From:	Kelly Logan - NOAA Federal
To:	David Bernhart - NOAA Federal
Subject:	EPA letter for POM
Date:	Thursday, April 09, 2015 10:35:21 AM
Attachments:	MiamiPhaseIII_2014con_EPAletter.pdf

Jocelyn sent this letter from EPA that I haven't read through yet, but they suggest there are 49 instances of non-compliance with the ODMDS at POM may have some implications for listed corals.

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KL

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

DEC 19 2014

Mr. Eric Summa
Environmental Branch Chief
Planning Division
Jacksonville District Corps of Engineers
P.O. Box 4970
Jacksonville, Florida 32232-0019

Dear Mr. Summa:

This letter is in regard to your September 26, 2014, request for a two-year extension to the Environmental Protection Agency's 2011 concurrence on the suitability for ocean disposal of dredged material from new work and maintenance dredging at Miami Harbor pursuant to Section 103 of the Marine Protection Research and Sanctuaries Act (MPRSA). Your letter included a MPRSA Section 103 Evaluation Report for Miami Harbor (Report) that included a Tier I review of historical sediment testing of the project, spills since the testing was conducted and non-dredging changes in the harbor. On October 23, 2014, the EPA requested additional information on the status of dredging operations, compliance history, and disposal operations at the Miami Ocean Dredged Material Disposal Site (ODMDS). In response to this request, the EPA received a revised Report from your office by letter dated November 17, 2014.

Based on the review of the information provided by the U.S. Army Corps of Engineers (USACE), the EPA conditionally concurs with the suitability of the material for ocean disposal for a six-month period. The information you provided indicates multiple instances of violations of the Construction Dredging Phase III Contract Specifications (Contract Specifications) for the disposal operations underway for the Miami Harbor Phase III Deepening and maintenance dredging projects. While the EPA recognizes that the USACE is requesting concurrence for a two-year period, our concurrence is limited to a six-month period during which the USACE and the EPA can evaluate whether the compliance issues have been addressed and whether additional conditions or other appropriate measures may be warranted prior to the completion of the project.

Per the information provided in your revised Report, the USACE has identified forty-nine instances of non-compliance related to disposal operations at the Miami ODMDS. We understand that many of these instances violated sections 3.4.2.1, 3.4.2.2, 3.4.2.3 and 3.4.9 of the Contract Specifications. Violations include misplaced materials, excessive leakage from disposal vessels and leaving disposal doors open following departure from the ODMDS. A majority of the non-compliance events involve excessive leakage from the disposal vessel. The EPA is concerned about these violations in consideration of the valuable live bottom resources in the vicinity, including federally-listed species protected under the Endangered Species Act. We understand and appreciate from the information provided that your contractor plans to take steps to address the non-compliance issues. The EPA's concurrence is conditioned on compliance with all of the requirements of the Contract Specifications, including the specific provisions referenced above.

The information provided in the revised Report also indicates that disposal operations for this project are not being implemented as modeled. Per section 7 of the revised Report, we appreciate that the USACE's plans to continue conducting quarterly bathymetric surveys of the Miami ODMDS. The EPA's concurrence is conditioned upon the continuation of the quarterly bathymetric surveys. We anticipate these surveys will provide the data necessary for the USACE to manage the dredging contractor's disposal operations to achieve a more even distribution of dredged material throughout the release zone. Adherence with the modeled disposal operations will help ensure achieving success in our joint management objective of potentially isolating the area within the ODMDS with elevated PCB sediment concentrations and limiting impacts from disposal to the seafloor within the ODMDS boundaries.

Pursuant to MPRSA section 104(a)(4), ocean disposal permits (and contracts in the case of federal permits) must be conditioned to assure consistency with the approved Site Management and Monitoring Plans (SMMP). The Miami ODMDS SMMP was revised in September 2011, and specifies among other requirements the USACE's reporting requirements for non-compliance events. We request your cooperation in bringing any additional non-compliance issues to our attention consistent with the SMMP.

In addition, the EPA recommends the USACE convene a technical committee (e.g., represented by industry, regulatory agencies, and the USACE's Engineer Research and Development Center) to discuss how to improve scow operations and other aspects of the project to help ensure compliance with the requirements of MPRSA. We would be pleased to participate in this effort, and suggest you convene such a group before the end of January.

The EPA's concurrence with the suitability of the material for ocean disposal is valid for six months from the date of this letter. During this six-month period, we are committed to work cooperatively with your office to monitor compliance and ensure the successful implementation of MPRSA for the Miami ODMDS. If you have any questions or there are any issues you wish to discuss, please contact me at (404) 562-9345, or have a member of your staff contact Mr. Chris McArthur of my staff at (404) 562-9391.

Sincerely,

James D. Giattina
Director
Water Protection Division

From:	David Bernhart
To:	Cheryl Scannell; Kel Logan; Rachel Sweeney
Subject:	Fwd: EPA letter for POM
Date:	Thursday, April 09, 2015 11:05:48 AM
Attachments:	MiamiPhaseIII_2014con_EPAletter.pdf

FYI. More problems at Port of Miami. I don't think the Corps had told us about this issue. I hope they told DOJ b/c the plaintiffs know about it.

-------- Forwarded Message --------
Subject:EPA letter for POM
Date: Thu, 9 Apr 2015 10:35:21 -0400
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To: David Bernhart - NOAA Federal <david.bernhart@noaa.gov>

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