



Florida Department of Environmental Protection

Northwest District
160 W. Government Street, Suite 308
Pensacola, Florida 32502-5740

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

October 21, 2011

BY ELECTRONIC MAIL
mike.tadros@talgov.com

Mr. Mike Tadros
General Manager, Underground Utilities
City of Tallahassee
300 South Adams Street
Tallahassee, Florida 32301

Subject: Executed First Amended Consent Order; DEP vs. City of Tallahassee;
Lake Bradford Road WWTP and T.P. Smith WRF; Permit #s FLA010140 and
FLA010139; OGC File No. 08-2519B-37-DW; Leon County

Dear Mr. Tadros:

Enclosed is a copy of the executed First Amended Consent Order, OGC File No. 08-2519B-37-DW, concerning City of Tallahassee's Lake Bradford Road wastewater treatment plant ("WWTP") and T.P. Smith water reclamation facility ("WRF").

Please note the requirements in the Consent Order for which you are responsible and fulfill all pertinent actions accordingly. Unless otherwise noted, all deadlines for completing requirements and actions in the Consent Order are to be calculated from its effective date, which is the date the Consent Order was filed with the Department Clerk, as noted on the signature page.

Mr. Mike Tadros, General Manager, Water Utility
City of Tallahassee, Lake Bradford Road WWTP and T.P. Smith WRF
OGC File No. 08-2519B-37-DW
Page 2 of 2

If you have any questions, please contact Krista McGraw at 850/595-0612, or
Krista.McGraw@dep.state.fl.us.

Sincerely,



David P. Morres, P.E.
Program Administrator
Water Facilities

DPM/km

Enclosures

c: David Childs, Hopping Green & Sams (DavidC@hgslaw.com)
Joe Cheatham, City of Tallahassee (Joe.Cheatham@talgov.com)
Charles Ziegmont, City of Tallahassee (Charles.Ziegmont@talgov.com)
DEP Northwest District Tallahassee Office
DEP Wastewater Compliance Evaluation Section

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION,)	NORTHWEST DISTRICT
)	
vs.)	OGC FILE NO. 08-2519B-37-DW
)	
CITY OF TALLAHASSEE,)	
_____)	

FIRST AMENDED CONSENT ORDER

The State of Florida Department of Environmental Protection (“Department”) and the City of Tallahassee (“Respondent”) entered into Consent Order OGC File No. 08-2519-37-DW (“Original Order”) concerning two wastewater facilities as described below (operating under Permit Nos. FLA010140 and FLA010139), which became effective on September 3, 2009. It is hereby agreed between the parties that this First Amended Consent Order (“Amended Order”) shall supersede and replace the Original Order.

The Department finds and Respondent neither admits nor denies the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to 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 thereunder, Title 62, Florida Administrative Code (“F.A.C.”). The Department has jurisdiction over the matters addressed in this Amended 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 T.P. Smith Water Reclamation Facility and the Lake Bradford Road Wastewater Treatment Plant (“Facilities”), and the associated wastewater collection/transmission systems (“Collection System”).

4. The T.P. Smith Water Reclamation Facility is a 26.5 million gallon per day permitted capacity treatment facility that serves the Tallahassee area. The facility is being modified from a conventional activated sludge facility to a four-stage Bardenpho type activated sludge process in order to meet Advance Wastewater Treatment standards. Effluent

reclaimed water is land-applied at three sprayfields in the Tallahassee area. The T.P. Smith facility is located at 3805-B Springhill Road, Tallahassee, Florida and at approximate latitude 30° 23' 29" North and longitude 84° 19' 20" West. Respondent operates the T.P. Smith facility under Department Permit No. FLA010139, which was issued on January 29, 2008, and will expire on January 28, 2013.

5. The Lake Bradford Road Wastewater Treatment Plant is a 4.5 million gallon per day permitted capacity conventional activated sludge facility. The facility is currently not in operation but remains in a state of "readiness". All flows are directed to the T.P. Smith Water Reclamation Facility for treatment and disposal. The Lake Bradford Road Facility is located at 1815 Lake Bradford Road, Tallahassee, Florida and at approximate latitude 30° 25' 38" North and longitude 84° 18' 05" West. Respondent operates the Lake Bradford Road Facility under Department Permit No. FLA010140, which was issued on January 29, 2008, and will expire on January 28, 2013.

