

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: May 28, 2015
TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
FROM: Dexter B. Monroe, Public Utility Analyst I, Division of Accounting & Finance
RE: Docket No. 140239-WS-Florida DEP Consent Order OGC File No. 04-1430 and Amendments

Please place the attached documents in the above-referenced docket file. Thank you.

RECEIVED-FPSC
15 MAY 28 AM 9:47
COMMISSION
CLERK

Original
Consent
Order

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Complainant,

vs.

ORCHID SPRINGS DEVELOPMENT
CORPORATION,

Respondent.

IN THE OFFICE OF THE
SOUTHWEST DISTRICT

OGC FILE NO. 04-1430

FO#04-1832

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department") and Orchid Springs Development Corporation ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

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, and the rules promulgated thereunder, Title 62, Florida Administrative Code. The Department has jurisdiction over the matters addressed in this Consent Order.

2. Respondent is a person within the meaning of Section 403.031(5), Florida Statutes.

3. Respondent is the owner and is responsible for the operation of the Orchid Springs Wastewater Treatment Facility, a 0.0950 million gallons per day type III extended aeration domestic wastewater treatment plant discharging chlorinated effluent to an effluent disposal system consisting of a percolation/evaporation pond, a polishing pond and spray field ("Facility"). The Facility is located at 28° 00' 30" latitude north, 81° 41' 00" longitude west, 710 Overlook Drive, Winter Haven, Florida 33884 ("Property"). Respondent owns the Property.

Respondent operates the Facility under Department Permit FLA012992 ("Permit"), which was issued on August 27, 1998 and expired on August 26, 2003.

4. The Department finds that the application to renew the Permit was not timely and was not made complete prior to the expiration date of the Permit. Therefore, the Facility has been operating without a permit since August 27, 2003. As of the effective date of this Consent Order, Respondent has not been issued a wastewater permit by the Department. A wastewater permit for operation of the Facility is required pursuant to Sections 403.087 and 403.088, Florida Statutes, and Chapters 62-4 and 62-620, Florida Administrative Code. This Consent Order is not intended to directly or indirectly authorize the temporary or permanent operation of the Facility.

5. On March 2, 2004, the Department inspected the Facility and found the following:

a) A resident of the community was using effluent from the remote polishing pond (Golden Pond) to water his lawn.

b) The remote polishing pond and the percolation/evaporation pond did not have proper access control.

c) There was an unpermitted discharge of effluent from the remote polishing pond through the emergency overflow pipes.

d) The unpermitted discharge from the emergency overflow pipes was not reported to the Department as required in the Permit.

6. On May 14, 2001, the Department issued a Permit Revision to modify the Facility. Respondent modified the Facility and certified the work complete. The Department finds that the Facility was not modified as authorized by the Permit Revision and cannot be permitted in its current configuration. The revision of the Facility should have met Class III reliability standards as required by Rule 62-600.400(1)(b), Florida Administrative Code.

7. The findings by the Department in paragraphs 4, 5, and 6 of this Consent Order constitute violations of Sections 403.161(1)(b) and 403.087(1), Florida Statutes, and Rule 62-600.740(2)(a) and (b) and Rule 62-610.518, Florida Administrative Code. The violations are applicable to the assessment of administrative penalties in accordance with Section 403.121, Florida Statutes.

8. Respondent and the Department have worked to resolve all issues relating to the aforementioned matters and have agreed to the resolution of the issues and findings described in

this Consent Order. Having reached a resolution of the matter, the Department and Respondent mutually agree and it is

ORDERED:

9. Within 90 days of the effective date of this Consent Order, Respondent shall submit to the Department an application for a substantial revision to the Permit to construct a modification to the Facility that will bring the Facility into compliance with the Department rules concerning Class III reliability standards. The application shall be prepared and sealed by a professional engineer registered in the State of Florida. In the event that the application submitted is incomplete, Respondent shall submit to the Department, within 30 days of written request by the Department, all requested additional information necessary to process the application. Within 90 days of issuance of the revision to the Permit, Respondent shall construct the modifications that will bring the Facility into compliance. Within 30 days of completion of construction, Respondent shall submit a certification of completion of construction to the Department and place the modifications into service.

10. Within 30 days of the effective date of this Consent Order, Respondent shall submit a request for a variance in accordance with Section 120.542, Florida Statutes, to the requirement for access control for the remote polishing pond. Should Respondent fail to submit a request for a variance, then within 60 days of the effective date of this Consent Order Respondent shall have the remote polishing pond fenced. In the event the request for the variance is denied, then within 60 days of denial Respondent shall have the remote polishing pond fenced.

