



# 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 31, 2023

Sent electronically to: [mpersing@walshgroup.com](mailto:mpersing@walshgroup.com)

Mr. Matthew D. Persing  
Vice President of Florida Region  
4343 Anchor Plaza Parkway, #155  
Tampa, Florida 33634

Corporation Service Company  
1201 Hays Street  
Tallahassee FL 32301-2525

**SUBJECT: Florida Department of Environmental Protection v. Archer Western  
Contractors, LLC  
FLR20BA14  
OGC File No. 21-1016  
Duval County – NPDES Stormwater Program**

Dear Mr. Persing,

Enclosed is a copy of the executed Consent Order to resolve Case No. 21-1016. March 31, 2023 is the effective date of this Order, 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 Matthew Kershner, at (904) 256-1649. Your continued cooperation is appreciated.

Sincerely,

A handwritten signature in blue ink that reads "TG Kallemeyn".

Thomas G. Kallemeyn  
Assistant Director

cc: FDEP-NED: Sally Logan, Anna McClure, Matthew Kershner  
FDEP-OGC: Ronnie W. Hoenstine

cc: Donald Cowan – [dcowan@walshgroup.com](mailto:dcowan@walshgroup.com); James Graham – [jgraham@walshgroup.com](mailto:jgraham@walshgroup.com)  
Erin Dubose – [edubose@walshgroup.com](mailto:edubose@walshgroup.com); Mark Monreal - [mmonreal@walshgroup.com](mailto:mmonreal@walshgroup.com)  
Quentin Hill – [qhill@gaiconsultants.com](mailto:qhill@gaiconsultants.com); Emy Delgado – [emy.delgado@dot.state.fl.us](mailto:emy.delgado@dot.state.fl.us)



# 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

February 17, 2023

Sent electronically to: [mpersing@walshgroup.com](mailto:mpersing@walshgroup.com)

Mr. Matthew D. Persing  
Vice President of Florida Region  
4343 Anchor Plaza Parkway, #155  
Tampa, Florida 33634

Corporation Service Company  
1201 Hays Street  
Tallahassee FL 32301-2525

**SUBJECT: Florida Department of Environmental Protection v. Archer Western  
Contractors, LLC**  
**FLR20BA14**  
**OGC File No. 21-1016**  
**Duval County – NPDES Stormwater Program**

Dear Mr. Persing,

Enclosed is the Consent Order to resolve the issues in the subject OGC File. Please review the Consent Order and, if you find it acceptable, sign and return the original document to this office within 14 days of receipt.

If you wish to modify the Consent Order, please respond to this office in writing within 14 days, explaining your concerns including any proposed changes.

If you have any questions concerning the Consent Order, please contact Matt Kershner at (904) 256-1649, or via email at [matthew.kershner@floridadep.gov](mailto:matthew.kershner@floridadep.gov). Your continued cooperation in the matter is greatly appreciated.

Sincerely,

A handwritten signature in blue ink that reads "T.G. Kallemeyn".

Thomas G. Kallemeyn  
Assistant Director

ec: FDEP-NED: Sally Logan, Anna McClure, Matthew Kershner  
FDEP-OGC: Ronnie W. Hoenstine

cc: Donald Cowan – [dcowan@walshgroup.com](mailto:dcowan@walshgroup.com); James Graham – [jgraham@walshgroup.com](mailto:jgraham@walshgroup.com)  
Erin Dubose – [edubose@walshgroup.com](mailto:edubose@walshgroup.com); Mark Monreal - [mmonreal@walshgroup.com](mailto:mmonreal@walshgroup.com)  
Quentin Hill – [qhill@gaiconsultants.com](mailto:qhill@gaiconsultants.com); Emy Delgado – [emy.delgado@dot.state.fl.us](mailto:emy.delgado@dot.state.fl.us)

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

|                             |   |                      |
|-----------------------------|---|----------------------|
| STATE OF FLORIDA DEPARTMENT | ) | IN THE OFFICE OF THE |
| OF ENVIRONMENTAL PROTECTION | ) | NORTHEAST DISTRICT   |
|                             | ) |                      |
| v.                          | ) | OGC FILE NO. 21-1016 |
|                             | ) |                      |
| ARCHER WESTERN CONTRACTORS, | ) |                      |
| LLC.                        | ) |                      |
| _____                       | ) |                      |

**CONSENT ORDER**

This Consent Order (“Order”) is entered between the State of Florida Department of Environmental Protection (“Department”) and Archer Western Contractors, LLC (“Archer Western” or “Respondent”) to reach settlement of certain matters at issue between the Department and the Respondent.

