



## Interoffice Memorandum

August 19, 2022

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

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

A handwritten signature in black ink, appearing to read "Ed Torres", with a long, sweeping horizontal line extending to the right.

**SUBJECT: BCC AGENDA ITEM - Consent Agenda  
September 13, 2022 BCC Meeting  
Department of Environmental Protection v. Orange County Florida  
Solid Waste Division, OCG File No. #22-2254, Consent Order  
Contact Person: David Gregory, Manager  
Solid Waste Division  
407-254-9622**

Under Chapter 403, Florida Statutes, and Chapter 62-701, Florida Administrative Code (F.A.C.), the Florida Department of Environmental Protection (FDEP) has jurisdiction over the County landfills. Pursuant to that authority, FDEP initiated the subject consent order (Consent Order) to provide for civil penalties and corrective actions for failure of the Solid Waste Division to apply initial cover at the Class I landfill at the end of each workday and at the Class III landfill once each week.

The Consent Order is the result of a June 9, 2022 inspection by the FDEP at the County landfill, where the DEP inspector noted that initial cover was not completed in accordance with Rule 62-701.500(7)(e) and (f), F.A.C. Specifically, portions of the Class I landfill were not covered daily, and portions of the Class III landfill were not covered at the end of each work week. The Consent Order requires the County to pay \$1,000 in civil penalties and \$250 for costs and expenses incurred for a total payment of \$1,250. Further, initial cover must be placed by November 1, 2022 and a weekly status report must be provided to the FDEP by the Solid Waste Department each week until the Consent Order is closed by the FDEP.

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 Florida, OGC File No. #22-2254 Consent Order; authorization for the County Administrator to execute the Consent Order; and authorization to pay civil penalties in the amount of \$1,000 and costs and expenses in the amount of \$250 for a total payment in the amount of \$1,250.**

**All Districts.**



# 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

August 15, 2022

David Gregory, Division Manager  
Orange County Utilities Solid Waste Division  
9150 Curry Ford Rd.  
Orlando, FL 32825  
[David.Gregory@ocfl.net](mailto:David.Gregory@ocfl.net)

Re: Orange County Landfill  
SW Facility ID #21847  
Orange County

Dear Mr. Gregory:

Enclosed is a Consent Order ("Order") prepared by the Department for resolution of the referenced enforcement case. Please review this document and by September 30, 2022, return a signed copy to the Department. Once fully executed, a copy of the final document will be forwarded to you.

Should you have any questions or comments, please contact Amada Fernandez at 407-897-4159 or via e-mail at [Amada.M.Fernandez@FloridaDEP.gov](mailto:Amada.M.Fernandez@FloridaDEP.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "AW 7L".

*On behalf of:*

Aaron Watkins, Director  
Central District

Enclosure: Consent Order

cc: Amada Fernandez and Viviana Useche, FDEP  
Daniel Courcy, [Daniel.Courcy@ocfl.net](mailto:Daniel.Courcy@ocfl.net)  
James Flynt, [James.Flynt@ocfl.net](mailto:James.Flynt@ocfl.net)  
Georgiana Holmes, [Georgiana.Holmes@ocfl.net](mailto:Georgiana.Holmes@ocfl.net)

BCC Mtg. Date: September 13, 2022

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. <u>#22-2254</u>
	)	
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 administer and enforce the provisions of the Florida Resource Recovery and Management Act, Sections 403.702, et seq., 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 Sections 403.031(5) and 403.703(22), F.S.
3. Respondent is the operator of a municipal landfill, located at 5901 Young Pine Road, Orlando (Parcel ID No. 22-23-31-0000-00-001), in Orange County, Florida ("Facility"). The Facility's Solid Waste Facility ID Number is 21847.
4. The Department finds that the following violation occurred:
  - a) The Facility failed to apply initial cover at the Class I and Class III landfill in accordance with 62-701.500(7)(e) and (f), F.A.C. Respondent has indicated that staffing issues are the reason cover has not been completed as required.

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) By November 1, 2022, Respondent shall apply initial cover at the end of each working day at the Class I landfill and apply cover at the end of each work week at the Class III landfill.

b) Effective immediately and continuing until this Order is closed by the Department, Respondent shall provide the Department a weekly report on staffing and cover operations. The report shall be submitted to [DEP\\_CD@FloridaDEP.gov](mailto:DEP_CD@FloridaDEP.gov) and at a minimum shall address:

1. Whether daily cover has been completed at the Class I landfill;
2. Whether weekly cover has been completed at the Class III landfill;
3. Details on staffing efforts and;
4. Long-term plan for ensuring cover occurs as required.

6. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$ 1,250.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$ 1,000.00 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 penalties are apportioned as follows: \$ 1,000.00 for violation of Rule 62-701.500(7), F.A.C.

7. Respondent agrees to pay the Department stipulated penalties in the amount of \$1,000.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph 5 of this Order. 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 paragraphs 8 and 9, 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 6 of this Order.

8. 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 becomes final, effective and filed with the Clerk of the Department before ability to make online payment is available.

9. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Amada Fernandez, Department of Environmental Protection, 3319 Maguire Blvd, Orlando, FL 32803.

10. 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.

11. 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.

12. 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 alleged violations 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

13. 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.

14. 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.

15. 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 \$15,000.00 per day per violation, and criminal penalties.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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, Florida Statutes. 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 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

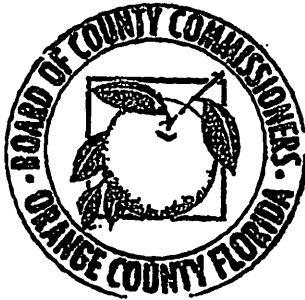
interests will be affected by the agency determination;

- 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, 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 3319 Maguire Blvd, Orlando, FL 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, Florida Statutes. 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, Florida Statutes. 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, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

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





FOR THE RESPONDENT:

Byron W. Brooks

September 13, 2022

Byron W. Brooks, A.I.C.P.

Date

County Administrator, Orange County Administrator's  
Office

DONE AND ORDERED this 12 day of October 2022, in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

Aaron Watkins

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.

Lea Crandall

October 12, 2022

Clerk

Date

Copies furnished to:

Lea Crandall, Agency Clerk  
Mail Station 35