



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 21, 2022

Mr. Scott Seymour, Manager
Onyx Island, LLC
2049 State Road 30A
Port St. Joe, Florida 32456
sseymour@byt.email

Re: Executed Consent Order; DEP vs. Onyx Island, LLC
PWS ID No. 1234027
OGC File No. 21-0125
Gulf County

Dear Mr. Seymour:

Enclosed is the executed Consent Order (OGC File No. 21-0125) which addresses compliance and corrective actions related to the subject facility. Please note the requirements of the executed Consent Order for which you are responsible and fulfill all pertinent actions accordingly. All Consent Order time requirements begin the date that it is clerked in our Department unless otherwise noted.

Your cooperation in resolving this matter is greatly appreciated. If you have any questions, please contact Joey Whibbs at 850-595-0636 or Earl.Whibbs@floridadep.gov.

Sincerely,

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

Elizabeth Mullins Orr
Director
Northwest District

EMO/ejw

c: Mr. Mark Logan, Sniffen Law (mlogan@sniffenlaw.com)
Mr. Philip Jones, Dewberry, pajones@dewberry.com

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	NORTHWEST DISTRICT
)	
v.)	OGC FILE NO. 21-0125
)	
ONYX ISLAND, LLC)	
)	
_____)	

CONSENT ORDER

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

The Department finds and 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 water resources and to administer and enforce the provisions of the Florida Safe Drinking Water Act, Sections 403.850, et seq., Florida Statutes (“F.S.”), and the rules promulgated and authorized in Title 62, Florida Administrative Code (“F.A.C.”). The Department has jurisdiction over the matters addressed in this Order.
2. Respondent is a person within the meaning of Section 403.852(5), F.S.
3. Respondent, Onyx Island, LLC, is a Florida profit corporation with its principal place of business located at 2049 County Road 30A, Port St. Joe, Florida 32456.
4. Respondent is the owner and operator of formerly a transient non-community system, PWS No. 1234027, located on an island known as Black’s Island within St. Joseph Bay, in Gulf County, Florida (“System”).
5. On July 19, 2020, Department personnel completed a compliance inspection of the System and found that the following violation(s) occurred:
 - a) Respondent failed to maintain an operations and maintenance logbook and failed to conduct documented plant checks two days per week in violation of Rules 62-555.350(12)(a) and 62-699.311(3)(b), F.A.C.

b) Respondent failed to create and implement a Bacteriological Sampling Plan that complies with the Revised Total Coliform Rule (RTCR) in violation of Rule 62-550.518(1), F.A.C.

c) Respondent failed to maintain a written valve program and documentation of isolation valves being exercised in violation of Rules 62-555.350(2) & (12)(c), F.A.C.

d) Respondent failed to submit a permit application to install a replacement chlorination system to replace the previously permitted chlorination system that was destroyed by Hurricane Michael, and Respondent failed to maintain a minimum continuous free chlorine residual of 0.2 mg/l in the distribution system at all times in violation of Rule 62-555.350(6), F.A.C.

e) Respondent failed to properly screen storage tank run-off valves in violation of Rule 62-555.350(2), F.A.C.

f) On September 4, 2020, during a conference call the respondent was informed that a valid permit would be required to make any additions to the system in accordance with Rule 62-532.400(1), F.A.C.

However, on November 3, 2020, the Respondent submitted a letter and specifications stating that a new chlorination system had been added to the system. This chlorination system was installed without permit authorization in violation of Rule 62-532.400(1), F.A.C.

6. Prior to the execution of this Order, the Department requested that the Respondent undertake certain actions to resolve the violation(s). These actions have since been completed:

a) Respondent submitted documentation that the system operator is maintaining an operations and maintenance logbook and conducting plant checks two days per week pursuant to Rules 62-555.350(12)(a) and 62-699.311(3)(b), F.A.C.

b) Respondent completed and submitted photo documentation of the installation of a 24-mesh corrosion resistant screen to storage tank run off valves pursuant to Rule 62-555.350(2), F.A.C.

c) Respondent developed and submitted a written valve program and begin documenting the exercise of isolation valves pursuant to Rules 62-555.350(2) & (12)(c), F.A.C.

d) Respondent developed and submitted a Bacteriological Sampling Plan that complies with the Revised Total coliform Rule (RTCR) pursuant to Rule 62-550.518(1), F.A.C.