The Department finds and the 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 (“Fla. Stat.”), and the rules promulgated and authorized in Title 62, Florida Administrative Code (“Fla. Admin. Code”). The Department has jurisdiction over the matters addressed in this Order.
2. The Respondent is a person within the meaning of Section 403.031(5), F.S.
3. Respondent is an active foreign limited liability company with a principal address of 929 West Adams Street, Chicago, IL 60607.
4. On October 24, 2016, the Department received the Respondent’s Notice of Intent application form to use the National Pollutant Discharge Elimination System (“NPDES”) Construction Generic Permit for Stormwater Discharge from Large and

Small Construction Activities” (“CGP”) to conduct construction activities at the Interstate 95 and Interstate 295 North Interchange located in Jacksonville, Florida, Duval County, with approximate Latitude 30°27'35.04" North, Longitude -81°38'57.89" West (“Project Site”). The CGP document and its requirements can be referenced at: [https://floridadep.gov/sites/default/files/Construction\\_Generic\\_Permit\\_0.pdf](https://floridadep.gov/sites/default/files/Construction_Generic_Permit_0.pdf).

5. On November 3, 2016, the Department issued a letter to the Respondent verifying the Project Site was covered as a large dewatering construction site under the NPDES CGP from October 27, 2016, to October 26, 2021; and assigned the Project Site the permit number of FLR20BA14 (Exhibit A).

6. On August 24, 2021, the Department received the Respondent’s Notice of Intent to renew the current NPDES CGP to continue conducting construction and dewatering activities at the Project Site.

7. On August 27, 2021, the Department issued a letter to the Respondent verifying the Project Site would remain covered as a large dewatering construction site under the NPDES CGP from August 27, 2021, to August 26, 2026 (FLR20BA14-002) (Exhibit B). The NPDES CGP issued requires performance based and effective sediment and erosion controls until the FDOT Jax I-95/I-295 North Interchange DB Project (“Project”) reaches Final Stabilization.

8. Department personnel conducted NPDES Stormwater inspections on June 1, 2021, and June 4, 2021 and follow-up visits on July 15, 2021, July 26, 2021, September 30, 2021, December 21, 2021, and January 28, 2022; and observed the following violations at the Project Site:

a) Respondent failed to properly maintain certain Best Management Practices (“BMPs”) on-site during six site visits conducted by the Department, pursuant to **NPDES CGP Condition Part 5 as well as Rules 62-620.610(7) and 62-621.260, Fla. Admin. Code**. BMPs are performance based and must be implemented before construction activities commence and must be maintained until final stabilization has been achieved for the portions of the Project

served by the BMPs. The NPDES Stormwater inspection conducted on June 1, 2021 revealed a failure to maintain or install appropriate BMPs at five locations of Cross Drain ("CD")-4 EB, CD-5W, CD-8W, CD-11S, and CD-13S; contributing to sedimentation issues in Little Cedar Creek, a Class III water of the state as defined in Chapter 62-302, Fla. Admin. Code, at the address of 12974 Duval Lake Road E., and sedimentation issues in Little Cedar Creek downstream of CD-11S. The second part of the NPDES Stormwater inspection conducted on June 4, 2021, revealed the failure to install appropriate BMPs at CD-15W as well as at three drain locations along Cole Road, which became clogged with sediment and did not appropriately protect Little Cedar Creek from turbidity and sedimentation. The first follow-up site visit on July 15, 2021, revealed a wash-out of certain previously installed BMPs at CD-13 as well as a failure to install a BMP at the storm drain south of this final discharge location at the I295-W ramp parking area; contributing to further sedimentation in Little Cedar Creek at 12974 Duval Lake Road E. The second follow-up visit on July 26, 2021, revealed new sedimentation deposition occurring at 12974 Duval Lake Road East. The third follow-up visit on September 30, 2021, revealed sedimentation deposition occurring again at least 100 feet downstream of CD-13 and 400 feet downstream of CD-11S. The fourth follow-up visit on December 21, 2021, revealed sediment in CD-5 that flowed to CD-8. Turbid water (100+ NTUs) was discharging from CD-8 directly to off-site wetlands and eventually to Little Cedar Creek. Additionally, there was more sediment in Little Cedar Creek downstream from CD-13 and CD-11S as well as active sediment being discharged to Little Cedar Creek at CD-11S (coffer dam).

