

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Case No. \_\_\_\_\_

UNITED STATES OF AMERICA,	)
STATE OF FLORIDA, and STATE OF	)
FLORIDA DEPARTMENT OF	)
ENVIRONMENTAL PROTECTION,	)
	)
Plaintiffs	)
	)
v.	)
	)
MIAMI-DADE COUNTY, FLORIDA,	)
	)
Defendant.	)

**COMPLAINT**

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), the State of Florida (“Florida”), and the Florida Department of Environmental Protection (“FDEP”) (collectively, “Plaintiffs”) file this complaint and allege as follows:

**NATURE OF ACTION**

1. This is a civil action brought pursuant to Clean Water Act (“CWA”) Sections 309(b) and (d) and 504, 33 U.S.C. §§ 1319(b) and (d) and 1364, and the Florida Air and Water Pollution Control Act, Fla. Stat. Chapter 403, against Miami-Dade County, Florida (“Miami-Dade” or “Defendant”).

2. This civil action seeks penalties and injunctive relief under Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and under Fla. Stat. §§ 403.121, 403.131, 403.141 and 403.161 for discharges of pollutants into the navigable waters of the United States and

Florida waters and for violations of certain terms, conditions and limitations of National Pollutant Discharge Elimination System (“NPDES”) permits issued to Miami-Dade by the EPA and/or the Florida Department of Environmental Protection (“FDEP”) and/or other permits issued by FDEP pursuant to CWA Section 402, 33 U.S.C. § 1342, Fla. Stat. Chapter 403 and applicable rules of the Fla. Admin. Code.

3. This civil action also seeks injunctive relief under Section 504 of the CWA, 33 U.S.C. § 1364, and Fla. Stat. § 403.131 to address the imminent and substantial endangerment to the health and welfare of persons presented by (i) numerous and repeated sanitary sewer overflows untreated wastewater; and (ii) the aged and deteriorated condition of force mains within Miami-Dade’s wastewater collection and transmission system, including the 54-inch force main underneath Government Cut between Fisher Island and south of the City of Miami Beach that conveys untreated wastewater from the City of Miami Beach under Biscayne Bay to the Central District Wastewater Treatment Plant.

JURISDICTION, AUTHORITY, AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to CWA Sections 309(b) and 504, 33 U.S.C. §§ 1319(b) and 1364, and 28 U.S.C. §§ 1331, 1345, and 1355, and over the Parties. This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367(a) because the state law claims are related to the federal law claims and form part of the same case or controversy.

5. Authority to commence this action is vested in the Administrator of the EPA pursuant to CWA Sections 309(b) and 504, 33 U.S.C. §§ 1319(b) and 1364, and authority to bring this action is vested in the U.S. Attorney General pursuant to Section 506 of the CWA, 33

U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519. As the United States has brought suit against Miami-Dade County, a municipality of Florida, Florida joins as a plaintiff to this action in accordance with CWA Section 309(e), 33 U.S.C. § 1319(e). In accordance with Article 4 Section 4 of the Florida Constitution and Fla. Stat. Chapters 16 and 20, the Attorney General for the State of Florida “[s]hall appear in and attend to, in behalf of the state, all [civil] suits or prosecutions . . . in which the state may be a party, or in anywise interested . . . .” The FDEP, a Florida administrative agency created by Fla. Stat. § 20.255, is charged with the power and duty to administer and enforce the provisions of Fla. Stat. Chapter 403 and the rules promulgated thereunder in Fla. Admin. Code Title 62.

6. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a), as well as CWA Sections 309(b) and 504, 33 U.S.C. §§ 1319(b) and 1364, because it is the judicial district in which Miami-Dade is located and in which the alleged violations occurred.

7. As a signatory to this Complaint, Florida has actual notice of the commencement of this action, in accordance with Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

DEFENDANT MIAMI-DADE COUNTY

8. Defendant Miami-Dade is a political subdivision of the State of Florida, a “municipality” pursuant to Section 502(4) of the CWA, 33 U.S.C. § 1362(4), and a “person” pursuant to Sections 502(5) and 504 of the CWA, 33 U.S.C. §§ 1362(5) and 1364, and Fla. Stat. § 403.031(5). Miami-Dade owns and operates a publically owned treatment works (“POTW”) consisting of a municipal wastewater collection and transmission system (“WCTS”) which is designed to collect and convey municipal sewage (domestic, commercial and industrial), and

three (3) municipal wastewater treatment plants: the North District Wastewater Treatment Plant (“North District WWTP”), the Central District Wastewater Treatment Plant (“Central District WWTP”), and the South District Wastewater Treatment Plant (“South District WWTP”).

Miami-Dade’s POTW is one of the largest public utilities in the United States, providing both water and wastewater service to a population of over two (2) million with 336,000 retail sewer accounts as well as fifteen (15) Volume Sewer Customers and numerous private collection systems. The WCTS consists of three regional WWTPs, 1,035 pump stations, roughly 910 miles of force mains and approximately 3,071 miles of gravity sewer interceptors, gravity sewers and siphons. Additionally, Miami-Dade is responsible for an estimated 2,241 miles of public laterals, for a total collection and transmission system of nearly 6,000 miles.