6. On June 4, 2008, the Department was notified of an unauthorized discharge of untreated wastewater from pump station #149. The release was approximately 72,000 gallons and the result of a faulty 36-inch force main end cap. Respondent notified the State Warning Point and the Department as required by Rule 62-604.550, F.A.C., and immediately implemented corrective actions.

7. The Department finds that according to the State Warning Point, Department records, and Respondent records, that Respondent has reported an increase in unauthorized discharges from the collection system since early 2007, summarized in the table below.

Year	Total spills
2007	157
2008	184
2009	158
2010	92

8. In 2006, the Department reviewed 12 unauthorized discharges, reported by the Respondent, and determined that untreated wastewater totaling approximately 65,000 gallons

had been released. From February 2007 to September 2008, 123 unauthorized discharges of untreated wastewater have occurred totaling approximately 686,000 gallons.

9. Two events accounting for approximately 350,000 gallons of untreated wastewater discharges occurred in November 2007, and Respondent recovered most of the untreated wastewater from these events. Blockages, a result of the accumulation of grease and/or debris, account for 67% of the unauthorized discharges. The second major cause, broken pipes, accounts for 10% of the unauthorized discharges.

10. Additionally, this Amended Order addresses unauthorized discharges reported by Respondent which occurred from October 2008 through May 2010, provides a date by which Respondent will be in final compliance regarding the violations described above, and establishes stipulated penalties for unauthorized discharges occurring since June 1, 2010, and until all terms and conditions herein have been met.

11. Respondent is currently implementing two programs, the Environmental Management System Program ("EMS Program") and the Fats, Roots, Oil and Grease Program ("FROG Program"), for the purpose of reduction and prevention of future spills from the Collection System.

12. The EMS Program is associated with the Respondent's ISO 14001 Certificate Program and is a set of management processes and procedures that will help Respondent address ongoing upkeep of the Collection System in a systematic and cost-effective manner. The program can help reduce the risk of non-compliance and improve health and safety practices for employees and the public. Through the EMS Program, Respondent uses Preventative and Corrective Actions Notifications (PCANs) to provide root cause analysis of sanitary sewer overflows in order to prevent them from happening again, and Environmental Management Plans (EMPs), which are improvement projects that help reduce the impact or occurrence of spills. The Respondent achieved certification of the EMS Program for Wastewater Collections, effective January 7th 2011, and the certification is registered by NSF, International, a third party certification company.

13. The FROG Program will help reduce fats, roots, oils and grease from the Collection System through public education and outreach. Through the FROG Program, Respondent has identified seven potential residential problem areas and will address them individually.

14. On September 29, 2009, as part of the Original Order, Respondent submitted a plan for Collection System rehabilitation projects developed under the Capital Improvement Plan and Master Plan (collectively, "Plan").

a. The Plan described the activities, studies, and analyses that Respondent is undertaking or plans to undertake by September 3, 2012 including, pursuant to the EMS Program and FROG Program, identification of any conditions impairing the function of the Collection System. The Plan also described the measures that Respondent has identified, but has not undertaken, to rehabilitate impaired conditions of the Collection System and improve the system's function. Respondent began seeking certification of its EMS Program by March 1, 2010, as required by the Original Order, and obtained certification on January 7, 2011.

b. The Plan did not state that a comprehensive evaluation of the Collection System would be completed by Respondent, nor did the Original Order require that Respondent perform such an evaluation.

c. Notwithstanding there being no requirement to do so, Respondent voluntarily engaged in a comprehensive evaluation of its collection and transmission systems including completion of a 2030 Master Sewer Plan. This evaluation, which has been summarized in a report to the Department, included analysis utilizing smoke testing, flow monitoring, hydraulic capacity analysis, inflow/infiltration analysis, visual inspections of pipes and manholes, and closed circuit television ("CCTV") inspection. As a result of this effort the Respondent has achieved a significant reduction in unauthorized discharges and based on the results of this previous work, determined that the most effective method to further reduce unauthorized discharges will be to focus additional evaluation and rehabilitation on the specific areas of the collection

system where vitrified clay pipe was utilized. In support of this determination, on June 30, 2011, Respondent submitted a report to the Department entitled "Report to Substantiate Need for Focus of Future Evaluation and Rehabilitation on the Vitrified Clay Pipe Sections of the Wastewater Collection System."

