



AGENDA	
Section	Consent
Item No.	II.D.2

Meeting Date
2/21/17

**AGENDA REPORT**  
**BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**

SUBJECT:	A request for authority to file, but not yet serve, a complaint against Diamond Plastics Corporation for negligence resulting in force main failures.
DEPT/OFFICE:	County Attorney's Office

Requested Action:  
This is a request for authority to file, but not yet serve, a complaint against Diamond Plastics Corporation for claims relating to force main failures.

Summary Explanation & Background:  
This is a matter involving a 3.1 mile segment of force main that runs along Riverside Drive located beach-side between the Eau Gallie and U.S. 192 causeways. This pipe is located near the environmentally sensitive Indian River Lagoon. The segment in question was installed in 2007 by Stately Contractors, Inc. ("Contractor"). Beginning in 2011, the pipe began experiencing circumferential breaks along the "bell" area of the joint which has led to multiple pipe failures. To date, there have been 14 similar failures out of an estimated 900 total joints. The total cost of repair for the failed joints thus far has been \$539,427.07.

In July of 2010, the Contractor filed suit against the County for its with-holding of payments due to the Contractor's incomplete and defective work relating to road and sidewalk settlement. The County counterclaimed for damages caused by Stately's deficient work resulting in road subsidence, depressions, uneven pavement, and other road and right-of-way defects or failures. That suit settled in April of 2015 with the County collecting \$718,151.20. As part of that settlement, there was a general release of the Contractor and Surety from "any and all claims, rights, demands and/or causes of action of whatsoever kind or nature which either party has or may ever claim to have, now or in the future, whether known or unknown."

Consequently, in April of 2015 the opinion of utilities' staff was that, of the approximate 900 joints installed, the failure of the twelve joints had been the result of the Contractor's improper installation of those twelve joints.

As due diligence, in May of 2015 staff sent the pipe manufacturer, Diamond Plastics Corporation ("Manufacturer"), cross sections of the broken pipe that had been removed for repair. The Manufacturer inspected and tested the pipe and provided the County with a report dated July 31, 2015 in which the Company concluded that there were "no manufacturing defects found on the sample submitted," that the pipe met "the specifications" for the product requested, and that the failure was likely a result of improper installment by the Contractor.

**CONTINUE ON ATTACHED PAGE.**

Clerk to the Board Instructions:

Exhibits Attached:

Contract /Agreement (If attached): Reviewed by County Attorney    Yes     No     PR

County Manager 	Assistant County Manager	Department Director / Extension 
Stockton Whitten	Assistant County Manager	



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

February 22, 2017

**M E M O R A N D U M**

**TO:** Scott Knox, County Attorney

**RE:** Item II.D.2., Authority to File, but not Yet Serve, Complaint Against Diamond Plastics Corporation for Negligence Resulting in Force Main Failures

The Board of County Commissioners, in regular session on February 21, 2017, granted authority to file, but not yet serve, a complaint against Diamond Plastics Corporation for claims relating to force main failures.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

cc: Assistant County Attorney Berrios  
Assistant County Attorney Soss  
Finance  
Budget

However, after the County's receipt of the pipe company's report several more joint failures occurred. In October of 2016, the County hired HDR Engineering, Inc. to investigate the cause of the joint failures. To date, a report has not been received by the County on the subject.

In November of 2016, a sales representative from the Manufacturer visited the staff of Utilities Services in an attempt to sell more pipes to the County. He brought with him a cross section of the pipe sample the County staff had sent Manufacturer for the testing that was the subject of the Diamond Pipe report. Upon viewing this cross section, staff recognized that the wall width of the "bell" area of the joint was about half an inch thinner than required—a potential defect in the pipe.

The County's expert in construction matters, Bob Robinson from the construction consultant firm Wagner Hohns Inglis, has since reviewed related evidence. He suggests hiring a professional testing service to inspect three pipe joints that County staff have replaced, but kept in the County's custody. Should those three pipe joints reveal that the wall thickness of the "bell" area is in fact too thin, the next step is to run a destructive testing plan where a statistically significant number of joints are excavated and inspected for the defective wall "bell" thickness.

The investigative process will continue to take time. Since the initial break occurred in 2011, we anticipate that in any litigation involving pipe defects the Manufacturer would attempt to raise a "statute of limitations" defense in an effort to bar the County from any potential claim against them. Although the County Attorney's Office is of the opinion that, on the facts of this case, there is no merit to such a defense, in an abundance of caution this office requests permission to file a lawsuit on behalf of the County against the Manufacturer in cut off the operation of the statute of limitations and preserve rights of recovery the County may against the Company. However, the County Attorney's Office would recommend that the complaint not be served on the Company until the engineering testing is further along.

The utilities department estimates a \$6.4 million cost to replace this ten year old pipe—the cost of which is amortized over 50 years and the useful life of which can exceed 50 years.

Contact: Cristina Berrios & Matt Soss, Assistant County Attorneys

Phone/e-mail: [cristina.berrios@brevardcounty.us](mailto:cristina.berrios@brevardcounty.us) / [matthew.soss@brevardcounty.us](mailto:matthew.soss@brevardcounty.us)