



FLORIDA DEPARTMENT OF Environmental Protection

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

South District
Post Office Box 2549
Fort Myers, FL 33902-2549
SouthDistrict@FloridaDEP.gov

Noah Valenstein
Secretary

January 29, 2021

Richard Moulton
Director of Public Works
City of Fort Myers
PO Box 2217
Fort Myers, FL 33902
Email: rmoulton@cityftmyers.com

Re: Lee County – Domestic Wastewater
OGC Case No. 20-0851
City of Fort Myers Central (FL0021261)
City of Fort Myers South (FL0021270)
LFCO

Dear Mr. Moulton:

Enclosed is the final copy of Consent Order OGC Case No. 20-0851 to reach settlement of certain matters at issue between the Department of Environmental Protection (“Department”) and the City of Fort Myers.

Please have the original signed and return it to this office within 20 calendar days of receipt of the Consent Order. After the Consent Order has been executed by the Department, your copy will be returned to you.

If you have any questions, please contact Jennifer Carpenter at Jennifer.Carpenter@FloridaDEP.gov or 239-344-5676. Your cooperation in resolving this case is appreciated.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. M. Iglehart".

Jon M. Iglehart
Director of District Management
South District
Florida Department of Environmental Protection

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	SOUTH DISTRICT
)	
v.)	OGC FILE NO. 20-0851
)	
CITY OF FORT MYERS)	
)	

CONSENT ORDER

This Consent Order (“Order”) is entered into between the State of Florida Department of Environmental Protection (“Department”) and City of Fort Myers (“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 operator of the following wastewater treatment facilities (Facilities) and associated wastewater collection/transmission systems, as well as an operator/co-permittee of the municipal separate storm sewer systems (MS4) operated under State of Florida Municipal Separate Storm Sewer System National Pollutant Discharge Elimination System (NPDES) Permit No. FLS000035 (MS4 Permit), serving the City of Fort Myers:

(a) Fort Myers Central Advanced Wastewater Treatment Facility (“Central Facility”), is an 11.0 million gallons per day (MGD) annual average daily flow, 5-stage BARDENPHOTTM process domestic wastewater treatment facility with high level disinfected effluent discharging to a slow-rate public access reuse system or a surface

water outfall to the Caloosahatchee River Estuary, Class III Marine waters, (WBID# 3240B). The Central Facility is operated under Wastewater Permit No. FL0021261 ("Central Facility Permit"), which was issued on June 12, 2017, and will expire on June 11, 2022. The Central Facility is located at 1501 Raleigh Street, Fort Myers, Florida 33916, Lee County, Florida ("Central Property"). Respondent owns the Central Property on which the Central Facility is located.

(b) Fort Myers South Advanced Wastewater Treatment Facility ("South Facility"), is a 12.0 MGD annual average daily flow, BARDENPHO™ process domestic wastewater treatment facility with treated effluent discharging to the Caloosahatchee River Estuary, Class III Marine waters, (WBID# 3240A). The South Facility is operated under Wastewater Permit No. FL0021270 ("South Facility Permit"), which was issued on June 12, 2017, and will expire on June 11, 2022. The South Facility is located at 1618 Matthew Drive, Fort Myers, Florida 33907, in Lee County, Florida ("South Property"). Respondent owns the South Property on which the South Facility is located.

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

(a) Respondent reported 44 spills of untreated wastewater associated with the Central Facility. Spill details are in Exhibit A attached and incorporated to this Order. The Department finds that the discharges violated Rule 62-604.130(1), F.A.C., and Section 403.161(1)(a), F.S.

(b) Respondent reported 26 spills of untreated wastewater associated with the South Facility. One of the spills resulted in a multi-day violation of surface water quality standards caused by untreated effluent from the overflow of a malfunctioning lift station that led to surface waters. Spill details below and are in Exhibit A attached and incorporated to this Order. The Department finds that the discharges violated Rule 62-604.130(1), F.A.C., and Section 403.161(1)(a), F.S.

1) The March 16, 2020 discharge of untreated wastewater from a malfunctioning lift station, Lift Station #5, at the South Facility was reported to have totaled 183,000 gallons with no recovery, which entered Manuel's Branch, a tributary leading to the Caloosahatchee River.