d. On July 28, 2011, Respondent reported that as of June 30, 2011, it has evaluated a total of 864,747 feet of the vitrified clay pipe, and that it has a remaining 1,229,326 feet to inspect. Respondent will continue to evaluate and rehabilitate the clay pipe portions of the Collection System using a three step approach. First Respondent cleans the pipes and vacuums out the debris, if warranted, to ensure the line is free of obstruction prior to inspection. Respondent then conducts a CCTV inspection of the pipe. Structural defects are identified using the computer software program called Pipeline Observation System Management (POSM) and the Pipeline Assessment Certification Program ("PACP") for pipeline evaluation. The severity of each defect identified in the clay pipe is graded using PACP's numerical scale of 1 to 5. The PACP grades are defined as follows:

Grade	Definition
5	Pipe segment has failed or will likely fail within the next 5 years. Pipe segment requires immediate attention.
4	Pipe segment has severe defects with the risk of failure within the next 5-10 years.
3	Pipe segment has moderate defects. Deterioration may continue, but not for 10 to 20 years.
2	Pipe segment has minor defects. Pipe is unlikely to fail for at least 20 years.
1	Pipe segment has minor defects. Failure is unlikely in the foreseeable future.

Respondent repairs and replaces portions of the pipe with Grade 5 defects.

Having reached a resolution of the matter, the Department and Respondent mutually agree and it is

ORDERED:

15. Respondent shall implement recommendations in the collection system master plan to reduce unauthorized discharges and to improve the function of the Collection System as follows:

- a. By September 3, 2012, Respondent shall complete the Projects identified in the 36-month Collection System Evaluation and Rehabilitation Plan required by Paragraph 13 of the Original Order.
- b. By December 31, 2013, Respondent shall complete construction of the Blair Stone Force Main Bypass to provide additional redundancy to the Respondent's Collection System and shall notify the Department of the completed construction within 30 days of the completion date.
- c. By December 31, 2014, Respondent shall complete an evaluation of the gravity system having vitrified clay pipe and submit a rehabilitation plan. The plan shall include the following.
 - i. A list of all deficiencies that were identified during the clay pipe evaluation as Grade 3, 4 and 5 defects using the POSM evaluation system, clearly specifying which deficiencies have been corrected and which deficiencies remain.
 - ii. Identification of projects that will correct any remaining, uncorrected Grade 5 defects, including cost estimates, ranking and prioritization, and a capital project plan for funding the projects.
- d. The Department will review the rehabilitation plan to determine whether Respondent has made satisfactory progress on reducing and planning to reduce unauthorized discharges and improving the functioning of the Collection System. Respondent shall respond to written requests for additional information within 30 days of receipt of the request.
- e. By December 31, 2021, Respondent shall complete the projects in the rehabilitation plan necessary to correct all the remaining defects identified by POSM as

a Grade 5. Within 30 days of completion, Respondent shall submit notification to the Department that all of the Grade 5 Priority Projects are complete.

f. Upon satisfactory completion of items 15 (a), (b), (c), and (e) above, as determined by the Department, this amended order may be closed. The Department shall notify the Respondent of its decision regarding the closure of this Amended Order within 30 days of receiving notification that Respondent has completed all corrective actions required by paragraph 15.

g. Respondent shall complete all the requirements of this Amended Order and shall be in full compliance with Rule 62-604.130(1), F.A.C., by no later than January 30, 2022.

16. Every calendar quarter following the effective date of this Amended Order and until this Order is closed, Respondent shall submit a written report to the Department containing information concerning the status and progress of projects being completed under this Amended Order and information as to compliance or noncompliance with the applicable requirements of this Amended Order including construction requirements, unauthorized discharges, and any reasons for noncompliance. These reports shall include a summary of any unauthorized spills that occurred during the reporting period along with an evaluation of the causes of the spills and any measures taken to reduce their occurrence. The reports shall be submitted to the Department within 30 days following the end of the calendar quarter. If the Department requests additional information or clarification on the progress reports, Respondent shall submit additional information within 30 days of receipt of written notice.

17. 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 Amended Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the properties or Facilities, (1) notify the Department of such sale or conveyance, (2) provide the name and address of the purchaser, or operator, or person(s) in control of the Facilities, and (3) provide a copy of this Amended Order with all attachments to the new owner(s). The sale or

conveyance of the Facilities or the properties upon which the Facilities are located shall not relieve Respondent of the obligations imposed in this Amended Order.

