



FLORIDA DEPARTMENT OF Environmental Protection

Northeast District
8800 Baymeadows Way West, Suite 100
Jacksonville, Florida 32256

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

May 15, 2020

Sent electronically to: dean-wilbur@levycounty.org

Mr. Wilbur Dean, County Coordinator
Levy County Board of Commissioners
Post Office Drawer 310
Bronson, Florida 32621

**SUBJECT: Dept. of Environmental Protection v. Levy County Board of Commissioners
Levy County Jail WWTF - OGC File No. 19-1796
Facility ID No. FLA011647
Levy County**

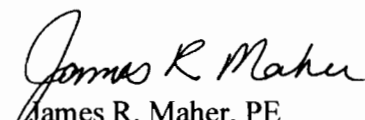
Dear Mr. Dean:

Enclosed is the Consent Order to resolve the issues in the subject OGC File. Please review the Consent Order and, if you find it acceptable, sign and return the original document to this office within 14 days of receipt.

If you wish to modify the Consent Order, please respond to this office in writing within 14 days, explaining your concerns including any proposed changes.

If you have any questions concerning the Consent Order, please contact Nick Williams, at (904) 256-1608, or at Nick.Williams@FloridaDEP.gov. Your continued cooperation in the matter is greatly appreciated.

Sincerely,


James R. Maher, PE
Assistant Director

ec: FDEP – NED: Matthew Kershner, Herndon Sims, Nick Williams, Monique Jordan, DEP_NED
Anne Brown - annebrownlevy@bellsouth.net; Robin Mccracken - rmccracken@levyso.com
Brett Beauchamp - bbeauchamp@levyso.com; Jared Blanton - blanton-jared@levyclerk.com
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Randy Wilkerson - randy@chieflandfla.com

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	NORTHEAST DISTRICT
)	
v.)	OGC FILE NO. 19-1796
)	
LEVY COUNTY BOARD)	
OF COUNTY COMMISSIONERS)	
_____)	

CONSENT ORDER

This Consent Order (“Order”) is entered into between the State of Florida Department of Environmental Protection (“Department”) and Levy County Board of County Commissioners (“Respondent”) to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and Respondent admits 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 (“Fla. Stat.”), and the rules promulgated and authorized in Title 62, Florida Administrative Code (“Fla. Admin. Code”). The Department has jurisdiction over the matters addressed in this Order.

2. Respondent is a person within the meaning of Section 403.031(5), Fla. Stat.

3. Respondent is the owner and is responsible for the operation of Levy County Jail Wastewater Treatment Facility, a 0.024 MGD annual average daily flow (“AADF”) extended aeration activated sludge domestic wastewater treatment facility (“WWTF”) consisting of an influent bar screen, one 4,000-gallon flow equalization tank, one 5,060-gallon anoxic tank, four aeration basins in series (#1, #2, #3 aeration basins at 5,060-gallons each, #4 at 5,000-gallons), one 4,965-gallon secondary clarifier, one 650-gallon chlorine contact chamber, one 2,230-gallon aerobic digester; effluent disinfection is by

sodium hypochlorite solution; and chlorinated reclaimed water is discharged from the chlorine contact chamber to an open flow splitter box and land-applied to any one of three onsite, rapid-rate percolation ponds on a rotating basis (“Facility”).

4. Respondent owns and operates the Facility under Department Wastewater Generic Permit No.: FLA011647 (“Permit”), which was issued on March 4, 2019, and will expire on March 3, 2024. The Facility is located at 9150 NE 80th Avenue, Bronson, Florida, 32621-3430, in Levy County, Florida, further identified by Levy County Property Appraiser Parcel ID No.: 0329300200 (“Property”).

5. The Department finds that the following violation(s) occurred:

a) Failure to submit required DMRs from March 2017 through the effective date of this Order, in violation of Condition IV.1 and IV.2, Permit No.: FLA011647, and Rule 62-620.610(18)(a), Fla. Admin. Code.

b) Failure to maintain a functional secondary blower in violation of Rule 62-620.610(7), Fla. Admin. Code.

6. As of the effective date of this Order, Respondent has resolved the violation of Rule 62-620.610(7), Fla. Admin. Code, based on documentation submitted to the Department the secondary blower is now functional as required.

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

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

a) **Within 60 days of the effective date of this Order**, Respondent shall register for Electronic Discharge Monitoring Report System (“EzDMR”). Once registration is complete, Respondent shall submit EzDMRs on the same schedule as required for the DMRs in the Permit. The EzDMRs must

be received by the Department no later than the 28th day following the end of the reporting period (e.g., an October report would be due no later than November 28th).

8. **Within 60 days of the effective date of this Order**, Respondent shall pay the Department \$1,500.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$1000.00 for civil penalties for violation of Rule 62-620.610(18)(a), Fla. Admin. Code, pursuant to Section 403.121(4)(f), Fla. Stat., and \$500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order.

9. If the Respondent completes Paragraph 7, Department will waive penalties from the violations as described in Paragraph 8, above. However, even if the Respondent completes Paragraph 7 requirements, Respondent shall pay the \$500.00 in Department costs and expenses regardless.

10. Notwithstanding the time periods described in the paragraphs above, Respondent shall complete all corrective actions required by Paragraph 7 within 60 days of the effective date of this Order and be in full compliance with Chapter 62-620, Fla. Admin. Code, regardless of any intervening events or alternative time frames imposed in this Order, other than those excused delays agreed to by the Department, as described in paragraph 16, below.

11. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to timely comply with any of the requirements of Paragraph 7 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 Paragraph 10, 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.

12. 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.

13. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Department of Environmental Protection, Northeast District, 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida, 32256.

14. 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.

15. In the event of a sale or conveyance of the Facility or of the Property upon which the Facility is located, if all of the requirements of this Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Facility or Property, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility, and (c) provide a copy of this Order with all attachments to the purchaser, operator, or person(s) in control of the Facility. The sale or conveyance of the Facility or the Property does not relieve Respondent of the obligations imposed in this Order.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, Fla. Stat., 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, Fla. Stat.

22. 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.

23. 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, Fla. Stat. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), Fla. Stat.

24. This Consent Order is a final order of the Department pursuant to section 120.52(7), Fla. Stat., 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, Fla. Stat. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

25. Respondent has the option to publish the following notice in a newspaper of daily circulation in Levy County, Florida. If Respondent chooses to do so, notice shall be published one time only within 14 days of the effective date of the Order. Respondent shall provide a certified copy of the published notice to the Department within 10 days of publication.

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 LEVY COUNTY BOARD OF COMMISSIONERS pursuant to section 120.57(4), Florida Statutes (“Fla. Stat.”). The Consent Order addresses the failure to submit required DMRs for the facility located at 9150 NE 80th Avenue, Bronson, Florida 32621-3430. 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, 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida, 32256.

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, Fla. Stat. 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 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida, 32256. 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, Fla. Stat.

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, Fla. Stat.

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, Fla. Stat. and Rule 62-110.106(12), Fla. Admin. Code.

25. Rules referenced in this Order are available at:

<http://www.dep.state.fl.us/legal/Rules/rulelist.htm>.

FOR THE RESPONDENT:

Matt Brooks, Commission Chair
Levy County Board of Commissioners

Date

DONE AND ORDERED this _____ day of _____ 2020, in Duval, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Gregory J. Strong
District Director
Northeast District

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

Clerk

Date

Copies furnished to:
Lea Crandall, Agency Clerk, Mail Station 35
Adrienne Pennington, FDEP

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY *Anne Bast Brown*
Anne Bast Brown, County Attorney