b) Archer Western performed and supplied documentation of certain sedimentation removal cleanup activities in response to notifications of the above referenced failures.

c) Throughout 2022 the Department continued to receive complaints from third parties about further ongoing sedimentation in the area of Little Cedar Creek, often including photos. Complaint investigations throughout the year, sometimes in conjunction with Archer Western Representatives were conducted. Additional BMP failures and sedimentation were observed.

d) Using Archer Western's weekly SWPPP inspection notes, the Department counted 44 potential violations based on AW log entries. Of these, 10 incidents had more than 30 days of overdue corrective actions. Corrective actions for BMP failures are to be completed within 7 days of discovery per the permit condition 6.4. Potential Violations Noted in Weekly/Rain Event SWPPP Inspections is attached as Exhibit C.

e) Archer Western has made claims of other contributors of sedimentation to the receiving waters discussed. The Department extensively investigated all the parties that Archer Western identified as contributors. While some of the claimed contributors were without merit or not actionable (such as natural or unregulated non-point source activity), the Department did find other entities contributed to the sedimentation and they were subject to separate enforcement actions.

f) It is impossible to identify with 100 percent certainty the origin of any given sedimentation accumulation, particularly as different flow regimes

under different conditions can carry sedimentation far afield for distant accumulation or shoaling can be near. However, enough evidence of Archer Western's contributions has accrued such that the removal requirements in paragraph 9 are appropriate. As some of the sediment accumulation in the removal areas identified may have had a different source, the value of this effort shall count toward an In-Kind project to offset penalties accrued.

Having reached a resolution of the matter the Respondent and the Department mutually agree, and it is,

**ORDERED:**

9. Respondent shall complete the following Corrective Actions
  - a) Within 120 days Respondent shall remove sedimentation from the tributary of Little Cedar Creek from CD 13 located at 30°27'43.45"N, 81°38'57.92"W for a stream length of approximately 800 ft. to 30°27'47.80"N, 81°39'03.67"W located on Brian Klepper et. al Parcel ID 0196950010. This volume is estimated to be 89 cubic yards of material. This was derived by multiplying the stream length of 800 ft as derived from a LIDAR survey x an average stream width of 6ft x an overall depth of 6 inches of sediment. Note that the current distribution of sediment is patchy and at greater and lesser depths than 6 inches, however an overall depth for the purposes of this calculation seems reasonable. The objective is to remove the sand sediment overburden from the natural pre-existing elevations and contours of the stream bed and steam channel as evidenced by the presence of tree roots and natural soil substrate. If Respondent achieves this objective by removing some volume different from this estimate, they shall so document and request Department concurrence prior to demobilization.
  - b) Within 120 days Respondent shall further remove sedimentation from the tributary of Little Cedar Creek, located at 30°27'52.54"N, 81°39'09.45"W, within City of Jacksonville parcel ID 0196891000. This volume



is estimated to be 1,000 cubic yards. This was derived by a visual comparison of previous soil boring investigations at this location with current site conditions. The objective is to remove the sand sediment overburden from the natural pre-existing elevations and contours of the stream bed and stream channel as evidenced by the presence of tree roots and natural soil substrate. If Respondent achieves this objective by removing some volume different from this estimate, they shall so document and request Department concurrence prior to demobilization.

c) The removal location and requirements of the above subparagraphs are shown in Exhibit D.

d) Respondent shall adhere to the time periods described in the paragraphs above and be in full compliance with Rules 62-302.500(1)(a)(3) and 62-302.530(70), Fla. Admin. Code, as well as the NPDES CGP rule requirements.

10. In addition to administrative penalties, within 30 days of the effective date of this Order, Respondent shall pay \$5,000.00 to the Department for costs and expenses. Payment shall be made by cashier's check or money order. Cashier's check or money order shall be made payable to the "State of Florida Department of Environmental Protection" and shall include thereon the notations "OGC Case No. 21-1016" and "Water Quality Assurance Trust Fund." The payment shall be sent to the State of Florida Department of Environmental Protection at 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida 32256. 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 ability to make online payment is available.