(c) Respondent did not meet water quality standards, which violates

Rule 62-302, F.A.C. The Department finds that surface water standards were violated in the following manner:

1) Sampling data associated with the spill into Manuel's Branch reported on March 16, 2020 documented levels of bacteria exceeding surface water standards through March 22, 2020 as a result of the spill, violating 62-302.530(6)a, F.A.C., and 62-302.530(6)b, F.A.C.

2) Respondent had a total of 8 additional spills that violated water quality standards, specifically Rule 62-302.530(6)b, F.A.C.

(d) Respondent did not properly plug an abandoned section of ductile iron pipe, which resulted in the Manuel's Branch spill, in which 183,000 gallons of untreated wastewater entered the tributary, leading to the Caloosahatchee River. This is a violation of Rule 62-620.300(5) F.A.C.

(e) Respondent reported multiple groundwater exceedances for Total Dissolved Solids (TDS) and Arsenic from June 2018 to September 2020. Each exceedance is a violation of Rule 62-620.300(5) F.A.C., Rule 62-610.412(2) F.A.C., and Rule 62-520.420(1) F.A.C.

1) Central Facility had exceedances for TDS in December 2019, March 2020, and June 2020. Details are in Exhibit B.1 attached and incorporated to this Order.

2) Central Facility had Arsenic exceedances in June 2018, September 2018, December 2018, March 2019, June 2019, September 2019, March 2020, June 2020 and September 2020. Details are in Exhibit B.1 attached and incorporated to this Order.

(f) Respondent did not meet the Central and South Facilities' permit imposed effluent limitations on several occasions. Excessive nutrients (TN) are the primary pollutants contributing to the impairment of the Caloosahatchee River. In 2009, a nutrient Total Maximum Daily Load (TMDL) was established for the Caloosahatchee River and Estuary and in 2012 (subsequently updated in January 2020), a Basin Management Action Plan (BMAP) was adopted to address the nutrient TMDL for the Caloosahatchee River and Estuary. This portion of the Caloosahatchee River and Estuary is designated as a Class III water which is meant to be suitable for recreational use and for the propagation and maintenance of a healthy, well-balanced population of fish and wildlife. Each exceedance is a violation of Rule 62-

620.300(5) F.A.C., and Rule 62-600.410(1), F.A.C.

1) The Central Facility had Total Nitrogen exceedances in February 2019, March 2019, and September 2020. Details are in Exhibit B.2 attached and incorporated to this Order. The Central Facility is a surface water discharger to WBID# 3240B in the Caloosahatchee River, a Class III water, which is impaired for nutrients.

2) The South Facility had Total Nitrogen exceedances in March 2019, September 2019 and March 2020. Details are in Exhibit B.2 attached and incorporated to this Order. The South Facility is a surface water discharger to WBID# 3240A in the Caloosahatchee River, a Class III water, which is impaired for nutrients.

3) The Central Facility had Total Phosphorus exceedances in September 2020. Details are in Exhibit B.2 attached and incorporated to this Order. The Central Facility is a surface water discharger to WBID# 3240B in the Caloosahatchee River, a Class III water, which is impaired for nutrients.

4) The South Facility had Total Suspended Solids exceedances in September 2020. Details are in Exhibit B.2 attached and incorporated to this Order.

5) The South Facility had Total Recoverable Copper exceedances in June 2020 and September 2020. Details are in Exhibit B.2 attached and incorporated to this Order.

6) The South Facility had a Flow exceedance in September 2020. Details are in Exhibit B.2 attached and incorporated to this Order.

(g) Respondent did not address long term elevated levels of bacteria in Manuel's Branch, a tributary to the Caloosahatchee River. A review of water quality data for the creek in WBID# 3240V indicates evidence of bacteria impairment is likely due to anthropogenic causes. Respondent has not addressed or eliminated loading to waterbodies of untreated human waste, which poses a risk to human health. The Department finds that the discharges violated Rule 62-604.130(1), F.A.C., Section 403.161(1)(a), F.S., Rule 62-620.610(5) F.A.C., and Rule 62-302.300(15) F.A.C.

