|  |  |  |
| --- | --- | --- |
|  |  |  |

**[Date will be inserted upon mailout]**

|  |  |  |
| --- | --- | --- |
| Florida Department of Environmental Protection logo | **Florida Department of****Environmental Protection**Bob Martinez Center2600 Blair Stone RoadTallahassee, FL 32399-2400 | **Ron DeSantis**Governor**Jeanette** **Nuñez**Lt. Governor**Alexis A. Lambert**Secretary |

PERMITTEE CONTACT

NAME

ADDRESS

Email

SUBJECT: Proposed Settlement Offer

*Department of Environmental Protection v. Permittee Name*

Facility: [Name] (Facility #)

OGC File No.: XX-XXXX

Dear \_\_\_\_\_\_\_\_\_\_:

Enclosed is a proposed Consent Order No. XX-XXXX, to resolve [Permittee Name]’s failure to conduct and submit quarterly analytical stormwater monitoring for the [Facility Name] facility, as required by the NPDES Multi-Sector Generic Permit for Stormwater Discharge Associated with Industrial Activity No. [Facility #]. The Department is offering this Consent Order to resolve the above-referenced noncompliance issues without the need for formal enforcement or litigation.

If [Permittee Name] wishes to resolve the noncompliance issues by entering into the Consent Order, an authorized representative of [Permittee Name]must sign and return the enclosed Consent Order to the Department within 15 days of receipt. The Department will then countersign the Consent Order, file it with the agency clerk, and forward you a copy for your records. If the Department does not receive the signed Consent Order from [Permittee Name] within this time period, the Department must assume that [Permittee Name] is not interested in settling this matter and may initiate formal enforcement proceedings.

 [Permittee Name]’s continued cooperation in resolving this matter is appreciated. If you have any further questions, please contact [FDEP Contact Name] at (850) 245-XXXX or [FDEP Contact Email].

Sincerely,

Cindy Mulkey, Deputy Director

Division of Water Resource Management

Enclosure:

* Consent Order No. XX-XXXX

cc: File [Facility #]

If Permittee is a corporation (Inc./LLC/LP)

Copy Permittee’s Registered Agent

BEFORE THE STATE OF FLORIDA

DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT ) IN THE OFFICE OF THE

OF ENVIRONMENTAL PROTECTION ) DIVision of water

 ) resource MANAGEMENT

 )

v. ) OGC FILE NO.: XX-XXXX

 )

PERMITTEE )

 )

**CONSENT ORDER**

 This Consent Order (Order) is entered into between the State of Florida Department of Environmental Protection (Department) and [Permittee Name] (Respondent), pursuant to Section 120.57(4), Florida Statutes, to settle certain matters at issue between the Department and Respondent.

 The Department finds and Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida’s air and water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes (Fla. Stat.), and the rules promulgated thereunder in Title 62, Florida Administrative Code (Fla. Admin Code). The Department has jurisdiction over the matters addressed in this Order.

2. Respondent is a Florida/foreign for-profit corporation with its principal place of business located at [Permittee Corporation Address], Florida [zip] and is a “person” within the meaning of Section 403.031(5), Fla. Stat. Respondent’s Registered Agent is [Permittee’s Registered Agent], [Permittee’s Registered Agent's Address], Florida [zip].

 3. Respondent owns and operates [Facility Name], which engages in industrial activities, such as the [Description of Facility operations] (Facility). The Facility is located at [Facility Address], \_\_\_\_ County, Florida [zip] (Property). Respondent’s Facility contact on file with the Department is [Facility Contact Name], [Facility Contact Address], Florida [zip].

4. Industrial activities conducted at the Facility are covered under Standard Industrial Classification (SIC) Code [Insert SIC Code], [Insert SIC Code Description]. Respondent operates the Facility under Sector X of the National Pollutant Discharge Elimination System (NPDES), *Multi-Sector Generic Permit for Stormwater Discharge Associated with Industrial Activity* (MSGP),No. [Facility #], which was issued on [date], 20XX, and expires on [date], 20XX (Permit). Activities at the Facility are exposed to stormwater and the stormwater runoff discharges into the [discharge location description].

5. The Permit requires that Respondent conduct quarterly analytical monitoring during years 2 and 4 of the permit period and submit Discharge Monitoring Reports (DMRs) for the previous year’s analytical monitoring by March 31 of Year 3 (March 31, 20xx) and Year 5 (March 31, 20xx).

6. Respondent failed to conduct and submit quarterly analytical monitoring during Year 2 (calendar year 20xx) of its permit cycle and also failed to submit those results to the Department as required by Sector L of the Permit and Florida Administrative Code Rules 62-621.300(5)(e) and 62-621.250(1).

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

**ORDERED:**

7. Respondent shall comply with all of the following corrective actions, within the time periods set out herein:

**(a)** **Commencing immediately and henceforth,** Respondent shall comply with all Department rules and statutes regarding NPDES and environmental permitting, including but not limited to Chapter 403, Fla. Stat., and the rules promulgated thereunder in Title 62, Fla. Admin, Code.

**(b)** **Commencing immediately and henceforth,** Respondent shall conduct all required sector-specific analytical monitoring, pursuant to the MSGP and Florida Administrative Code Rule 62-621.300(5)(a), during Year 4 of the Facility’s permit (calendar year 20xx).

