



## Interoffice Memorandum

March 9, 2023

**TO:** Mayor Jerry L. Demings  
-AND-  
County Commissioners

**FROM:** Ed Torres, MS, PE, LEED AP, Director  
Utilities Department

A handwritten signature in black ink that reads "Ed Torres" with a stylized flourish above the name.

**SUBJECT:** **BCC AGENDA ITEM - Consent Agenda**  
**March 21, 2023, BCC Meeting**  
**Department of Environmental Protection v. Orange County Florida**  
**Water Division, OGC File No. 23-0220, Consent Order**  
**Contact Person: Iulia Siemen PE, Manager**  
**Water Division**  
**407-254-9844**

Under Chapter 403, Florida Statutes, and Chapters 62-550 and 62-555, Florida Administrative Code, the Florida Department of Environmental Protection (FDEP) has jurisdiction over the public water systems. Pursuant to that authority, FDEP initiated the subject consent order (Consent Order) to provide for civil penalties and corrective actions for failure to issue a precautionary boil water notice.

The Consent Order is the result of a water main break repair conducted on September 15, 2022. The FDEP determined that Orange County Utilities failed to follow the recommended practices provided by the Department of Health's "Guidelines for the Issuance of Precautionary Boil Water Notices." The Consent Order requires the County to pay \$1,500 in civil penalties and \$250 for the costs and expenses incurred for a total payment of \$1,750.

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

**Action Requested:** **Approval and execution of Florida Department of Environmental Protection v. Orange County Utilities Water Division, OGC File No. 23-0220 Consent Order; authorization for the County Administrator to execute the Consent Order; and authorization to pay civil penalties in the amount of \$1,500 and costs and expenses in the amount of \$250 for a total payment in the amount of \$1,750.**

All Districts.

BCC Mtg. Date: March 21, 2023



# FLORIDA DEPARTMENT OF Environmental Protection

Central District Office  
3319 Maguire Blvd., Suite 232  
Orlando, Florida 32803

**Ron DeSantis**  
Governor

**Jeanette Nuñez**  
Lt. Governor

**Shawn Hamilton**  
Secretary

February 23, 2023

Byron Brooks, County Administrator  
County Administrator's Office  
County Administration Building, 5<sup>th</sup> Floor  
201 S Rosalind Avenue  
Orlando, FL 32801-3527  
[Iulia.Siemen@ocfl.net](mailto:Iulia.Siemen@ocfl.net)

SUBJECT: Department of Environmental Protection v. Orange County Utilities  
Water Division  
OGC File No.: 23-0220  
OCUD Southern Water System PWS ID No.: 3484119

Mr. Brooks:

The State of Florida Department of Environmental Protection ("Department") finds that Orange County Utilities Water Division ("Respondent") failed to issue precautionary "boil water" notices as required or recommended in the Department of Health's "Guidelines for the Issuance of Precautionary Boil Water Notices" for a distribution system incident that occurred on September 15, 2022. This noted occurrence is in violation of Chapter 62-555.350(11), Florida Administrative Code (F.A.C.). Before sending this letter, the Department requested that the Respondent undertake certain actions to resolve the violations. These actions have since been completed. However, due to the nature of the violations, the Respondent remains subject to civil penalties. The Respondent is also responsible for costs incurred by the Department during the investigation of this matter.

### The Department's Offer

Based on the violations described above, the Department is seeking \$ 1,500.00 in civil penalties and \$ 250.00 for costs and expenses the Department has incurred in

investigating this matter, which amounts to a total of \$1,750.00. The civil penalties are apportioned as follows: \$ 1,500.00 for violation of Rule 62-555.350(11), F.A.C. The final amount due will be \$ 1,750.00.

### **Respondent's Acceptance**

If you wish to accept this offer and fully resolve the enforcement matter pending against the Respondent, please sign this letter and return it to the Department at Central District Office 3319 Maguire Blvd., Suite 232 Orlando, Florida 32803 by **March 31, 2023**. The Department will then countersign it and file it with a designated clerk of the Department. Once the document is filed with the designated clerk, it will constitute a final order of the Department pursuant to Section 120.52(7), F.S. and will be effective unless a request for an administrative hearing is filed by a third party in accordance with Chapter 120, F.S. and the attached Notice of Rights.

By accepting this offer you, Byron Brooks:

- (1) certify that you are authorized and empowered to negotiate, enter into, and accept the terms of this offer in the name and on behalf of Respondent;
- (2) acknowledge and waive Respondent's right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this offer, once final;
- (3) acknowledge and waive Respondent's right to an appeal pursuant to Section 120.68, F.S.; and

The Department acknowledges that the Respondent's acceptance of this offer does not constitute an admission of liability for the violations referenced above. The Department acknowledges that the Respondent neither admits nor denies the violations referenced above.

### **Respondent's Performance**

After signing and returning this document to the Department,

- (1) Respondent must pay **\$ 1,750.00** in full by **April 30, 2023**.
- (2) 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/>

FOR THE RESPONDENT:

I, Byron Brooks [Type or Print Name], HEREBY ACCEPT  
THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.

By: *Byron Brooks*  
[Signature]

Date: March 21, 2023



Title: County Administrator  
[Type or Print]

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FOR DEPARTMENT USE ONLY

DONE AND ORDERED this 7 day of April, 2023, in Orange County,  
Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

*MA J L* 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.

*Morgan Ruiz*  
Clerk

April 7, 2023  
Date

Attachments: Notice of Rights

Final clerked copy furnished to:

Lea Crandall, Agency Clerk ([lea.crandall@dep.state.fl.us](mailto:lea.crandall@dep.state.fl.us))

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.

The Department may enforce the terms of this document, once final, and seek to collect monies owed pursuant to Sections 120.69 and 403.121, F.S.

Until clerked by the Department, this letter is only a settlement offer and not a final agency action. Consequently, neither the Respondent nor any other party may request an administrative hearing to contest this letter pursuant to Chapter 120, F.S. Once this letter is clerked and becomes a final order of the Department, as explained above, the attached Notice of Rights will apply to parties, other than the Respondent, whose interests will be substantially affected.

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.

Please be aware that if the Respondent declines to respond to the Department's offer, the Department will assume that the Respondent is not interested in resolving the matter and will proceed accordingly.

If you have any questions, please contact Sarah Desmarais at 407-897-2923 or at [sarah.desmarais@floridadep.gov](mailto:sarah.desmarais@floridadep.gov).

Sincerely,



*On behalf of:*

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Aaron Watkins  
District Director  
Central District

## NOTICE OF RIGHTS

Persons who are not parties to this 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, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Order means that the Department's final action may be different from the position it has taken in the Order.

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

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; 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; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 or received via electronic correspondence at [Agency\\_Clerk@floridadep.gov](mailto:Agency_Clerk@floridadep.gov), 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 the address indicated above. 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, Florida Statutes. Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.