



FLORIDA DEPARTMENT OF Environmental Protection

Northeast District
8800 Baymeadows Way West, Suite 100
Jacksonville, Florida 32256

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

March 11, 2024

Sent electronically to: Upchurchservicesllc@gmail.com

Mr. James Upchurch
Upchurch Services, LLC
21 Sweet Mango Trail
St. Augustine, Florida 32086

SUBJECT: Department of Environmental Protection v. James Upchurch
OGC File No. 23-1969
Facility ID No. 436669
St. Johns County


Dear Mr. Upchurch:

Enclosed is a copy of the executed Consent Order to resolve Case Number 23-1969. The effective date of this Order is March 11, 2024, and all timeframes will be referenced from this date.

As a reminder, a Consent Order is a binding legal document and was voluntarily entered into by both parties.

Should you have any questions concerning the Consent Order, please contact the case manager, Brandi Philips at (904) 256-1506, or at brandi.philips@floridadep.gov. Your continued cooperation in the matter is appreciated.

Sincerely,


Thomas G. Kallemeyn
Assistant Director

Enclosure: Executed Consent Order #23-1969

ec: FDEP-OGC: Lea Crandall
FDEP-NED: Brandi Philips, Keri Armstrong, Thomas Kallemeyn, DEP_NED



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January 19, 2024

Mr. James Upchurch
Upchurch Services, LLC
21 Sweet Mango Trail
St. Augustine, Florida 32086
Upchurchservicesllc@gmail.com

SUBJECT: Department of Environmental Protection v. James Upchurch
OGC File No.: 23-1969
Site No. 436669/ 7630 A1A S., St. Augustine, Florida 32080

Dear Mr. Upchurch:

The State of Florida Department of Environmental Protection (“Department”) finds James Upchurch (“Respondent” or “you”) conducted an unauthorized mangrove alteration, in violation of Section 403.9328(1) Florida Statutes (Fla. Stat.). Although there are no actions required to correct the violation, the Respondent remains subject to civil penalties as a result of the violation. 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 \$4,500.00 in civil penalties and \$500.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$5,000.00. The civil penalties are apportioned as follows: \$4,500.00 for violation of 403.9328(1), Fla. Stat. In lieu of paying \$750.00 of this total, the Department will accept timely completion of the Department’s Online Environmental School and reduce the penalty and costs total to \$4,250.00.

Respondent’s Acceptance

If you wish to accept this offer and fully resolve this pending enforcement matter, please sign this letter and return it to the Department at 8800 Baymeadows Way W, Suite 100 within 30 calendar days of receipt of this letter. 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), Fla. Stat., and will be effective unless a request for an administrative hearing is filed by a third party in accordance with Chapter 120, Fla. Stat., and the attached Notice of Rights.

By accepting this offer you:

- (1) acknowledge and waive your right to an administrative hearing pursuant to Sections 120.569 and 120.57, Fla. Stat., on the terms of this offer, once final;
- (2) acknowledge and waive your right to an appeal pursuant to Section 120.68, Fla. Stat; and
- (3) 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 your 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) If Respondent elects to complete the online course effectively reducing the penalty to \$4,250.00, the online course must be completed with a passing score of 80 or above on the Environmental School exam by James Upchurch [Respondent], or other representative corporate officer of Respondent within 30 calendar days of the Department's course activation date.
 - a. To accept this offer, Respondent shall execute "Attachment A- Environmental School Offer Letter" attached hereto and incorporated herein and return the executed letter via certified mail within 30 days of the effective date of this Consent Order. It shall be submitted to the Florida Department of Environmental Protection, Northeast District Office, Attention: Brandi Rickett, 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida, 32256.
 - b. Upon submitting an executed Attachment A to the Department, Respondent shall complete the Online Environmental Training School course within 30 calendar days from the Department's course activation date.
 - c. Upon the timely successful completion of the course, Respondent shall pay a civil penalty and cost of \$4,250.00 in 12 monthly installments of \$354.17. The first payment is due no later than 60 days of the effective date of this Consent Order and your final payment is due no later than 14 months from the effective date of this Consent Order. Failure to timely make any installment payment will enable the Department, at its discretion, to accelerate the remaining balance to become immediately due. The payments required by this Consent Order shall be paid 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 Consent 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 becomes final, effective and filed with the Clerk of the Department before the ability to make online payment is available.
 - d. If Respondent does not elect to take Environmental School, does not complete within the time specified herein, or does not complete the course within 30 days