18. On September 21, 2009, Respondent paid \$1,500.00 in settlement of the matters addressed in the Original Order. This amount included civil penalties of \$1,000.00 for violation of Rule 62-604.130(1), F.A.C. and \$500.00 for costs and expenses incurred by the Department. In addition to the amounts already paid, Respondent agrees to pay stipulated penalties in accordance with paragraph 19. Respondent shall, within 60 days of the effective date of this Amended Order, pay \$36,500.00 in stipulated penalties for violations of Rule 62-604.130(1), F.A.C. which occurred from October 2008 through May 2010. Within 60 days of the effective date of this Amended Order, Respondent shall pay the Department \$500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Amended Order.

19. Respondent agrees to pay the Department stipulated penalties in accordance with the schedule set forth below. Except for those Delayed Payments agreed to by the Department, as described in subparagraph 19.d., within 60 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to "The Florida Department of Environmental Protection" by cashier's check, money order, or City check and shall include thereon the notations "OGC No. 08-2519" and "Ecosystem Management and Restoration Trust Fund." Payment shall be sent to the address provided in paragraph 25. The Department may make demands for payment at any time after violations occur and may assess penalties retroactively to include any unauthorized discharges that have occurred since June 1, 2010. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Amended Order.

a. 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 paragraphs 15, 16, 17, 20, 21 and 23 of this Amended Order.

b. For unauthorized discharges from either of the Facilities or the Collection System that do not qualify as Excusable Discharges, as defined in subparagraph 19.c., Respondent agrees to pay penalties as follows:

<u>i. Amount per day per Discharge</u>	<u>Discharge Volume</u>
\$500.00	up to 5,000 gallons
\$1,000.00	5,001 to 10,000 gallons
\$2,500.00	10,001 to 25,000 gallons
\$5,000.00	25,001 to 100,000 gallons
\$10,000.00	in excess of 100,000 gallons

c. Under this paragraph, the term “day” shall mean each successive 24-hour period subsequent to the commencement of the unauthorized discharge. Each unauthorized discharge shall be considered to have ceased when the release from the Collection System has ceased. The Department will evaluate each unauthorized discharge on a case-by-case basis and the Department may decide not to collect or may decide to reduce or increase the stipulated penalty amount. An evaluation will determine whether the unauthorized discharge reached surface waters, was of treated effluent, and/or was beyond Respondent’s reasonable control; whether Respondent is exercising prudent wastewater utility practices to reduce the frequency of unauthorized wastewater discharges; and whether Respondent took aggressive actions to reduce the environmental impact of the unauthorized discharge(s). A stipulated penalty will be applied to any unauthorized discharge where Respondent fails to provide the Department with sufficient information to demonstrate that the unauthorized discharge qualifies as an excusable discharge. For the purposes of this Amended Order, an excusable discharge is an unauthorized discharge that resulted from a temporary, exceptional incident that was beyond the reasonable control of Respondent (“Excusable Discharge”). Excusable Discharges include, but are not limited to the following:

- i. Exceptional acts of nature, including rainfall equal to a minimum of a 10-year, 24-hour storm event, hurricanes, tropical storms, tornadoes, wild fires, lightning strikes, or other events where a state of emergency is declared.

- ii. Actions by third parties unrelated to Respondent, including construction accidents, vehicular accidents, or vandalism.
- iii. Blockages that could not be prevented by reasonable measures and due diligence.
- iv. Unforeseen sudden structural, mechanical, or electrical failure that could not be avoided by reasonable measures and due diligence.

d. Respondent may delay payment of stipulated penalties for unauthorized discharges that Respondent contends are caused by third parties unrelated to Respondent, and for which Respondent has initiated a legal proceeding seeking relief from a third party for the stipulated penalties sought by the Department. Within 30 calendar days of the Department's demand for payment of stipulated penalties, Respondent shall submit in writing to the Department a notice that Respondent is seeking relief from a third party for the stipulated penalties, and request a Delayed Payment ("Notice"). The Notice shall include the date, the location, the State Warning Point number for the unauthorized discharge, if applicable, a summary of the event, and documentation verifying that the legal proceeding for relief has been initiated. The written Notice shall be submitted to the Department at the address specified in paragraph 25, below. If the parties agree that the unauthorized discharge was caused by a third party unrelated to Respondent, and was beyond the reasonable control of Respondent, the Department will extend the time for payment of stipulated penalties to 60 days subsequent to conclusion of Respondent's legal proceeding for relief, but no later than one year from the last day of the calendar quarter in which the unauthorized discharge occurred ("Delayed Payment"). The agreement for Delayed Payment of stipulated penalties must identify the specific unauthorized discharge for which the Delayed Payment is approved, a demand for payment of the stipulated penalties, and the Delayed Payment due date. Respondent's failure to comply with the Notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's

right to request a Delayed Payment of stipulated penalties for unauthorized discharges caused by third party actions.