11. In any event, by November 30, 2005 the Facility shall be in complete compliance with all Department rules and regulations that are the subject of this Consent Order.

12. Respondent shall pay to the Department \$7,000.00 in settlement of the matters addressed in this Consent Order. This amount includes \$1,000.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. The civil penalty of \$6,000.00 is apportioned as follows: \$1,000.00 for violation of Section 403.087(1), Florida Statutes, in accordance with Section 403.121(3)(b), Florida Statutes; \$2,000.00 for violation of Rule 62-600.740(2)(a), Florida Administrative Code, in accordance with Section 403.121(3)(b), Florida Statutes; \$1,000.00 for violation of Section 403.161(1)(b), Florida Statutes, in accordance with Section 403.121(4)(e),

Florida Statutes; and \$2,000.00 for violation of Rule 62-600.740(2)(b), Florida Administrative Code, in accordance with Section 403.121(4)(d), Florida Statutes. Within 90 days of the effective date of this Consent Order and continuing quarterly thereafter, Respondent shall pay to the Department \$1,750.00 every quarter until the penalty is paid in full. All payments shall be made by cashier's check or money order payable to the "State of Florida Department of Environmental Protection" and shall include thereon the OGC Number and the notation "Ecosystem Management and Restoration Trust Fund". The payments shall be sent to State of Florida Department of Environmental Protection, Southwest District Office, 3804 Coconut Palm Drive, Tampa, Florida 33619-1352.

13. Respondent agrees to pay the Department stipulated penalties in the amount of \$150.00 per day for each and every day Respondent fails to timely comply with any of the requirements of Paragraphs 9 through 12 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Consent Order. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to the "State of Florida Department of Environmental Protection" by cashier's check or money order and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund". Payment shall be sent to the Department of Environmental Protection, 3804 Coconut Palm Drive, Tampa, Florida 33619-1352. The Department may make demands for payment at any time after violations occur. Nothing in this Paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Consent Order. If the Department is required to file a lawsuit to recover stipulated penalties under this Paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this Paragraph.

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

Property upon which the Facility is located, shall not relieve the Respondent of the obligations imposed in this Consent Order.

15. 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 Consent 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 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 Consent Order.

16. Persons who are not parties to this Consent Order, but whose substantial interests are affected by this Consent Order, have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, 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 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 named above at the address indicated. Failure to file a petition within the 21

days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:

A) The name, address and telephone number of each petitioner, the Department's Consent Order identification number, and the county in which the subject matter or activity is located;

B) A statement of how and when each petitioner received notice of the Consent Order;

C) A statement of how each petitioner's substantial interests are affected by the Consent Order;

D) A statement of the material facts disputed by petitioner, if any;

E) A statement of facts which petitioner contends warrant reversal or modification of the Consent Order;

F) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order;

G) A statement of the relief sought by petitioner, stating precisely the action petitioner wants 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, Florida Statutes, 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, Florida Administrative Code.

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under Section 120.573, Florida

Statutes, 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. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS #35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

- A) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- B) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- C) The agreed allocation of the costs and fees associated with the mediation;
- D) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- E) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- F) The name of each party's representative who shall have authority to settle or recommend settlement; and
- G) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference.
- H) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the

mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

17. 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 Consent Order and the rules and statutes of the Department.

18. All submittals and payments required by this Consent Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, Southwest District Office, attn. Tom Gucciardo, 3804 Coconut Palm Drive, Tampa, Florida 33619-1352.

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

20. 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 Consent Order, including but not limited to undisclosed releases, contaminated or polluting conditions.

21. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Florida Statutes. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.161(1)(b), Florida Statutes.

22. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Order, hereby waives its right to seek

judicial imposition of damages or civil penalties for alleged violations through the date of the filing of this Consent Order as addressed in this Consent Order.

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

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

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

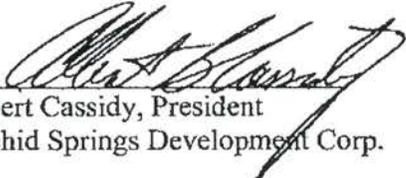
26. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes, and waives that right upon signing this Consent Order.

This area intentionally left blank.

