



FLORIDA DEPARTMENT OF Environmental Protection

CENTRAL DISTRICT OFFICE
3319 MAGUIRE BLVD., SUITE 232
ORLANDO, FLORIDA 32803

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

March 25, 2021

Frank Abbate, County Manager
Brevard County Utilities Department
2725 Judge Fran Jamieson Way
Viera, FL 32940
Frank.Abbate@brevardfl.gov

Re: BCUD South Central WWTF
DW Facility ID # FL0102679
OGC Case #21-0180

Dear Mr. Abbate:

Enclosed is the executed Consent Order to resolve the above referenced case. This copy is for your records.

Should you have any questions or comments, please contact Manuel F. Cardona at 407-897-4134 or via e-mail at Manuel.Cardona@FloridaDEP.gov.

Your cooperation in this matter will be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Watkins".

Aaron Watkins
Director, Central District

Enclosure: Consent Order OGC#21-0180

cc: Lea Crandall, OGC
Zoey Carr, Daun Festa, Central District
Courtney Duff, Courtney.Duff@brevardfl.gov
Matthew Prendergast, Matthew.Prendergast@brevardfl.gov
David Smicherko, Manuel Cardona, Central District



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March 11, 2021

Edward Fontanin, P.E., Utility Services Director
Brevard County Utilities Department
2725 Judge Fran Jamieson Way, Bldg. A Ste 213
Viera, FL 32940
Edward.Fontanin@brevardfl.gov

Re: BCUD/South Central Regional WWTF
DW FL0102679
OGC Case No: 21-0180
Brevard County

Dear Mr. Fontanin:

Enclosed is a Consent Order ("Order") prepared by the Department for resolution of the referenced enforcement case. Please review this document and within 14 days of receipt, either: 1) return a signed copy to the Department or 2) provide comments and suggested changes. Once fully executed, a copy of the final document will be forwarded to you.

Should you have any questions or comments, please contact Manuel F. Cardona at 407-897-4134 or via e-mail at Manuel.Cardona@FloridaDEP.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Watkins".

Aaron Watkins, Director
Central District
Florida Department of Environmental Protection

AW/ds/mfc

Enclosure: Consent Order OGC#21-0180

cc: Courtney Duff, Courtney.Duff@brevardfl.gov
Matthew Prendergast, Matthew.Prendergast@brevardfl.gov
David Smicherko, Manuel Cardona, Central District

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. 21-0180
)	
BREVARD COUNTY)	
_____)	

CONSENT ORDER

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department") and Brevard County ("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 ("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 BCUD/South Central Regional WWTF, a 12.00 million gallons per day Annual Average Daily Flow Facility (Category I, Class A), utilizing the IFAS BNR and Carrousel BNR treatment processes generating reclaimed water that is used for slow-rate, "public access" spray irrigation throughout the service area and "restricted public access" land application through the 200-acre Ritch Grissom Memorial Wetlands ("Facility"). The Facility is operated under Wastewater Permit No. FL0102679 ("Permit"), which was issued on May 5, 2016 and will expire on May 4, 2021. The Facility is located at 10001 North Wickham Road Melbourne, FL 32940, in Brevard County, Florida ("Property"). Respondent owns the Property on which the Facility is located.

4. The Department finds that the following violation(s) occurred. All the observations that follow are possible violations of Chapter 403, F.S. and Chapter 62-620, F.A.C. and Chapter 62-520 F.A.C.:

a) These violations were observed at the WEP-1 monitoring location:

- The Total Nitrogen (TN) maximum result reported on the DMR for July 2020 exceeded the maximum limit of 3.2 milligrams per liter(mg/L).
- The TN monthly average result reported on the DMR for July 2020 exceeded the maximum limit of 2.0 milligrams per liter(mg/L).
- The TN weekly average result reported on the DMR for July 2020 exceeded the maximum limit of 2.4 milligrams per liter(mg/L).
- The Carbonaceous 5 day, 20C BOD, (CBOD) maximum results reported on the DMRs for July 2020, September 2020, and October 2020, exceeded the maximum limit of 6.0 mg/L.
- The CBOD weekly average results reported on the DMRs for July 2020, and October 2020, exceeded the maximum limit of 4.5 mg/L.
- The CBOD annual average results reported on the DMRs for July 2020, September 2020, October 2020, and November 2020, exceeded the maximum limit of 3.0 mg/L.
- The CBOD monthly average results reported on the DMRs for July 2020 and September 2020, exceeded the maximum limit of 3.75 mg/L.
- The CBOD annual average results reported on the DMRs for July 2020, September 2020, October 2020, and November 2020, exceeded the maximum limit of 3.0 mg/L.
- The Total Suspended Solids (TSS) maximum result reported on the DMRs for October 2020 exceeded the maximum limit of 6.0 mg/L.

b) These violations were observed at the EFB-2 monitoring location:

- The % less than detection Fecal Coliform results reported on the DMRs for August 2020 and September 2020, did not meet the 75% limit.