e. If the Department is required to file a lawsuit to recover stipulated penalties, the Department will not be foreclosed from seeking civil penalties for violations of this Amended Order in an amount greater than the stipulated penalties due under this paragraph.

20. In lieu of making cash payment of stipulated penalties for unauthorized discharges as set forth in paragraphs 18 and 19 above, Respondent may elect to offset stipulated penalties owed by implementing a pollution prevention project, which must be approved by the Department. A pollution prevention project must be either a source reduction, waste minimization, or on-site recycling project. If Respondent chooses to implement a pollution prevention project to offset the stipulated penalty described in paragraph 18 and 19, above, Respondent shall notify the Department of its election by certified mail within 15 days of the effective date of this Amended Order. For stipulated penalties assessed subsequent to the effective date of this Amended Order, Respondent shall notify the Department of its desire to implement a pollution prevention project by certified mail within 15 days of the date of the Department's demand for stipulated penalties. The Department may approve or deny Respondent's election to implement a pollution prevention project in lieu of the stipulated penalties. The Department will notify Respondent in writing if the Department does not approve of Respondent's election to implement a pollution prevention project. If Respondent elects to implement a pollution prevention project and the Department does not object to Respondent's election to do so, then Respondent shall comply with all of the requirements and time frames in Attachment A, entitled Pollution Prevention Projects.

21. In lieu of making cash payment of stipulated penalties for unauthorized discharges as set forth in paragraph 18 and 19 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 stipulated penalty off-set amount. 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 Department's demand for stipulated penalties. Notwithstanding the election to implement an in-kind project, payment of the remaining \$500.00 in costs must be paid within 30 days of the effective date of this Amended Order. If Respondent elects to implement an in-kind project as provided in this paragraph then Respondent shall comply with all of the requirements and time frames in Attachment B, entitled In-kind Projects.

22. 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 Amended 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. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall 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 be a cause 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 orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and 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 for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or

minimize delay. Failure of Respondent to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Amended Order.

23. Respondent shall publish the following notice in a newspaper of daily circulation in Leon County, Florida. The notice shall be published one time only within 15 days following the effective date of the Amended Order by the Department. Within 30 days of publication, Respondent shall provide the Department with an affidavit of publication, which should include the name of the newspaper, the date of publication, and original newsprint clipping of the notice.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

NOTICE OF CONSENT ORDER

The Department of Environmental Protection gives notice of agency action of entering into an Amended Consent Order with the City of Tallahassee pursuant to Section 120.57(4), Florida Statutes. The Amended Consent Order addresses the unauthorized discharges from the City's sanitary sewer system and 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, 160 West Government Street, Suite 308, Pensacola, Florida 32502-5740.

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

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

- a) The OGC Number assigned to this Amended 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 Amended Consent Order;
- d) A statement of when and how the petitioner received notice of the Amended 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 Amended Consent Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Amended 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 Amended 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 the address indicated in Paragraph 25, below. 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 Amended 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 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. Respondent shall allow all authorized representatives of the Department access to the property and facility at reasonable times for the purpose of determining compliance with the terms of this Amended Order and the rules and statutes of the Department.

25. Except as otherwise provided, all submittals and payments required by this Amended Order shall be sent to the Florida Department of Environmental Protection, Water Facilities Program Administrator, Northwest District Office, 160 West Government Street, Suite 308, Pensacola, Florida 32502-5740.

26. This Amended Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Amended 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.

27. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the terms of this Amended Order, including but not limited to undisclosed releases, contamination, or polluting conditions. In the event that the Department initiates such actions pursuant to this paragraph, Respondent reserves all of its rights and defenses to challenge or respond to such legal action as appropriate.

28. The terms and conditions set forth in this Amended 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 Amended Order shall constitute a violation of Section 403.161(1)(b), F.S.

29. Respondent is fully aware that a violation of the terms of this Amended Order may subject Respondent to judicial imposition of damages, civil penalties up to \$10,000.00 per day per violation, and criminal penalties.