27. This Consent Order is a final order of the Department pursuant to Section 120.52(7), Florida Statutes, 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, Florida Statutes. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

FOR THE RESPONDENT:

November 12, 2004
Date


Albert Cassidy, President
Orchid Springs Development Corp.

DONE AND ORDERED this 19th day of November, 2004, in Tampa, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


For Deborah A. Getzoff
District Director
Southwest District

FILING AND ACKNOWLEDGEMENT

FILED, on this date, pursuant to §120.52 Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Lexxa Eutermark
Clerk

11-22-04
Date

cc: Kathy Carter, OGC
Vincent Pickett, Pickett and Associates



Memorandum

Florida Department of
Environmental Protection

SOUTHWEST DISTRICT
PENALTY COMPUTATION WORKSHEET

Violator's Name: Orchid Springs Development Corporation

Violator's Facility: Orchid Springs WWTF

Department Staff Responsible for the Penalty Computations: James McNeil II SM

2/29/13
GM

Date: August 30, 2004

PART I - Penalty Determinations

Violation Type / ELRA Statute	ELRA Schedule (\$)	Multi-Day (\$)	Adjs. (\$)	Total (\$)
Operating without a permit / 403.087(1), F.S.	1000 403.121(3)(b), F.S.			1000
Unauthorized Discharge / 62-600.740(2)(a), F.A.C.	2000 403.121(3)(b), F.S.			2000
Failure to submit required notification for the discharge / 403.161(1)(b), F.S.	1000 403.121(4)(e), F.S.			1000
Failure to construct in accordance with permit / 62-600.740(2)(b), F.A.C.	2000 403.121(4)(d), F.S.			2000
Lack of access control / 62-610.518, F.A.C.	500 403.121(5), F.S.		500	0
Subtotal				6000
DEP costs				1000
		Total Penalty & Costs		7000

Part II - Multi-day Penalties and Adjustments

ADJUSTMENTS

DOLLAR AMOUNT: -\$500

Good faith/Lack of good faith prior to discovery: Access control to the remote pond -\$500

Justification: The lack of access control for the remote pond is an existing situation. It was not an issue despite numerous Department inspections.

Good faith after discovery: _____

Justification: _____

History of non-compliance: _____

Justification: _____

Economic benefit of non-compliance: _____

Justification: _____

Ability to pay: _____

Justification: _____

MULTI-DAY PENALTIES

No multi-day penalties were assessed.

9-28-04
Date


Deborah A. Getzoff
District Director
Southwest District

Orchid Springs Development Corporation
Penalty Computation Worksheet

Part III - Other Adjustments Made After Meeting with the
Responsible Party

Relative merits of the case: _____

Resource considerations: _____

Other justification: _____

Date

Deborah A. Getzoff
District Director
Southwest District

First
Amendment
to Consent
Order

04-1430



Department of Environmental Protection

Jeb Bush
Governor

Southwest District
13051 North Telecom Parkway
Temple Terrace, FL 33637-0926
Telephone: 813-632-7600

Collection stills

January 19, 2006

CERTIFIED MAIL NO. 7002 3150 0003 8459 4425
RETURN RECEIPT REQUESTED

Albert Cassidy, President
Orchid Springs Development Corporation
295 First Street South
Winter Haven, FL 33880

Re: Amendment to Consent Order OGC File No. 04-1430
Orchid Springs WWTF
Facility ID No. FLA012992
Polk County

Dear Mr. Cassidy:

Enclosed please find a copy of the signed Amendment to Consent Order regarding the above-referenced facility. The effective date of the Amendment may be found on the last page, the day it was filed by the clerk.

Should you have any questions, please direct them to Frank L. Fulghum III at (813) 632-7600, extension 313.

Sincerely yours,

Deborah A. Getzoff
District Director
Southwest District

DAG/ff

Enclosure

cc: Patricia Leon, DEP w/o enclosure

"More Protection, Less Process"

Printed on recycled paper.

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)
OF ENVIRONMENTAL PROTECTION,)
)
Complainant,)
)
vs.)
)
ORCHID SPRINGS DEVELOPMENT)
CORPORATION,)
)
Respondent.)
_____)

IN THE OFFICE OF THE
SOUTHWEST DISTRICT

OGC File No. 04-1430

AMENDMENT TO CONSENT ORDER

The State of Florida Department of Environmental Protection ("Department") and Orchid Springs Development Corporation ("Respondent") entered into a Consent Order, OGC File No. 04-1430, on November 22, 2004 ("Original Order") concerning the Orchid Springs Wastewater Treatment Facility ("Facility"). This Amendment to Consent Order ("Amendment"), which incorporates and amends the Original Order, is entered into to reach settlement of certain matters at issue between the Department and Respondent that have not been resolved, or were not at issue, in the Original Order.

