



FLORIDA DEPARTMENT OF Environmental Protection

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

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

September 8, 2023

Pamela Caddell, President
Gulf-Atlantic Constructors Inc.
255 Kenmore Road
Pensacola, FL, 32503
phcaddell@gmail.com

RE: Executed Consent Order; FDEP vs. Gulf-Atlantic Constructors Inc; FLR10TP65;
OGC File No. 23-1040; Santa Rosa County

Dear Ms. Caddell:

Enclosed is the executed Consent Order, which addresses NPDES stormwater violations related to Airway Oaks. Please note the requirements of the Consent Order for which you are responsible for and fulfill all pertinent actions accordingly. All Consent Order time requirements begin the date that it is clerked by our Department unless otherwise noted.

Your cooperation in resolving this matter is greatly appreciated. If you have any questions, please contact Trevor Bostwick at (850) 595-0624 or by email at Trevor.Bostwick@FloridaDEP.gov.

Sincerely,

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

on behalf of

Elizabeth Mullins Orr
Director
Northwest District

EMO/tb

Enclosures: Executed Consent Order

cc: Lea.Crandall@dep.state.fl.us

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

IN THE OFFICE OF THE
NORTHWEST DISTRICT

Complainant,

OGC FILE NO. 23-1040

vs.

Gulf-Atlantic Constructors, Inc.

Respondent.

CONSENT ORDER

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department"), and Gulf-Atlantic Constructors, Inc ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and the Respondent admits 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, and the rules promulgated and authorized thereunder, Title 62, Florida Administrative Code. The Department has jurisdiction over the matters addressed in this Order.

2. Respondent is an active Florida Corporation registered to do business in the state of Florida with its principal place of business located at 650 West Oakfield Road Pensacola, Florida 32503.

3. Respondent is a person within the meaning of Section 403.031(5), Florida Statutes.

4. On June 8, 2020, Respondent submitted a Notice of Intent ("NOI") to use the "Generic Permit for Stormwater Discharge from Large and Small Construction Activities" ("NPDES Stormwater CGP") to the Department in order to conduct construction activities at the Airway Oaks Subdivision construction site, Milton Florida, Santa Rosa County, approximate Latitude 30°38'2.224" North, Longitude -86°59'47.85" West ("project site").

5. On June 8, 2020, the Department issued a letter to the Respondent verifying the

NPDES Stormwater CGP and assigned project identification number FLR10TP65 ("Permit") to the project site.

6. The Department finds that Respondent violated Section 403.161(1)(b) Florida Statutes by not complying with the terms of the Permit. More specifically, on August 10, 2022, Department personnel visited the project site and observed that the Best Management Practices ("BMPs") required by Part 5 of the Permit and implemented throughout the project site did not prevent offsite sedimentation and BMPs were not maintained and were inadequate, in violation of the Permit. The Stormwater Pollution Prevention Plan ("SWPPP") did not meet Part 4 of the Permit requirements by not updating SWPPP to match current BMPs onsite.

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

ORDERED:

7. Respondent must pay the Department \$39,732.72 in settlement of the regulatory matters addressed in this Order. This amount includes \$1,000.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order. This \$1,000.00 amount shall be paid within 30 days of the Effective Date of this Agreement. The total remaining payment shall be made in five installments. The first installment payment of \$7,746.55 shall be due within 30 days of the Effective Date of this Agreement. The second payment of \$7,746.55 shall be due within 30 days of the first payment. The third payment of \$7,746.54 shall be due within 30 days of the second payment. The fourth payment of \$7,746.54 shall be due within 30 days of the third payment. The fifth payment of \$7,746.54 shall be due within 30 days of the fourth payment. If an installment payment is missed, the Respondent is required to pay the total remaining penalty balance within 30 days.

8. 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 (OGC# 23-1040) 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 and effective filed with the Clerk of the Department before ability to make online payment is available.

9. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Assistant District Director, Department of Environmental Protection, Northwest District Office, 160 West Government St., Pensacola, Florida 32502.

10. Until Final Stabilization has been achieved as defined in Part 8 of the Permit (as defined in paragraph 5 above), Respondent shall take all necessary actions to ensure compliance with the Permit. Necessary actions may include but not be limited to deployment of an on-site manager delegated with necessary authority to achieve and maintain compliance described herein.

11. Within 30 days of the effective date of this Order, Respondent shall submit its updated SWPPP as defined in Part 8 of the Permit to the Department for its approval. The SWPPP shall include all required elements listed in the Permit. Additionally, the SWPPP shall include Respondent's plans to remove sediment from the on-site/off-site discharge, including the Florida Department of Transportation ("FDOT"), and Santa Rosa County Municipal Separate Storm Sewer System (MS4) Stormwater culverts, Stormwater ponds and ditch systems and any adjacent stormwater infrastructures that have been affected by sedimentation from the project site. Upon approval, the SWPPP shall become an enforceable part of this Order.

12. Within 30 days of the effective date of this Order, Respondent shall submit a Turbidity sampling plan ("plan") to the Department for review and approval. The plan must include a site plan or map depicting distinct background and compliance sample locations at the project site. Each sample location must include a description and a different name and shall include background, downstream, and at the point of discharge samples. Upon approval, the plan shall become an enforceable part of this Order.

13. After rainfall of 0.5 inch or greater occurring at the project site, until Final Stabilization (as defined in Part 8 of the Permit) is achieved, the Respondent will report violations at the point of immediate discharge from its permitted facility into downstream drainage ("reporting point") per the self-monitored and logged conditions. Samples shall be taken at background, downstream, and at the point of discharge from facility. Monitoring shall be done in accordance with the Department's Quality Assurance Rule, Chapter 62-160, Florida Administrative Code. The results of all turbidity monitoring greater than 29 NTU's above background at the reporting point shall be reported to the Department no later than 5 pm CST the Friday following the day of the rainfall event.

14. In the event of a discharge of sediments or turbid water from the project site into jurisdictional waters, or the FDOT, and Escambia County MS4 Stormwater culverts, Stormwater

ponds and ditch systems and any adjacent stormwater infrastructure that have been affected by sedimentation from the project site, Respondent shall monitor daily (in accordance with the approved plan) any affected wetlands or waters for turbidity until any sedimentation has been properly removed or until water quality standards for turbidity, as established in 62-302.530(117), Florida. Administrative Code, are met, whichever is sooner.

15. Consistent with the testing conditions and parameters in Paragraph 13, from the effective date of this Order until Final Stabilization has been achieved as defined in Part 8 of the Permit (i.e. - 70% stabilization achieved), turbidity sampling results of greater than 29 Nephelometric Turbidity Units (NTUs) above background at the reporting point shall be reported to the Department's National Pollutant Discharge Elimination System (NPDES) Stormwater Program within 72 hours of learning of an exceedance by Respondent. Within one week of any such exceedance, Respondents will provide a written submission to the Department containing (i) sampling results, (ii) a description of the location of the exceedance, (iii) the breadth and location of any sedimentation, if applicable, (iv) the cause of the exceedance, (v) any steps taken reduce turbidity levels, (vi) the length of time the exceedance has and is expected to continue, and (vii) any steps planned to reduce turbidity levels and prevent recurrence of an exceedance. Respondents shall immediately take all steps necessary to eliminate water quality exceedances. Submissions under this paragraph shall be submitted to Florida Department of Environmental Protection, Northwest District Office, 160 West Government St., Pensacola, Florida 32502.