11. The Department has calculated a penalty in excess of the Environmental Litigation Reform Act (ELRA) cap of \$50,000.00, so an administrative penalty of \$50,000.00 is hereby assessed. However, acknowledging that some of the sediment



may have been sourced from an activity other than Respondent's, the full removal of the sedimentation identified in paragraph 9 and Exhibit D, including whatever may have come from other sources, is recognized as having a value greater than one and a half times the assessed penalty and therefore fulfills the Department's In-kind policy and satisfies the assessed penalty.

12. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each day Respondent fails to timely comply with the requirements of paragraph 9 of this Consent Order.

13. Within 30 days of written demand from the Department, the 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 "Water Quality Assurance Trust Fund." The Department may make demands for payment at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment and shall do so as further described in paragraphs 14 and 15, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Consent Order. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 11 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. 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 BusinessPortal

at: <http://www.fldepportal.com/go/pay/>. It will take a number of days after this Order becomes final and effectively filed with the Clerk of the Department before the ability to make an online payment is available.

15. Except as otherwise provided, all submittals and payments required by this Order shall be sent to NPDES Stormwater Program, Department of Environmental Protection, Northeast District Office, 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida, 32256.

16. This Order shall remain in effect until all costs and expenses have been paid and until the Project has reached Final Stabilization. Final Stabilization means that all soil disturbing activities at the Project Site have been completed, and that for all unpaved areas and areas not covered by a permanent structure, a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of at least 70% have been established or equivalent permanent stabilization measures (e.g., geotextiles) have been employed.

17. Respondent shall allow all authorized representatives of the Department access to the Project Site at reasonable times for the purpose of determining compliance with the terms of this Order, as well as the rules and statutes administered by the Department.

18. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor 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 shall be considered circumstances 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 by the next working day and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) 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. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

19. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

20. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This 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. Entry of this Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

21. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Order.

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

23. Respondent acknowledges and waives their right to an administrative hearing pursuant to Sections 120.569 and 120.57, Fla. Stat., on the terms of this Order. Respondent also acknowledge and waive their rights to appeal the terms of this Order pursuant to Section 120.68, Fla. Stat.

24. 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.

25. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Fla. Stat. Failure to comply with the terms of this Order constitutes a violation of Section 403.161(1)(b), Fla. Stat.

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

27. Persons who are not parties to this Consent 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. The administrative hearing process is designed to formulate final agency action and 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 Consent 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 Consent Order;
- d) A statement of when and how the petitioner received notice of the Consent 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 Consent Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent 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 Consent 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](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 Northeast District, 8800 Baymeadows Way West, Jacksonville, Florida, 32256. 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, Fla. Stat. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under Section 120.573, Fla. Stat. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in Section 120.573, Fla. Stat. and Rule 62-110.106(12), Fla. Admin. Code.

28. Rules referenced in this Order are available at:

<http://www.dep.state.fl.us/legal/Rules/rulelist.htm>.

FOR THE RESPONDENT ARCHER WESTERN  
CONTRACTORS, LLC:

Matthew Persing Digitally signed by Matthew Persing  
Date: 2023.03.27 12:38:00 -04'00'

03/27/2023

Matthew D. Persing  
Vice President - Florida Region

Date

**FOR DEPARTMENT USE ONLY**

DONE AND ORDERED this 31st day of March 2023, in Duval, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

*TJK*  
\_\_\_\_\_  
Gregory J. Strong  
District Director

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

\_\_\_\_\_  
Clerk

March 31, 2023  
Date



## Florida Department of Environmental Protection

Bob Martinez Center  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

Rick Scott  
Governor

Carlos Lopez-Cantera  
Lt. Governor

Jonathan P. Steverson  
Secretary

November 3, 2016

Kevin McGlinchey  
Archer Western Contrators LLC  
4343 Achor Plaza Pkway Ste 155  
Tampa, FL 33634

RE: **Facility ID: FLR20BA14**  
I-95 / I-295 N Interchange  
County: Duval

Dear Permittee:

The Florida Department of Environmental Protection has received and processed your *Notice of Intent to Use Generic Permit for Stormwater Discharge from Large and Small Construction Activities and Dewatering Operations* (NOI) and the accompanying processing fee. This letter acknowledges that:

- your NOI is complete;
- your processing fee is paid-in-full; and
- you are covered under the *Generic Permit for Stormwater Discharge from Large and Small Construction Activities and Dewatering Operations from non-contaminated sites* (CGD), DEP Document No. 62-621.300(4)(a).