(h) Respondent did not take reasonable steps to control or prohibit discharges to their MS4 from the Lindell Investments construction site (aka City Walk) located at 2250 McGregor Blvd. in Fort Myers, FL. The Department finds that the discharges violated

MS4 Permit FLS000035 Part I.D. which includes a requirement to effectively prohibit non-stormwater discharges into the storm sewers within each permittee's MS4.

(i) Respondent did not effectively implement a program to reduce or eliminate Sanitary Sewer Overflows (SSO) from entering the MS4. The Department finds that the discharges violated MS4 Permit FLS000035 Part I.D. which includes a requirement to effectively prohibit non-stormwater discharges into the storm sewers within each permittee's MS4.

(j) Respondent did not effectively implement a program to reduce or eliminate unauthorized discharges from the MS4, leading to surface waters. The Department finds that the discharges violated MS4 Permit FLS000035 Part I.D. which includes a requirement to effectively prohibit non-stormwater discharges into the storm sewers within each permittee's MS4.

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:

<p>(A) Submit an Engineering Report that evaluates the SSO and related violations documented in paragraph 4, subparagraphs (a) and (b) of this Consent Order, indicating what the City is doing to prevent such future violations from occurring and confirming that the Respondent has completed operational or other enhancements that improve and increase reliability at each location where a violation occurred, as referenced in this Consent Order in paragraph 4, subparagraphs (a) and (b) and in Exhibit A. P.E. oversight (signing and sealing) is not necessary to address SSOs less than 1,000 gallons.</p>	<p>April 30, 2021</p>
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(B) Submit a list of all known pump stations connected to the City of Fort Myers that are not under the direct control of the City of Fort Myers, including the portion(s) of the Lee County collection system. Include responsible party contact information, estimated flow from the pump station, the location of the pump station, and any known complaints or problems since April 30, 2018.	June 30, 2021
(C) Fully implement a documented Capacity, Management, Operation, and Maintenance (CMOM) program in accordance with US EPA document 305-B-05-002 dated January 2005 ("Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems").	March 31, 2023
(D) Document reasonable further progress in implementing the CMOM in semiannual reports in accordance with subparagraph 5 (C) of this order.	July 31, 2021 January 31, 2022 July 31, 2022 And so on until the CMOM program is fully implemented.
(E) Provide an updated comprehensive wastewater Emergency Response Plan as part of the collection system O & M Manual for the Central and South Facilities that details the City's SSO response plans, sampling protocols, and is consistent with Rule 62-604.500, F.A.C.	June 30, 2021

<p>(F) Develop and implement a Pollutant Reduction Plan to address elevated bacteria levels in 1) Manuel's Branch watershed and 2) Billy's Creek watershed. The Plan shall include measures to identify and eliminate sources of bacteria within the City of Fort Myers and shall be submitted to the Department for review and approval.</p>	<p>July 31, 2021</p>
<p>(G) Conduct and submit a minimum of quarterly sampling data for untreated human waste indicators (HF-183 and acetaminophen at a minimum) for at least 4 quarters to the Department for the watersheds referenced in subparagraph 5 (F) above (minimum 2 stations per watershed). If untreated human waste indicators persist, quarterly source specific monitoring shall continue until clear for at least two consecutive quarters.</p>	<p>April 30, 2021 July 31, 2021 October 31, 2021 January 31, 2022 And continue until no untreated human waste indicators are detected for at least two consecutive quarters.</p>
<p>(H) Investigate the groundwater exceedances to avoid violating permit limitations in the future and provide an updated Groundwater Monitoring Plan.</p>	<p>December 31, 2021</p>
<p>(I) Permanently reduce the actual combined surface water discharges of treated effluent to the Caloosahatchee River from the City of Fort Myers Central Facility and South Facility by at least 60%, based upon the agreed upon baseline of 12.235 MGD that was calculated as the arithmetic average of the combined annual average daily flows ("AADF") for the last four Novembers [2017-2020; $(12.31+11.61+12.08+12.94)/4 = 12.235$ MGD]. This means that</p>	<p>December 31, 2023</p>