16. Within 60 days of the effective date of this Order, Respondent shall perform an assessment of all drainage paths to the Blackwater River from the site to include the FDOT, and Santa Rosa County MS4 Stormwater culverts, Stormwater ponds and ditch system so further impacts can be documented. The assessment shall evaluate for sediment resulting from erosion of the project site and its effect on the systems. Within 15 days of the completion of the assessment, the Respondent shall submit to the Department the results of the assessment. The Department shall review the assessment and either approve or request additional information or evaluation. The Respondent shall respond to any request for additional information by the Department within 15 days of any such request. Within 15 days of approval of the assessment, Respondent shall submit a restoration plan to the Department to restore any areas found to have environmental impacts as a result of the Respondent's activities. The Department shall review the restoration plan and either approve the plan or request additional measures be taken. The Respondent shall respond to any

request for additional information by the Department within 15 days of any such request. Respondent shall complete restoration actions in accordance with the approved plan within 120 days of approval.

17. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to timely comply with paragraph 11 - 16 of this Order. Respondent agrees to pay the Department stipulated penalties in the amount of \$6,000.00 for any failure to install, implement, or maintain its Best Management Practices contained within its approved SWPPP at the project site. Respondent also agrees to pay the Department stipulated penalties for each and every turbidity violation that occurs after the effective date of this Order in accordance with the following schedule:

<u>Turbidity sample results</u>	<u>Stipulated Penalty</u>
70 NTUs or greater above background	\$7,000.00
50 NTUs or greater, but less than 70 NTUs above background	\$5,000.00
29 NTUs or greater, but less than 50 NTUs above background	\$3,000.00

Each distinct location and each day constitutes a separate violation. Within 30 days of written demand from the Department, 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 Order (OGC#23-1040) and the notation "Water Quality Assurance Trust Fund." The Department may make demands for payment at any time after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Order. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 7 of this 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 Order in an amount greater than the stipulated penalties due under this paragraph.

18. This Order shall remain in effect until all costs and expenses have been paid and until the construction project site has reached Final Stabilization and sediment has been removed from any adjacent stormwater infrastructure and waterbody that have been affected by sedimentation from the project site. Final Stabilization means that all soil disturbing activities at the 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.

19. Notwithstanding the time periods described in the paragraphs above, Respondent shall complete all corrective actions required by paragraphs 10-16 within 1 year of the effective date of this Order and be in full compliance with Rule 62-621.300(4), Florida Administrative Code, regardless of any intervening events or alternative time frames imposed in this Order.

20. Respondent shall allow all authorized representatives of the Department access to the property at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

21. 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 the terms of this Order.

22. 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.

23. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department for future occurrences that are not specifically resolved by and to be administered under this Order.

24. 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.

25. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, Florida Statutes, on the terms of this Order. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to section 120.68, Florida Statutes.

26. 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.

27. 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, Florida Statutes. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), Florida Statutes.

28. This Order is a final Order of the Department pursuant to section 120.52(7), Florida Statutes, 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, Florida Statutes. Upon the timely filing of a petition, this Order will not be effective until further order of the Department.

29. 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 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 160 W. Government St. Suite 308 Pensacola, FL. 32502. 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. Before the deadline for filing a petition, a person whose substantial interests are affected by this Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. 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, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

30. Rules referenced in this Order are available at
<http://www.dep.state.fl.us/legal/Rules/rulelist.htm>

FOR THE RESPONDENT:
Gulf-Atlantic Construction, Inc

9/6/23
DATE


by: Pamela Caddell
President

DONE AND ORDERED this 8th day of September 2023, in Escambia County,
Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Elin Laszake on behalf of

Elizabeth Mullins Orr
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

September 8, 2023
Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35

Penalty Calculation Worksheet

Facility ID:	FLR10TP65	Violator's Name:	Airway Oaks (GAC)
Date of Initial Computation:	8/10/2022		
Name of Department Staff Responsible for Penalty Computations:	Trevor Bostwick		

- This calculation uses the ELRA penalty schedule for purposes of settlement (via a consent order).
- This calculation is in support of an administrative penalty action (via an ELRA Notice of Violation).

