

**Neal, Kevin**

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**From:** Sole, Michael  
**Sent:** Friday, December 15, 2006 10:37 AM  
**To:** Neal, Kevin  
**Cc:** Rach, Timothy; Gaskin, Carla A.  
**Subject:** RE: Civil Penalty Authorization

Kevin,

I hope your recuperation is going well. I have spoken with DOT and asked them to present to you a Quality Assurance Plan which would eliminate these types of accidents in the future. While this was a significant spill, they have responded quickly and taken all appropriate corrective actions. I see no benefit of assessing a fine, as a punitive measure that merely takes state taxpayers funds from one trust fund and moves them to another. The purpose of a penalty is to discourage future incidents, and I would rather see DOT take the initiative and make programmatic changes that reduces these occurrences than receiving a check.

I'm willing to discuss and would like your thoughts on the subject.

Thanks

Michael W. Sole, Deputy Secretary  
Department of Environmental Protection  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399  
tel: (850) 245-2037  
fax: (850) 245-2041  
mobile (850) 599-2553

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**From:** Neal, Kevin  
**Sent:** Tuesday, November 14, 2006  
**To:** Sole, Michael  
**Cc:** Gaskin, Carla A.; Pennington, Jr  
**Subject:** Civil Penalty Authorizatio

Mike,  
Attached is the memo we d

<< File: DOC061114-001.pr

*Linda,  
Please see Mike Sole's  
Comments.*

*1/2/07*

*KN*

**Florida Department of**

**Memorandum**                      **Environmental Protection**

TO:                      Larry Morgan

FROM:                  Suzanne Lurix, Environmental Specialist

THROUGH:          Kevin R. Neal, District Director, Southeast District  
                         Todd R. Brown, C.P.M., Water Facilities Compliance/Enforcement Manager *AB*

DATE:                  October 18, 2006

SUBJECT:              Civil Penalty Authorization for Florida Department of Transportation

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Attached is a request for authorization to assess the specified civil penalty amount for the above subject case.

Based upon the information detailed in this memorandum it is believed that this recommended penalty settlement is in accordance with the Department's Civil Penalty Policy and appropriate for the violation documented.

If you have any questions concerning this matter, please contact Suzanne Lurix at Suncom 226-6694.

KRN/TRB/srl

## CIVIL PENALTY AUTHORIZATION

### SOUTHEAST FLORIDA DISTRICT

Investigators: Suzanne Lurix, DEP, WF Compliance/Enforcement, SED  
David Hebert, PBCDOH/Wastewater Compliance/Enforcement

Date Submitted: October 18, 2006

1. VIOLATOR(S): Florida Department of Transportation District 4  
Mr. Melvin Pollock, P.E., West Palm Beach Operations Engineer  
West Palm Beach Operations Center  
7900 Forest Hill Boulevard  
West Palm Beach, FL 33413-3342
2. LOCATION OF VIOLATION: Glades Road bridge over the El Rio Canal  
Boca Raton, FL 33431
3. NATURE OF VIOLATION: The Florida Department of Environmental Protection (Department) and the Palm Beach County Department of Health (DOH) was notified on Saturday July 15, 2006 that the City of Boca Raton's (City) 42" ocean outfall pipe had been punctured by a 16" concrete piling at approximately 10:00 am. The Florida Department of Transportation (FDOT) contracted the expansion of Glades Road to Weekley Asphalt, Inc. (Weekley). Weekley subcontracted Beyel Brothers, Inc. (Beyel) for the use of a crane and an operator. The operator was under full direction and supervision of Weekley. The FDOT hired Corzo Castella Carballo Thompson Salman, P.A. (C3TS) as their engineering consultants. Proper locates were marked by the City east and west of the El Rio Canal, south side and north side of Glades Road within the project limits. On August 16, 2006, these locations were confirmed by an inspector working on behalf of FDOT. The correct position of the outfall pipe was not transposed onto the final construction plans, even though the pipe was physically located.

After the piling punctured the pipe, a joint decision was made to keep the piling inside of the pipe to act as a temporary plug. Since Weekley could not complete the repairs to the pipe, the City hired Lanzo Construction Co., Florida. The piling was removed on July 17 at approximately 8:00 am. The break was repaired on July 19, but there was a leak estimated at 15 gallons per minute. The job was completed on Thursday, July 20, 2006. On Friday, July 21, 2006, a pressure test was conducted and the pipe was restored to normal operations. Through the duration of the leak, approximately 25.744 million gallons of secondarily treated wastewater entered the El Rio Canal.