<p>after December 31, 2024, the combined AADF of surface water discharges of treated effluent to the Caloosahatchee River from the City of Fort Myers Central Facility and South Facility shall not exceed 4.9 MGD.</p>	
<p>Complete the Central Facility reuse expansion project which upgrades the facility to production of 100% reuse water. Completion of this project shall provide a reduction of at least 80% of actual combined surface water discharges based upon the above defined baseline.</p>	<p>December 31, 2025</p>
<p>Submit a written plan to permanently eliminate the remainder of the non-emergency surface water discharges of treated effluent to the Caloosahatchee River by December 31, 2028. After December 31, 2028, emergency surface water discharges shall not exceed 1.0% of the baseline defined above.</p>	<p>The written plan is due by December 31, 2025</p>
<p>(J) Submit in writing to the Department, every 6 months, a report containing information concerning the status and progress of projects completed under this Order. The report shall include projection of the work to be performed pursuant to this Order. The report shall include status update of any In-Kind projects.</p>	<p>July 31, 2021 January 31, 2022 July 31, 2022 And so on until the Consent Order is closed.</p>
<p>(K) Submit to the Department a Final Report demonstrating that all conditions and corrective actions required in this consent order have been completed.</p>	<p>December 31, 2025</p>

6. Notwithstanding the time periods described in the paragraphs above, Respondent shall complete all corrective actions required by paragraph 5 on or before December 31, 2025, and be in full compliance with Section 403.161(1)(a), F.S., and Rule 62-604, F.A.C., regardless of any intervening events or alternative time frames imposed in this Order.

7. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$514,450.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$512,450.00 for civil penalties, and \$2,000.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order.

8. In lieu of making the cash payment of \$512,450.00 in civil penalties as set forth in paragraph 7 above, 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 \$768,675.00. If Respondent chooses to implement an in-kind project, Respondent shall notify the Department of its election by certified mail within 15 days of the effective date of this Consent Order. Notwithstanding the election to implement an in-kind project, payment of the remaining \$2,000.00 in costs must be paid within 30 days of the effective date of the Consent Order.

9. If Respondent elects to implement an in-kind project as provided in paragraph 8, then Respondent shall comply with all of the requirements and time frames in Exhibit C entitled In-Kind Projects attached and incorporated to this Order.

10. 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 this Consent Order, other than unauthorized discharges. For unauthorized discharges from any part of any of the Respondent's wastewater collection and transmission systems, wastewater treatment works, reuse or disposal systems, conveyance or storage

systems, and residual management systems, Respondent agrees to pay stipulated penalties to the Department as follows:

Stipulated penalties shall be assessed according to the volume of the discharge and the number of days the discharge continued and/or impacted surface water, as shown below:

<u>Amount per Day per Discharge or</u>	<u>Discharge Volume</u>
<u>Amount per day per Water Quality Violation</u>	
\$500.00	Up to 1,000 gallons
\$1,000.00	1,001 to 5,000 gallons
\$2,500.00	5,001 to 10,000 gallons
\$5,000.00	10,001 to 25,000 gallons
\$10,000.00	in excess of 25,000 gallons

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 13, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Consent Order.

11. In lieu of making cash payment of the amount required under paragraph 10 (stipulated penalties) above, the Department, at its discretion, may allow Respondent to offset this amount by implementing an in-kind 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 and may not be a corrective action requirement of this Consent Order or otherwise required by law. 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 portion of the stipulated penalty amount for which the approved project off-sets. The Respondent shall request consideration of applying stipulated penalties toward an in-kind project within 15 days of notification by the Department that stipulated penalties are being assessed under paragraph 10. If acceptable, the Respondent shall comply with all the requirements and timeframes in Consent Order Exhibit C, entitled In-Kind Projects. If not acceptable, the Respondent will pay the stipulated penalties within 30 days of receipt of the Department's

notification that applying the stipulated penalties to an in-kind project is not acceptable.

12. In the event that Respondent elects to off-set civil penalties, including stipulated penalties, by implementing an in-kind penalty project which is approved by the Department, during the period that this Consent Order 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). Respondent shall annually certify to the Department using the Annual Certification Form located within Exhibit C to this Consent Order 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.

