

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING OLETA PARTNERS, LLC, TO USE APPROXIMATELY ONE HUNDRED NINETY-FOUR THOUSAND (194,000) CUBIC YARDS OF FILL MATERIAL FROM THE “BRICKELL CITY CENTRE,” CURRENTLY STOCKPILED ON THE PREMISES COMMONLY REFERRED TO AS THE BISCAYNE LANDING SITE, IN ACCORDANCE WITH THE MIAMI-DADE COUNTY DEPARTMENT OF REGULATORY AND ECONOMIC RESOURCES, (“DERM”), JULY 17, 2013 LETTER; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

WHEREAS, the City of North Miami (“City”), and Oleta Partners, LLC, (“Oleta”), are parties to a certain Lease Agreement dated May 29, 2012, between the City, as landlord, and Oleta, as tenant for the property commonly referred to as Biscayne Landing (“Premises”); and

WHEREAS, Oleta obtained approximately One Hundred Ninety-Four Thousand (194,000) cubic yards of fill (the “Fill”) from the “Brickell City Centre” site, which is currently stockpiled on the Premises; and

WHEREAS, on July 17, 2013, the Miami-Dade County Department of Regulatory and Economic Resources, (“DERM”), issued a letter to the City and Oleta which enumerated a number of lawful uses for the Fill upon the Premises, a copy of which is attached hereto as Exhibit “A” (the “DERM Letter”);

WHEREAS, on November 12, 2013, the City voted to require Oleta to remove the Fill from the Premises; and

WHEREAS, on December 2, 2013, the City filed a Petition for Writ of Certiorari in the Circuit Court of Miami-Dade County, Florida (Case No. 13-432 AP) (the “Petition”) seeking reversal of a November 1, 2013, Order of the Miami-Dade County Environmental Quality Control Board that granted a variance to Oleta to use the Fill for lake filling at the Premises; and

WHEREAS, to better understand the allowable uses of the Fill, the City engaged Christopher M. Teaf, Ph.D., President of Hazardous Substance & Waste Management Research, Inc., an independent environmental company (the “Consultant”), to evaluate the existing analytical data conducted on the Premises and any such other relevant scientific data; and

WHEREAS, based on his review of the data, the Consultant has issued a written report stating that the Fill may safely be used at the Premises consistent with Paragraphs 1 and/or 3 of the DERM Letter, subject to any additional authorization required by DERM, a copy of which is attached hereto as Exhibit “B; ” and

WHERAS, within forty-five (45) days, the City, with Oleta’s input, will organize an educational campaign, including town hall meetings and related outreach efforts, to properly educate residents and stakeholders regarding the allowable uses of the Fill as set forth herein; and

WHEREAS, the Mayor and City Council believe that it is in the best interest of the City to: (1) allow the use of the Fill as indicated in the DERM letter, consistent with the Consultant’s Report; and (2) rescind the November 12, 2013, vote to remove the Fill from the Premises.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. **Authorization to Oleta Partners, LLC.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize Oleta Partners, LLC, to use the Fill on the Premises consistent with Paragraphs 1 and/or 3 of the DERM Letter, subject to any authorization required by DERM.

Section 2. **Authority of City Manager.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager to take all necessary actions to fulfill the requirements of this Resolution.

Section 3. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, this _____ day of February, 2014.

LUCIE M. TONDREAU
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: MAYOR LUCIE TONDREAU

Moved by: _____

Seconded by: _____

Vote:

Mayor Lucie M. Tondreau	_____ (Yes)	_____ (No)
Vice Mayor Scott Galvin	_____ (Yes)	_____ (No)
Councilperson Carol Keys, Esq.	_____ (Yes)	_____ (No)
Councilperson Philippe Bien-Aime	_____ (Yes)	_____ (No)
Councilperson Marie Erlande Steril	_____ (Yes)	_____ (No)



Carlos A. Gimenez, Mayor

Department of Regulatory and Economic Resources
Environmental Resources Management
701 NW 1st Court, 4th Floor
Miami, Florida 33136-3912
T 305-372-6700 F 305-372-6982

miamidade.gov

July 17, 2013

CERTIFIED MAIL NO: 7011 0470 0002 4387 1771
RETURN RECEIPT REQUESTED

Stephen Johnson, City Manager
City of North Miami
776 NE 125 Street - 4th Floor
North Miami, FL 33161