Paragraph 9 of the Original Order required Respondent to submit an application for a substantial revision to the Permit to construct a modification to the Facility to bring the Facility into compliance with Department rules concerning Class III reliability. In compliance with the Original Order, Respondent submitted an application for the revision on January 27, 2005. The revision was incorporated into the application submitted on August 21, 2003 to renew the Permit for the Facility. The entire application was denied on September 8, 2005. Respondent did not file a petition on the denial.

The effluent disposal system for the Facility consists of a percolation/evaporation pond at the plant site, a remote polishing pond and a spray field. The effluent disposal system is inadequate for the Facility. On June 8, 2005, a Department inspection found a discharge of effluent from the on-site pond. This occurred for an unknown number of days as it was discovered during the inspection. On June 15, 2005, the certified operator reported a discharge of effluent from the on-site pond starting June 13, 2005 due to heavy rain. On June 30, 2005, a Department inspection found a discharge of

effluent from the remote pond. On July 18, 2005, the certified operator reported a discharge of 64,000 gallons of effluent due to a cap blowing off on the emergency overflow pipe for the on-site pond. On August 11, 2005, the certified operator reported a discharge from the disposal system on August 9 and 10, 2005, due to high groundwater. On October 14, 2005, the certified operator reported a discharge from the remote pond.

The Department finds and Respondent neither admits nor denies that the Facility has intermittently discharged effluent from the disposal system from June 2005 through at least October 2005. The Department's findings constitute violations of Section 403.161(1)(b), Florida Statutes, and Rule 62-600.740(2)(a), Florida Administrative Code. Along with the monetary settlement reached to address the violations, this Amendment will provide a schedule to bring the Facility into compliance.

Paragraph 9 of this Amendment will provide for corrective action to bring the Facility into compliance for both treatment and effluent disposal.

Paragraph 11 of the Original Order required the Facility to be in compliance by November 30, 2005. This Amendment will provide a new final compliance date.

Paragraph 12 of the Original Order required Respondent to pay \$7,000 in costs and penalties. Respondent paid this amount. This Amendment requires Respondent to pay additional penalties for the unauthorized discharges from the effluent disposal system.

On October 20, 2005, the Department and Respondent met to discuss these matters. It is hereby agreed between the parties that this Amendment shall amend the Original Order only to the extent specifically stated herein, and that all the provisions of the Original Order not addressed herein shall remain in full force and effect. Therefore, it is

ORDERED:

1. Paragraph 9 of the Original Order is replaced to read as follows:

Within 90 days of the effective date of this Amendment, Respondent shall submit an application to the Department to modify the Facility so that the Facility will be brought into compliance for both treatment and effluent disposal. The application must include information to renew the Permit, and include a water balance for the existing and proposed effluent disposal systems. Within 45 days of a Department request for additional information, Respondent shall submit the information needed to complete the application. Within 270 days of issuance of the Permit to modify the Facility, Respondent shall complete the work authorized by the Permit. Within 15 days of completion of the work, Respondent shall submit to the Department a Certification of Completion (DEP Form 62-620.910(12)).

2. Paragraph 11 of the Original Order is replaced to read as follows:

In any event, the Facility shall be in compliance with the terms of the Original Order and this Amendment, and all Department rules by August 1, 2007.

3. Paragraph 12 of the Original Order is replaced to read as follows:

Within 60 days of the effective date of this Amendment, Respondent shall pay the Department \$7,000 in additional civil penalties. In accordance with Section 403.121(3)(b), Florida Statutes, the additional civil penalties of \$7,000 are for violations of Section 403.161(1)(b), Florida Statutes, and Rule 62-600.740(2)(a), Florida Administrative Code, for the unauthorized discharges from the effluent disposal system since the entry of the Original Order. Payment shall be made by cashier's check or money order. The instrument shall be made payable to the "Department of Environmental Protection" and shall include thereon the OGC number assigned to the Original Order and the notation "Ecosystem Management and Restoration Trust Fund". Payment shall be sent to the Department of Environmental Protection, attn.: Tom Gucciardo, 3804 Coconut Palm Drive, Tampa, Florida.