13. 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.

14. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Jennifer Carpenter, Assistant Director, Department of Environmental Protection, South District Office, P.O. Box 2549, Fort Myers, Florida, 33902-2549.

15. Respondent shall allow all authorized representatives of the Department access to the Facilities and the Properties at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

16. In the event of a sale or conveyance of the Facilities or of the Properties upon which the Facilities are 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 Facilities or Properties, (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 Facilities, and (c) provide a copy of this Order with all attachments to the purchaser, operator, or person(s) in control of the Facilities. The sale or conveyance of the Facilities or the Properties does not relieve Respondent of the obligations imposed in this Order.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. Respondent shall publish the following notice in a newspaper of daily circulation in Lee County, Florida. The 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 the City of Fort Myers pursuant to section 120.57(4), Florida Statutes. The Consent Order addresses the unauthorized discharges to ground and surface waters, violations to water quality standards, groundwater exceedances, effluent exceedances, chronic levels of elevated bacteria in waters of the state, and MS4 permit violations.

The Consent Order is available electronically at the following Information Portal link: <https://prodenv.dep.state.fl.us/DepNexus/public/electronic-documents/FL0021261/facility!search>. The Consent Order is also 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, 2295 Victoria Ave., Suite 364, Fort Myers, FL 33901, phone (239) 344-5600.

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 South District Office, Department of Environmental Protection, P.O. Box 2549, Fort Myers, Florida, 33902-2549. 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.

27. Rules referenced in this Order are available at

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

FOR THE RESPONDENT:

Kevin B. Anderson
Mayor, City of Fort Myers

Date

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DONE AND ORDERED this _____ day of _____, 2021, in Lee County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Jon M. Iglehart
District Director
South District

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

Clerk

Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35

EXHIBIT A
CENTRAL FACILITY

Location	Date Discharge Occurred	Spill Volume (Gal.)	Spill Characteristic	Area Affected
3970 E River Drive	12/8/2020	200	Raw Wastewater	Ground
1546 Live Oak Drive	11/30/2020	150	Raw Wastewater	Stormwater; Ground
4600 Bruce Herd Lane	11/18/2020	150	Raw Wastewater	Ground
3915 Pearl Street	11/12/2020	1,500	Raw Wastewater	Billy's Creek
1298 Polk Street	11/11/2020	2,500	Raw Wastewater	Billy's Creek
Franklin Street & Highlands Avenue	10/15/2020	500	Raw Wastewater	Ground
Jacksonville Street & MLK	10/8/2020	150	Raw Wastewater	Stormwater; Ground
1205 Alhambra Drive	9/20/2020	500	Raw Wastewater	Caloosahatchee River
3614 Clermont Street	9/8/2020	79,700	Raw Wastewater	Habitat Canal
Priscilla Lane	8/25/2020	300	Raw Wastewater	Billy's Creek
1011 Windsor Avenue	8/7/2020	500	Raw Wastewater	Billy's Creek
2208 Cranford	7/23/2020	10	Raw Wastewater	Ground
Jacksonville Street & Edison	6/22/2020	80	Raw Wastewater	Ground
2951 Blount Street	6/1/2020	15	Raw Wastewater	Ground
1642 Hill Street	4/1/2020	60	Raw Wastewater	Ground
3764 Central Avenue	3/30/2020	300	Raw Wastewater	Ground
2635 Rockfill Road	3/25/2020	100	Raw Wastewater	Ground
2976 Cleveland Avenue	3/10/2020	60	Raw Wastewater	Ground
Manhole 4484	2/17/2020	400	Raw Wastewater	Ground
850 Oleander Avenue	2/11/2020	20	Raw Wastewater	Ground
Bernwood Place Drive	1/15/2020	100	Raw Wastewater	Ground
134 Riverview Road	1/13/2020	10	Raw Wastewater	Ground
11064 Yellow Poplar	1/10/2020	50	Raw Wastewater	Ground
3051 Lafayette Street	1/2/2020	5	Raw Wastewater	Ground
1700 Monroe Street	12/13/2019	500	Raw Wastewater	Stormwater; Ground

