

MEMORANDUM

TO: Governing Board Members

FROM: Sheryl Wood, General Counsel

DATE: August 3, 2010

SUBJECT: Settlement of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) claims with regard to Florida Petroleum Reprocessors Superfund Site in Davie, Broward County, Florida

Background:

Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) through the U. S. Department of Justice (DOJ) has advised the District of its potential claims against the District resulting from the transportation and the ultimate disposal of 24,527 gallons of used motor oil and contaminated liquids (collectively, "waste oil") to the Florida Petroleum Reprocessors (FPR) Superfund Site located in Davie, Florida. Many other potentially responsible parties (PRPs), including corporations, governmental agencies and businesses sent waste oil to the FPR Site for proper disposal, but unfortunately, the waste oil at the FPR facility leaked into the soil and groundwater resulting in removal/remediation actions/costs by the EPA and the PRP Working Group . Under CERCLA's strict liability provisions, all parties that contributed waste oil to the Site are liable for the removal/remediation/cleanup costs. The United States on July 9, 2010 transmitted a settlement offer to the District that would require the District to pay \$222,750 in exchange for a covenant not to sue. Upon evaluation of the EPA's claim and after further discussion with the DOJ, the EPA's settlement offer was revised/reduced to \$190,000.

How this helps meet the District's Ten Year Strategic Plan:

n/a

Funding Source:

Funding for the settlement will be from Operations and Maintenance budgeted Ad Valorem funds.

This Board item impacts what areas of the District, both resource areas and geography:

The proposed settlement contains the following provisions:

- The District shall pay to the EPA by electronic funds transfer the total sum of \$190,000 substantially in accordance with the draft administrative settlement agreement attached to this memorandum as Exhibit A.
- The EPA agrees not to sue the District and releases the District from any further liability under CERCLA. Further, the settlement agreement bars any contribution claims against the District from the PRP Working Group and brings finality to this matter.

What concerns could this Board item raise?

The settlement eliminates the costs and expenses of extensive litigation and any risks associated therein.

Why should the Governing Board approve this item?

This settlement resolves all claims against the District concerning any District waste oil/contaminants that were transported to the FPR site and fulfills the District's obligations under the strict liability provisions of CERCLA.. The settlement eliminates any potential risk and the extensive costs associated with protracted litigation.