



FLORIDA DEPARTMENT OF Environmental Protection

Northwest District
160 W. Government Street, Suite 308
Pensacola, FL 32502

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

March 22, 2022

Fort Walton Beach Medical Center, Inc.
c/o Steve Moore, Chief Financial Officer
1000 Mar Walt Drive
Fort Walton Beach, Florida 32547

Re: Executed Consent Order; DEP v. Fort Walton Beach Medical Center, Inc.
OGC Case No. 21-1357

Dear Mr. Moore:

Please find enclosed the executed Consent Order that addresses the resolution of petroleum storage tank violations at Destin Medical Arts/Urgent Care located at 966 Airport Road, Destin, Florida 32541.

Please review the Respondent's Performance section of the Consent Order and respond accordingly.

Your cooperation in resolving this matter is appreciated. If you have questions, please contact Haley Matherly at Haley.Matherly@FloridaDEP.gov

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth Mullins Orr".

Elizabeth Mullins Orr
Director
Northwest District

EMO/hm

Enclosure: Short Form Consent Order



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March 10, 2022

Fort Walton Beach Medical Center, Inc.
Steve Moore, Chief Financial Officer
1000 Mar Walt Drive
Fort Walton Beach, Florida 32547

SUBJECT: Department of Environmental Protection v. Fort Walton Beach Medical Center, Inc.

OGC File No.: 21-1357

Facility: Destin Medical Arts/Urgent Care, Facility No. 9047092, 966 Airport Road, Destin (Okaloosa County), Florida 32541

Dear Mr. Moore:

The State of Florida Department of Environmental Protection (Department) finds that Fort Walton Beach Medical Center, Inc. (Respondent) failed to (1) perform integrity testing on a transition piping sump in contact with the soil every three years, not to exceed 36 months, in violation of Rule 62-762.701(4)(a)1.b., Florida Administrative Code (F.A.C.) and section 403.121(4)(d), Florida Statutes ("F.S.") and (2) maintain and demonstrate financial responsibility to the County or Department for all storage tank systems, in violation of Rule 62-762.421(2), F.A.C. and section 403.121(4)(a), 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 \$8,400.00 in civil penalties and \$250.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$8,650.00. The civil penalty for violation of Rule 62-762.701(4)(a)1.b., F.A.C. and section 403.121(4)(d), F.S. is \$3,000.00. The civil penalty for violation of Rule 62-762.421(2), F.A.C. and section 403.121(4)(a), F.S. is \$7,500.00. The

Respondent requested a reduction in the civil penalties based on their urgency addressing the violations after they were referred. The typographical error the facility claims led to the violations has been fixed to prevent violations from happening at the facility in the future. The Department notes that the facility had 90 days to resolve the violations with the inspector prior to being referred for enforcement. The Department has approved a 20% reduction in the penalty to \$8,400.00. This amounts to a penalty of \$8,400.00 for the violations and \$250.00 for Department costs for a total of \$8,650.00.

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 **March 17, 2022**. 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, Steve Moore:

- (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 referenced above.

Respondent's Performance

After signing and returning this document to the Department,

- (1) Respondent must pay \$8,650.00 in full by **March 22, 2022**.
- (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.fldepportal.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 interest will be substantially affected.

Electronic signatures or other versions of parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect against 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 Haley Matherly at Haley.Matherly@FloridaDEP.gov.

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth Mullins Orr". The signature is written in a cursive style with a large, stylized "M" at the end.

Elizabeth Mullins Orr
District Director
Northwest District

FOR THE RESPONDENT:

I, Jeffrey S. Moore [Type or Print Name], **HEREBY**
ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.

By:

[Signature]

Date:

3/16/22

Title:

CFO

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this 22nd day of March, 2022, in
Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Elizabeth Mullins Orr

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.

Mandakini Patel

Clerk

March 22, 2022

Date

Enclosures: Notice of Rights
Penalty Calculation

Cc: Dianne Ristom, dianne.ristom@hcahealthcare.com

Final clerked copy furnished to:

Lea Crandall, Agency Clerk, 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, 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:		<u>Destin Medical Arts/Urgent Care, Facility No. 9047092</u>					
Address:		<u>996 Airport Road, Destin (Okaloosa County), Florida 32541</u>					
Name of Department Staff Responsible for the Penalty Computations:							
<u>Haley Matherly</u>		<u>Mark Gillman</u>					
<u>December 2021</u>							
<u>PART I - PENALTY DETERMINATIONS</u>							
Violation Type and description	RCRA Guideline	ELRA Schedule	ENVIRON- MENTAL Harm	Extent of Dev.	Matrix or ELRA Amount	Adjust-ments	Total
I Rule 62-762.701(4)(a)1.b., F.A.C. - Failure to perform integrity testing on transition piping sump in contact with the soil every three years, not to exceed 36 months. The violation has since been resolved, but the facility exceeded the 90-day compliance assistance period.	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
II Rule 62-762.421(2), F.A.C. - Failure to maintain and demonstrate financial responsibility to the County or Department for all storage tank systems. During the 2021 compliance inspection, it was discovered that the most recent tank insurance policy expired in 2018. The violation has since been resolved, but the facility exceeded the 90-day compliance assistance period.	N/A	Section 403.121(4)(a), F.S. - Failure to satisfy financial responsibility requirements.	N/A	N/A	N/A	\$0.00	\$7,500.00
Subtotals					\$0	\$0.00	\$10,500.00
<u>Total Penalties for all violations:</u>							<u>\$10,500.00</u>
<u>Chin Lasker</u> on behalf of						<u>Department Costs:</u>	<u>\$250.00</u>
Elizabeth Mullins Orr, District Director						12/29/2021	
MaryAlice McElheney						Date	
Assistant Deputy Secretary, Regulatory						Date	
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: <u>Please see justification and calculations below</u>	
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	Integrity Testing	=	0.79	\$175	0.04	= \$7.00	1	\$7.00
II	Tank Insurance	= \$1,619	0.79	\$540	0.04	= \$1,300.61	1	\$1,300.61
							TOTAL:	\$1,307.61

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:	
Please see justification below.	
02/28/2022	
Date	Elizabeth Mullins Orr, District Director

We recommend and request an approval for the reduction in this civil penalty for the purpose of resolving this case by way of a Short Form Consent Order (SFCO). The above penalty was approved for an SFCO issued and dated January 3, 2022.

The Respondent sent an email requesting a reduction in the civil penalty due to their efforts to address the violations quickly after they were referred. The violations occurred due to a typographical error that caused the tank at this facility to be overlooked when routine maintenance and insurance updates were being performed at the Respondent's other facilities. The tank associated with this facility was listed in the facility's records as being at a different location. The error has since been fixed; the tank's specific location has been updated in the facility's records and on the insurance policy. Further, the facility was able to produce the missing insurance certificates since 2018 after being issued the SFCO; however, on certificates 09/2018-09/2020 the facility is listed incorrectly.

Compliance Assurance Program (CAP) management notes that the facility received a Compliance Assistance Offer to a verified email address shortly after the compliance inspection during which the violations were cited. The facility had 90 days to resolve the violations with the inspector before being referred for enforcement. CAP management has reviewed the penalties and the facility's request and believes a 20% reduction in the penalties is justified. We propose a civil penalty of \$2,400.00 for Count I, \$6,000.00 for Count II, and \$250.00 in Department costs for a total of \$8,650.00. This would amount to a 20% reduction, which we believe is appropriate for the reasons described.