



Interoffice Memorandum

July 2, 2020

TO: Mayor Jerry L. Demings
and Board of County Commissioners

FROM: Raymond E. Hanson, P. E., Director
Utilities Department

A handwritten signature in black ink, appearing to read "R. Hanson", is written over the "FROM:" field.

**SUBJECT: BCC Agenda Item – Consent Agenda
July 28, 2020 BCC Meeting
Florida Department of Environmental Protection v. Orange County Utilities
Water Reclamation Division, OGC File No.: 20-0221 Consent Order
Contact Person: Michael J. Hudkins, P. E., Manager
Water Reclamation Division
Utilities Department
(407) 254-9685**

Under Chapter 403, Florida Statutes, and Title 62, Florida Administrative Code, the Florida Department of Environmental Protection (FDEP) has jurisdiction over the operation of the County's water reclamation system. Pursuant to that authority, FDEP has initiated this Consent Order to provide for payment of civil penalties for effluent discharge violations occurring at the South Water Reclamation Facility (SWRF) during the period of September 2017 through January 2020.

The SWRF was under construction for expansion during this period and was unable to maintain full compliance with the operating permit primarily due to construction activities. The Consent Order requires the County pay \$6,500 in civil penalties and \$250 for costs and expenses incurred for a total payment of \$6,750.

In lieu of making a cash payment of \$6,500 in civil penalties, OCU proposed to offset this amount by implementing and completing a FDEP-approved Pollution Prevention (P2) project. The P2 project involves an energy-saving environmental enhancement project at the SWRF that includes changing out the facility maintenance bay lights from the current 400 metal-halide fixture lights to 120-watt LED fixture lights. The County demonstrated that the P2 project was at least one and a half times the civil penalty off-set amount, which in this case is the equivalent of at least \$9,750. The remaining \$250 in administrative costs must be paid within 30 days of the effective date of the Consent Order.

Orange County Attorney's Office staff has reviewed the Consent Order prepared by FDEP and has approved it as to form. Utilities Department staff has reviewed the Consent Order and recommends approval.

Action Requested: Approval and execution of Florida Department of Environmental Protection v. Orange County Utilities Water Reclamation Division, OGC File No.: 20-0221 OCUD South WRF, FLA107972 Consent Order and authorization for the County Administrator to execute the Consent Order; approval of the maintenance bay LED lighting P2 project at the SWRF; and authorization to pay costs and expenses in the amount of \$250.

District 6.

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	CENTRAL DISTRICT
)	
v.)	OGC FILE NO. 20-0221
)	
ORANGE COUNTY FLORIDA)	
_____)	

CONSENT ORDER

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department") and Orange County Florida, a charter county and political subdivision of the State of Florida ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and Respondent neither admits nor denies the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes ("F.S."), and the rules promulgated and authorized in Title 62, Florida Administrative Code ("F.A.C."). The Department has jurisdiction over the matters addressed in this Order.
2. Respondent is a person within the meaning of Section 403.031(5), F.S.
3. Respondent is the owner and is responsible for the operation of the OCUD South Water Reclamation Facility ("Facility"), a 56-million gallons per day (MGD) annual average daily flow ("AADF") domestic wastewater treatment facility with four reuse systems (R001, R002, R003, R004). The Facility includes an 8 MGD (design capacity) Modified Ludzack-Ettinger (MLE) activate sludge treatment train (North Plant 1), a 20 MGD (design capacity) step-feed treatment train (North Plant 2), a 7.5 MGD design capacity oxidation ditch (Southeast Plant), and a 20.5 MGD design capacity modified step-feed treatment train (Southwest Plant). Treatment processes include influent screening, grit removal, aeration,

clarification, filtration, and disinfection. Biosolids are discharged to a holding tank prior to thickening, anaerobic digestion, dewatering, and land application. The Facility is operated under Wastewater Permit No. FLA 107972 ("Permit"), which was issued on March 7, 2019 and will expire on March 6, 2024. This Permit includes the Respondent's intent to expand the Facility from a 43 MGD AADF plant to a 56 MGD AADF and improve the Facility's overall treatment performance ("Phase V Improvements"). The Facility is located at 4760 W. Sand Lake Rd., Orlando, in Orange County, Florida ("Property"). Respondent owns the Property on which the Facility is located.

