduce the time and financial burden to these businesses as they desperately seek to open and operate under the new normal. During this period of abeyance, all other conditions shall apply and maintenance requirements shall continue to be enforced. Any food service establishment that does not comply with operational requirements in Section 24-42.6 in a timely manner, or is found to be affecting the building sewer or public sanitary sewer system in manner that can result in a sanitary nuisance, will be subject to all enforcement provisions of Chapter 24. Therefore, this temporary abeyance will not cause or contribute to the endangerment of the public health, welfare or the environment.

DERM's request is specifically limited to the requirements of Section 24-42.6(7)(c)(i) above and for the aforementioned requested timeframe. Furthermore, any permanent changes to Miami-Dade County's FOG Program requiring changes to its FOG Ordinance set forth in Section 24-42.6 of the Code of Miami-Dade County will be addressed pursuant the requirements of Paragraph 19(a)(xv).

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 (305) 372-6754.

Sincerely,

*Carlos L. Hernandez*

*for* Lee N. Hefty, Director  
Division of Environmental Resources Management

ec:

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