9. Miami-Dade operates its POTW pursuant to two (2) NPDES permits issued under Section 402(b) of the CWA, 33 U.S.C. § 1342, and Fla. Stat. Chapter 403, authorizing the discharge of pollutants from certain outfalls, and pursuant to three (3) permits issued by FDEP pursuant to the Underground Injection Control requirements and regulations of the Safe Drinking Water Act, 42 U.S.C. § 300h *et seq.*, Fla. Stat. Chapter 403, and applicable rules of the Fla. Admin Code.

#### STATUTORY AND REGULATORY REQUIREMENTS

10. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” to waters of the United States, except, *inter alia*, in compliance with an NPDES permit issued by EPA or an authorized state pursuant to CWA Section 402, 33 U.S.C. § 1342.

11. Chapter 403 of the Florida Statutes and Fla. Admin. Code Rules 62-604 and 62-620 likewise prohibits the discharge of wastes into waters of the state without a valid permit and sets the requirements for treatment of such wastes prior to discharge. Pursuant to Fla. Stat. § 403.088(1), a facility “may not discharge any waste into the waters of the state which, by itself or in combination with the wastes of other sources, reduces the quality of the receiving waters below the classification established for such waters.” Fla. Stat. § 403.087(1) mandates that all facilities that are “reasonably expected to be a source of . . . water pollution must not be operated, maintained, constructed, expanded, or modified without an appropriate and currently valid permit.” Further, Fla. Admin. Code Rule 62-604.130(1) prohibits the “release or disposal of excreta, sewage, or other wastewaters or residuals without providing proper treatment approved by the Department . . . .”

12. Section 502(12) of the CWA defines “discharge of a pollutant” to mean, among other things, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

13. Fla. Admin. Code Rule 62-620.200(13) defines “discharge of a pollutant” to mean, “any addition of any pollutant or combination of pollutants, as defined in 40 C.F.R. § 122.2, to waters from any point source . . . . This definition includes additions of pollutants into waters from surface runoff which is collected or channeled by man, and discharges through pipes, sewers, or other conveyances which do not lead to a treatment works.”

14. The Clean Water Act’s definition of “pollutant” in Section 502(6) of the CWA specifically identifies “sewage” as a pollutant. 33 U.S.C. § 1362(6). *See also* Fla. Stat. §§ 403.031(7) and (12); Fla. Admin. Code Rules 62-620.200(36); 62-604.200(11), (18), (19).

15. Section 502(7) of the CWA defines navigable waters to be “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). U.S. EPA regulations promulgated pursuant to the CWA define the term “waters of the United States” to include, among other things: (1) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (2) all interstate waters; (3) all other waters such as intrastate lakes, rivers and streams (including intermittent streams), the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; (4) tributaries of waters of the United States; and (5) certain wetlands (including wetlands adjacent to these waters). 40 C.F.R. § 122.2.

16. Section 403.031(13) of the Florida Statutes define “waters” to include, but not be limited to, “rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water including fresh, brackish, saline, tidal, surface, or underground waters. . . . Solely for purposes of [section] 403.0885, waters of the state also include navigable waters or waters of the contiguous zone as used in [section] 502 of the Clean Water Act, as amended, 33 U.S.C. ss. 1251 et seq.” *See also* Fla. Admin. Code Rules 62-604.200(21); 62-620.200(56).

17. The term “point source” is defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel . . . from which pollutants are or may be discharged.” *See also* Fla. Stat. § 403.031(1), (10); Fla. Admin. Code Rules 62-604.200(2), (20); 62-620.200(37).

18. Federal regulations set forth a list of general conditions that all facilities issued NPDES permits under State NPDES permitting programs must meet. 40 C.F.R. § 122.41(e) sets

forth the General Condition for “Proper Operation and Maintenance” of facilities and systems. Section 122.41(e) states that a “permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of [the] permit.”

19. The term “facility” is defined in the regulations as “any NPDES ‘point source’ or any other facility . . . (including land or appurtenances thereto) that is subject to regulation under the NPDES program.” 40 C.F.R. § 122.2.

20. The term “treatment works” is defined as “any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature . . . including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment . . . .” 33 U.S.C. § 1292(2)(A).

21. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that EPA may issue NPDES permits to “persons” that authorize the discharge of any pollutant to navigable waters, but only in compliance with Section 301 of the CWA, 33 U.S.C. § 1311, and such terms and conditions as EPA determines are necessary to carry out the provisions of the CWA. *See also* Fla. Stat. §§ 403.088 and 403.0885.

22. Section 402 of the CWA, 33 U.S.C. § 1342, further directs the Administrator of the EPA to prescribe conditions for NPDES permits to assure compliance with the requirements of the CWA, including conditions on data and information collection, reporting and other such requirements as the Administrator deems appropriate.

23. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that if a state so requests, and the Administrator of the EPA determines that the state complies with certain

requirements, the Administrator may approve a state to administer the NPDES program if the state meets certain requirements. Pursuant to Section 402(b), the State of Florida has been authorized by the EPA to administer its NPDES program since May 1, 1995.

24. Chapter 403 of the Florida Statutes, including Fla. Stat. §§ 403.088 and 403.0885, and Florida Administrative Code Rules 62-604 and 62-620 prescribe the conditions that a facility must meet to be issued a NPDES Permit.

25. If a state NPDES program is approved pursuant to CWA Section 402(b), 33 U.S.C. § 1342(b), the Administrator of the EPA retains the authority to take enforcement action under CWA Section 309, 33 U.S.C. § 1319. CWA Section 402(i), 33 U.S.C. § 1342(i).

26. Effluent limitations, as defined in CWA Section 502(11), 33 U.S.C. § 1362(11), are restrictions on quantity, rate and concentration of chemical, physical, biological and other constituents which are discharged from point sources. Effluent limitations are among the conditions and limitations prescribed in NPDES permits issued under CWA Section 402(a), 33 U.S.C. § 1342(a).

27. Chapter 403.161(1)(a) of the Florida States prohibits any person to “caus[e] pollution” except as permitted by applicable permits. *See also* Fla. Admin. Code Rules 62-620.300; 62-620.610.

28. CWA Section 309(b), 33 U.S.C. § 1319(b), authorizes the Administrator of the EPA to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of CWA Section 301, 33 U.S.C. §§ 1311, or is in violation of any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.



29. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, or violates any permit condition or limitation in an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$32,500 per day for each violation which takes place after March 15, 2004 through January 12, 2009; and not to exceed \$37,500 per day for each violation which takes place after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Pub. L. 104-134). *See* 40 C.F.R. Part 19; 69 Fed. Reg. 7,121 (Feb. 13, 2004); 73 Fed. Reg. 75346 (Dec. 11, 2008).

30. Section 403.141(1) of the Florida Statutes provides that any person who violates the provisions of Fla. Stat. § 403.161 (*e.g.* causes pollution or fails to comply with rule permit provisions) is liable to the state for any damage caused . . . and for reasonable costs and expenses of the state” in tracing, controlling and abating the source and the pollutants. Such person “is furthermore subject to the judicial imposition of a civil penalty for each offense in an amount no more than \$10,000 per offense. . . . Each day during any portion of which such violation occurs constitutes a separate offense.”

31. Section 504 of the CWA, 33 U.S.C. § 1364, authorizes “the Administrator [of the EPA] upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons . . . [to] bring suit on behalf of the United States . . . to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants causing or contributing to such pollution or to take such other action as may be necessary.”

32. Fla. Stat. § 403.131 authorizes the FDEP to “institute a civil action . . . to seek injunctive relief to enforce compliance with [the Florida Air and Water Pollution Control Act, Fla. Stat. Chapter 403,] or any rule, regulation [or] permit . . . ; to enjoin any violation specified in [Section] 403.161(1); and to seek injunctive relief to prevent irreparable injury to the air, waters, and property, including animal, plant, and aquatic life, of the state and to protect human health, safety, and welfare caused or threatened by any violation.”

#### GENERAL ALLEGATIONS

33. Miami-Dade is a “municipality” pursuant to Section 502(4) of the CWA, 33 U.S.C. § 1362(4), and therefore is a “person” within the meaning of Sections 502(5) and 504 of the CWA, 33 U.S.C. §§ 1362(5) and 1364, and Fla. Stat. § 403.031(5).

34. At all relevant times herein, Miami-Dade has owned and operated the POTW, which consists of the three (3) regional wastewater treatment plants (“WWTPs”) described in Paragraph 8, above, as well as 1,035 pump stations, roughly 910 miles of force mains, including force mains running under Biscayne Bay, and approximately 3,071 miles of gravity sewer interceptors, gravity sewers, and siphons. Additionally, Miami-Dade is responsible for an estimated 2,241 miles of public laterals, for a total collection and transmission system of nearly 6,000 miles.

35. Miami-Dade’s POTW is a “treatment works” within the meaning of Section 212(2)(A) and (B) of the CWA, 33 U.S.C. § 1292(2)(A) and (B), and a “publicly owned treatment works” as defined by the federal regulations implementing the CWA at 40 C.F.R. § 122.2 (cross-referencing the definition at 40 C.F.R. § 403.3(q)). *See also* Fla. Stat. § 403.031(11).

36. Miami-Dade's POTW, North District WWTP, Central District WWTP, and South District WWTP, as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), are "discernible, confined and discrete conveyance[s], including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, [or] rolling stock . . . from which pollutants are or may be discharged."

37. Miami-Dade's POTW, North District WWTP, Central District WWTP, and South District WWTP are point sources within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14). *See also* Fla. Stat. § 403.031(1) and (10).