Persons who are not parties to this Amendment to Consent Order but whose substantial interests are affected by this Amendment to Consent Order have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, 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 within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the Southwest District Office, 3804 Coconut Palm Drive, Tampa, Florida 33619-1352. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information: (a) The name, address, and telephone number of each petitioner; the Department's Amendment to Consent Order identification number and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of the Amendment to Consent Order; (c) A statement of how each petitioner's substantial interests are affected by the Amendment to Consent Order; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Amendment to Consent Order; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Amendment to Consent Order; (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Amendment to 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 Amendment to 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, Florida Statutes, 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, Florida Administrative Code.

A person whose substantial interests are affected by this Amendment to Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under Section 120.573, Florida Statutes, 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. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by this Amendment to Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS #35, Tallahassee, Florida 32399-3000, within ten days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;

(e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;

(f) The name of each party's representative who shall have authority to settle or recommend settlement;

(g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference; and

(h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

(This space intentionally left blank)

This Amendment to Consent Order is final agency action of the Department pursuant to Section 120.52(7), Florida Statutes, 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, Florida Statutes. Upon the timely filing of a petition, this Amendment to Consent Order will not be effective until further order of the Department.

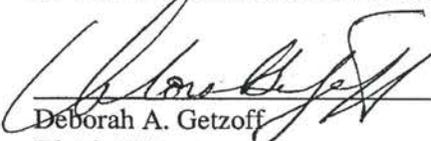
FOR RESPONDENT:

12-28-2005
DATE


Albert Cassidy
President
Orchid Springs Development Corporation

DONE AND ORDERED this 12th day of January, 2006, in Tampa, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


Deborah A. Getzoff
District Director
Southwest District

FILING AND ACKNOWLEDGEMENT

FILED, on this date, pursuant to §120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Dianne McClain
Clerk

January 19, 2006
Date

DAG/js/ff

cc: Lea Crandall, Office of General Counsel
David O'Brien, DEP-Tall. w/attachments



Memorandum

Florida Department of
Environmental Protection

SOUTHWEST DISTRICT
PENALTY COMPUTATION WORKSHEET

Violator's Name: Orchid Springs Development Corporation

Identify Violator's Facility: Orchid Springs WWTP

Name of Department Staff Responsible for the Penalty Computations: Frank L. Fulghum III *ff*

Date: November 16, 2005

Handwritten initials/signature

PART I - Penalty Determinations

Violation Type	ELRA Schedule (\$)	Multi-Day (\$)	Adj. (\$)	Total (\$)
62-600.740(2)(a), F.A.C.	\$2,000	\$5,000		\$7,000
	403.121(3)(b), F.S.			
			Total Penalty	\$7,000

Part II - Multi-day Penalties and Adjustments

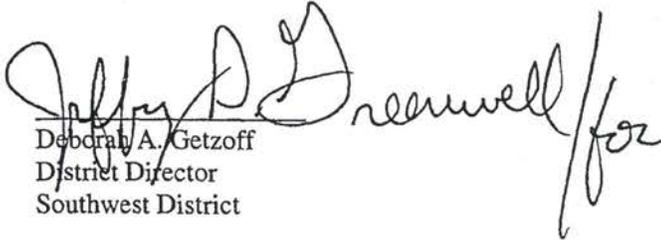
ADJUSTMENTS	DOLLAR AMOUNT	JUSTIFICATION
Good faith/Lack of good faith prior to discovery		
Good faith/Lack of good faith after discovery		
History of non-compliance		
Economic benefit of non-compliance	\$00.00	Considered but not appropriate in this case
Ability to pay		
Total Adjustments	\$00.00	
MULTI-DAY PENALTIES		
Number of days adjustment factors to be applied		
Number of days matrix amount is to be multiplied		

Justification: The matrix amount of \$2,000 is derived from ELRA penalty schedule for an unauthorized discharge from the effluent disposal system. There were five additional discharges assessed at \$1,000 each, for a total of \$5,000.