30. Entry of this Amended Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.


31. No modifications of the terms of this Amended Order shall be effective until reduced to writing and executed by both Respondent and the Department.

32. 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 Amended Order. Respondent acknowledges its right to appeal the terms of this Amended Order pursuant to Section 120.68, F.S., and waives that right upon signing this Amended Order.

33. This Amended 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 Amended Order will not be effective until further order of the Department.

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

FOR THE RESPONDENT:



Mr. Mike Tadros
General Manager of Underground Utilities
City of Tallahassee


10/14/2011

DATE

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this 21ST day of OCTOBER, 2011, in Escambia County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Emile D. Hamilton
Director
Northwest District

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



Clerk

10/21/11

Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35

Exhibit A

Pollution Prevention Projects

I. Introduction

1. Pollution Prevention (“P2”) is a process improvement that reduces the amount of pollution that enters the environment by conserving resource (including water, raw materials, chemicals, and energy) use, or by reducing waste (including domestic and industrial wastewater, solid and hazardous waste, and air emissions). A P2 project must reduce pollution or waste within the process beyond what is required by federal, state, or local law, in order to be eligible for stipulated penalty offset under this Amended Order. For every creditable \$1.00 spent on the Department approved P2 project, the Respondent shall receive a credit of \$1.00 against the portion of the stipulated penalty that can be offset. Whereas P2 projects are evaluated on the basis of the amount of pollution they eliminate, P2 projects usually have the added benefit of reducing production and disposal costs and regulatory oversight.

2. A P2 project can be classified as source reduction, waste minimization, and on-site recycling. Source reduction provides the greatest P2 benefit, while on-site recycling provides the least. These categories are defined further below.

3. Because P2 projects must be designed to reduce waste at the facility, P2 projects do not include projects that involve off-site recycling. In addition, P2 projects do not involve treatment prior to discharge, or disposal by landfilling or incineration.

A. Source Reduction

A source reduction project replaces materials or processes that produce pollution with materials or processes that cause less pollution. The ideal situation is to produce goods or services with no pollution. Source reduction has the most benefit for the environment among the P2 project options and usually requires the greatest change in the production process.

B. Waste Minimization

A waste minimization project reduces the generation of unusable by-products (air emissions, wastewater, or solid or liquid wastes). Waste minimization strategies involve reducing resource use and minimizing waste generation on site that result in a net decrease in the release of chemicals to the environment.

C. On-Site Recycling

On-site recycling projects reuse materials that are the source of pollution. Process materials are reused directly or indirectly in the original or some other process within the facility.

II. The P2 Project Approval Process

1. In order to adequately evaluate the P2 project options, the Department must understand the facility processes, material use, waste streams, options available, projects proposed, and estimated waste and cost savings.

2. The P2 project is typically implemented in a five-step process. First, the Respondent must prepare and obtain the approval of a P2 Opportunity Assessment (“Assessment”). Second, the Respondent must prepare and obtain the approval of a P2 Project Plan (“Project Plan”) based upon the findings in the Assessment. Third, the

Respondent must construct or implement the approved Project Plan. Fourth, the Respondent must submit a P2 Final Report (“Final Report”) to the Department that summarizes the P2 modifications or improvements, benefits, and allowable costs. Finally, the Department approves or disapproves the offset of the penalty. All of these steps and the timeframes are discussed in detail below.

A. The P2 Opportunity Assessment

1. Within 60 days of the date of the Department’s demand for stipulated penalties, the Respondent shall submit an Assessment to the Department for review and approval. The Assessment provides the basis for identifying, comparing, and evaluating P2 opportunities at the facility. The Assessment should be divided into two sections:

a. An audit of current facility practices and their associated waste streams that shall identify where improvements can be made and provide a baseline for measuring changes, and

b. A complete evaluation of all available options for improvement regardless of their feasibility, a feasibility determination, and an environmental determination of acceptable options. These options will then be evaluated for economic and technical practicality, and environmental benefit.

2. The Assessment shall include a table by which all the processes can be compared. The table shall include brief descriptions of the processes, P2 options, resources consumed, waste streams, and P2 benefits. The table shall be supplemented by more in-depth descriptions that will allow the Department to evaluate the P2 options for each process. Because the P2 project will be evaluated by the amount of pollutants removed from the environment, the comparative units shall be in weight per unit time or

volume per unit time. Concentrations are not appropriate units. The time unit used to calculate the amount of pollutants removed should be sufficiently large to average out abnormalities. All waste should be considered, including solid and hazardous wastes, wastewater, and air emissions. Raw materials, water, chemicals, and energy use should be similarly examined.