4. The Department finds that the following violations occurred:

a) A review of the Discharge Monitoring Reports ("DMRs") from September 2017 through January 2020 was conducted and exceedances of the Permit's total suspended solids ("TSS") maximum limit of (5.0 mg/L) were noted. Exceedances were noted for R001 at 8.0, 6.0, 8.0, and 6.0 mg/L; for R003 at 12.0, 10.0, 8.0, 11.0, 9.0, 23.0, 6.0, 22.0, 10.0, 88.0, 16.0, 7.0, 37.0, 9.0, 12.0, 12.0, and 54.0 mg/L; and for R004 at 7.0, 6.0, and 10.0 mg/L, which is a violation of Section 403.121(3)(b), F.S. and Rule 62-610.525(5), F.A.C.

b) A review of the DMRs from September 2017 through January 2020 was conducted and exceedances of the Permit's Fecal Coliform maximum limit (25 #/100mL) for R003 at 200, 98, 40, 240, 180, and 33 #/100mL, which is a violation of Section 403.121(3)(b), F.S. and Rule 62-600.440(6)(a), F.A.C.

c) A review of the DMRs from September 2017 through January 2020 was conducted and exceedances of the Permits' Fecal Coliform % Non-Detect minimum limit (75%) were noted. Exceedances were noted for R001 at 61.54 %; at R003 at 70, 3.25, 45, 70, 50, 19.35, and 74.19%; and for R004 at 61.54%, which is a violation of Section 403.121(3)(b), F.S., and Rule 62-600.440(6)(a), F.A.C.

d) During the DMR review period from September 2017 through April 2019 it was noted that substandard public access reuse water was discharged to the public access reuse distribution system (R-003) on several occasions and not rejected or diverted as per the current operating protocol. These events were confirmed with the Facility through email

correspondence on June 20, 2019. The total substandard release amount during this time was approximately 39.21 million gallons and is a violation of Section 403.121(5), F.S., and Rule 62-610.463(2), F.A.C.

Having reached a resolution of the matter Respondent and the Department mutually agree and it is

ORDERED:

5. Respondent shall comply with the following corrective actions within the stated time periods:

a) Within 365 days of the effective date of this Order, Respondent shall complete the Phase V Improvement project at the Facility, attached hereto and incorporated herein as Exhibit #1. The Respondent shall submit to the Department a Certification of Completion, prepared and sealed by a professional engineer registered in the State of Florida, stating that modifications to the Facility, effluent disposal system, and collection system have been constructed in accordance with the provisions of the Permit.

6. Every calendar quarter after the effective date of this Order and continuing until all corrective actions have been completed, Respondent shall submit to the Department a written report containing information about the status and progress of projects being completed under this Order, information about compliance or noncompliance with the applicable requirements of this Order, including construction requirements and effluent limitations, and any reasons for noncompliance. These reports shall also include a projection of the work Respondent will perform pursuant to this Order during the 12-month period which will follow the report. Respondent shall submit the reports to the Department within 30 days of the end of each quarter.

7. Notwithstanding the time periods described in the paragraphs above, Respondent shall complete all corrective actions required by paragraphs 5 (a) and 6 within 365 days of the effective date of this Order and be in full compliance with Rules 62-610.525(5), 62-620.610(7), 62-600.440(6)(a), F.A.C., and 62-600.410(5), F.A.C. regardless of any intervening events or alternative time frames imposed in this Order.

8. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$6,750.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$6,500.00 for civil penalties and \$250.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order. The civil penalty in this case includes 3 violations that each warrant a penalty of \$2,000.00 or more.

