



# Florida Department of Environmental Protection

South District  
Post Office Box 2549  
Fort Myers, Florida 33902-2549  
[SouthDistrict@dep.state.fl.us](mailto:SouthDistrict@dep.state.fl.us)

Rick Scott  
Governor

Carlos Lopez-Cantera  
Lt. Governor

Noah Valenstein  
Secretary

March 26, 2018

City of Fort Myers  
Mr. Richard Moulton, Director of Public Works  
2200 Second Street  
PO Box 2217  
Fort Myers, Florida 33902-2217  
[rmoulton@cityftmyers.com](mailto:rmoulton@cityftmyers.com)

Re: Lee County – Domestic Wastewater  
OGC Case No. **18-0043**  
City of Fort Myers Central FL0021261  
City of Fort Myers South FL0021270

Dear Mr. Moulton:

Enclosed is the signed and entered Consent Order to resolve the above referenced case. This copy is for your records. Please note that all compliance dates begin from the date of entry of this Order, which is March 26, 2018.

Upon satisfactory completion of all conditions of the Order, we will close this case and place it in our inactive file.

If you have any questions, please contact Toni Fonseca at [Toni.Fonseca@dep.state.fl.us](mailto:Toni.Fonseca@dep.state.fl.us) or 239-344-5630. Your cooperation in resolving this case is appreciated.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Iglehart", is written over a horizontal line.

Jon M. Iglehart  
Director of District Management

Enclosure: Executed Consent Order

cc: Lea Crandall, FDEP [Agency\\_Clerk@dep.state.fl.us](mailto:Agency_Clerk@dep.state.fl.us)

# CITY OF FORT MYERS, FLORIDA



CITY CLERK'S OFFICE  
PO Box 2217  
FORT MYERS, FL 33902  
239-321-7035 TEL  
239-344-5927 FAX  
WWW.CITYFTMYERS.COM

March 22, 2018

Mr. Jon Iglehart, District Director  
Florida Department of Environmental Protection - South District  
2295 Victoria Ave, Ste 364  
PO Box 2549  
Fort Myers, FL 33902-2549

RE: Consent Order – City of Fort Myers

Dear Mr. Iglehart:

Enclosed herewith are two (2) duly executed original Consent Order between the State of Florida Department of Environmental Protection and the City for OGC File No. 18-043.

City Council approved the Consent Order at its regular meeting held on March 19, 2018.

Please have all originals signed, retain one (1) for your records, and return one (1) fully signed original to my attention at the address shown above.

Yours truly,

**CITY OF FORT MYERS**

A handwritten signature in cursive script that reads 'Gwen Carlisle'.

Gwen Carlisle, MMC  
City Clerk

Enclosure/sr

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION	)	IN THE OFFICE OF THE SOUTH DISTRICT
	)	
v.	)	OGC FILE NO. 18-0043
	)	
CITY OF FORT MYERS	)	
_____	)	

**CONSENT ORDER**

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department") and the 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 is responsible for the operation of the Fort Myers Central Wastewater Treatment Facility (FL0021261), a 11.0 million gallons per day (MGD) 5-stage BARDENPHO 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. This facility is operated under Wastewater Permit No. FL0021261, which was renewed on June 12, 2017, and will expire on June 11, 2022. The facility is located at 1501 Raleigh St, Fort Myers, Florida, in Lee County, Florida. Respondent owns the property on which the facility is located.

4. Respondent is the owner and is responsible for the operation of the Fort Myers South Wastewater Treatment Facility (FL0021270), a 12.0 MGD 5-stage BARDENPHO process domestic wastewater treatment facility with treated effluent discharging to the Caloosahatchee River. This facility is operated under Wastewater Permit No. FL0021270, which was renewed on June 12, 2017, and will expire on June 11, 2022. The facility is located at 1618 Mathew Dr., Fort Myers, Florida, in Lee County, Florida. Respondent owns the property on which the facility is located.

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



a) Respondent reported the following effluent violations of permit number FL0021270 for the Fort Myers South Wastewater Treatment Facility:

DATE	NITROGEN, TOTAL PERMIT LIMIT	NITROGEN, TOTAL REPORTED VALUE
3/31/2017	6.0 mg/L Single Sample Max	9.62 mg/L Single Sample
3/31/2017	4.5 mg/L Weekly Avg Max	7.48 mg/L Weekly Avg
3/31/2017	3.0 mg/L Monthly Avg Max	4.36 mg/L Monthly Avg
4/30/2017	6.0 mg/L Single Sample Max	9.23 mg/L Single Sample
4/30/2017	4.5 mg/L Weekly Avg Max	5.98 mg/L Weekly Avg
4/30/2017	3.0 mg/L Monthly Avg Max	4 mg/L Monthly Avg
5/31/2017	6.0 mg/L Single Sample Max	7.25 mg/L Single Sample
8/31/2017	6.0 mg/L Single Sample Max	6.8 mg/L Single Sample

b) On September 10, 2017, Hurricane Irma impacted South Florida. On and following that date, Respondent reported 21 sanitary sewer overflows (SSOs) due to extreme rainfall and power failure at lift stations. The Department finds that over 35,000 gallons of untreated wastewater were discharged, entering stormwater systems that empty into Billy's Creek or the Caloosahatchee River. The Department finds that such discharges violate Rule 62-604.130 (1), F.A.C., which prohibits the release or disposal of excreta, sewage, or other wastewaters or domestic wastewater residuals without providing proper treatment approved by the Department. The Department further finds that such discharges violate Section 403.161(1)(a), F.S., which states that it is a violation to cause pollution so as to harm or injure human health or welfare, animal, plant, or aquatic life or property.