38. At all times relevant herein, Miami-Dade has "discharged pollutants" including from its POTW within the meaning of Sections 502(6) and (12) of the CWA, 33 U.S.C. §§ 1362(6) and (12), and within the meaning of Fla. Admin. Code Rule 62-620.200(13). *See also* Fla. Admin. Code Rule 62-604.200(11), (18).

39. Miami-Dade's North District WWTP and Central District WWTP both discharge to the Atlantic Ocean, which is a "navigable water" as defined by 33 U.S.C. § 1362(7), and a "water" and "water of the state" as defined by Fla. Stat. §§ 403.031(13).

40. At all times relevant herein, Miami-Dade has "discharged pollutants" from "point sources" within the meaning of Section 502(12) and (14) of the CWA, 33 U.S.C. § 1362(12) and (14), into "navigable waters" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

41. At all times relevant herein, Miami-Dade has "discharged pollutants," "pollution," "contaminants" and "wastes" from "point sources" into "waters" and "waters of the state" within the meaning of Fla. Admin. Code Rules 62-620.200(13), (14) and (37) and Fla.

Stat. §§ 403.031(1), (7), (12), (13); and 403.161. *See also* Fla. Stat. §§ 403.087, 403.088, 403.0885, 403.141, 403.161; Fla. Admin. Code Rule 62-620.300.

42. Pursuant to Section 402(a) of the CWA, 33 U.S.C. § 1342(a), and Fla. Stat. §§ 403.088 and 403.0885, EPA or FDEP issued Miami-Dade NPDES permits currently in effect for the following WWTPs:

(a). EPA issued Miami-Dade NPDES Permit Number FL0032182 for its North District WWTP on January 31, 1995. The permit was administratively continued on July 21, 1997, and it was revised by FDEP on October 15, 2003. The original EPA NPDES Permit and all revisions issued by FDEP are jointly known as the Consolidated Wastewater Permit, issued by FDEP as Permit Number FL0032182-001. NPDES Permit Number FL0032182 was reissued by FDEP on February 20, 2012, effective as of April 1, 2012.

(b). EPA issued Miami-Dade NPDES Permit Number FL0024805 for its Central District WWTP on April 16, 1999. The NPDES permit expired on June 30, 2004 and has been administratively continued.

43. At all relevant times herein, Miami-Dade's NPDES permits have authorized Miami-Dade to discharge treated municipal wastewater from its North District and Central District WWTPs to the Atlantic Ocean, subject to certain limitations and conditions set forth in the NPDES permits.

44. The NPDES Permits establish certain limitations on the mass and concentration of pollutants Miami-Dade may discharge from its WWTPs during a given period. The NPDES permits also require Miami-Dade to monitor its discharges and submit periodic discharge monitoring reports ("DMRs") to FDEP and/or EPA.

45. The permits require Miami-Dade at all times to properly operate and maintain all facilities and systems (and related appurtenances) for collection and treatment installed or used by Miami-Dade to achieve compliance with the terms and conditions of the permits. This provision of the NPDES permits also requires the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit.

46. Miami-Dade has submitted DMRs which show that on one or more occasions in the past five (5) years, effluent limitations at the North District WWTP and Central District WWTP have been violated.

47. The EPA and/or FDEP have inspected Miami-Dade's WWTPs and have identified problems with the operation and maintenance of the WWTPs and/or the levels of pollutants being discharged.

48. At both the North District WWTP and the Central District WWTP, the effluent limitations and/or operation and maintenance requirements of the NPDES permits have been violated on one or more occasions within the past five (5) years.

49. Unless ordered by the Court to comply with the CWA, Miami-Dade will continue to violate the CWA.

50. On numerous occasions in the last five years, Miami-Dade's POTW experienced overflows of untreated wastewater ("sanitary sewer overflows" or "SSOs") containing pollutants.

51. Many of these SSOs resulted from clogged or broken sanitary sewer lines, pump system failure, and other management, operations, and maintenance issues.

52. On numerous occasions in the last five years, SSOs from Miami-Dade's POTW have included discharges of untreated sewage into the Florida Southeast Coast watershed. These are navigable waters of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as well as "waters" as defined by Fla. Stat. § 403.031(13). *See also* Fla. Admin. Code Rules 62-604.200(21); 62-620.200(56).

53. There are many water bodies, including the Biscayne Canal, the Miami River, and the Little River, into which Miami-Dade's POTW, including the WCTS, have discharged untreated sewage that are included on Florida's reports under Section 303(d) of the CWA, 33 U.S.C. § 1313(d), which list water bodies that do not meet or are not expected to meet the water quality standards.

54. On numerous occasions in the last five years, Miami-Dade has "discharged" "pollutants" within the meaning of Sections 502(6) and (12) of the CWA, 33 U.S.C. §§ 1362(6), (12), from "point sources" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), into "navigable waters" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. 122.2.

