



# FLORIDA DEPARTMENT OF Environmental Protection

Ron DeSantis  
Governor

Jeanette Nuñez  
Lt. Governor

Northwest District  
160 W. Government Street, Suite 300  
Pensacola, FL 32502

September 22, 2021

**CERTIFIED MAIL #: 7021 0350 0000 9459 3291**

Henry Stovall  
Regional President  
Ascension Sacred Heart Emerald Coast  
7800 US Highway 98 W  
Miramar Beach, FL 32550

RECEIVED

OCT 05 2021

Northwest Florida DEP

SUBJECT: Department of Environmental Protection v. Ascension Sacred Heart Emerald Coast

OGC File No.: 21-0994

Facility: Sacred Heart Hospital on the Emerald Coast, Facility No. 9805525,  
7800 US Highway 98 W, Miramar Beach (Walton County), FL 32550

Dear Mr. Stovall:

The State of Florida Department of Environmental Protection ("Department") finds that Ascension Sacred Heart Emerald Coast ("Respondent"), failed to (1) conduct annual operability testing of the release detection systems, in violation of Rule 62-762.601(7), Florida Administrative Code ("F.A.C.") and section 403.121(3)(g), Florida Statutes ("F.S."); (2) provide approved overfill protection for the storage tank systems, in violation of Rule 62-762.501(2)(e)4., F.A.C. and section 403.121(4)(d), F.S.; and (3) conduct release detection, including visual inspections monthly, in violation of Rule 62-762.601(1)(e), F.A.C. and section 403.121(3)(g), F.S.

Before sending this letter, the Department requested that the Respondent undertake certain actions to resolve the violations. These actions have since been completed. However, due to the nature of the violations, the Respondent remains subject to civil penalties. The Respondent is also responsible for costs incurred by the Department during the investigation of this matter.

### The Department's Offer

Based on the violations described above, the Department is seeking \$9,000.00 in civil penalties and \$250.00 for costs and expenses the Department has incurred in investigating this matter,

which amounts to a total of \$9,250.00. The civil penalty for violation of Rule 62-762.601(7), F.A.C. and section 403.121(3)(g), F.S. is \$3,000.00. The civil penalty for violation of Rule 62-762.501(2)(e)4., F.A.C. and section 403.121(4)(d), F.S. is \$3,000.00. The civil penalty for violation of Rule 62-762.601(1)(e), F.A.C. and section 403.121(3)(g), F.S. is \$3,000.00.

### **Respondent's Acceptance**

If you wish to accept this offer and fully resolve the enforcement matter pending against the Respondent, please sign this letter and return it to the Department at the Northwest District by **October 7, 2021**. The Department will then countersign it and file it with a designated clerk of the Department. Once the document is filed with the designated clerk, it will constitute a final order of the Department pursuant to section 120.52(7), F.S. and will be effective unless a request for an administrative hearing is filed by a third party in accordance with Chapter 120, F.S. and the attached Notice of Rights.

By accepting this offer you, Henry Stovall:

- (1) certify that you are authorized and empowered to negotiate, enter into, and accept the terms of this offer in the name and on behalf of Respondent;
- (2) acknowledge and waive Respondent's right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this offer, once final;
- (3) acknowledge and waive Respondent's right to an appeal pursuant to section 120.68, F.S.; and
- (4) acknowledge that payment of the above amount does not constitute a waiver of the Department's right, if any, to recover emergency response related costs and expenses for this matter.

The Department acknowledges that the Respondent's acceptance of this offer does not constitute an admission of liability for the violation(s) referenced above.

### **Respondent's Performance**

After signing and returning this document to the Department,

- (1) Respondent must pay \$9,250.00 in full by **October 21, 2021**.
- (2) 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.fldeportal.com/go/pay/>

It will take a number of days after this order is final, effective and filed with the Clerk of the Department before ability to make online payment is available.

The Department may enforce the terms of this document, once final, and seek to collect monies owed pursuant to Sections 120.69 and 403.121, F.S.

Until clerked by the Department, this letter is only a settlement offer and not a final agency action. Consequently, neither the Respondent nor any other party may request an administrative hearing to contest this letter pursuant to Chapter 120, F.S. Once this letter is clerked and becomes a final order of the Department, as explained above, the attached Notice of Rights will apply to parties, other than the Respondent, whose interests will be substantially affected.

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.

Please be aware that if the Respondent declines to respond to the Department's offer, the Department will assume that the Respondent is not interested in resolving the matter and will proceed accordingly.

If you have questions, please contact Ms. Haley Matherly at [Haley.Matherly@FloridaDEP.gov](mailto:Haley.Matherly@FloridaDEP.gov).

