



## FLORIDA DEPARTMENT OF Environmental Protection

Northwest District  
160 W. Government Street, Suite 200  
Pensacola, FL 32502

RECEIVED

JAN 19 2022

January 7, 2022

Midway Water Systems, Inc.  
Brenda Agricola, General Manager  
4971 Gulf Breeze Parkway  
Gulf Breeze, FL 32563

SUBJECT: Department of Environmental Protection v. Midway Water Systems, Inc.,  
OGC File No.: 22-0005

Ms. Agricola,

The State of Florida Department of Environmental Protection ("Department") finds that Midway Water Systems, Inc. ("Respondent") based on the activities noted in the Warning letter issued on October 19, 2021, is found to be in violation of 62-555.350(1) Florida Administrative Code (F.A.C.) and 62-555.350(10)(a) F.A.C. Although there are no actions required to correct the violation(s), the Respondent remains subject to civil penalties as a result of the violation(s). 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 \$ 220,000.00 in civil penalties, and \$ 5,000.00 in expenses the Department has incurred in investigating this matter, which amounts to a total of \$ 225,000.00. The civil penalties are apportioned as follows: \$ 200,000.00 for violation of Rule 62-555.350(1) F.A.C. and \$ 20,000.00 for violation of Rule 62-555.350(10)(a) F.A.C.

In lieu of making cash payment of \$ 220,000.00, Respondent may elect to offset the amount as described below:

- (1) Respondent may elect to offset the civil penalty amount of \$ 220,000.00 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 and may not be a corrective action requirement of the Order or

otherwise required by law. The Department may also consider the donation of environmentally sensitive land as an in-kind project. The value of the in-kind project shall be one and a half times the civil penalty off-set amount, which in this case is the equivalent of at least \$ 330,000.00.

- (2) If Respondent elects to implement as in-kind project, then the Respondent shall comply with all the requirements and time frames in Exhibit I entitled "In-Kind Projects".

### **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 160 W. Government Street, Suite 308, Pensacola, FL 32502 by **January 17, 2022**. The Department will then countersign it and file it with a designated clerk of the Department. Once the document is filed with the designated clerk, it will constitute a final order of the Department pursuant to Section 120.52(7), F.S. and will be effective unless a request for an administrative hearing is filed by a third party in accordance with Chapter 120, F.S. and the attached Notice of Rights.

By accepting this offer you, Brenda Agricola:

- (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) If Respondent chooses to implement an in-kind project, Respondent shall notify the Department of its election within **15 days** of the effective date of this Consent Order. If Respondent elects to implement an in-kind project, then Respondent shall comply with all requirements and time frames in Exhibit I entitled "In-Kind Projects".
- (2) Notwithstanding the election to implement an in-kind project, payment of the remaining \$ 5,000.00 in costs must be paid within **30 calendar days** of the

effective date of the Consent Order. If Respondent does not elect to implement an in-kind project within the timeframes specified above, the balance of the civil penalty, which is \$ 220,000.00, shall be due within **30 calendar days** of the effective date of this Order.

- (3) Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at: <http://www.fldepportal.com/go/pay/>. It will take a number of days after this order is final, effective and filed with the Clerk of the Department before ability to make online payment is available.

The Department may enforce the terms of this document, once final, and seek to collect monies owed pursuant to Sections 120.69 and 403.121, F.S.


Until clerked by the Department, this letter is only a settlement offer and not a final agency action. Consequently, neither the Respondent nor any other party may request an administrative hearing to contest this letter pursuant to Chapter 120, F.S. Once this letter is clerked and becomes a final order of the Department, as explained above, the attached Notice of Rights will apply to parties, other than the Respondent, whose interests will be substantially affected.

Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

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

If you have any questions, please contact Erin Rasnake at 850-595-0688 or at [Erin.Rasnake@FloridaDEP.gov](mailto:Erin.Rasnake@FloridaDEP.gov).

Sincerely,



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Elizabeth Mullins Orr  
District Director  
Northwest District

FOR THE RESPONDENT:

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

By: [Signature]  
[Signature]

Date: 1/17/2022

Title: General Manager  
[Type or Print]

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**FOR DEPARTMENT USE ONLY**

DONE AND ORDERED this 21st day of January, 2022, in  
Orange County, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

Elizabeth Mullins Orr  
Elizabeth Mullins Orr  
District 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.

[Signature]  
Clerk

January 21, 2022  
Date

Attachments: Notice of Rights  
In Kind Projects

Final clerked copy furnished to:  
Lea Crandall, Agency Clerk ([lea.crandall@dep.state.fl.us](mailto:lea.crandall@dep.state.fl.us))

## NOTICE OF RIGHTS

Persons who are not parties to this Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Order means that the Department's final action may be different from the position it has taken in the Order.

The petition for administrative hearing must contain all of the following information:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 or received via electronic correspondence at [Agency\\_Clerk@floridadep.gov](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 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 I

IN-KIND PROJECTS

**Introduction**

**Proposal**

a. Within **60 days** of the effective date of this Consent Order, Respondent shall submit 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 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 civil penalties 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, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable then Respondent shall make cash payment of the civil penalties as set forth in Respondent's Performance paragraph 2 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 Respondent's Performance paragraph 1 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. If the in-kind penalty project is terminated and Respondent timely remits the \$ 220,000.00 penalty, no additional penalties shall be assessed for failure to complete the requirement of this paragraph.

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 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. If the in-kind penalty project is terminated and Respondent timely remits the \$ 220,000.00, no additional penalties shall be assessed for failure to complete the requirements of this paragraph.