55. On numerous occasions in the last five years, Miami-Dade has "discharged" "pollutants," "pollution," "contaminants" and "wastes," within the meaning of Fla. Admin. Code Rules 62-604.200(11), (18) and 62-620.200(13), (14), (36), and Fla. Stat. § 403.031(1), (7), (12), from "point sources" and "sources," within the meaning of Fla. Admin. Code Rule 62-620.200(37) and Fla. Stat. § 403.031(10), to "waters" and "waters of the state" within the meaning of Fla. Admin. Code Rules 62-604.200(21) and 62-620.200(56) and Fla. Stat. §

403.031(13), and “caused pollution” within the meaning of Fla. Stat. § 403.161. *See also* Fla. Stat. §§ 403.021(6), 403.088, and 403.0885.

56. In addition, SSOs from Miami-Dade’s POTW, including the WCTS, include overflows of untreated wastewater that did not reach waters of the United States or the state, but these SSOs are nonetheless in violation of state law because state law prohibits not only actual discharges into waters of the state, but also discharges which will reasonably be expected to be a source of water pollution. *See* Fla. Admin. Code Rule 62-620.300(2); Fla. Stat. § 403.087. Furthermore, these SSOs were also in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a) and Fla. Stat. § 403.161, as they are indicative of Miami-Dade’s failure to comply with the operation and maintenance conditions of its NPDES permits.

57. Unpermitted discharges of untreated sewage from Miami-Dade’s POTW to waterbodies in the Florida Southeast Coast Watershed, as described in Paragraphs 50 through 53 above, have caused and/or contributed to the presence of elevated levels of coliform bacteria in these waterbodies.

58. Many waterbodies within the Florida Southeast Coast Watershed, including the ICCW Dade Co., Biscayne Canal, Little River, Miami River, Miami Canal, and Lower Miami River, are listed pursuant to CWA Section § 303(d) as waterbodies that do not meet, or are not expected to meet, water quality standards for pollutants, including fecal coliform and total coliform.

59. Miami-Dade’s Central District WWTP receives untreated wastewater from Miami Beach, Bal Harbour, Bay Harbor islands, Indian Creek and Surfside through a 54-inch force main made of prestressed concrete cylinder pipe which lies under Government Cut in

Biscayne Bay. Additional flow is added to this force main from customers on Fisher Island. This 54-inch force main (hereinafter called "Government Cut Line") is the primary line carrying untreated wastewater from these areas within Miami-Dade County to the Central District WWTP. The Government Cut Line handles an average flow of 25 million gallons per day (mgd) and peak flows of up to 46 mgd.

60. In December 2011, an inspection of the Government Cut Line found thirty-seven (37) pipes, each approximately twenty (20) feet in length, with broken prestressing wire wraps. Fourteen (14) of these pipes also had wire break damage at or very near the point at which the pipes would yield under seasonal high operating plus surge pressures. However, currently there are no cracks or leaks in the Government Cut Line.

61. Miami-Dade has committed to replacing the Government Cut Line, and began construction on a new line in August 2011. In September 2011, Miami-Dade estimated the completion at December 2012; however, Miami-Dade now estimates that the project, which will be executed in three phases, will not be finished until April 2017, as follows: Phases 1 and 2 will replace the 54-inch force main with a new 60-inch force main from upland Miami Beach to the northern portion of Fisher Island. These phases have commenced and are estimated to be completed by August 2013. Phase 3 will replace the 54-inch force main from the northern portion of Fisher Island to the Central District WWTP, and is estimated to be completed by April 2017.

62. Failure of the Government Cut Line would result in the discharge of millions of gallons of untreated wastewater containing raw sewage will result in the introduction of



significant volumes and concentrations of pollutants, including fecal coliform, into Biscayne Bay and its environs.

63. Coliform bacteria in untreated wastewater is an indicator of the levels of disease-causing organisms present in receiving waterbodies. Organisms in untreated wastewater containing raw sewage can cause a number of diseases in users of contaminated areas. These diseases include enteric diseases such as gastroenteritis, dysentery, and cholera. These diseases are highly communicable.

64. Numerous waterbodies, including the Miami River, Lower Miami River, Biscayne Canal, Biscayne Bay, and their environs, including in the vicinity of the Government Cut Line are used extensively for recreational purposes including fishing and various water sports including swimming, diving and water skiing.

65. Biscayne Bay and its environs in the vicinity of the Government Cut Line are also used for commercial purposes including fishing, shellfishing and tourism.

FIRST CLAIM FOR RELIEF  
UNPERMITTED DISCHARGES OF UNTREATED SEWAGE

66. Paragraphs 1 through 65 above are realleged and incorporated herein.

67. On numerous occasions in the last five years, Miami-Dade discharged untreated sewage into Biscayne Canal, Little River, Miami River, Miami Canal, Lower Miami River, ICCW Dade Co. Estuary, and other Florida waters within the Florida Southeast Coast watershed from discharge points within its POTW, including the WCTS, which were not and are not authorized by any federal or state NPDES permit or exemption.

