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July 2, 2002

Madeline Mondragon  
DERM  
33 S.W. 2<sup>nd</sup> Avenue  
Suite 900  
Miami, Florida 33130

**RE: REQUEST FOR ADVISORY OPINION 02-74**

Dear Ms. Mondragon:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on June 27, 2002 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding any conflicts created by your personal relationship with the owner of a testing company regulated by the Department of Environmental Regulation (DERM).

In your letter, you advised the Commission that you are one of three pollution control inspectors for DERM. As a pollution control inspector, you are responsible for monitoring testing of vapor recovery systems at gas stations. Pursuant to Chapter 24-20 of the Code of Miami-Dade County, owners of gas stations are required to reduce emissions by installing, maintaining and periodically testing the station's vapor recovery systems. The gas station owner selects a private testing company to conduct the tests. DERM Pollution Control Inspectors supervise the tests to make sure the tests are properly conducted. The testing is validated based on

several measurements and the company passes or fails based on the results.

You currently date the owner of Down Under Tank Testing. Down Under is one of ten private companies that conduct the vapor recovery system tests. You have informed your supervisors of your personal relationship with the owner of Down Under. In response, your supervisors advised you to avoid supervising testing conducted by Down Under.

A rival testing agency has complained that your personal relationship with the owner of a testing company has the potential to compromise your work. The rival company complains that you may use your position to hurt Down's Under's competitors or to steer work to Down Under.

The Commission found that the conflict of interest and code of ethics ordinance permits you to continue to work as a Pollution Control Inspector despite your personal relationship with the owner of a testing company. However, you and your supervisors must ensure that you do not violate the prohibitions contained in Section 2-11.1 (g) (Exploitation of official position); Section 2-11.1 (h) (Prohibitions on use of confidential information) and 2-11.1 (p) (Recommending professional services).

Section 2-11.1(g) prohibits you from using your official position to secure special benefits or privileges for Down Under. Section 2-11.1(g) provides that "No person ... shall use or attempt to use his official position to secure special privileges or exemptions for himself or others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted by the Board of County Commissioners.

Section 2-11.1(h) prohibits you from disclosing confidential information acquired

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics if you have any questions regarding possible conflicts under state law.

As long as your supervisors at DERM erect sufficient safeguards, such as excluding you from supervising any testing conducted by Down Under, and monitor your work to ensure that no violation of the relevant code sections occurs, you may continue in your present position.

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through your official position or using such information directly or indirectly for your personal benefit. Section 2-11.1(h) states that no person ... shall accept employment or engage in any business or professional activity which he might reasonably expect would require him or induce him to disclose confidential information acquired by him by reason of his official position, nor shall he in fact ever disclose confidential information garnered or gained through his official position with the County nor shall he ever use such information, directly or indirectly, for his personal gain or benefit. Section 2-11.1(p) prohibits you, as does departmental policy, from recommending a testing service to a gas station owner. Section 2-11.1 (p) provides that " no person... may recommend the services of any lawyer of law firm, architect or architectural firm, public relations firm or any other person or firm, professional or otherwise, to assist in any transaction involving the county or any of its agencies, provided that such recommendation may properly be made when required to be made by the duties of office and in advance at a public meeting attended by other County officials, officers or employees.

If you have any questions regarding this opinion, please call the undersigned at (305) 579-2594 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,

A handwritten signature in cursive script that reads "Robert Meyers". The signature is written in black ink and has a long, horizontal flourish extending to the right.

ROBERT MEYERS  
Executive Director