



FLORIDA DEPARTMENT OF Environmental Protection

South District
PO Box 2549
Fort Myers FL 33902-2549
SouthDistrict@FloridaDEP.gov

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

December 8, 2022

William Conerly, Senior Project Manager
Kimley-Horn and Associates, Inc.
1777 Main Street, Suite 200
Sarasota, FL 34236
E-mail: Bill.Conerly@kimley-horn.com

Re: Collier County – PW
OGC Case No. 22-2874
Encompass Health Rehabilitation Hospital of Naples (SFCO); PWS 5114069

Dear Mr. Conerly:

Enclosed is the final copy of Consent Order OGC Case No. 22-2874 to resolve violations noted in the August 26, 2022 Warning Letter.

Please sign the original and return it to this office within **14** calendar days of receipt of the Consent Order. After the Consent Order has been executed by the Department, your copy will be returned to you.

If you have any questions, please contact Megan Jarabek at 239-344-5648 or Megan.Jarabek@FloridaDEP.gov. Your cooperation in resolving this case is appreciated.

Sincerely,

Jennifer L. Carpenter
Acting District Director
South District
Florida Department of Environmental Protection

Enclosure(s): Short Form Consent Order

ec: Patrick Healy (via e-mail: patrick.healy@kimley-horn.com)
John Tschudin (via e-mail: John.Tschudin@encompasshealth.com)
Thomas Boyle (via e-mail: thomas.boyle@encompasshealth.com)



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1777 Main Street, Suite 200
Sarasota, FL 34236

SUBJECT: Department of Environmental Protection v. Kimley-Horn and Associates, Inc.
OGC File No.: 22-2874
Encompass Health Rehabilitation Hospital of Naples – PWS 5114069

Mr. Conerly:

The State of Florida Department of Environmental Protection (“Department”) finds that Kimley-Horn and Associates, Inc. (“Respondent”) constructed a potable water distribution transmission line without a permit, in violation of Rule(s) 62-555, Florida Administrative Code (“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 \$5,150.00 in civil penalties and \$250.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$ 5,650.00. The civil penalty in this matter includes 1 violation(s) of \$2,000.00 or more.

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 of Environmental Protection, South District, 2295 Victoria Avenue, Suite 364, Fort Myers, FL 33901 (or via e-mail at Megan.Jarabek@FloridaDEP.gov) by within 14 calendar days

of receipt of this Consent Order. 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. William Conerly:

- (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 \$ 5,150.00 in civil penalties and \$250.00 in costs and expenses in full within 30 days of the effective date of this Order.
- (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, 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 Megan Jarabek at (239) 344-5648 or at Megan.Jarabek@FloridaDEP.gov.

Sincerely,



Jennifer Carpenter
Acting District Director
South District
Florida Department of Environmental
Protection

FOR THE RESPONDENT:

I, _____ [William Conerly], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: _____
[Signature]

Date: _____

Title: _____
[Type or Print]

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this ___ day of _____, 20___, in _____
County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Jennifer Carpenter
Acting District Director
South District
Florida Department of Environmental
Protection

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.

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 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, 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.

Instructions

When you are ready to add another violation to the list, simply place the cursor in the cell in the very next empty row in the Program column, and select a program from the drop-down list to start. Move across the row making selections as appropriate. Some cells auto-fill.

| For ELRA calculation | For Matrix calculation |
|---|---|
| The Violation Type drop-down list is based on the Program selected. | The Matrix Penalty Amount should be entered based on the Matrix Range. |
| The ELRA Penalty Schedule and Number of Violations at Base Penalty fields are related (their values are multiplied together in the row total) and the Additional Adjusted Multi-Day Penalty Amount and Multi-Day Factor for Adjusted Penalty Amount fields are related (their values are multiplied together in the row total). | The Matrix Penalty and Number of Violations at Base Penalty fields are related (their values are multiplied together in the row total) and the Additional Adjusted Multi-Day Penalty Amount and Multi-Day Factor for Adjusted Penalty Amount fields are |
| If you change the Program in a row that is already filled out, you will need to also update the Violation Type. | If you update the Environmental Harm or Extent of Deviation fields, you may need to update the Matrix Penalty amount. |

Program Guidance

ERP: <https://floridadep.gov/ogc/ogc/documents/erp-penalty-guidelines>

PW: <https://floridadep.gov/ogc/ogc/documents/drinking-water-guideline>

ST: <https://floridadep.gov/ogc/ogc/documents/guidelines-characterizing-npdes-stormwater-violation>

WW: <https://floridadep.gov/ogc/ogc/documents/guidelines-characterizing-wastewater-violation>

UIC: <https://floridadep.gov/ogc/ogc/documents/uic-manua>

Penalty Calculation Worksheet

| | | | |
|--|------------------------------|------------------|---|
| Facility ID: | 5114069 | Violator's Name: | Encompass Health Rehabilitation Hospital of Naples, Inc. |
| Date of Initial Computation: | 11/17/2022 | | |
| Name of Department Staff Responsible for Penalty Computations: | Vanessa Kraft, Megan Jarabek | | |

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 |
|---------|--|--|---------------|-----------------------|---|--|--|------------|
| PWS | Failure to obtain a required permit before construction or modification. | Failure to obtain proper permit before construction of water main extension. | 403.121(4)(c) | \$4,500.00 | 1 | | | \$4,500.00 |
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Part II - Adjustments

| Adjustment | Justification | Dollar Amount |
|--|---------------|---------------|
| Good faith/Lack of good faith prior to discovery | | |
| Good faith/Lack of good faith after discovery | | |
| History of Non-compliance | | |
| Ability to pay | | |
| Other Unique Factors | | |

Economic Benefit

| Item | Delayed or Avoided or Direct | Description | Dollar Amount |
|---|------------------------------|-----------------------------------|---------------|
| Failure to obtain a permit before constructing a water main extension | Avoided | Cost of GP permit application fee | \$650.00 |
| | | | |
| | | | |

Penalty Calculation Worksheet

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

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

| |
|----------|
| \$250.00 |
|----------|

Penalty with Department Costs and Expenses: \$5,400.00

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: \$5,400.00

Penalty Calculation Worksheet

| | | | | | |
|--|--|--|------------------|--|--|
| Facility ID: | | | Violator's Name: | | |
| Date of Initial Computation: | | | | | |
| Name of Department Staff Responsible for Penalty Computations: | | | | | |

Part I - Penalty Determinations

| Program | Settlement Guidelines | Violation Description | Environmental Harm | Extent of Deviation | Matrix Range | Matrix Penalty | Number of Violations Assessed at Base Penalty | Additional Adjusted Multi-Day Penalty Amount | Multi-Day Factor for Adjusted Penalty Amount | Total |
|---------|-----------------------|-----------------------|--------------------|---------------------|--------------|----------------|---|--|--|-------|
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Part II - Adjustments

| Adjustment | Justification | Dollar Amount |
|--|---------------|---------------|
| Good faith/Lack of good faith prior to discovery | | |
| Good faith/Lack of good faith after discovery | | |
| History of Non-compliance | | |
| Ability to pay | | |
| Other Unique Factors | | |

Economic Benefit

| Item | Delayed or Avoided or Direct | Description | Dollar Amount |
|------|------------------------------|-------------|---------------|
| | | | |
| | | | |
| | | | |

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

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

| |
|--|
| |
|--|

Penalty with Department Costs and Expenses: \$0.00

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: \$0.00

Penalty Calculation Worksheet

Assistant Director of District Management

Date

Director of District Management
Division Director

Date

Peer reviewed by Division:

Deputy Secretary (if required by guidelines)

Date