68. Each of the discharges referred to in Paragraph 67 involved a discharge of pollutants, contaminants, waste, wastewater or sources of pollution, within the meaning of CWA

Section 502(6) and (12), 33 U.S.C. § 1362(6) and (12), and within the meaning of Fla. Stat. §§ 403.031(1), (7), (12) and Fla. Admin. Code Rules 62-604.200(11), (18), (19) and 62-620.200(13), (14) and (36), from a point source and/or source and/or waterwater collection/transmission system or facility, within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14), Fla. Stat. § 403.031(10), and Fla. Admin. Code Rules 62-604.200(2), (20) and 62-620.200(37), into navigable waters of the United States, within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7), and Florida waters, within the meaning of Fla. Stat. § 403.031(13) and Fla. Admin. Code Rules 62-604.200(21) and 62-620.200(56), without authorization under a NPDES permit or other exception specified in Section 301(a) of the CWA, 33 U.S.C. § 1311(a), Fla. Stat. §§ 403.087, 403.088, 403.0885 or Fla. Admin. Code Rule 62-620.300, or providing proper treatment, *see* Fla. Admin. Code Rule 62-604.130(1), in violation of CWA Section 301, 33 U.S.C. § 1311, Fla. Stat. § 403.161, and Fla. Admin. Code Rules 62-604.130 and 62-620.300.

69. Each day of unpermitted discharges by Miami-Dade referred to in Paragraph 67 constitutes a separate violation of CWA Section 301, 33 U.S.C. § 1311 and Fla. Stat. § 403.161.

70. Under CWA Sections 309(b) and (d), 33 U.S.C. § 1319(b) and (d); the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (1990), *amended by* Pub. L. No. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (1996) (28 U.S.C. § 2461 note); 61 Fed. Reg. 69,360 (Dec. 31, 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); and 73 Fed. Reg. 75346 (Dec. 11, 2008), codified at C.F.R. Title 40, Part 19, Miami-Dade is liable for a civil penalty of up to \$32,500 per day for each violation which takes place after March 15, 2004 through January 12, 2009, and \$37,500 per day thereafter.

71. Under Fla. Stat. § 403.141(1), Miami-Dade, as a person who has violated Fla. Stat. § 403.161, “is liable to the state for any damage caused . . . and for reasonable costs and expenses of the state” in tracing, controlling and abating the source and the pollutants, “and is furthermore subject to the judicial imposition of a civil penalty for each offense in an amount no more than \$10,000 per offense. . . . Each day during any portion of which such violation occurs constitutes a separate offense.”

72. Miami-Dade continues to violate the CWA and Fla. Stat. § 403.161 by causing pollution, discharging waste and wastewater containing pollutants without a permit from point sources within its POTW, including the WCTS, that are not identified in its NPDES permits as authorized outfalls. Unless restrained by an order of the Court, Miami-Dade will continue to discharge pollutants from point sources without a permit or other authorization, in violation of the CWA and Fla. Stat. § 403.161.

SECOND CLAIM FOR RELIEF  
FAILURE TO COMPLY WITH EFFLUENT PERMIT CONDITIONS

73. Paragraphs 1 through 72 above are realleged and incorporated herein.

74. On numerous occasions in the last five years, Miami-Dade’s North District WWTP and Central District WWTP failed to comply with the effluent limitations prescribed in their respective NPDES permits and FDEP permits, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a) and Fla. Stat. § 403.161.

75. Each day of each effluent limitation violation is a separate violation of CWA Section 301(a), 33 U.S.C. § 1311(a), and Fla. Stat. § 403.161.

76. Miami-Dade’s exceedance of the effluent limitations specified in the NPDES and FDEP permits for its North District WWTP and Central District WWTP violated Sections 309(a)

and (d) of the CWA, 33 U.S.C. §§ 1319(a) and (d), and Fla. Stat. § 403.161, and subjects Miami-Dade to the imposition of injunctive relief and civil penalties.

77. Under CWA Sections 309(b) and (d), 33 U.S.C. § 1319(b) and (d); the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (1990), *amended by* Pub. L. No. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (1996) (28 U.S.C. § 2461 note); 61 Fed. Reg. 69,360 (Dec. 31, 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); and 73 Fed. Reg. 75346 (Dec. 11, 2008), codified at C.F.R. Title 40, Part 19, Miami-Dade is liable for a civil penalty of up to \$32,500 per day for each violation of CWA Sections 309(a) and (d), 33 U.S.C. §§ 1319(a) and (d), which takes place after March 15, 2004 through January 12, 2009, and \$37,500 per day thereafter.

78. Under Fla. Stat. § 403.141(1), Miami-Dade, as a person who has violated Fla. Stat. § 403.161, “is liable to the state for any damage caused . . . and for reasonable costs and expenses of the state” in tracing, controlling and abating the source and the pollutants, “and is furthermore subject to the judicial imposition of a civil penalty for each offense in an amount no more than \$10,000 per offense. . . . Each day during any portion of which such violation occurs constitutes a separate offense.”

79. Unless restrained by an order of the Court, Miami-Dade will continue to exceed these effluent limitations, in violation of CWA Sections 309(a) and (d), 33 U.S.C. §§ 1319(a) and (d), and 1342 and Fla. Stat. § 403.161.