3. The *Current Facility Practices* section of the Assessment shall include:
 - a. Location and name of the facility and a brief description of what is done there;
 - b. Contact information for personnel who provided information, analysis, background data, or expertise for the Assessment;
 - c. Identification and description of processes or operations producing waste streams;
 - d. Mass balances that identify and quantify input materials for each process, materials consumed during each process, and waste streams produced from each process;
 - e. Simple flow charts or diagrams for each process; and
 - f. Supporting documentation such as waste profile sheets.
4. The *Improvement Options Evaluation* section of the Assessment shall include a comprehensive list of the following P2 options and the corresponding considerations for each process that produces a waste stream:
 - a. Process Elimination - Can an acceptable product be achieved without this process?

- b. Process Substitution - Can an acceptable product be achieved with a cleaner process?
- c. Input Material Substitution - Can a less polluting chemical or substance be used in the process?
- d. Waste Reduction - Can the process be run with less waste?
- e. In-process Recycling/Reuse - Can used process materials be used instead of virgin materials in the same process?
- f. Out-process Recycling/Reuse - Can used process materials, instead of virgin materials, be reused in another process within the facility?
- g. Waste Segregation - Will the segregation of wastes result in any usable waste products?
- h. Improved Maintenance - Can facility operations be run more efficiently with improved equipment maintenance?
- i. Improved Operational Procedures and/or Scheduling - Will improving facility operational procedures and/or scheduling reduce the generation of waste?
- j. Improved Equipment Layout, Piping and or Automation - Will upgrading facility process equipment reduce the generation of waste?

5. The *Pollution Prevention Opportunity Assessment* section of the Assessment shall also consider and record all P2 options. This consideration shall include:

- a. A description of each process;
- b. A description of any P2 option considered for each process;
- c. The technical feasibility of each P2 option;

- d. The approximate cost of implementing process modifications or changes;
- e. A quantitative description of the materials and wastes to be reduced;
- f. A quantitative description of any waste streams that will increase;
- g. Other benefits such as economic return; and
- h. Supporting documentation such as Material Safety Data Sheets (“MSDS”), material purchasing and use records, waste stream analytical test results, recycling, treatment or disposal records, or vendor information on proposed new equipment.

6. The Department will review the Assessment and either approve or disapprove with comments. If the Department disapproves the Assessment, the Respondent shall resubmit the Assessment that is responsive to the comments. If after one re-submittal the Assessment is not approved or if the Respondent does not resubmit, the Respondent shall pay the balance of the allowable amount of the stipulated penalty in accordance with the Amended Order.

B. P2 Project Plan

1. Within 60 days of approval of the Assessment, the Respondent shall submit a detailed P2 Project Plan based on the approved Assessment, particularly section II, Pollution Prevention Opportunity Assessment. The Project Plan shall describe in detail the current operation of the particular process that will be part of the P2 Project. The process description will aid in the P2 Project’s design and provide a benchmark for measuring the P2 Project’s success. The Project Plan shall include four sections:

background information, project description, environmental and economic benefits, and a schedule for implementation.

2. The *Background* section of the Project Plan shall include the following:
 - a. Flow diagram of the process;
 - b. Mass balance of the process; and
 - c. Current operating costs including those for material procurement, maintenance, operation, utilities, and waste disposal.

3. The *Project Description* section of the Project Plan shall include the following:
 - a. Description of process modification;
 - b. Any modifications to the flow diagram;
 - c. Mass balance for the new process;
 - d. Itemized costs of implementing the project including the design, capital equipment, installation, testing, training, and total project cost;
 - e. Costs of operating and maintaining the project once it is complete; and
 - f. Documentation that supports the costs such as vendor literature and price quotes, research, and endorsements.

4. The *Environmental and Economic Benefits* section of the Project Plan shall describe in detail each material use and waste stream eliminated or reduced, and each material use and waste stream created or increased:
 - a. Type of material or waste;
 - b. Mass (weight or volume) reduction/increase in materials and wastes per unit time;

c. Mass (weight or volume) reduction/increase in materials and wastes per unit of production;

d. Method of material re-use/waste management;

e. Expected financial incentives and monetary gains;

f. Supporting documentation.