CERTIFIED MAIL NO: 7011 0470 0002 4387 3591
RETURN RECEIPT REQUESTED

Darryl Lee
Oleta Partners LLC,
3390 Mary Street, Suite 200
Coconut Grove, FL 33133

Re: Reuse of material generated from the deep soil mixing process at the Brickell Citi Center Project and stockpiled at the Biscayne Landing facility (SW-1178/File 12838) located at, near, or in the vicinity of Biscayne Boulevard and NE 151 Street, City of North Miami, Miami-Dade County, Florida.

Dear Messrs Johnson and Lee:

As you requested, and as provided in previous meetings and telephone conversations, the Division of Environmental Resources Management (DERM) of the Department of Regulatory and Economic Resources provides the following options for the beneficial reuse of the above referenced contaminated material. As you are aware, the concentration of aluminum in the Synthetic Precipitation Leaching Procedure (SPLP) extract of samples obtained from stockpiles of the material (at the Biscayne Landing site) exceeds the groundwater and surface water cleanup target level and as such the material represents a source of ground pollution as defined in Section 24-5 of the Miami-Dade County Code (the Code).

1. Under the Risk Based Corrective Action restricted closure provision of Section 24-44(2) of the Miami-Dade County Code, the material may be used under an impervious surface (2 feet of clean fill, building, parking lot, etc). The closure restrictions associated with this reuse option are already required for final closure for this type of facility (i.e. former landfill) and specifically for the Biscayne Landing site.
2. The material may be blended with other appropriate material in such ratios that will reduce the contaminant concentrations, in the SPLP extract of the blended product, to levels at or below the applicable leachability criteria.
3. The material may be temporarily stockpiled (until such time as required for reuse) and subject to a minimum of one year of quarterly groundwater monitoring, utilizing monitoring wells appropriately located in the vicinity of the stockpiles, to determine actual

Determining Leachability Every Day

Messrs Johnson and Lee
Re: Biscayne Landing Soil Reuse
July 17, 2013
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groundwater impacts (notwithstanding the SPLP concentrations). Based on the results of the groundwater monitoring the responsible party may request a reuse reclassification of the soil for final cover, etc.

The material stockpiles shall be managed in accordance with the DERM approved stockpile management plan (SMP). Be advised that long term temporary (as defined in Item 3 above) stockpiling may require modifications to the approved SMP.

Be advised that the options provided above are not intended to be all inclusive and, as provided under the Code, the responsible party may appeal to the EQCB for a variance to allow the material to be utilized for lake filling. DERM is committed to continue working with Oleta Partners and the City, within the framework of the Code, to facilitate the redevelopment of the site.

Within sixty (60) days of receipt of this correspondence, submit to DERM for review, either a reuse proposal based on the options provide above, a proposal for an alternate reuse, or an application requesting a hearing before the EQCB.

If you have any questions concerning the above contact Loma Bucknor at bucknl@miamidade.gov or myself at mayorw@miamidade.gov or via telephone at (305) 372-6700.

Sincerely



Wilbur Mayorga, P.E., Chief
Environmental Monitoring and Restoration Division

cc: Kerri Barsh, Greenberg Taurig (barshK@gtlaw.com)
Aleem Ghany City of North Miami (agahny@northmiamifl.gov)
Lisa Smith, SCS ES Consultants (lsmith@scsengineers.com)
Lee Hefty, Assistant Director DERM

HSWMR

Hazardous Substance & Waste Management Research, Inc.

2976 Wellington Circle West
Tallahassee, Florida 32309
Phone: (850) 681-6894
Fax: (850) 906-9777
e-mail: staff@hswmr.com

7 February 2014

Mr. Alfred J. Malefatto, Esq.
Lewis, Longman & Walker, P.A.
516 North Flagler Drive
Suite 1500
West Palm Beach, FL 33401

Re: Biscayne landing

Dear Mr. Malefatto:

At your request on behalf of the City of North Miami, I have reviewed a variety of documents related to historical investigations, correspondence, and technical reports concerning the Biscayne Landing site (15055 Biscayne Boulevard, North Miami), owned by the City of North Miami, and currently under lease for development by Oleta Partners, LLC. References cited in this letter report are presented in Attachment A.