- The Fecal Coliform (FC) maximum results reported on the DMRs for August 2020 and September 2020, exceeded the maximum limit of 25/100 mL.
 - The Total Suspended Solids (TSS) maximum result reported on the DMRs for November 2020 exceeded the maximum limit of 5.0 mg/L.
- c) This violation was observed at the Groundwater monitoring location:
- The FC results reported for the groundwater monitoring reports for the 4th quarter 2019, 2nd quarter 2020, and 3rd quarter 2020, exceeded the permit limit of 4 fecal coliform colonies per 100 milliliters (fcc/100mL).

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 60 days of the effective date of this Order, Respondent shall submit to the Department an evaluation, conducted by a professional engineer registered in the state of Florida, to discover the cause or causes of the violations identified in subparagraphs 4.a) and 4.c), above. The evaluation shall contain recommended corrective actions including applicable design modification(s).

b) Within 60 days of the due date for submission of the evaluation and design modification(s) in subparagraph a), Respondent shall submit a complete application for a Department permit to construct the modifications submitted pursuant to paragraph a) above, if such a permit is required. In the event the Department requires additional information to process the permit application Respondent shall provide a written response containing the information requested by the Department within 90 days of the date of the request.

c) Within 545 days after issuance of the permit referenced in subparagraph b) above, or if no permit is required, within 545 days of the approval of the design modification(s) in subparagraph a) above, Respondent shall complete construction of the modification(s) submitted pursuant to subparagraph a) above.

d) Within 30 days after completion of the construction, 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 or, if no Permit is required the design modification(s) submitted pursuant to subparagraph a) above.

e) Upon the submittal of the Certificate of Completion to the Department, or, if no permit is required, upon completion of corrective actions, Respondent shall demonstrate compliance by maintaining effluent discharge concentrations at discharge location D-001 at or below the Permit’s effluent limits for CBOD and TN for six consecutive calendar months for all discharges within the six months after the receipt of the Certificate of Completion, and report effluent sampling results on the required Discharge Monitoring Reports (“DMRs”).

f) Respondent shall comply with the interim limit (“Interim Limit”), the discharge monitoring, and reporting requirements in the table below for discharges to the Surface Water Discharge (D-001) system at the Facility. All of the other parameter limits in the Permit remain the same and Respondent shall comply with all of the other conditions of the Permit. The Interim Limit shall become effective upon the first day of the month following the effective date of this Consent Order. The Interim Limit shall remain in effect until 760 days of the effective date of the consent order.

Parameter	Units	Max./Min	Reclaimed Water Limitations		Monitoring Requirements		
			Limit	Statistical Basis	Frequency of Analysis	Sample Type	Monitoring Site Number
BOD, Carbonaceous 5 day, 20C	mg/L	Max Max Max Max	7.0 10.0 12.0 15.0	Annual Average Monthly Average Weekly Average Single Sample	5 Days/Week	24-hr FPC	WEP-1
Solids, Total Suspended	mg/L	Max Max Max Max	6.0 8.0 12.0 15.0	Annual Average Monthly Average Weekly Average Single Sample	5 Days/Week	Grab	WEP-1
Nitrogen, Total	mg/L	Max Max Max	4.0 4.0 6.0	Monthly Average Weekly Average Single Sample	Weekly	24-hr FPC	WEP-1

6. Every 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 paragraph 5 above, within 760 days of the effective date of this Order and be in full compliance with Rule 62-620, 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 \$6,250.00 for civil penalties 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. 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(s) 5 and 6 above, 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 above, of this Order.

10. 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.

11. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Manuel F. Cardona, Compliance Assurance Program, Department of Environmental Protection, Central District, 3319 Maguire Boulevard, Suite 232, Orlando, FL 32803.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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 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 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 Boulevard, Suite 232, 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.

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

FOR THE RESPONDENT:



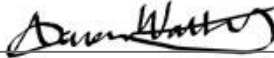
Frank Abbate
County Manager



Date

DONE AND ORDERED this 25th day of March, 2021, in Orange County,
Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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.



Clerk

March 25, 2021

Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35