



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 25, 2023

Mr. Kevin A. Croft, Executive Vice President
Irby Construction Company, FPC
318 Old Highway 49S
Richland, MS 39218
kcroft@irbyconstruction.com

RE: Executed Short Form Consent Order; FDEP vs. Irby Construction Company, FPC;
Deaton Substation Connector; Facility ID: FLR10VV49; OGC File No. 23-1472; Santa
Rosa County

Dear Mr. Croft:

Enclosed is the Executed Short Form Consent Order, which addresses issues related to the subject facility. Please note the requirements of the Short Form Consent Order for which you are responsible and fulfill all pertinent actions accordingly. Unless otherwise noted, all deadlines for completing requirements and actions in the Short Form Consent Order are to be calculated from its executed date, which is the date the Short Form Consent Order was filed with the Department Clerk, as noted on the signature page.

Your cooperation in resolving this matter is greatly appreciated. If you have any questions, please contact Kevin Hargett at (850)-595-0687 or by email at Kevin.Hargett@FloridaDEP.gov.

Sincerely,

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

Elizabeth Mullins Orr
Director
Northwest District

EMO/kh

Enclosure: Executed Short Form Consent Order

cc: Doug Lack, Irby Construction Company (DLack@mgdyess.com)



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September 21, 2023

Mr. Kevin A. Croft, Executive Vice President
Irby Construction Company, FPC
318 Old Highway 49S
Richland, MS 39218
kcroft@irbyconstruction.com

SUBJECT: Department of Environmental Protection v. Irby Construction Company,
FPC OGC File No.:23-1472; Deaton Substation Connector;
NPDES Stormwater Facility ID: FLR10VV49; Santa Rosa County

Mr. Croft:

The State of Florida Department of Environmental Protection (“Department”) finds that Irby Construction Company, FPC (“Respondent”) had the following violations, as documented in the April 11, 2023 NPDES Stormwater Inspection and the April 28, 2023 Warning Letter for its Deaton Substation Connector site.

- a) Respondent failed to use, maintain, or install required pollution control devices and/or best management practices at its project site, Deaton Substation Connector (Project ID #FLR10VV49), in a manner to prevent visibly turbid stormwater/sediment discharges into waterbody (Rule 62-621.300(4), Rule 62-621.300(4)(a) Florida Administrative Code (F.A.C.) Part 5), in violation of the Generic Permit for Stormwater Discharge from Large and Small Construction Activities, document number 62-621.300(4)(a), F.A.C., and Section 403.161(1)(a), Florida Statutes (F.S.).
- b) Respondent failed to comply with any other Departmental regulatory statute or rule requirement (Allowable Discharges-visibly turbid Stormwater/Sediment discharge offsite into waterbody) (rule 62-621.300(4)(a), F.A.C. Part 5) in violation of the Generic Permit for Stormwater Discharge from Large and Small Construction Activities, document number 62-621.300(4)(a), F.A.C., and Section 403.161(1)(a), F.S.

Respondent neither admits nor denies responsibility for the violation(s).

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 \$12,116.00 in civil penalties and \$500.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$12,616.00. The civil penalties are apportioned as follows: \$12,000.00 for BMP's that were inadequate and not maintained for violation of rule 62-621.300(4)(a), F.A.C. Part 5, and 403.121(4)(b), F.S.; and \$1000.00 Allowable Discharges - visibly turbid stormwater/sediment discharge offsite into waterbody for violation of rule 62-621.300 (4)(a), F.A.C. Part 5, and 403.121(5). F.S.; and \$1,519.79 for Economic Benefit that was gained from not installing effective soil stabilization BMP's (Delayed Cost); and maintenance cost of silt fence was unknown so \$750.00 amount of money was accessed (De Minimis amount); Irby Construction Company submitted documentation showing BMPs installed in additional areas not in the original project area. A reduction was approved \$15,770.00 – 20% for total penalty amount \$12,616.00.

Respondent's Acceptance

If you wish to accept this offer and fully resolve the enforcement matter pending against the Respondent, please sign this letter and return it to the Department at Northwest District Office, 160 West Government Street, Suite 308, Pensacola, Florida 32502, by **October 5, 2023**. 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, Mr. Kevin A. Croft:

- (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 \$12,616.00 in full by **October 20, 2023**.
- (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 and effective filed with the Clerk of the Department before ability to make online payment is available.
- (3) In lieu of making cash payment of \$12,116.00 in civil penalties as set forth in The Departments Offer above, Respondent may elect to off-set this amount by implementing an in-kind penalty project, which must be approved by the Department. An in-kind project must be either an environmental enhancement, environmental restoration or a capital/facility improvement project. The Department may also consider the donation of environmentally sensitive land as an in-kind project. The value of the in-kind penalty project shall be one and a half times the civil penalty off-set amount, which in this case is the equivalent of at least \$18,174.00. If Respondent chooses to implement an in-kind project, Respondent shall notify the Department of its election by certified mail within 15 days of the effective date of this Consent Order. Notwithstanding the election to implement an in-kind project, payment of the remaining \$500.00 in costs must be paid within 30 days of the effective date of the Consent Order.
- (4) If Respondent elects to implement an in-kind project as provided in paragraph 3, then Respondent shall comply with all of the requirements and time frames in Exhibit A, entitled In-Kind Projects.