By way of introduction, I am a toxicologist and human health risk assessment specialist by education and experience, and I presently serve as the President and Director of Toxicology for Hazardous Substance & Waste Management Research, an environmental and public health evaluation firm operating in Tallahassee for over 28 years. I also hold the position of Associate Director at the Center for Biomedical & Toxicological Research and Waste Management at Florida State University. Over the past 30+ years, my professional experience has centered on environmental and occupational health risk issues related to soils, groundwater surface water, sediments and air in Florida and numerous other states. Many of our projects have addressed issues similar to those that have been raised for the Biscayne Landing site. I also have considerable experience in the waste management and resource reuse field over the past three decades. A complete copy of my Curriculum Vitae is presented in Attachment B.

I was asked to consider reasonable and appropriate precautions proposed for the application of approximately 194,000 cubic yards of mixed soil and cement grout fill material that was brought for reuse to the Biscayne Landing site from another construction site identified as the Brickell Citi Centre project located at 701 South Miami Avenue in Miami (SCS Engineers, 2013a; Westhorp & Associates, 2013). That soil/grout mixture reportedly contained approximately 30% cement grout, which in turn contained approximately 8.6% "slag cement" (or 86,000 parts per million, ppm). The soil initially was approved by Environmental Resources Management Division (EMRD) of the Miami-Dade Department of Regulatory

and Economic Resources (RER) for use in a variety of circumstances at the Biscayne Landing location. Based on additional information subsequently provided to Miami-Dade RER, the original approval was rescinded in a letter dated May 31, 2013 (RER, 2013a), and further chemical characterization of the fill material was required by that agency.

Composite soil samples that were collected in June 2013 by RER indicated that Synthetic Characteristic Leaching Procedure (SPLP) tests conducted on 5 of 5 of the samples resulted in concentrations of aluminum in exceedance of the groundwater and surface water cleanup target levels presented in Section 24-44(2) of the Miami-Dade County Code (RER, 2013b). Total aluminum concentrations for those soil samples ranged from 6,620 mg/kg to 17,400 mg/kg. The SPLP leaching results (7,000 ug/L to 10,300 ug/L) were in excess of the applicable Dade County criteria for aluminum by factors ranging from 35x to 52x for comparison with applicable groundwater criteria (200 micrograms per liter (ug/L) or parts per billion, ppb), and 538x to 792x for comparison with applicable fresh surface water criteria (13 ug/L). The SPLP leaching test is designed to predict the potential for chemicals to be released from the soils when placed in the environment and subjected to rainfall and related percolation.

The RER analytical results and conclusions subsequently were supported on the basis of 10 additional samples collected in October, 2013 from six "suspect soil piles onsite" (Westhorp & Associates, 2013). All 10 of those latter soil pile samples also showed SPLP leaching results (4,630 ug/L to 8,240 ug/L) that were in excess of the applicable Dade County criteria for aluminum by factors ranging from 23x to 41x for comparison with applicable groundwater criteria (200 micrograms per liter (ug/L) or parts per billion, ppb), and 356x to 634x for comparison with applicable fresh surface water criteria (13 ug/L). Those soil pile samples were reported to contain total aluminum concentrations ranging from 5,130 mg/kg to 8,522 mg/kg (Westhorp & Associates, 2013). The Westhorp results were similar to the Miami-Dade RER data described previously.

On the basis of the June, 2013 Miami-Dade SPLP results, the agency issued a letter on July 17, 2013 (RER, 2013c) which provided several site-specific permissible use conditions for the recovered soil, stated as follows:

1. Under the Risk Based Corrective Action restricted closure provision of Section 24-44(2) of the Miami-Dade County Code, the material may be used under an impervious surface (2 feet of clean fill, building, parking lot, etc). **The closure restrictions associated with this reuse option are already required for final closure for this type of facility (i.e. former landfill)** and specifically for the Biscayne Landing site. (*emphasis added*)
2. The material may be blended with other appropriate material in such ratios that will reduce the contaminant concentrations, in the SPLP extract of the blended product, to levels at or below the applicable leachability criteria.