Sincerely,



Elizabeth Mullins Orr  
District Director  
Northwest District

**FOR THE RESPONDENT:**

I, Henry Stovall [Type or Print Name], **HEREBY ACCEPT**  
**THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By:  Date: October 1, 2021  
[Signature]

Title: Regional President Ascension Sacred Heart  
[Type or Print]

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**FOR DEPARTMENT USE ONLY**

DONE AND ORDERED this 6th day of October, 2021, in Orange County,  
Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



Elizabeth Mullins Orr  
District Director  
Northwest District

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

  
Clerk

October 6, 2021  
Date

Attachments: Notice of Rights  
Penalty Calculation

Cc: Christopher Van Wagner, [christopher.vanwagner@medxcel.com](mailto:christopher.vanwagner@medxcel.com)

Final clerked copy furnished to:  
Lea Crandall, Agency Clerk, [Lea.Crandall@FloridaDEP.gov](mailto:Lea.Crandall@FloridaDEP.gov)

## NOTICE OF RIGHTS

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

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

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; 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; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 or received via electronic correspondence at [Agency\\_Clerk@floridadep.gov](mailto: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 District Office at the address indicated above. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under Sections 120.569 and 120.57, Florida Statutes. Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.

PENALTY COMPUTATION WORKSHEET  
SUBJECT TO FINAL APPROVAL

Violator's Name: Sacred Heart Hospital on the Emerald Coast, Fac No 9805525

Address: 7800 US Highway 98 W, Miramar Beach, Walton County, FL

Name of Department Staff Responsible for the Penalty Computations:

Haley Matherly Mark Gillman

September 2021

PART I - PENALTY DETERMINATIONS

Violation Type and description	RCRA Guideline	ELRA Schedule	ENVIRON- MENTAL Harm	Extent of Dev.	Matrix or ELRA Amount	Adjust- ments	Total
<sup>I</sup> Rule 62-762.601(7), F.A.C. - Failed to conduct annual operability testing of the release detection systems. The annual operability results of the release detection devices were not available during the inspection.	N/A	Section 403.121(3)(g), F.S. - Failure to conduct or maintain required release detection.	N/A	N/A	N/A	\$0.00	\$3,000.00
<sup>II</sup> Rule 62- 762.501(2)(e)4., F.A.C. - Failed to provide approved overfill protection. The annual operability results of the overfill protection devices were not available during the inspection.	N/A	Section 403.121(4)(d), F.S. - Failure to conduct required monitoring or testing.	N/A	N/A	N/A	\$0.00	\$3,000.00

III Rule 62-762.601(1)(e), F.A.C. - Failure to conduct release detection, including visual inspections monthly. There is a gap in the records that shows the facility did not conduct monthly visual inspections from September 2019 until April 2021.	Section 403.121(3)(g), F.S. - Failure to conduct or maintain required release detection.						
	N/A	N/A	N/A	N/A	\$0.00	\$3,000.00	

Subtotals: \$0 \$0.00 \$9,000.00

**Total Penalties for all violations: \$9,000.00**

Department Costs: \$250.00

09/22/2021

Date

Date

Elizabeth Mullins Orr, District Director

MaryAlice McElheney

Assistant Deputy Secretary, Regulatory

Peer Reviewed by Division: Yes ( ) No (X)

## PART II - MULTI-DAY PENALTIES AND ADJUSTMENTS

<u>Adjustments</u>	<u>Amount</u>
Good faith prior to discovery:	\$0.00
Justification:	
Good faith after discovery:	\$0.00
Justification:	
History of non-compliance:	\$0.00
Justification:	
Economic benefit of non-compliance:	
Economic Benefit was calculated to be insignificant and will not be added to the penalties at this time.	
Refer to descriptions and calculations below.	
	\$0.00
Justification:	
Ability to pay:	\$0.00
Justification:	
Total Adjustments:	
	\$0.00

## ECONOMIC BENEFIT CALCULATIONS

$$EB = AC(1-T) + DC(I) =$$

AC = Avoided Costs – expenditures that will never be incurred for violator's noncompliance.

DC = Delayed Costs – expenditures deferred by violator's failure to comply.

T = Corporate Tax Rate = 21% (in 2020)

I = Interest rate charged by IRS for delinquent accounts = 4% (in 2020)

**Avoided Costs (AC) and/or Delayed Costs (DC) for each Violation:**

Add description including assumptions used for cost calculations.

Count	Issue	Avoided Cost AC	Corporate Tax Rate 2020=21% T	Delayed Costs DC	Interest Rate for Delinquent Accounts 2020=4% I	Economic Benefit AC(1-T) + DC(I)	# of Components or Occurrences	TOTAL
I	Release detection testing	=	0.79	\$150	0.04	= \$6.00	2	\$12.00
II	Overfill device testing	=	0.79	\$50	0.04	= \$2.00	2	\$4.00
TOTAL:								\$16.00

Economic Benefit will not be added to the Penalty Calculations as it was found to be insignificant.

The total estimated Economic Benefit is calculated above.

**MULTI-DAY PENALTIES**

Number of days adjustment factor(s) to be applied:

Justification: \_\_\_\_\_ \$0.00

Or

Number of days matrix amount is to be multiplied:

Justification: \_\_\_\_\_ \$0.00

Comments:

**PART III - OTHER ADJUSTMENTS MADE AFTER MEETING WITH THE RESPONSIBLE PARTY**

ADJUSTMENT

Dollar Amount

Relative merits of the case:

\_\_\_\_\_

Resource Considerations:

\_\_\_\_\_

Other Justification:

Date

Elizabeth Mullins Orr, District Director