5. The *Schedule for Implementation* section of the Project Plan shall contain a brief discussion of the steps necessary to implement the project and expected dates of completion. The schedule shall include milestones, anticipated problems and options, and the project completion date. The implementation should take no longer than six months from approval of the Project Plan.

6. The Department will review the Project Plan and either approve or disapprove with comments. If the Department disapproves the Project Plan, the Respondent shall resubmit a Project Plan that is responsive to the comments. If after one re-submittal the Project Plan is not approved or if the Respondent does not resubmit, the Respondent shall pay the balance of the allowable amount of the stipulated penalty in accordance with the Amended Order.

C. Implementation of the P2 Project Plan

Within 30 days of approval of the P2 Project Plan, the Respondent shall begin implementation of the P2 Project in accordance with the approved schedule.

D. Progress and Final Reports

1. Within 90 days of approval of the Project Plan, the Respondent shall submit a progress report to the Department that describes the Respondent's progress in

implementing the P2 Project and meeting the requirements in the Project Plan and includes a list of equipment ordered, purchased, and/or installed.

2. Within 180 days of approval of the Project Plan, the Respondent shall submit to the Department a Final Report that includes the following:

- a. An update on the information required in the *Environmental and Economic Benefits* section of Project Plan;
- b. A description of the methods used to quantify wastes;
- c. An expense report, receipts, and other documents itemizing costs expended on preparing and implementing the project, which are described in section E below.

3. The Department will review the Final Report and determine:

- a. Whether the project has been implemented in accordance with the approved P2 Project Plan; and
- b. Which expenses apply toward pollution prevention credits.

4. If the P2 Project Plan is approved by the Department and properly implemented, a \$1.00 pollution prevention credit for each \$1.00 spent on applicable costs will be applied against the portion of the stipulated penalty that can be offset.

E. Final Accounting and Stipulated Penalty Offset

1. The following costs are allowable to offset the allowable amount of the stipulated penalty:

- a. Preparation of the P2 Project;
- b. Design of the P2 Project;
- c. Installation of equipment for the P2 Project;

- d. Construction of the P2 Project;
 - e. Testing of the P2 Project;
 - f. Training of staff concerning the implementation of the P2 Project; and
 - g. Capital equipment needed for the P2 Project.
 2. The following costs shall not apply toward P2 credit:
 - a. Costs incurred in conducting a waste audit;
 - b. Maintenance and operation costs involved in implementing the P2 Project;
 - c. Monitoring and reporting costs;
 - d. Salaries of employees who perform their job duties;
 - e. Costs expended to bring the facility into compliance with current law, rules, and regulations;
 - f. Costs associated with a P2 Project that is not implemented;
 - g. Costs associated with a P2 Project that has not been approved by the Department; and
 - h. Legal costs.
 3. If any balance remains after the entire P2 credit is applied to the allowable portion of the stipulated penalty, Respondent shall pay the difference within 30 days of receipt of written notification by the Department to the Respondent that the balance is due.
 4. The Department may terminate the P2 Project at any time during the development or implementation of it, if the Respondent fails to comply with the requirements in this document, act in good faith in preparing and implementing the

project, or develop and implement the P2 Project in a timely manner. The Respondent may terminate the P2 Project at any time during its development or implementation.

5. If the P2 Project is terminated for any reason, Respondent shall pay the full balance of the allowable portion of the stipulated penalty within 30 days of receipt of written demand by the Department.

6. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the P2 Project Plan shall include the following language, "This project was undertaken in connection with the Florida Department of Environmental Protection for violations of Florida's environmental laws."

Exhibit B

In-kind Projects

I. Introduction

An in-kind project

a. Within 120 days of the Department's demand for payment of stipulated penalties, 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.

b. 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 receipts of written notice.

c. 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, 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 stipulated penalties as set forth in paragraph 18 and 19 above, within 30 days of receipt of Department notice.

d. Within 120 days of the Department's demand for payment of stipulated penalties, 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 Department's demand for payment of stipulated penalties, then Respondent shall make cash payment of the stipulated penalties as set forth in paragraph 18 and 19 above, within 30 days of receipt of Department notice.

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

f. 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.

g. 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 stipulated penalties shall be due from the Respondent to the Department within 30 days of receipt of Department notice.

h. 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.

i. 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, 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 receipt of Department notice.