Your project identification number is **FLR20BA14**. Please include this number on all future correspondence to the Department regarding this permit.

This letter is **not** your permit; however, this letter does serve **as verification of permit coverage**. A copy of the permit language is available online at <https://www.flrules.org/Gateway/reference.asp?No=Ref-04265> or by contacting the NPDES Stormwater Notices Center.



November 3, 2016

Your permit coverage becomes effective **10/27/2016** and will expire **10/26/2021**. To terminate your coverage prior to this expiration date, you must file a *National Pollutant Discharge Elimination System (NPDES) Stormwater Notice of Termination*, DEP Form 62-621.300(6) (NOT). An NOT must be filed within 14 days of either (a) your final stabilization of the site or (b) your relinquishment of control of the construction activities to a new operator. Terminating coverage under the CGP will also terminate your dewatering operations. You may not exclusively terminate dewatering operation under this form.

To renew your coverage beyond the expiration date, you must submit a new NOI and processing fee to the Department no later than two days before coverage expires.

Until your permit coverage is terminated, modified, or revoked, you are authorized to discharge stormwater from the construction site referenced in your NOI to surface waters in accordance with the terms and conditions of the CGP. Some key conditions of the CGP are:

- implementation of your stormwater pollution prevention plan (SWPPP);
- implementation of appropriate construction and dewatering best management practices (BMPs);
- conducting and documenting routine inspections; and
- retaining all records required by the permit (including your SWPPP) at the construction site or the alternate location specified in your NOI.

Projects that discharge stormwater associated with construction activity to a municipal separate stormwater system (MS4) shall submit a copy of the NOI or the Acknowledgement Letter within 7 days of receipt to the operator of the MS4.

If you have any questions concerning this Acknowledgment Letter, please contact the NPDES Stormwater Notices Center at (866) 336-6312 (toll-free).

Sincerely,



Cierra Robinson  
NPDES Stormwater Program



FLORIDA DEPARTMENT OF  
Environmental Protection

Bob Martinez Center  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

**Ron DeSantis**  
Governor

**Jeanette Nuñez**  
Lt. Governor

**Shawn Hamilton**  
Interim Secretary

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August 24, 2021

Matt Persing  
Archer Western Contractors  
4343 Anchor Plaza Pkwy Ste 155  
Tampa, FL 33634 7532

**RE: Facility ID: FLR20BA14-002**  
I - 95 - 9A - I - 295 Interchange  
County: Duval

Dear Permittee:

The Florida Department of Environmental Protection has received and processed your *Notice of Intent to Use Generic Permit for Stormwater Discharge from Large and Small Construction Activities and Dewatering Operations* (NOI) and the accompanying processing fee. This letter acknowledges that:

- your NOI is complete;
- your processing fee is paid-in-full; and
- you are covered under the *Generic Permit for Stormwater Discharge from Large and Small Construction Activities and Dewatering Operations from Large and Small Construction Activities and Dewatering Operations* (CGD), DEP Document No. 62-621.300(4)(a).

Your project identification number is **FLR20BA14-002**. Please include this number on all future correspondence to the department regarding this permit.

This letter is **not** your permit; however, this letter does serve as **verification of permit coverage**. A copy of the permit language is available online at <https://www.flrules.org/Gateway/reference.asp?No=Ref-04265> or by contacting the NPDES Stormwater Notices Center.

Your permit coverage becomes effective **August 27, 2021** and will expire **August 26, 2026**. To terminate your coverage prior to this expiration date, you must file a *National Pollutant Discharge Elimination System (NPDES) Stormwater Notice of Termination*, DEP Form 62-621.300(6) (NOT). An NOT must be

filed within 14 days of either (a) your final stabilization of the site or (b) your relinquishment of control of the construction activities to a new operator. Terminating coverage under the CGP will also terminate your dewatering operations. You may not exclusively terminate dewatering operation under this form.