Department of Environmental Protection v. City of Fort Myers
 Consent Order, OGC No. 20-0851

851 Dellen Lane	12/11/2019	5	Raw Wastewater	Ground
3573 Patrick Avenue	10/18/2019	15	Raw Wastewater	Ground
10500 Darlington Drive	8/30/2019	100	Raw Wastewater	Ground
2650 Edison Avenue	8/19/2019	10	Raw Wastewater	Ground
1202 Alhambra Drive	8/16/2019	200	Raw Wastewater	Caloosahatchee River
Silver Ridge Boulevard	8/14/2019	1,500	Raw Wastewater	Stormwater; Ground
1205 Alhambra Drive	8/5/2019	500	Raw Wastewater	Caloosahatchee River
Central Avenue	7/25/2019	10	Raw Wastewater	Stormwater; Ground
Warrior Way	4/24/2019	1,000	Raw Wastewater	Ground
3599 Palm Avenue	3/12/2019	50	Raw Wastewater	Ground
1536 Live Oak Drive	2/14/2019	200	Raw Wastewater	Ground
Warrior Way	2/8/2019	500	Raw Wastewater	Ground
Golfview Avenue	1/8/2019	900	Raw Wastewater	Stormwater; Ground
10541 Bellagio Drive	10/3/2018	500	Raw Wastewater	Ground
920 Zana Drive	8/21/2018	700	Raw Wastewater	Billy's Creek
3701 Nelson Tills	8/1/2018	200	Raw Wastewater	Ground
Kingsbridge Boulevard	6/26/2018	250	Raw Wastewater	Ground
1205 Alhambra Drive	6/13/2018	800	Raw Wastewater	Stormwater; Ground
3800 Michigan Avenue	4/30/2018	300	Raw Wastewater	Ground

SOUTH FACILITY

Location	Date Discharge Occurred	Spill Volume (Gal.)	Spill Characteristic	Area Affected
Chrasfield Chase & Plantation Gardens	11/18/2020	200	Raw Wastewater	Stormwater; Ground
1206 Plumosa Drive	9/21/2020	600	Raw Wastewater	Caloosahatchee River
11055 Sparkleberry Drive	8/18/2020	500	Raw Wastewater	Ground
10300 Treeline Avenue	8/5/2020	20	Raw Wastewater	Ground
2130 Ford Street	7/22/2020	20	Raw Wastewater	Ground
3704 Broadway Street	7/16/2020	100	Raw Wastewater	Stormwater; Ground
3593 Cleveland Avenue	7/2/2020	600	Raw Wastewater	Carrell Canal
3745 Broadway Street	6/1/2020	80	Raw Wastewater	Ground
10300 Queen Palm Lane	5/25/2020	19,000	Raw Wastewater	Ground
Colonial Boulevard	5/19/2020	1,000	Raw Wastewater	Ground
Canal Street & US 41	3/16/2020	183,000	Raw Wastewater	Manuel's Branch
3745 Broadway Street	3/5/2020	80	Raw Wastewater	Ground
11033 Grand Belvedere	3/2/2020	500	Raw Wastewater	Stormwater; Ground
Jackson Street & Canal Street	2/15/2020	500	Raw Wastewater	Ground
1791 Boy Scout Drive	2/12/2020	30	Raw Wastewater	Ground
1849 Maravilla Avenue	2/11/2020	800	Raw Wastewater	Stormwater; Ground
2366 East Mall Drive	12/11/2019	30	Raw Wastewater	Ground
1255 Osceola Drive	12/5/2019	20	Raw Wastewater	Ground

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Chrasfield Chase	10/2/2019	5	Raw Wastewater	Ground
1700 Matthew Drive	9/5/2019	300	Raw Wastewater	Stormwater; Ground
10453 Treeline Avenue	6/5/2019	200	Raw Wastewater	Ground
1601 Red Cedar Drive	5/21/2019	1,000	Raw Wastewater	Ground
252 Poinsettia	2/2/2019	100	Raw Wastewater	Ground
3250 Winkler Avenue	9/27/2018	5,000	Raw Wastewater	Ground
10500 Silver Ridge Boulevard	7/10/2018	300	Raw Wastewater	Ground
2310 Airport Road	7/2/2018	100	Raw Wastewater	Ground