Part III - Other Adjustments Made After
Meeting with the Responsible Party

ADJUSTMENTS	DOLLAR AMOUNT	JUSTIFICATION
Relative merits of the case		
Resource considerations		
Other justification		

Date


Deborah A. Getzoff
District Director
Southwest District

PENALTY ASSESSMENT MATRIX*

POTENTIAL FOR HARM	EXTENT OF DEVIATION FROM REQUIREMENT		
	MAJOR	MODERATE	MINOR
MAJOR	\$8,000-10,000	\$6,000-7,999	\$4,600-5,999
MODERATE	\$3,200-4599	\$2,000-3,199	\$1,200-1,999
MINOR	\$600-1,199	\$200-599	\$100-199

ELRA PENALTIES APPLICABLE TO THE WASTEWATER PROGRAM

VIOLATION	PENALTY AMOUNT
1. Failure to obtain required wastewater permit, other than permit for surface water discharge. {403.121(3)(b)}.	\$1,000.00
2. Unpermitted or unauthorized discharge or effluent limitation not involving a surface water or groundwater quality violation {403.121(3)(b)}.	\$2,000.00
3. Unpermitted or unauthorized discharge or effluent limitation that resulted in a surface water or groundwater quality violation {403.121(3)(b)}.	\$5,000.00
4. Failure to install, maintain, or use a required pollution control system or device {403.121(4)(b)}.	\$4,000.00
5. Failure to obtain a required permit before construction or modification {403.121(4)(c)}.	\$3,000.00
6. Failure to conduct required monitoring and testing; failure to conduct required release detection, or failure to construct in compliance with a permit {403.121(4)(d)}.	\$2,000.00
7. Failure to maintain required staff to respond to emergencies {403.121(4)(e)}.	\$1,000.00
8. Failure to conduct required training {403.121(4)(e)}.	\$1,000.00
9. Failure to prepare, maintain or update required contingency plans {403.121(4)(e)}.	\$1,000.00
10. Failure to adequately respond to emergencies to bring the emergency situation under control {403.121(4)(e)}.	\$1,000.00
11. Failure to submit required notification to the Department {403.121(4)(e)}.	\$1,000.00
12. Failure to prepare, submit, maintain or use required reports or other required documentation {403.121(4)(f)}.	\$500.00
13. Failure to comply with any other departmental regulatory statute or rule requirement {403.121(5)}.	\$500.00

Second
Amendment
to Consent
Order

04-1430



Florida Department of Environmental Protection

Southwest District
13051 North Telecom Parkway
Temple Terrace, Florida 33637-0926

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

June 7, 2007

CERTIFIED MAIL: 7004 1350 0002 5571 3407
RETURN RECEIPT REQUESTED

Mr. Albert Cassidy, President
Orchid Springs Development Corporation
295 First Street South
Winter Haven, FL 33880

Re: Second Amendment to Consent Order OGC File No. 04-1430
Orchid Springs WWTF
Facility ID No. FLA012992
Polk County

Dear Mr. Cassidy:

Enclosed is an original copy of the Second Amendment to Consent Order, OGC File No. 04-1430, regarding the above-referenced facility. The effective date of the Second Amendment is June 5, 2007.

Should you have any questions, please contact Joseph Squitieri at (813) 632-7600, extension 309, or via e-mail: joe.squitieri@dep.state.fl.us.

Sincerely,

Thomas Gucciardo
Environmental Manager
Domestic Wastewater Section

TG/mdd

Enclosure

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)
OF ENVIRONMENTAL PROTECTION,)

Complainant,)

vs.)

ORCHID SPRINGS DEVELOPMENT)
CORPORATION,)

Respondent.)
_____)

IN THE OFFICE OF THE
SOUTHWEST DISTRICT

OGC File No. 04-1430

SECOND AMENDMENT TO CONSENT ORDER

The State of Florida Department of Environmental Protection ("Department") and Orchid Springs Development Corporation ("Respondent") entered into a Consent Order, OGC File No. 04-1430, on November 22, 2004 ("Original Order") concerning the Orchid Springs Wastewater Treatment Facility ("Facility"). An Amendment to Consent Order ("Amendment") was entered into on January 19, 2006. This Second Amendment to Consent Order ("Second Amendment"), which incorporates and amends the Original Order and the Amendment, is entered into to provide an alternative schedule and means to achieve compliance in settlement of certain matters at issue between the Department and Respondent that have not been resolved through the Original Order and the Amendment.

Paragraph 9 of the Amendment required Respondent to submit an application to construct a modification to the Facility to bring the Facility into compliance with Department rules concerning treatment and effluent disposal. In compliance with the Amendment, Respondent submitted an application on April 24, 2006; Department review of this application is pending. Paragraph 9 of this Second Amendment will provide for corrective action to bring the Facility into compliance by removing the Facility from service.