To renew your coverage beyond the expiration date, you must submit a new NOI and processing fee to the department no later than two days before coverage expires.

Until your permit coverage is terminated, modified, or revoked, you are authorized to discharge stormwater from the construction site referenced in your NOI to surface waters in accordance with the terms and conditions of the CGD. Some key conditions of the CGD are:

- implementation of your stormwater pollution prevention plan (SWPPP);
- implementation of appropriate construction and dewatering best management practices (BMPs);
- conducting and documenting routine inspections; and
- retaining all records required by the permit (including your SWPPP) at the construction site or the alternate location specified in your NOI.

Projects that discharge stormwater associated with construction activity to a municipal separate stormwater system (MS4) shall submit a copy of the NOI or the Acknowledgment Letter within 7 days of receipt to the operator of the MS4.

If you have any questions concerning this Acknowledgment Letter, please contact the NPDES Stormwater Notices Center at (866) 336-6312 or [NPDES-stormwater@dep.state.fl.us](mailto:NPDES-stormwater@dep.state.fl.us).

Sincerely,

NPDES Stormwater Program  
Florida Department of Environmental Protection

### **NOTICE OF RIGHTS**

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the department. Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the application.

#### **Petition for Administrative Hearing**

A person whose substantial interests are affected by the department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rules 28-106.201 and 28-106.301, F.A.C., a petition for an administrative hearing must contain 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, and telephone number of the 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; and an explanation of how the petitioner's substantial interests are or 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 that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that 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 that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at [Agency\\_Clerk@dep.state.fl.us](mailto:Agency_Clerk@dep.state.fl.us). Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

### Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant and persons entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first. The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

### Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the department's action may also request an extension of time to file a petition for an administrative hearing. The department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at [Agency\\_Clerk@dep.state.fl.us](mailto:Agency_Clerk@dep.state.fl.us), before the deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

### Mediation

Mediation is not available in this proceeding.

### Judicial Review

Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Florida Rules of Appellate Procedure 9.110 and 9.190 with the Clerk of the Department in the Office of General Counsel (Station #35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000) and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice must be filed within 30 days from the date this action is filed with the Clerk of the Department.



**FLORIDA DEPARTMENT OF  
Environmental Protection**

**Ron DeSantis**  
Governor

Bob Martinez Center  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

**Jeanette Nuñez**  
Lt. Governor

**Shawn Hamilton**  
Interim Secretary

**Receipt for Submission**

For:  
**Matt Persing**

Facility ID: **FLR20BA14**

Facility Address: **11650 Houle Rd Jacksonville, FL 32218 3972**

**- Generic Permit for Stormwater Discharge Construction Activities and Dewatering Operations from non-contaminated sites (CGD)**

COUNTY: **Duval**

The department acknowledges receipt of your Notice of Intent (NOI) use NPDES Generic Permit for Stormwater Discharge from Large and Small Construction Activities and Dewatering Operations from non-contaminated sites (CGD). The Acknowledgement Letter, a copy of your NOI and the Generic Permit are attached. Please note that within 14 calendar days after your site has achieved final stabilization and all discharges authorized by this permit are eliminated or are authorized under a separate NPDES permit, you must submit a completed Notice of Termination (NOT). For your convenience, a blank form has been attached.

For sites discharging to an MS4, the Operator must send a copy of the NOI or the Acknowledgement Letter within 7 calendar days of receipt to the operator of the MS4. If you have any questions concerning this e-mail, please contact the NPDES Stormwater Notices Center at (866) 336-6312 or [NPDES-stormwater@dep.state.fl.us](mailto:NPDES-stormwater@dep.state.fl.us).