Part I - Penalty Determinations

Program	Violation Type	Violation Description	ELRA Citation	ELRA Penalty Schedule	Number of Violations Assessed at Base Penalty	Additional Adjusted Multi-Day Penalty Amount	Multi-Day Factor for Adjusted Penalty Amount	Total
STW	Failure to install, maintain, or use a required pollution control system or device.	BMP's were insufficient and not maintained.	403.121(4)(b)	\$6,000.00	3	\$6,000.00		\$18,000.00
STW	Failure to comply with any other Departmental regulatory statute or rule requirement.	Allowable Discharges - unauthorized sediment discharge offsite and into an OFW waterbody.	403.121(5)	\$1,000.00	1			\$1,000.00
STW	Failure to comply with any other Departmental regulatory statute or rule requirement.	Notice of Termination (NOT) for permit coverage was filed with the Department on August 18, 2022. The site did not meet permit requirements to file the Notice of Termination (NOT).	403.121(5)	\$1,000.00	1			\$1,000.00
STW	Failure to obtain a required permit before construction or modification.	Lack of permit coverage.	403.121(4)(c)	\$4,500.00	1			\$4,500.00

Part II - Adjustments

Adjustment	Justification	Dollar Amount
Good faith/Lack of good faith prior to discovery		
Good faith/Lack of good faith after discovery	Calculated at 25% of penalty; (25% of \$13,000). Facility was aware of permit and BMP requirements as a permit was obtained at this site and other multiple sites in the past.	\$3,250.00
History of Non-compliance	A prior executed consent order on April 2, 2021, (CO #21-0258) was issued for the same company for same BMP deficiencies. 50% penalty for history of Non-Compliance for the prior consent order penalties is \$13,000 X 50% = \$6,500.00	\$6,500.00
Ability to pay		
Other Unique Factors		

Economic Benefit

Penalty Calculation Worksheet

Item	Delayed or Avoided or Direct	Description	Dollar Amount
\$89,654.57 (\$1.00/Erosion and Sedimentation Control x 89,654.57 Sq feet x 1 location) of economic benefit was gained from not installing effective soil stabilization BMP's on areas of unstabilized soil onsite, adjacent to Blackwater River (OFW).	Delayed Cost	(I = IRS Interest Rate = 5% (Based on 2018 IRS Interest Rate for Underpayments (DCx(I)) \$89,654.57, DC x .05(I) = \$4,482.72).	\$4,482.72

Economic Benefit = (Avoided Costs)(1-Corporate Tax Rate) + (Delayed Costs)(IRS Interest Rate)

IRS Interest Rate =5% (Based on 2018 Interest Rate for Underpayments.) & Corporate Tax Rate = 21%

Penalty Calculation Worksheet

- Penalty is \$75,000 or more and Secretary approval is required.
 Penalty is greater than \$25,000 and Deputy Secretary approval is required.
 Penalty is \$25,000 or less with an economic benefit adjustment for which Deputy Secretary approval is required.
- Cap penalties at \$50,000 for settlement purposes under ELRA?

Department Costs and Expenses:

Minimum enforcement case range: \$100 to \$500

Average enforcement case range: \$500 to \$1000

Complex enforcement case range: \$1000 to \$5000

\$1,000.00

Penalty with Department Costs and Expenses: \$39,732.72

Part III - Other Adjustments Made After Meeting with the Responsible Party

	Adjustment Description	Dollar Amount
Relative merits of the case:		
Resource considerations:		
Other justification:		

Final Penalty with Adjustments: \$39,732.72

Penalty Calculation Worksheet

Ein Lasnake

Assistant Director of District Management

01/31/2023

Date

Elizabeth Mullins OM

Director of District Management
Division Director

02/06/2023

Date

Peer reviewed by Division: Yes No

Justin Wolfe Digitally signed by Justin Wolfe
Date: 2023.02.06 12:09:43
-05'00'

Deputy Secretary (if required by guidelines)

Date