3. The material may be temporarily stockpiled (until such time as required for reuse) and subject to a minimum of one year of quarterly groundwater monitoring, utilizing monitoring wells appropriately located in the vicinity of the stockpiles to determine actual groundwater impacts (notwithstanding the SPLP concentrations). Based on the results of the groundwater monitoring the responsible party may request a reuse reclassification of the soil for final cover, etc.

In my professional opinion as a risk assessor and toxicologist, these specific soil reuse considerations and requirements from the July 17, 2013 Miami-Dade County RER letter are reasonable, appropriate and would be protective if implemented as described in the RER letter. As an additional point, USEPA Region 4 cites a protective ecologically based threshold soil criterion for aluminum of 50 mg/kg, below which nonhuman ecological species are judged to be protected (USEPA, 2012). The reported fill material concentrations as reported by Miami-Dade RER (6,620 mg/kg to 17,400 mg/kg) and by Westthorp (5,130 mg/kg to 8,522 mg/kg) are much higher than the USEPA guideline. This comparison provides reinforcement of the need for the protective Miami-Dade impervious cover and stockpile requirements.

The impervious cover requirement that is described in the RER Point #1 above is a common approach to dealing with such situations, and is particularly of interest in that the historical use of the Biscayne Landing property (the former Munisport municipal solid waste landfill) would carry with it the same type of restrictions as those imposed for the fill material. This relates in part to the reported residual landfill waste material thickness of five to 29 feet on-site (Atkins, 2013). I am familiar with similar impervious cover approaches at other sites. In addition, a December 5, 2013 Memorandum from Jeff Thompson (SCS Engineers; entitled "Example projects where impervious surfaces have been used for engineering control") to Darryl Lee (Oleta Partners, LLC) provides seven site-specific examples from their experience with that approach as well. SCS (2013b) correctly notes in their memorandum that "The use of engineering controls to allow soils exceeding the soil cleanup target levels (SCTLs) to remain on a site is a standard risk management option that is both widely practiced throughout Miami-Dade County and the State of Florida and is supported by Chapter 24 of the Code of Miami-Dade County and Chapter 62-780, Florida Administrative Code." In my experience, similar requirements are included among those imposed by Florida Department of Environmental Protection (FDEP) regulations (e.g., Chapter 62-780, F.A.C.) at closed landfills or other sites in cases where materials will be left on-site in excess of one or more of the applicable Soil Cleanup Target Levels (SCTLs).

The soil blending option described in the RER Point #2 above, while theoretically feasible, would carry with it a complicating requirement to demonstrate in advance that blending would ameliorate the SPLP problem. It is likely that such data would vary with different soils and blending ratios. Assessment and documentation of such a large scale blending operation may prove challenging.

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The stockpiling and monitoring option described in RER Point #3 above is reasonable, and such a monitoring plan is more fully addressed in the SCS (2013a) soil reuse document prepared on behalf of Oleta Partners, LLC. That monitoring plan document is important in that it specifies soil reuse would not be conducted in areas that lie outside the capture zone of the Phase I groundwater capture and treatment system. If or when the Phase II element of the groundwater treatment capture and treatment system is installed, it is possible that soil reuse activities could be expanded to include those areas.

In summary, given the SPLP leaching data that have been developed to date for the fill materials, in my judgment and experience there is technical support and regulatory precedent for permitting the use of soils with chemical concentrations in excess of the Miami-Dade County and State of Florida SCTLs, provided in this case that impervious cover is installed and properly maintained. That approach is adequately described in the July 17, 2013 Miami-Dade RER letter. In this instance, such a precaution would be expected to be effective in protecting against leaching of aluminum from the fill material that is proposed for reuse on the Biscayne Landing site. Further, fill may only be used in areas are within the existing Phase I groundwater treatment system. Finally, the substance of interest in the discussion, aluminum, does not cause health effects from soil exposures until very high levels are reached. For example, the highest concentration detected in the fill level is about 5 times less than the level considered safe by Dade County and by the Florida Department of Environmental Protection (DEP) assuming oral, dermal and inhalation exposure on a daily basis for 30 years. In my professional opinion, if the recommended precautions are followed, risk to human health or the environment will be negligible and well within protective guidelines.