6. In response to the overflows, the Respondent has completed the following response and corrective actions:

- a) Respondent has updated its internal spill protocol and emergency plan.
- b) Respondent has updated its Sewer Overflow Response Plan.
- c) Respondent has updated its Comprehensive Emergency Management Plan.

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

**ORDERED:**

7. Respondent shall comply with the following corrective actions within the stated time periods:

Provide the Department a copy of an updated Operation and Maintenance Manual for the collection system.	May 15, 2018
Provide a plan, including funding sources and timelines, for reliable emergency pumping capability, including an in-place emergency generator or engine-driven pump, at each of 4 additional lift stations to be installed by December 31, 2019.	June 30, 2018
Submit a plan to evaluate and update minimum engineering design standards for the city's lift stations (new and existing) to improve reliability during and after severe weather events.	June 30, 2018
Provide documentation of specific physical or operational enhancements designed to improve the reliability of the emergency pumping capability at the following pump stations: LS-001, 002, 007, 020, 028, 036, 037, 086, 106, 108, 110, 134, 162, and 170.	June 30, 2018
Provide documentation demonstrating that the following repairs are complete: Sewer pipes damaged during Hurricane Irma have been repaired or replaced; missing and damaged sewer caps have been replaced; and manhole covers damaged during Hurricane Irma have been repaired or replaced.	May 15, 2018
Provide a schedule for the purchase at least 10 additional portable generators dedicated for wastewater service by June	May 15, 2018

30, 2019.	
Provide documentation that demonstrates a 25% acceleration in the completion schedule for implementing the City's I&I program, including budgeting and timing information.	June 30, 2018
Submit an estimate of the corrective action investment and the total investment in SSO reduction related to this Order.	May 15, 2018
Submit to the Department a Final Report documenting that all items needed to close this order have been completed, and list all future items to be performed to continue to reduce SSOs.	June 30, 2018

8. Notwithstanding the time periods described in the paragraphs above, Respondent shall complete all corrective actions required by paragraph 7 on or before September 30, 2018 and be in full compliance with the Respondent's permits, 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.

9. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$22,690.25 in settlement of the regulatory matters addressed in this Order. This amount includes \$22,190.25 for civil penalties and \$500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order.

10. In lieu of making a cash payment of \$22,190.25 in civil penalties as set forth in paragraph 9 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 \$33,285.38. 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 \$500.00 in costs must be paid within 30 days of the effective date of the Consent Order.

11. If Respondent elects to implement an in-kind project as provided in paragraph 10, then Respondent shall comply with all of the requirements and time frames in Exhibit A entitled In-Kind Projects.

12. Respondent agrees to pay the Department stipulated penalties in the amount of \$100 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph 7 of this Order. The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment, and shall do so as further described in paragraph 13, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph 9 of this Order.

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/eo/pay/>. It will take a number of days after this order is final and effective 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 Toni Fonseca, Engineering Specialist II, 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 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.

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

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 \$10,000.00 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 (City) pursuant to section 120.57(4), F.S. The Consent Order addresses unauthorized discharges to ground and/or surface waters from the City's collection system related to circumstances associated with Hurricane Irma, as well as wastewater effluent violations during 2017. The Consent Order 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, 2295 Victoria Ave., Suite 364, Fort Myers, Florida 33901.

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 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 South District Office, 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, F.S. 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, F.S. 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, F.S. and Rule 62-110.103(12), F.A.C.

27. Rules referenced in this Order are available at

<https://softlive.dep.state.fl.is/ogc/ogc/content/rules>

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement on the dates shown below to be effective the day and year first shown above.

CITY OF FORT MYERS, FLORIDA  
a Municipal Corporation

ATTEST:

By: 

Randall P. Henderson, Jr., Mayor

  
Mary Hagemann, Interim City Clerk

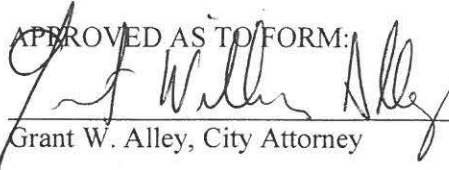
Date: 03/21/2018

By: 

Saeed Kazemi, P.E., City Manager

Date: 03/22/2018

APPROVED AS TO FORM:

  
Grant W. Alley, City Attorney


3/20/2018

Please do not write below this line, For DEP use only

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DONE AND ORDERED this 26<sup>th</sup> day of March, 2018, 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

3-26-18

\_\_\_\_\_  
Date

Copies furnished to:

Lea Crandall, Agency Clerk  
Mail Station 35

Exhibit A

**In-Kind Projects**

a. Within 60 days of the effective date of this Consent Order, 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 civil penalties as set forth in paragraph 9 above, within 30 days of Department notice.

d. Within 120 days of the effective date of this Consent Order, 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, then Respondent shall make cash payment of the civil penalties as set forth in paragraph 9 above, within 30 days 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 (a) above, Respondent shall complete the entire in-kind project.

f. 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 \$22,190.25 penalty, no additional penalties shall be assessed under paragraph 9 and 12 for failure to complete the requirement of this paragraph.

g. 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.

h. 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 Department notice. If the in-kind penalty project is terminated and Respondent timely remits the \$22,190.25, no additional penalties shall be assessed under paragraph 9 for failure to complete the requirements of this paragraph.