THIRD CLAIM FOR RELIEF  
FAILURE TO COMPLY WITH STANDARD PERMIT CONDITIONS:  
PROPER OPERATION AND MAINTENANCE

80. Paragraphs 1 through 79 above are realleged and incorporated herein.

81. On numerous occasions between December 2007 and the date this Complaint was filed, in addition to the discharges referred to in Paragraph 67, Miami-Dade has allowed SSOs to occur from various points within its POTW, including its WCTS, that did not reach navigable waters or waters of the State of Florida.

82. From at least December 2007, and continuing through the date this Complaint was filed, Miami-Dade failed to comply with Fla. Admin. Code Rule 62-620.610(7), which is incorporated by reference in applicable FDEP operating permits for the North and Central District WWTPs, as well as Part IX(7) of the October 15, 2003 revision to NPDES Permit No. FL032182 and issued by FDEP to Miami-Dade for the North District WWTP and the February 20, 2012 reissuance of this permit, and failed to comply with Part II(B)(1) of NPDES Permit No. FL 0024805 issued by EPA to Miami-Dade for the Central District WWTP, by failing to properly operate and maintain its permitted facilities, and systems of treatment and control and related appurtenances which are installed or used by Miami-Dade, to achieve compliance with the conditions of the permits, as evidenced, in part, by the SSOs referred to in Paragraphs 67 and 81, and effluent limitation violations referred to in Paragraph 74.

83. Each day Miami-Dade failed to comply with the operation and maintenance provisions of the NPDES and FDEP permits issued to it as set forth in Paragraph 82 constitutes a separate violation of CWA Sections 301 and 402, 33 U.S.C. § 1311 and 1342, and Fla. Stat. § 403.161.

84. Under CWA Sections 309(b) and (d), 33 U.S.C. § 1319(b) and (d); the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (1990), *amended by* Pub. L. No. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (1996) (28 U.S.C. § 2461 note); 61 Fed. Reg. 69,360 (Dec. 31, 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); and 73 Fed. Reg. 75346 (Dec. 11, 2008), codified at C.F.R. Title 40, Part 19, Miami-Dade is liable for a civil penalty of up to \$32,500 per day for each violation of CWA Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342, which takes place after March 15, 2004 through January 12, 2009, and \$37,500 per day thereafter.

85. Under Fla. Stat. § 403.141(1), Miami-Dade, as a person who has violated Fla. Stat. § 403.161, “is liable to the state for any damage caused . . . and for reasonable costs and expenses of the state” in tracing, controlling and abating the source and the pollutants, “and is furthermore subject to the judicial imposition of a civil penalty for each offense in an amount no more than \$10,000 per offense. . . . Each day during any portion of which such violation occurs constitutes a separate offense.”

86. Unless restrained by an order of the Court, Miami-Dade will continue to violate CWA Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342 and Fla. Stat. § 403.161 by failing to properly operate and maintain its permitted facilities, and systems of treatment and control and related appurtenances which are installed or used by Miami-Dade to achieve compliance with the conditions of its permits.

FOURTH CLAIM FOR RELIEF  
IMMINENT AND SUBSTANTIAL ENDANGERMENT - SSOs

87. Paragraphs 1 through 86 above are realleged and incorporated herein.

88. The POTW, as described in Paragraph 8 above, is a “pollution source or combination of sources” as the phrase is used in CWA Section 504, 33 U.S.C. § 1364, Fla. Admin. Code Rule 62-620.300(2), and Fla. Stat. § 403.087.

89. The numerous SSOs of untreated wastewater containing raw sewage from Miami-Dade’s POTW, including the WCTS, as described in Paragraphs 58, 59, 67 and 81 above, “is presenting an imminent and substantial endangerment to the health and welfare of persons,” using local surface waters and their environs for recreational and commercial purposes within the meaning of CWA Section 504, 33 U.S.C. § 1364, and is presenting a threat of irreparable injury to human health, waters and property including animal, plant and aquatic life of the state, within the meaning of Fla. Stat. § 403.131.

90. Miami-Dade, as the owner and operator of the POTW, is a “person causing or contributing to the alleged pollution” from the SSOs of untreated wastewater containing raw sewage within the meaning of CWA Section 504, 33 U.S.C. § 1364, and Fla. Stat. § 403.161.

91. Unless Miami-Dade is ordered by the Court pursuant to Section 504 of the CWA, 33 U.S.C. § 1364, and Fla. Stat. § 403.131 to immediately cease all SSOs of untreated wastewater, to develop and implement a comprehensive emergency contingency plan to respond to future unpermitted discharges, and to undertake an expeditious repair and rehabilitation program of the POTW, SSOs of untreated wastewater from the POTW will continue to present an imminent and substantial endangerment to the health and welfare of persons who use local surface waters for recreational and commercial purposes, as well as present the threat of irreparable injury to human health, waters, and property, including animal, plant and aquatic life of the state.

