



FLORIDA DEPARTMENT OF Environmental Protection

Southwest District Office
13051 North Telecom Parkway #101
Temple Terrace, Florida, 33637-0926

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

March 2, 2020

Mr. David Porter, P.E., Director
City of Clearwater Public Utilities
1650 N. Arcturas Ave., Building C
Clearwater, FL 33765
David.porter@myclearwater.com

SUBJECT: Department of Environmental Protection v. City of Clearwater,
OGC File No.: 20-0100
Marshall St. WRF - FL0021857
Northeast WRF - FL0128937
East WRF - FL0021865

Mr. Porter:

The State of Florida Department of Environmental Protection ("Department") finds that City of Clearwater ("Respondent") discharged approximately 1,500 gallons of untreated wastewater to a nearby waterbody known as Clearwater Harbor on June 24, 2019; 13,050 gallons of untreated wastewater to Allen's Creek on July 25, 2019 and August 16, 2019; 7,750 gallons of untreated wastewater to the Intercoastal Waterway on August 16, 2019; 500 gallons of untreated wastewater to Stevenson Creek on August 16, 2019; and 18,000 gallons of untreated wastewater to Tampa Bay on August 16, 2019. In addition, the facility bypassed the Sand Filters at the Marshall St. WRF on August 16, 17 and 19, 2019 resulting in a discharge of approximately 3.0M gallons of partially treated wastewater to Stevenson creek. These discharges all resulted in water quality violations and are in violation of Section 403.121 (3)(b), Florida Statutes, and Rules 62-604.130(1) and 62-302.500(2)(e), Florida Administrative Code. Although there are no further actions required to correct the violation, you remain subject to civil penalties as a result of the violation. You are 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 \$37,600.00 in civil penalties, \$7,592.64 in economic benefit, \$8,400.00 for a history of non-compliance, and \$250.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$53,842.64.

In lieu of making cash payment of \$53,592.64 in civil penalties as set forth in the above paragraph, Respondent may elect to off-set this amount by implementing an in-kind penalty project, which must be approved by the Department. An in-kind project must be either an environmental enhancement, environmental restoration or a capital/facility improvement project. The Department may also consider the donation of environmentally sensitive land as an in-kind project. The value of the in-kind penalty project shall be one and a half times the civil penalty off-set amount, which in this case is the equivalent of at least \$80,388.96. If Respondent chooses to implement an in-kind project, Respondent shall notify the Department of its election by electronic mail to Lance Kautz at Lance.Kautz@FloridaDEP.gov within 15 days of the effective date of this Settlement Agreement. **Notwithstanding the election to implement an in-kind project, payment of the remaining \$250.00 in costs must be paid within 30 days of the effective date of the Settlement Agreement.**

If Respondent elects to implement an in-kind project, then Respondent shall comply with all the requirements and time frames in Exhibit A entitled In-Kind Projects

In the event that Respondent elects to off-set civil penalties by implementing an in-kind penalty project which is approved by the Department, during the period that this Agreement remains in effect or during the effective date of any Department issued Permit to Respondent whichever is longer (Prohibited Transfer Duration), Respondent shall not transfer or use funds obtained by the Respondent from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System (hereinafter, Prohibited Transfer). The Department agrees that any and all PILOT (payment in lieu of taxes) made by the City of Clearwater Public Utilities Enterprise Fund to the City of Clearwater General Fund will not be considered a Prohibited Transfer and will not violate this Agreement. Respondent shall annually certify to the Department using the Annual Certification Form located on Exhibit B to this Agreement that no Prohibited Transfer has occurred. In the event of any Prohibited Transfer, the In-Kind project option shall be forfeited, and entire civil penalty shall immediately become due and owing to the Department irrespective of any expenditures by the Respondent in furtherance of the In-Kind project.

Respondent's Acceptance

If you wish to accept this offer and fully resolve this pending enforcement matter, please sign this Agreement and return it to the Department at 13051 North Telecom Parkway, Suite 101, Temple Terrace, FL, 33637-0926 by **May 8, 2020**. 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, David Porter:

- (1) acknowledge and waive your right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this offer;
- (2) acknowledge and waive your right to an appeal pursuant to Section 120.68, F.S.; and
- (3) acknowledge that payment of the above amount does not constitute a waiver of the Department's right, if any, to recover emergency response related costs and expenses for this matter.

The Department acknowledges that your acceptance of this offer does not constitute an admission of liability for the violation(s) referenced above.

Respondent's Performance

After signing and returning this document to the Department,

- (1) Upon signing this Agreement, you must implement the In-kind Project in accordance with the requirements identified in the attached Exhibit. Your failure to timely start or complete the In-kind Project, or timely provide the Department with the Final Report, will cause the In-kind Project option to be forfeited and the balance of the civil penalty shall be due within 10 days of notice from the Department.
- (2) If you elect to implement the In-kind project, **payment of \$250 for costs and expenses must be paid within 30 days of the effective date of this Agreement.** If you decide **not** to implement an In-kind Project, the Respondent shall pay the full penalty amount, including costs and expenses, of \$53,842.64 by **June 8, 2020**.

- (3) Make all payments required by this Agreement 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 Agreement 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 agreement is final and effective 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 Agreement is only a settlement offer and not a final agency action. Consequently, neither you nor any other party may request an administrative hearing to contest this Agreement pursuant to Chapter 120, F.S. Once this Agreement is clerked and becomes a final order of the Department, as explained above, the attached Notice of Rights will apply to parties, other than you, 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 Agreement 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 you decline to respond to the Department's offer, the Department will assume that you are not interested in resolving the matter and will proceed accordingly.