On Monday, July 17, 2006, the Department and the DOH advised the City to post advisory letters to the homes in the surrounding areas. The first sample was taken at 3:00 pm on Saturday, and then samples were taken twice daily from Sunday, July 16 through Sunday, July 23. Daily sampling was continued through July 28. The El Rio canal is tidally influenced, but the fecal coliform results showed significant impact to the water quality. Two turbidity barriers were placed just south of the bridge to contain as much treated sewage as possible. Due to the tidal influence, the barriers frequently detached.



A warning letter, WL 06-0133 DW50SED, was issued to Beyel on August 4, 2006. An enforcement meeting was held on August 28, 2006. Beyel, Weekley, C3TS, FDOT, and the City were present at the meeting. To conclude the meeting, the Department allowed the entities one month, until September 29, 2006, to reach a conclusion. By the end of September, the FDOT accepted the responsibility of these violations.

4. PENALTY RATIONALE: In accordance with Department penalty policy guidelines, it has been determined that the one major violation for which civil penalties are being sought against the FDOT, include documented water quality violations.

The penalty matrix and domestic wastewater residuals guidelines were used to calculate the penalty for the major-moderate violation.

1. Pursuant to Rule 62-604.130(1) of the Florida Administrative Code (F.A.C.), the following acts and the causing thereof are prohibited (1) The release or disposal of excreta, sewage, or other wastewaters or residuals without providing proper treatment approved by the Department; construction or operation of a wastewater collection system not in compliance with this rule; or any act otherwise violating provisions of this rule or of any other rules of the Department. Potential for Harm – Major. Extent of Deviation – Moderate - \$7,000. Multi-Day (5 Days @ \$7,000 per day). Total \$35,000.

5. PENALTY RECOMMENDATION: \$35,000 in civil penalties be sought against the Florida Department of Transportation as calculated on the attached civil penalty worksheets.

\_\_\_\_\_  
Kevin R. Neal  
District Director

\_\_\_\_\_  
General Counsel

\_\_\_\_\_ Approved

\_\_\_\_\_ Disapproved

Date: \_\_\_\_\_



DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Southeast District

PENALTY COMPUTATION WORKSHEET

Violator's Name: Florida Department of Transportation  
Identify Violator's Facility: Glades Road bridge over the El Rio Canal Boca Raton, Fl 33431  
Name(s) of Department Staff Responsible for Penalty Computations: Todd Brown, Suzanne Lurix  
Date: October 18, 2006

PART I - Penalty Determinations

	Violation Type	ELRA Schedule	Potential for Harm	Extent of Dev.	Matrix Amount	Multi- day	Adjustment	Total
1	unauthorized discharges to surface water (El Rio Canal 7/15/2006 - 7/20/2006)		Major #1	Moderate #1	\$7,000.00	5		\$35,000.00
2								
3								
4								
5								
6								
7								
8								
Total Penalties for All Violations								\$ 35,000.00
Department Costs & Expenses assessed at \$1,000.00								
<b>TOTAL</b>								<b>\$ 36,000.00</b>

Kevin R. Neal  
District Director  
Southeast District

Date

## Part II - Multi-day Penalties and Adjustments

ADJUSTMENTS	Dollar Amount
Good faith/Lack of good faith prior to discovery: _____	_____
Justification: _____	
Good faith/Lack of good faith after discovery: _____	_____
Justification: _____	
History of Noncompliance: _____	_____
Justification: _____	
Economic Benefit of Noncompliance: _____	_____
Justification: _____	
Ability to pay: _____	_____
Justification: _____	
Total Adjustments:	_____

MULTI-DAY PENALTIES	Dollar Amount
Number of days adjustment factor(s) to be applied: _____	_____
Justification: _____	
OR	
Number of days matrix amount is to be multiplied: <u>5</u>	<u>\$35,000.00</u>
Justification: _____	
The unauthorized discharged continued 7/15-7/20/06	
Total Adjustments:	<u>\$35,000.00</u>

## Part III - Other Adjustments Made After Meeting with the Responsible Party

ADJUSTMENT	Dollar Amount
Relative merits of the case: _____	_____
Resource considerations: _____	_____
Other justification: _____	_____
_____	
_____	
Total Adjustments:	_____

\_\_\_\_\_  
Kevin R. Neal  
District Director  
Southeast District

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Date