9. In lieu of making cash payment of \$6,500.00 in civil penalties as set forth in Paragraph 14, Respondent may elect to off-set the amount of \$6,500.00 by implementing a Pollution Prevention (P2) Project, which must be approved by the Department. P2 is a process improvement that reduces the amount of pollution that enters the environment; by conserving resource (including water, raw materials, chemicals, and energy) use, or by minimizing waste generation (including domestic and industrial wastewater, solid and hazardous waste, and air emissions). A P2 Project must reduce pollution or waste within the process beyond what is required by federal, state, or local law, in order to be eligible for civil penalty offset under this Order. If Respondent chooses to implement a P2 Project, Respondent shall notify the Department of its election by certified mail within 15 days of the effective date of this Order. Within 30 days of the effective date of this Order, Respondent must pay a total of \$0.00 for the remaining civil penalties, and \$250.00 for costs and expenses incurred by the Department, during the investigation of this matter, and the preparation and tracking of this Order.

10. If Respondent elects to implement a P2 Project as provided in Paragraph 9, Respondent shall submit a completed P2 Project Plan (Plan) within 30 days of the effective date of this Order. The Plan must be completed using Exhibit 2, "P2 Project Plan" template.

11. In the event the Department requires additional information to process the Plan described in Paragraph 9, Respondent shall provide a modified Plan containing the information requested by the Department within 30 days of the date of the request.

12. If any balance remains after the entire P2 credit is applied to the allowable portion of the civil penalty, Respondent shall pay the difference within 30 days of written notification by the Department to Respondent that the balance is due.

13. Respondent agrees to pay the Department stipulated penalties in the amount of \$1000.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraphs 5, 6, 7, 10, 11 and 12. The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment and shall do so as further described in paragraph 14, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph 8 of this Order.

14. Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at: <http://www.fldepportal.com/go/pay/>. It will take a number of days after this order is final, effective and filed with the Clerk of the Department before ability to make online payment is available.

15. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Jenny Farrell, Environmental Consultant, Compliance Assurance Program, Department of Environmental Protection, Central District Office, 3319 Maguire Blvd., Suite 232, Orlando, Florida, 32803.

16. Respondent shall allow all authorized representatives of the Department access to the Facility and the Property at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

17. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent

and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond the control of Respondent (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department by the next working day and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

18. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

19. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this

Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

20. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Order.

21. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties up to \$10,000.00 per day per violation, and criminal penalties.

22. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this Order. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to Section 120.68, F.S.

23. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

24. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Order constitutes a violation of Section 403.161(1)(b), F.S.

25. This Consent Order is a final order of the Department pursuant to Section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

NOTICE OF CONSENT ORDER

The Department of Environmental Protection ("Department") gives notice of agency action of entering into a Consent Order with ORANGE COUNTY FLORIDA pursuant

to Section 120.57(4), F.S. The Consent Order addresses the multiple effluent exceedances in the Public Access Reuse System at 4760 W. Sand Lake Road, Orlando, Orange County, Florida. The Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767.

Persons who are not parties to this Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under Sections 120.569 and 120.57, F.S. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department's final action may be different from the position it has taken in the Consent Order.

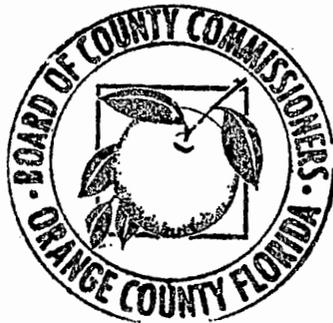
The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Consent Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- d) A statement of when and how the petitioner received notice of the Consent Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Order; and

h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at Central District Office, 3319 Maguire Blvd., Orlando, Florida, 32803. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under Sections 120.569 and 120.57, F.S. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under Section 120.573, F.S. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in Section 120.573, F.S. and Rule 62-110.106(12),F.A.C.

26. Rules referenced in this Order are available at <http://www.dep.state.fl.us/legal/Rules/rulelist.htm>



FOR THE RESPONDENT:

Byron W. Brooks

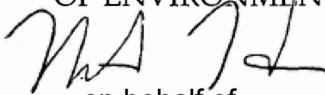
Byron W. Brooks
County Administrator
Orange County Administrator's Office

JUL 28 2020

Date

DONE AND ORDERED this 30th day of July, 2020, in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



on behalf of

Aaron Watkins
District Director
Central District

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk,
receipt of which is hereby acknowledged.



July 30, 2020

Clerk

Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35