from the Department's course activation date, the Respondent shall be responsible for the entire \$5,000.00 civil penalty and fee in accordance with paragraph 2 below.

- (2) Should the Respondent opt out of the online Environmental Training School or should the online course not be completed in accordance with the criteria set forth in paragraph 1 above, Respondent shall pay \$5,000.00 in 12 monthly installments of \$416.67. The first payment is due within 30 days of the effective date of this Consent Order and your final payment is due no later than 365 days from the effective date of this Consent Order. Failure to timely make any installment payment will enable the Department, at its discretion, to accelerate the remaining balance to become immediately due. Payments shall be made 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 and effective 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, Florida Statute

Until clerked by the Department, this letter is only a settlement offer and not a final agency action. Consequently, neither you nor any other party may request an administrative hearing to contest this letter pursuant to Chapter 120, Florida Statute. 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 you, 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 you decline to respond to the Department's offer, the Department will assume that you are not interested in resolving the matter and will proceed accordingly.

If you have any questions, please contact Brandi Rickett at (904) 256-1506, or at Brandi.Rickett@FloridaDEP.gov.


Sincerely,



Thomas G. Kallemeyn
Assistant Director

FOR THE RESPONDENT:

I, UPCHURCH, JAMES [James Upchurch], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: 
James Upchurch

Date: 02/24/2024

Title: OWNER
President

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this 11th day of March 2024, in Duval County, Florida

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Gregory J. Strong
District Director
Northeast District

TCK

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


Clerk

March 11, 2024
Date

Attachments: Notice of Rights

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 OGC Number assigned to this Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Order;
- d) A statement of when and how the petitioner received notice of the Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Order.

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.

ATTACHMENT A



**FLORIDA DEPARTMENT OF
Environmental Protection**

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January 19, 2024

Mr. James Upchurch
Upchurch Services, LLC
21 Sweet Mango Trail
St. Augustine, Florida 32086
Upchurchservicesllc@gmail.com

SUBJECT: Environmental School Offer
James Upchurch
OGC File No. 23-1969
Upchurch Services, LLC

Mr. Upchurch:

The State of Florida Department of Environmental Protection (“Department”) finds that James Upchurch (“Respondent”) altered mangroves without a permit, in violation of 403.9328(1), Florida Statutes.

The Department’s Offer: The Department will offer a \$750.00 reduction to the civil penalties for the violations described above if the Respondent completes, Department’s Online Environmental Training School in accordance with the criteria set forth with the Department’s executed Order.

Respondent’s Acceptance: If you wish to accept this offer and fully resolve the enforcement matter pending, please sign this letter and return it to the Department at 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida, 32256, to the attention of Brandi Rickett, within 30 calendar days of the date of this letter. 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, the online course must be completed by James Upchurch within 30 calendar days from the Department's course activation date.

Upon completion of the course, the Department will send you a notification that you have satisfied any liability you may have to the Department concerning the violations described in the attachments to this offer letter.

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

If you have any questions, please contact Brandi Rickett at (904) 256-1506, or via email at brandi.rickett@floridadep.gov.

Sincerely,



Thomas G. Kallemeyn
Assistant Director
Northeast District

FOR THE RESPONDENT:

I, UPCHURCH, JAMES, [James Upchurch], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: 
James Upchurch

Date: 02.24.2024

Email: UPCHURCHSERVICESLLC@GMAIL.COM