**(c) No later than DATE**, Respondent shall submit accurate and complete Year 4 DMRs, pursuant to Florida Administrative Code Rule 62-621.300(5)(a) and (e).

**(d)** **Within 30 days of the effective date of this Order**, Respondent shall submit payment in the amount of **$X,XXX.00** to the Department in settlement of the matters addressed in this Order. This amount includes: (i) $x,xxx.00 in administrative penalties for violations of Florida Administrative Code Rules 62-621.300(5)(e) and 62-621.250(1); and (ii) $xxx.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order. Payment shall be made by cashier's check, money order or online e-check. Cashier’s check or money order shall be made payable to the “*Florida Department of Environmental Protection*”, include both the notations *“OGC No. XX-XXXX”* and *“Water Quality Assurance Trust Fund”*, and submitted to the Department in accordance with Paragraph 8 herein. Online payments by e-check can be made by going to the DEP Business Portal at: <http://www.fldepportal.com/go/pay/>. Please note it will take a number of days after this order becomes final, effective and filed with the Clerk of the Department before ability to make online payment is available.

 [INSERT Additional Corrective Actions If Required]

8. Except as otherwise provided, all submittals and payments required by this Order shall be sent to: Department of Environmental Protection, 2600 Blair Stone Road, MS# 2511, Tallahassee, Florida, 32399-2400, Attention: [FDEP Contact Name], or electronically to: [FDEP Contact Email or Program General Email]. All submittals shall include the notations *“OGC No. XX-XXXX”* and *“Facility No.”*

9. Respondent agrees to pay the Department stipulated penalties in the amount of $500.00per day, per violation, for each and every day the Respondent fails to timely comply with any of the requirements of this Order. A separate stipulated penalty shall be assessed for each violation of this Order. Any stipulated penalties assessed under this Paragraph shall be in addition to the penalties, fees and/or costs agreed to in Paragraph 7(d) of this Order. Within 30 days of a written demand from the Department, the Respondent shall submit payment of the appropriate stipulated penalties in accordance with Paragraph 7(d). The Department may demand stipulated penalties at any time after violations occur. Nothing in this Paragraph shall prevent the Department from filing suit to specifically enforce any term of this Order. Should the Department be required to initiate a lawsuit to recover stipulated penalties under this Paragraph, the Department shall not be foreclosed from seeking civil penalties for violations of this Order in an amount greater than the stipulated penalties set out in this Paragraph.

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

11. This Order only addresses violations of the rules and statutes of the Department. Entry of this Order does not constitute a permit from the Department.

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

13. If any event, including administrative or judicial challenges by third parties unrelated to the 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 the 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 (7) calendar days of oral notification to the Departments, 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 Order.**

14. 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.

15. 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.

16. 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.

17. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, Fla. Stat., on the terms of this Order. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to section 120.68, Fla. Stat.

18. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, Fla. Stat. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), Fla. Stat.

19. 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.

20. This Consent Order is a final order of the Department pursuant to section 120.52(7), Fla. Stat., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Fla. Stat. Upon the timely filing of a petition, this Order will not be effective until further order of the Department.

21. Persons who are **not** parties to this Order but whose substantial interests are affected by it have a right, pursuant to Sections 120.569 and 120.57, Fla. Stat., to petition for an administrative hearing on it. The Petition must contain the information set forth below and 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 Department Office named above at the address indicated. **Failure to file a petition within 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Fla. Stat.**

The petition shall contain the following information:

1. The Department’s Consent Order identification number (XX-XXXX) and the county (county) in which the subject matter or activity is located;
2. The name, address, telephone number and email address of each petitioner;
3. The name, address, telephone number and email address of each petitioner’s representative (if any), which shall be the address for service purposes during the course of the proceeding;
4. An explanation of how the petitioner’s substantial interests will be affected by the Consent Order;
5. A statement of when and how the petitioner received notice of the Consent Order;
6. A statement of all material facts disputed by petitioner, if any;
7. A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
8. A statement of which rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
9. 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.

 If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. **Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Fla. Stat., and to participate as a party to this proceeding.** Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Fla. Admin. Code.

 A person whose substantial interests are affected by this Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Fla. Stat., or may choose to pursue mediation as an alternative remedy under Section 120.573, Fla. Stat., before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. Additional information about mediation is provided in Section 120.573, Fla. Stat., and Rule 62-110.106(12), Fla. Admin. Code.

 22. Electronic signatures or other versions of the parties’ signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals.

 23. 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. Rules referenced in this Order may be examined at any Department Office or may be obtained by written request to the Department Office referenced in Paragraph 8 herein. The rules referenced in this Order are also available at: <https://floridadep.gov/ogc/ogc/content/rules>.

**FOR THE RESPONDENT: PERMITTEE NAME**

The undersigned certifies that as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[title] of Permittee Name, he/she is authorized and empowered to negotiate, enter into and execute, in the name and on behalf of the Respondent, any agreements, documents, instruments, certificates, including and without limitation, this Consent Order entered into between Respondent and the State of Florida Department of Environmental Protection.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Signature] Date

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DONE AND ORDERED this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 202\_\_, in Leon County, Florida.

STATE OF FLORIDA DEPARTMENT

OF ENVIRONMENTAL PROTECTION

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Cindy Mulkey, Deputy Director

Division of Water Resource Management

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

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Clerk Date**

Executed Copies To:

FDEP-OGC: Agency Clerk (Agency\_Clerk@FloridaDEP.gov)

Permittee Registered Agent