Please call me at (850) 681-6894 when you have had an opportunity to review this material, so that we may discuss any questions you have.

Sincerely,



Christopher M. Teaf, Ph.D.
President & Director of Toxicology

CMT/dc

Attachments: (2)

ATTACHMENT A

References Cited

References Cited

- Atkins. 2013. ERP Modification to Biscayne Landing (Munisport Landfill Closure and End Use), ERP #13-02206-P. October 2013.
- RER. 2013a. Letter regarding "Soil Reuse Request for Soil Generated at the Citi Center Project dated January 25, 2013 submitted by SCS ES Consultants on behalf of the Biscayne Landing (aka Munisport) facility (SW-1178/File 12838) located at, near or in the vicinity of Biscayne Boulevard and NE 151 Street, City of North Miami, Miami-Dade County, Florida." Miami-Dade County Department of Regulatory and Economic Resources. May 31, 2013.
- RER. 2013b. Data reports from Pace Analytical Services; June 20, 2013.
- RER. 2013c. Letter regarding "Reuse of material generated from the deep soil mixing process at the Brickell Citi Center Project and stockpiled at the Biscayne Landing facility (SW-1178/File 12838) located at, near, or in the vicinity of Biscayne Boulevard and NE 151 Street, City of North Miami, Miami-Dade County, Florida." Miami-Dade County Department of Regulatory and Economic Resources. July 17, 2013.
- SCS Engineers. 2013a. Soil Reuse Plan for Soil Originating from the Brickell Citi Centre Site Located at 701 South Miami Avenue, Miami, Florida. August, 2013.
- SCS Engineers. 2013b. Memorandum entitled "Example projects where impervious surfaces have been used for engineering control". December 5, 2013.
- USEPA. 2012. Region 4 Ecological Risk Assessment Bulletins. Accessed <http://www.epa.gov/region04/superfund/programs/riskassess/ecolbul.html#tbl4>.
- Westhorp & Associates. 2013. Draft Soil Sampling Summary Report, Biscayne Landing. Biscayne Boulevard and NW 151st Street, North Miami, FL. October, 2013.

ATTACHMENT B

Curriculum Vitae of Dr. Christopher M. Teaf

CURRICULUM VITAE

NAME: Christopher Morris Teaf

DATE OF BIRTH: 5 May 1953

PLACE OF BIRTH: Philadelphia, PA

HOME ADDRESS: 499 Frank Shaw Road
Tallahassee, FL 32312
(850) 668-4303

MARITAL STATUS: Married, two children

PROFESSIONAL POSITIONS: Associate Director
Center for Biomedical & Toxicological Research and Waste Management
Florida State University
2035 East Paul Dirac Drive
Suite 226 HMB
Tallahassee, FL 32310
(850) 645-7912 phone
(850) 574-6704 FAX
cteaf@fsu.edu email

President & Director of Toxicology
Hazardous Substance & Waste Management Research, Inc.
2976 Wellington Circle West
Tallahassee, FL 32309
(850) 681-6894 phone
(850) 906-9777 FAX
cteaf@hswmr.com email

EDUCATION: Ph.D. Toxicology 1985
University of Arkansas for Medical Sciences

M.S. Biological Science 1980
Florida State University

B.S. Biology 1975 (*with Honors*)
Pennsylvania State University

PROFESSIONAL MEMBERSHIPS: Academy of Toxicological Sciences
Florida Bar, Environmental and Land Use Law Section
International Society for Technical & Environmental Professionals
National Association of Environmental Professionals
National Association of Underwater Instructors
Society of Toxicology
Society for Environmental Toxicology and Chemistry
Society for Risk Analysis

CERTIFICATIONS: Board Certified Fellow, Academy of Toxicological Sciences (ATS)
Radon Measurement Specialist (*FL DOH R1032*)
International Driving Permit # 01994400