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 Kevin Hargett at 850-595-0687 or at Kevin.Hargett@FloridaDEP.gov

Sincerely,

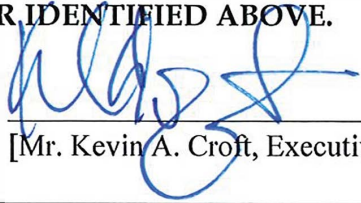
A handwritten signature in blue ink that reads "Elizabeth Mullins Orr". The signature is written in a cursive style with a large, stylized "M" at the end.

Elizabeth Mullins Orr
Director
Northwest District

FOR THE RESPONDENT:

I, **Kevin A. Croft**, HEREBY ACCEPT THE TERMS OF THE SETTLEMENT
OFFER IDENTIFIED ABOVE.

By:



Date:

9-21-23

[Mr. Kevin A. Croft, Executive Vice President]

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this 25 day of September, 2023, in Escambia
County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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.



September 25, 2023

Clerk

Date

Attachments: Notice of Rights

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 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 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.

Exhibit A
In-Kind projects

I. Introduction

An in-kind project

a. Within 60 days of the effective date of this Consent Order, Respondent shall submit, by certified mail, a detailed in-kind project proposal to the Department for evaluation. The proposal shall include a summary of benefits, proposed schedule for implementation and documentation of the estimated costs which are expected to be incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the in-kind project.

b. If the Department requests additional information or clarification due to a partially incomplete in-kind project proposal or requests modifications due to deficiencies with Department guidelines, Respondent shall submit, by certified mail, all requested additional information, clarification, and modifications within 15 days of receipts of written notice.

c. If upon review of the in-kind project proposal, the Department determines that the project cannot be accepted due to a substantially incomplete proposal or due to substantial deficiencies with minimum Department guidelines; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the proposal. Respondent shall correct and redress all of the matters at issue and submit, by certified mail, a new proposal within 30 days of receipt of

written notice. In the event that the revised proposal is not approved by the Department, Respondent shall make cash payment of the \$12,116.00 civil penalties as set forth in The Department's Offer above, within 30 days of Department notice.

d. Within 120 days of the effective date of this Consent Order, Respondent shall obtain approval for an in-kind project from the Department. If an in-kind project proposal is not approved by the Department within 120 days of the effective date of this Consent Order, then Respondent shall make cash payment of the \$12,116.00, civil penalties as set forth in The Department's Offer above, within 30 days of Department notice.

e. Within 180 days of obtaining Department approval for the in-kind proposal or in accordance with the approved schedule submitted pursuant to paragraph 2(a) above, Respondent shall complete the entire in-kind project.

f. During the implementation of the in-kind project, Respondent shall place appropriate sign(s) at the project site indicating that Respondent's involvement with the project is the result of a Department enforcement action. Respondent may remove the sign(s) after the project has been completed. However, after the project has been completed Respondent shall not post any sign(s) at the site indicating that the reason for the project was anything other than a Department enforcement action.

g. In the event, Respondent fails to timely submit any requested information to the Department, fails to complete implementation of the in-kind project or otherwise fails to comply with any provision of this paragraph, the in-kind penalty

project option shall be forfeited, and the entire amount of civil penalties shall be due from the Respondent to the Department within 30 days of Department notice.

h. Within 15 days of completing the in-kind project, Respondent shall notify the Department, by certified mail, of the project completion and request a verification letter from the Department. Respondent shall submit supporting information verifying that the project was completed in accordance with the approved proposal and documentation showing the actual costs incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the project.

i. If upon review of the notification of completion, the Department determines that the project cannot be accepted due to a substantially incomplete notification of completion or due to substantial deviations from the approved in-kind project; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the project. Respondent shall correct and redress all of the matters at issue and submit, by certified mail, a new notification of completion within 15 days of receipt of the Department's notice. If upon review of the new submittal, the Department determines that the in-kind project is still incomplete or not in accordance with the approved proposal, the in-kind penalty project option shall be forfeited, and the entire amount of civil penalty shall be due from the Respondent to the Department within 30 days of Department notice.