Attachments: Notice of Intent - CGP, Acknowledgement Letter, Construction Generic Permit Rule

## Exhibit C

### Potential Violations Noted in Weekly/Rain Event SWPPP Inspections

The tables below list potential violations pertaining to the failure of maintaining or improving BMPs based off the weekly/rain event SWPPP inspections conducted by AW. If there is a noted failure in BMPs during an inspection, corrective actions (maintenance and/or improvement of BMPs if BMP has proven ineffective) must be completed within 7 days of identification. Due to records being required to be kept for only 3 years, this analysis looked at SWPPP Inspections from 2020 to date (9/6/22) and was limited to only certain outfalls that are believed to be contributing to sedimentation around the site. Potential violations were limited to inspection entries that noted failed/damaged BMPs, needing improvement in BMPs (i.e. BMPs failing weeks at a time), exposed sediment, sediment removal, or any inspection notes that include evidence for the potential of sediment to be leaving the site. Any of the possible violations highlighted in red boxes are violations that took over 30 days for corrective actions to be noted.

In total, from 2020 until September 6, 2022, there were **44** of potential violations that occurred over **1,090** days from the **11** outfalls analyzed. There were **11** potential violations that were noted to have continued over 30 days.



| <b>CD-5 East</b>   |                     |  |
|--|---------------------|--|
| <b>SWPPP Entry</b>   | <b>Dates</b>        | <b>Number of Days Corrective Actions Overdue</b> |
| Silt fence undermined  | 6/25/20 - 07/14/20  | 12   |
| Additional check dams needed                                   | 12/07/20 - 12/14/20 | 7  |
| Exposed embankment awaiting sod                                | 2/17/21 - 3/16/21   | 27   |
| Remove sediment in ditch pavement                              | 7/06/21 - 7/27/21   | 21   |
| Additional BMPs for flyover runoff                             | 4/07/22 - 5/02/22   | 18   |
| <b>Total of 5 potential violations occurring over 85 days.</b> |                     |  |

| <b>CD-6 West</b>  |                   |  |
|---|-------------------|--|
| <b>SWPPP Entry</b>  | <b>Dates</b>      | <b>Number of Days Corrective Actions Overdue</b> |
| Need to add silt fence down, and sediment retrieval                 | 7/6/20 - 9/14/20  | 63   |
| Exposed embankment, silt fence down, shoulder exposed, and washouts | 2/10/21 - 5/11/21 | 83   |
| Sediment removal, and silt fence impaired/fixe                      | 6/29/21 - 9/28/21 | 84   |
| <b>Total of 3 potential violations occurring over 230 days.</b>     |                   |  |

| <b>CD-7 West</b>   |                    |  |
|--|--------------------|--|
| <b>SWPPP Entry</b>   | <b>Dates</b>       | <b>Number of Days Corrective Actions Overdue</b> |
| Retrieve sediment from creek   | 8/18/20 - 9/1/20   | 7  |
| Exposed embankment and silt fence down*  | 12/14/20 - 1/18/21 | 28   |
| Silt fence undermined, exposed embankment, turbid water, removal of sediment from creek, and FTB repairs | 2/10/21 - 3/2/21   | 13   |
| Exposed shoulder and noted washouts  | 4/13/21 - 5/11/21  | 21   |
| Silt fence repairs needed/conducted, sediment retrieval, and washouts                                    | 6/29/21 - 9/21/21  | 77   |
| Sediment removal   | 3/21/22 - 4/11/22  | 14   |
| <b>Total of 6 potential violations occurring over 160 days.</b>  |                    |  |

\* FDEP missing inspection report for week of 12/27/20

| <b>CD-8 West</b>   |                     |  |
|--|---------------------|--|
| <b>SWPPP Entry</b>   | <b>Dates</b>        | <b>Number of Days Corrective Actions Overdue</b> |
| Silt fence down  | 7/21/20 - 8/04/20   | 6  |
| silt fence undermined & remove sediment                        | 10/27/20 - 11/10/20 | 7  |
| Tree fell on silt fence; silt fence needs fix                  | 2/02/21 - 2/15/21   | 6  |
| Exposed embankment at headwall - awaiting sod                  | 2/10/21 - 2/23/21   | 6  |
| American Inline to remove sediment                             | 3/16/21 - 4/06/21   | 21   |
| Clean ditch pavement   | 7/08/21 - 7/27/21   | 12   |
| Overgrown vegetation   | 8/24/21 - 9/14/21   | 14   |
| Two trees down and remove FTB                                  | 7/15/22 - 7/26/22   | 4  |
| <b>Total of 8 potential violations occurring over 76 days.</b> |                     |  |

| CD-10   |                   |   |
|---|-------------------|---|
| SWPPP Entry   | Dates             | Number of Days Corrective Actions Overdue |
| Sediment removed  | 4/14/20 - 5/5/20  | 14  |
| Silt fence undermined, down, or repairs*                                | 5/12/20 - 7/6/20  | 48  |
| Silt fence down or undermined   | 9/8/20 - 10/13/20 | 28  |
| Retrieving sediment & fixing bank, plastic and/or silt fence            | 7/8/21 - 8/24/21  | 40  |
| Total of <b>4 potential violations</b> occurring over <b>130 days</b> . |                   |   |

