



FLORIDA DEPARTMENT OF Environmental Protection

South District
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Fort Myers FL 33902-2549
SouthDistrict@FloridaDEP.gov

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

April 7, 2022

Franck Leblanc, Director, Environmental Services
Florida Power & Light Company
15430 Endeavor Drive, Mail Station: D01/JW
Jupiter, Florida 33478
E-mail: Franck.leblanc@fpl.com

SUBJECT: Department of Environmental Protection v. Florida Power & Light Company
OGC File No.: 22-0461
Facility ID Number: FLD000807370
Ft. Myers Lee & Thompson Service Center

Dear Mr. Leblanc:

Thank you for your letter dated March 15, 2022, requesting the Department of Environmental Protection ("Department") to consider issuance of a Compliance Assistance Offer or In-Compliance Closure Letter in lieu of a short form consent order.

The Department agrees with you that providing informal opportunities to resolve relatively minor violations is good practice. In that spirit, the Department considers the violation of not properly labelling the 55-gallon drum to be fully resolved.

Regarding the violation of storing used oil more than 35 days, the Department twice provided Florida Power & Light Company informal opportunities to explain procedural changes that would provide assurance that this violation would not recur for a third time. After twice receiving written explanations similar to a previously ineffective explanation, the Department escalated to the Warning Letter/Consent Order enforcement path to ensure that Florida Power & Light Company would implement effective corrective action. The Department acknowledges that Florida Power & Light Company implemented effective corrective action after being informed that a Warning Letter would be issued. No further corrective action is necessary; therefore, the Department proposes to fully resolve this violation with this short form consent order.

The Department finds that Florida Power & Light Company ("Respondent") stored used oil for more than 35 days without meeting the requirements for a used oil processing facility and obtaining a processing permit, in violation of Title 40 Code of

Federal Regulations (40 C.F.R.) 279.45(a)/Rule 62-710.800(1), Florida Administrative Code (F.A.C.). Before sending this letter, the Department requested that the Respondent undertake certain actions to resolve the violation(s). These actions have since been completed. However, due to the nature of the violation(s), 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 \$2,000.00 in civil penalties and \$250.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$2,250.00. The civil penalty in this matter includes 1 violation(s) of \$2,000.00 or more.

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 P.O. Box 2549, Fort Myers, Florida 33902-2549 by April 25, 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, Franck Leblanc:

- (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 \$2,250.00 in full by May 16, 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 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 any questions, please contact Karen Bayly at 239-344-5616 or at Karen.Bayly@Floridadep.gov.

Sincerely,



Jon Iglehart
District Director
South District

cc: Tara Bourcy, Tara.Bourcy@fpl.com
Jack E. Alexander, Jack.E.Alexander@fpl.com

FOR THE RESPONDENT:

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

By: _____
[Signature]

Date: _____

Title: _____
[Type or Print]

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this ____ day of _____, 2022, in Lee County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Jon 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

Date

Attachments: Notice of Rights
 Warning Letter

Final clerked copy furnished to:

Lea Crandall, Agency Clerk (lea.crandall@dep.state.fl.us)

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.