If you have any questions, please contact Lance Kautz at 813-470-5903 or at Lance.Kautz@FloridaDEP.gov.

Sincerely,



Mary E. Yeargan, PG
District Director
Southwest District

FOR THE RESPONDENT:

I, _____ [David Porter], **HEREBY ACCEPT THE
TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: _____ Date: _____
[Signature]

Title: _____
[Type or Print]

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this __ day of _____, 2020, in Hillsborough
County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Mary E. Yeargan, PG
District Director
Southwest District

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

Clerk
Attachments: Notice of Rights

Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35

NOTICE OF RIGHTS

Persons who are not parties to this Agreement, 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 Agreement means that the Department's final action may be different from the position it has taken in the Agreement.

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

- a) The OGC Number assigned to this Agreement;
- 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 Agreement;
- d) A statement of when and how the petitioner received notice of the Agreement;
- 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 Agreement;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Agreement; 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 Agreement.

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 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.

Exhibit A

In-Kind Projects

I. Introduction

An in-kind project

a. Within **60 days** of the effective date of this Settlement Agreement, Respondent shall submit, electronically or by certified mail, a detailed in-kind project proposal to the Department for evaluation. The proposal shall include a summary of benefits, proposed schedule for implementation and documentation of the estimated costs which are expected to be incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the in-kind project.

Proposal Certification Form

b. The proposal shall also include a Certification by notarized affidavit from senior management official for City of Clearwater who shall testify as follows:

My name is _____ (print or type name of senior management official) and do hereby testify under penalty of law that:

A. I am a person with management responsibilities for City of Clearwater budget and finances. During the eighteenth month period prior to the effective date of Settlement Agreement OGC Case No.: 20-0100 there has not been any transfer or use of funds obtained by the City of Clearwater from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the sewer system or to any capital improvement needs of the sewer system.

B. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowingly submitting false information in this certification.

Sworn to and subscribed before me, by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2020
by _____

Personally, known or by Production of the following Identification _____

Notary Public, State of Florida

Printed/typed or stamped name:

My Commission Expires: _____

Commission/Serial No.: _____

c. If the Department requests additional information or clarification due to a partially incomplete in-kind project proposal or requests modifications due to deficiencies with Department guidelines, Respondent shall submit, electronically or by certified mail, all requested additional information, clarification, and modifications within 15 days of receipts of written notice.

d. If upon review of the in-kind project proposal, the Department determines that the project cannot be accepted due to a substantially incomplete proposal or due to substantial deficiencies with minimum Department guidelines; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the proposal. Respondent shall correct and redress all of the matters at issue and submit, electronically or by certified mail, a new proposal within 30 days of receipt of written notice. In the event that the revised proposal is not approved by the Department, Respondent shall make cash payment of the civil penalties as set forth in the Settlement Agreement, within 30 days of Department notice.

e. Within 120 days of the effective date of this Settlement Agreement, Respondent shall obtain approval for an in-kind project from the Department. If an in-kind project proposal is not approved by the Department within 120 days of the effective date of this Settlement Agreement, then Respondent shall make cash payment of the civil penalties as set forth in the Settlement Agreement, within 30 days of Department notice.

f. Within 180 days of obtaining Department approval for the in-kind proposal or in accordance with the approved schedule submitted pursuant to paragraph (a) above, Respondent shall complete the entire in-kind project.

g. During the implementation of the in-kind project, Respondent shall place appropriate sign(s) at the project site indicating that Respondent's involvement with the project is the result of a Department enforcement action. Respondent may remove the sign(s) after the project has been completed. However, after the project has been completed Respondent shall not post any sign(s) at the site indicating that the reason for the project was anything other than a Department enforcement action.

h. In the event, Respondent fails to timely submit any requested information to the Department, fails to complete implementation of the in-kind project or otherwise fails to comply with any provision of this paragraph, the in-kind penalty project option shall be forfeited, and the entire amount of civil penalties shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the civil penalty listed in the Agreement, no additional penalties shall be assessed for failure to complete the requirement of this paragraph.

i. Within 15 days of completing the in-kind project, Respondent shall notify the Department, electronically or by certified mail, of the project completion and request a verification letter from the Department. Respondent shall submit supporting information verifying that the project was completed in accordance with the approved proposal and documentation showing the actual costs incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the project.

j. If upon review of the notification of completion, the Department determines that the project cannot be accepted due to a substantially incomplete notification of completion or due to substantial deviations from the approved in-kind project; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the project. Respondent shall correct and redress all of the matters at issue and submit, electronically or by certified mail, a new notification of completion within 15 days of receipt of the Department's notice. If upon review of the new submittal, the Department determines that the in-kind project is still incomplete or not in accordance with the approved proposal, the in-kind penalty project option shall be forfeited, and the entire amount of civil penalty shall be due from the Respondent to the

Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the civil penalties listed in the Agreement, no additional penalties shall be assessed for failure to complete the requirements of this paragraph.

Exhibit B

Annual Certification Form

My name is _____ (print or type name of senior management official)

and do hereby testify under penalty of law that:

A. I am a person with management responsibilities for _____ (print or type name of Respondent) budget and finances. During the twelve month period immediately preceding the notary date on this Certification, there has not been any transfer or use of funds obtained by the _____ (print or type name of Respondent) from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System.

B. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowingly submitting false information in this certification.

Sworn to and subscribed before me, by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20__ by

Personally, known or by Production of the following Identification _____

Notary Public, State of Florida

Printed/typed or stamped name:

My Commission Expires: _____

Commission/Serial No.: _____