\* Inspection on 5/26/20 failed to list this outfall. During this period of inspections, it seems that the inspections were split into different areas so we may be missing the area that covered this outfall

| CD-10 South  |                   |   |
|--|-------------------|---|
| SWPPP Entry  | Dates             | Number of Days Corrective Actions Overdue |
| Exposed embankment near creek; turbid water; silt fence overwhelmed  | 2/10/21 - 2/23/21 | 6   |
| Total of <b>1 potential violation</b> occurring over <b>6 days</b> . |                   |   |

| <b>CD-11 North</b>   |                     |  |
|--|---------------------|--|
| <b>SWPPP Entry</b>   | <b>Dates</b>        | <b>Number of Days Corrective Actions Overdue</b> |
| Washouts (near pumps and headwall), silt fence down, and having to fix floating turbidity barrier* | 7/28/20 - 10/27/20  | 84   |
| Silt fence down from fallen tree   | 11/30/30 - 12/14/20 | 7  |
| Exposed embankment with silt fence down and notes on sediment leaving site                         | 2/10/21 - 3/16/21   | 27   |
| Exposed embankment   | 4/13/21 - 5/4/21    | 14   |
| Need to fix plastic sheeting, fixed plastic and/or FTB   | 6/29/21 - 8/17/21   | 42   |
| Fix plastic & FTB**  | 9/17/21 - 9/28/21   | 4  |
| Fix plastic (east side of culvert) & silt fence  | 10/26/21 - 11/30/21 | 28   |
| <b>Total of 7 potential violations occurring over 206 days.</b>                                    |                     |  |

\* Two weeks during this period noted nothing for this outfall but that BMPs conditions were "Stable/no action needed" (9/1/20 & 9/29/20)

\*\* Inspection did note that a there was additional silt fencing added

| <b>CD-11</b>  |                   |  |
|---|-------------------|--|
| <b>SWPPP Entry</b>  | <b>Dates</b>      | <b>Number of Days Corrective Actions Overdue</b> |
| Exposed sediment; Later weeks note added plastic              | 3/23/21 - 5/25/21 | 56   |
| <b>Total of 1 potential violation occurring over 56 days.</b> |                   |  |

| <b>CD-11 Median</b>   |                  |  |
|---|------------------|--|
| <b>SWPPP Entry</b>  | <b>Dates</b>     | <b>Number of Days Corrective Actions Overdue</b> |
| Silt in roadway and at TCBW; extended silt fence noted                | 7/6/21 - 8/24/21 | 42   |
| Total of <b>1 potential violation</b> occurring over <b>42 days</b> . |                  |  |

| <b>CD-12</b>   |                   |  |
|--|-------------------|--|
| <b>SWPPP Entry</b>   | <b>Dates</b>      | <b>Number of Days Corrective Actions Overdue</b> |
| Sediment removal and silt fence overwhelmed/undermined                 | 2/19/21 - 3/23/21 | 25   |
| Sediment removal from rip rap*   | 4/13/21 - 5/11/21 | 21   |
| Sediment removal from rip rap  | 6/22/21 - 7/27/21 | 28   |
| Total of <b>3 potential violations</b> occurring over <b>74 days</b> . |                   |  |

\*5/30/21 inspection FDEP is missing

| <b>CD-13 West</b>  |                    |  |
|--|--------------------|--|
| <b>SWPPP Entry</b>   | <b>Dates</b>       | <b>Number of Days Corrective Actions Overdue</b> |
| Retrieving sediment from creek   | 10/5/21 - 10/29/21 | 17   |
| Fix/secure washout   | 11/8/21 - 11/23/21 | 8  |
| Total of <b>2 potential violations</b> occurring over <b>25 days</b> . |                    |  |

# EXHIBIT D