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

ORDERED:

7. Respondent shall comply with the following corrective actions within the stated time periods:

a) **Within 30 days of the effective date of this Order**, Respondent shall retain the services of a professional engineer, registered in the State of Florida, to resubmit a complete application, along with any required application fees, to the Department for an after-the-fact construction permit for the previously installed chlorination system. It is noted that the Department received an after-the-fact construction permit application for the installed chlorination system on September 1, 2022, however, the application has not been deemed complete.

b) If the Department issues a written request for additional information, (RAI), the Respondent shall submit the requested information in writing to the Department within 90 days of receipt of the request. The Department must receive a response within 90 days of the date of the RAI, unless a written request for additional time to provide the requested information is submitted and approved. Pursuant to Rule 62-4.055(1), Fla. Admin. Code and Section 120.60, Fla. Stat., failure of an applicant to provide the timely requested

information by the applicable deadline may result in denial of the application. The Respondent shall provide all information necessary to complete the application.

c) **Within 10 days of the issuance of the after-the-fact construction permit** the Respondent shall submit a Certification of Completion, prepared and sealed by a professional engineer registered in the State of Florida with sampling that meets department rules and Standard Operating Procedures. New sample results shall be submitted to the Department.

d) If the application cannot be approved or the installed system does not meet Department requirements, Respondent shall hire a plumbing contractor or professional engineer licensed in the state of Florida to evaluate and install a new chlorination system pursuant to Rule 62-555.520(3), F.A.C. The new chlorination system shall be installed within 60 days of the issuance of the permit for the system, if a new system is required.

8. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$ 7,500.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$ 7,000.00 for civil penalties and \$ 500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order. The civil penalty in this case includes 4 violations that each warrant a penalty of \$1,000.00 or more.

9 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 any of the requirements of paragraphs 7 & 23 of this Order. The Department may demand stipulated penalties 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 paragraph 11, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph 8 of this Order.

10. 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 becomes final, effective and filed with the Clerk of the Department before ability to make online payment is available.

11. Except as otherwise provided, all submittals and payments required by this Order shall be sent electronically by e-mail to Earl Whibbs, Environmental Manager, Compliance Assurance Program - Potable Water Section at Earl.Whibbs@floridadep.gov; and copy the program's shared e-mail box at NWDPWS@floridadep.gov.

12. Respondent shall allow all authorized representatives of the Department access to the Facility and 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.

13. In the event of a sale or conveyance of the Facility or of the Property upon which the Facility is located, if all of the requirements of this Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Facility or Property, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility, and (c) provide a copy of this Order with all attachments to the purchaser, operator, or person(s) in control of the Facility. The sale or conveyance of the Facility or the Property does not relieve Respondent of the obligations imposed in this Order.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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 \$15,000.00 per day per violation, and criminal penalties.

19. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., 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, F.S.

20. 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.

21. 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, F.S. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), F.S.

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

23. Respondent shall publish the following notice in a newspaper of daily circulation in Gulf County, Florida. The notice shall be published one time only within 15 days of the effective date of the Order. Respondent shall provide a certified copy of the published notice to the Department within 10 days of publication.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

NOTICE OF CONSENT ORDER

The Department of Environmental Protection (“Department”) gives notice of agency action of entering into a Consent Order with Onyx Island, LLC pursuant to section 120.57(4), Florida Statutes. The Consent Order addresses the violations regarding sampling, disinfection, and proper operation maintenance of the potable water system at Black’s Island Resort. The Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Northwest District Office, 160 West Government Street, Suite 308, Pensacola, Florida 32502-5794 or the Northwest District Panama City Branch Office, 470 Harrison Avenue, Panama City, Florida 32401.

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. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department’s final action may be different from the position it has taken in the Consent 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, 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 Northwest District Office, 160 West Government Street, Suite 308, Pensacola, Florida 32502-5794. 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 Consent 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.

24. Rules referenced in this Order are available at

<https://floridadep.gov/ogc/ogc/content/rules>

FOR THE RESPONDENT:


 *for Onyx Island, LLC*

Scott Seymour
Manager, Onyx Island, LLC

9/20/22
Date:

DONE AND ORDERED this 21 day of September, 2022 in Orlando, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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.



Clerk

September 21, 2022

Date:

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35