Paragraph 11 of the Amendment required Respondent to bring Facility into compliance by August 1, 2007. Paragraph 11 of this Second Amendment provides a new final compliance date.

Paragraph 12 of the Amendment required Respondent to pay civil penalties. The penalties were paid. Paragraph 12 of this Second Amendment will provide for the timely abandonment of the Facility.

On May 2, 2007, the Department and representatives for Respondent met to discuss these matters. It is hereby agreed between the parties that this Second Amendment shall amend the Original Order and

the Amendment only to the extent specifically stated herein, and that all the provisions of the Original Order and the Amendment not addressed herein shall remain in full force and effect. Therefore, it is

ORDERED:

1. Paragraph 9 is replaced to read as follows:

Within 45 days of the effective date of this Second Amendment, Respondent shall submit an application to the Department to construct a collection/transmission system ("C/T System") to divert flow from the Facility to the City of Winter Haven sanitary sewer system. Within 15 days of a Department request for additional information, Respondent shall submit the information needed to complete the application. Within 90 days of issuance of the permit to construct the C/T System, Respondent shall complete the work authorized by the permit. Within 5 days of completion of the work, Respondent shall submit to the Department a Request for Approval to Place a Domestic Wastewater Collection/Transmission system into Operation (DEP Form 62-604.300(8)(b)). Within 5 days of receiving approval from the Department to place the C/T System into service, Respondent shall divert wastewater flow from the Facility to the C/T System.

2. Paragraph 11 is replaced to read as follows:

In any event, the Facility shall be removed from service and shall be properly abandoned by ~~February 28,~~ ^{May 01,} 2008.

3. Paragraph 12 is replaced to read as follows:

Within 90 days of the effective date of this Second Amendment, Respondent shall submit to the Department an abandonment plan that addresses how the Facility will be safeguarded in terms of public health and safety after flow has been diverted to the C/T System. Within 60 days of approval of the abandonment plan by the Department or within the schedule allowed by the Department during the approval process, Respondent shall complete the abandonment of the Facility in accordance with the approved plan.

Persons who are not parties to this Second Amendment to Consent Order but whose substantial interests are affected by this Second Amendment to Consent Order have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, 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 within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the Southwest District Office, 13051 North Telecom Parkway, Temple Terrace, Florida 33637-0926. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:

(a) The name, address, and telephone number of each petitioner; the Department's Second Amendment to Consent Order identification number and the county in which the subject matter or activity is located;

(b) A statement of how and when each petitioner received notice of the Second Amendment to Consent Order;

(c) A statement of how each petitioner's substantial interests are affected by the Second Amendment to Consent Order;

(d) A statement of the material facts disputed by petitioner, if any;

(e) A statement of facts which petitioner contends warrant reversal or modification of the Second Amendment to Consent Order;

(f) A statement of which rules or statutes petitioner contends require reversal or modification of the Second Amendment to Consent Order;

(g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Second Amendment to 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 Second Amendment to 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, Florida Statutes, 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, Florida Administrative Code.

A person whose substantial interests are affected by this Second Amendment to Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under Section 120.573, Florida Statutes, 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. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all

parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by this Second Amendment to Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS #35, Tallahassee, Florida 32399-3000, within ten days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

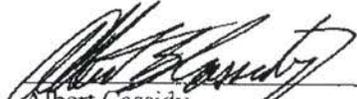
- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement; and
- (g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference.
- (h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

This Second Amendment to Consent Order is final agency action of the Department pursuant to Section 120.52(7), Florida Statutes, 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, Florida Statutes. Upon the timely filing of a petition, this Second Amendment to Consent Order will not be effective until further order of the Department.

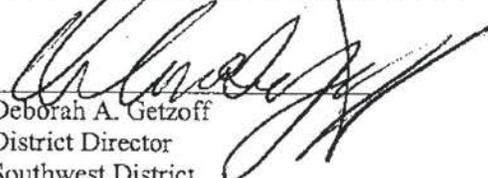
FOR RESPONDENT:

5/23/7
DATE


Albert Cassidy
President
Orchid Springs Development Corporation

DONE AND ORDERED this 5th day of June, 2007, in Hillsborough County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


Deborah A. Getzoff
District Director
Southwest District

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


Clerk

June 5, 2007
Date

DAG/js/a

cc: Lea Crandall, Office of General Counsel
David O'Brien, DEP-Tall.
Rudy Isaac, DEP-SWD