FIFTH CLAIM FOR RELIEF  
IMMINENT AND SUBSTANTIAL ENDANGERMENT - FORCE MAINS

92. Paragraphs 1 through 91 above are realleged and incorporated herein.

93. Miami-Dade's deteriorating force mains, including the Government Cut Line carrying untreated wastewater from Miami Beach to Miami-Dade's Central District WWTP, as described in Paragraphs 59 through 62 above, are "pollution sources" as that term is used in CWA Section 504, 33 U.S.C. § 1364, Fla. Admin. Code Rule 62-620.300(2), and Fla. Stat. § 403.087.

94. The deteriorated condition of Miami-Dade's force mains, including the Government Cut Line, as described in Paragraphs 59 through 62 above, is "presenting an imminent and substantial endangerment" as that phrased is used in CWA Section 504, 33 U.S.C. § 1364, and is also presenting a threat of irreparable injury to human health, waters, and property, including animal, plant and aquatic life of the state, within the meaning of Fla. Stat. § 403.131.

95. The threat of failure of Miami-Dade's deteriorated force mains, including the Government Cut Line is presenting an imminent and substantial endangerment "to the health of persons and the livelihood of persons" who use Biscayne Bay and its environs for recreational and commercial purposes within the meaning of Section 504 of the CWA, 33 U.S.C. § 1364, and is also presenting a threat of irreparable injury to human health, waters, and property, including animal, plant and aquatic life of the state, within the meaning of Fla. Stat. § 403.131.

96. Miami-Dade, as the owner and operator of the deteriorated force mains, including the Government Cut Line, is a "person causing or contributing to" the condition of the Government Cut Line within the meaning of Section 504 of the CWA, 33 U.S.C. § 1364.



97. Unless ordered by the Court pursuant to Section 504 of the CWA, 33 U.S.C. § 1364, to immediately develop and implement a comprehensive emergency contingency plan to respond in the event of a failure of a force main, including the Government Cut Line, and to continue the construction program to repair and/or replace the force mains, including the Government Cut Line, these force mains will continue to present an imminent and substantial endangerment to the health and welfare of persons who use Biscayne Bay and its environs for recreational and commercial purposes, as well as present the threat of irreparable injury to human health, waters, and property, including animal, plant and aquatic life of the state.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, United States of America, the State of Florida, and the State of Florida Department of Environmental Protection request that this Court enter judgment on behalf of the United States, Florida, and FDEP against Miami-Dade as follows:

1. Pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and Fla. Stat. § 403.131, order Miami-Dade to undertake a program to achieve permanent and consistent compliance with all terms and conditions of the applicable NPDES permits, the Clean Water Act, the Florida Air and Water Pollution Control Act, Fla. Stat. Chapter 403, and the regulations promulgated thereunder for all its WWTPs, including their related collection and transmission systems;

2. Pursuant to Sections 309(b) and 504 of the CWA, 33 U.S.C. § 1319(b) and 1364, and Fla. Stat. § 403.131, order Miami-Dade to:

(a) ensure adequate transmission capacity for its pump stations and adequate treatment capacity for its WWTPs;

(b) take measures to improve operation and maintenance and prevent future overflows of pollutants and other violations of its NPDES Permits;

(c) repair and maintain deteriorating and broken sewer lines, pumps, and force mains to prevent overflows of pollutants;

(d) undertake additional measures to prevent buildups and blockages due to fats, oils and grease to prevent overflows of pollutants;

(e) provide proper training of Miami-Dade employees to ensure proper operation and maintenance of Miami-Dade's POTW;

(f) undertake expeditiously all other measures necessary to comply with the Clean Water Act, the Florida Air and Water Pollution Control Act, Fla. Stat. Chapter 403, and all applicable NPDES permits including any necessary structural and operational changes to the POTW, including the Government Cut Line; and

(g) take such other action as may be necessary;

3. Pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), award the United States civil penalties against Miami-Dade of up to \$32,500 for each day of each violation that occurred before and through January 12, 2009, and \$37,500 per day for each day of violation that occurred after that date, for each violation of the applicable NPDES permits, the CWA, and the regulations promulgated thereunder;

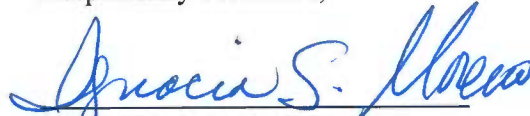
4. Pursuant to Fla. Stat. § 403.141, award the FDEP civil penalties against Miami-Dade of up to \$10,000 for each day of each violation of Fla. Stat. § 403.161;

5. Award the FDEP its investigative costs, and its costs and expenses of maintaining this action; and

6. Grant the United States, Florida, and the FDEP such other relief as this Court deems appropriate.

**ATTORNEYS FOR UNITED STATES OF AMERICA:**

Respectfully submitted,



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Respectfully submitted,

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\* Counsel for the State of Florida Department of Environmental Protection has reviewed this Complaint and has authorized Rachael Amy Kamons to electronically sign this Complaint on behalf of the Department.