EXHIBIT B

Exceedances

B. 1 Groundwater Exceedances - Central Facility					
Date	Description	MWC-35142	MWB-35143	MWB-35140	Limit
Sep-20	TR As	28.8	7.7		10 ug/L
Jun-20	TDS	676	608		500 mg/L
	TR As	34.3	7.7		10 ug/L
Mar-20	TDS	628	588		500 mg/L
	TR As	22	5.4		10 ug/L
Dec-19	TDS	690	548		500 mg/L
Sep-19	TR As	16.8	1		10 ug/L
Jun-19	TR As	22.2	17.6		10 ug/L
Mar-19	TR As	15.1		1	10 ug/L
Dec-18	TR As	23.2		1	10 ug/L
Sep-18	TR As	29.9		1	10 ug/L
Jun-18	TR As	24.1		3.7	10 ug/L

B. 2 Effluent Exceedances							
Facility	Monitoring Group	Date	Description	Result	Limit	Units	Statistical Base
Central Facility	D-001	9/30/2020	Nitrogen, Total	7.16	6.0	mg/L	MB - Maximum
Central Facility	D-001	9/30/2020	Phosphorus, Total	2.74	1.0	mg/L	MB - Maximum
Central Facility	D-001	9/30/2020	Solids, Total Suspended	74.4	60.0	mg/L	MB - Maximum
Central Facility	D-001	3/31/2019	Nitrogen, Total	12.7	6.0	mg/L	MB - Maximum
Central Facility	D-001	3/31/2019	Nitrogen, Total	3.87	3.0	mg/L	MK - Monthly Average

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Central Facility	D-001	2/28/2019	Nitrogen, Total	3.3	3.0	mg/L	MK - Monthly Average
Central Facility	D-001	2/28/2019	Nitrogen, Total	7.89	6.0	mg/L	MB - Maximum
South Facility	D-001	9/30/2020	Copper, Total Recoverable	4.1	3.7	ug/L	MB - Maximum
South Facility	D-001	9/30/2020	Flow	13.3	12.0	MGD	MK Monthly
South Facility	D-001	6/30/2020	Copper, Total Recoverable	4.2	3.7	ug/L	MB - Maximum
South Facility	D-001	3/31/2020	Nitrogen, Total	6.28	6.0	mg/L	MB - Maximum
South Facility	D-001	9/30/2019	Nitrogen, Total	3.2	3.0	mg/L	MK - Monthly Average
South Facility	D-001	3/31/2019	Nitrogen, Total	4.85	4.5	mg/L	WA - Weekly Average
South Facility	D-001	3/31/2019	Nitrogen, Total	3.47	3.0	mg/L	MK - Monthly Average

EXHIBIT C

In-Kind Projects

I. Introduction

Proposal

a. Within 60 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable, Respondent shall submit, 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 a senior management official for _____ (insert name of Respondent) 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 Fort Myers budget and finances. During the eighteen month period prior to the effective date of Consent Order OGC Case No.: 20-0851 there has not been any transfer or use of funds obtained by the _____ City of Fort Myers 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.: _____

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 the City of Fort Myers 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 City of Fort Myers 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.: _____

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, by certified mail, all requested additional information, clarification, and modifications within 15 days of receipt 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 the matters at issue and submit, 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 and stipulated penalties as set forth in paragraphs 7 and 10 above, within 30 days of Department notice.

e. Within 120 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable 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 Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable then Respondent shall make cash payment of the civil penalties and stipulated penalties as set forth in paragraphs 7 and 10 above, 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 entire amount of civil penalties and stipulated penalties due, no additional penalties shall be assessed under paragraphs 7 and 10 for failure to complete the requirement of Exhibit C.

i. Within 15 days of completing the in-kind project, Respondent shall notify the Department, 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 the matters at issue and submit, 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 entire amount of civil penalties and stipulated penalties due, no additional penalties shall be assessed under paragraphs 7 and 10 for failure to complete the requirements of Exhibit C.