



FLORIDA DEPARTMENT OF Environmental Protection

South District Branch Office
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Marathon, FL 33050
SouthDistrict@FloridaDEP.gov

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

November 15, 2021

Jamie Colee, Vice President
Little Palm Island Assoc. Ltd.
600 6th Street South
Kirkland, WA 98033
jcolee@noblehousehotels.com

Re: Monroe County – DW Program
OGC Case No. 21-0971
Little Palm Island WWTP (LFCO)
Facility ID FLA014845 / WACS79839

Dear Mr. Colee:

Enclosed is the signed and entered Consent Order to resolve the above referenced case. This copy is for your records. Please note that all compliance dates begin from the date of entry of this Order, which is November 15, 2021.

Upon satisfactory completion of all conditions of the Order, we will close this case and place it in our inactive file.

If you have any questions, please contact Gary Hardie at Gary.Hardie@FloridaDEP.gov or 305-289-7074 Your cooperation in resolving this case is appreciated.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Iglehart", with a long horizontal stroke extending to the right.

Jon M. Iglehart
Director of District Management

Enclosure: Executed Consent Order

cc: Lea Crandall, FDEP Agency_Clerk@dep.state.fl.us

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	SOUTH DISTRICT
)	
v.)	OGC FILE NO. 21-0971
)	
LITTLE PALM ISLAND ASSOCIATES, LTD)	
_____)	

CONSENT ORDER

This Consent Order (Order) is entered into between the State of Florida Department of Environmental Protection (Department) and Little Palm Island Associates, Ltd (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 air and water resources and to administer and enforce the provisions of Chapter 403, 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 403.031(5), F.S.

3. Respondent is the owner and is responsible for the operation of the Little Palm Island WWTP, a 15,000 gallon per day (gpd) activated sludge, sequencing batch reactor with treated effluent and ultraviolet disinfection discharging to 2 Class V injection wells (Facility). The Facility is operated under Wastewater Permit No. FLA014845 (Permit), which was issued on September 20, 2018, modified on December 7, 2020, and will expire on September 19, 2023. The Facility is located at Little Palm Island at latitude 24°37' 26.22" N, longitude 81°24' 2.08" W in Monroe County, Florida (Property). Respondent owns the Property on which the Facility is located.

4. The Department finds that the following violation(s) occurred:

a) The effluent permit limits for fecal coliform, CBOD, Total Suspended Solids, Total Phosphorus and Total Nitrogen were exceeded multiple times during the past year. The CBOD limits were exceeded during October 2020; the TSS limits were exceeded during October, November and December 2020; the Total Nitrogen limits were exceeded during October and December 2020 and January, February and March, 2021; the Total Phosphorus limits were exceeded during October and November 2020; the fecal coliform limits were exceeded during October, November and December 2020 and in July 2021. Rule 62-600.410(1), F.A.C., states that all domestic wastewater facilities shall be operated and maintained in accordance with the applicable provision of this chapter and related regulations so as to attain, at a minimum, the reclaimed water or effluent quality required by the facility permit. In addition, Rule 62-600.440 (5) (a), F.A.C., states that facilities required to provide basic disinfection shall meet the following criteria (using either MF or equivalent MPN methods): Any one sample shall not exceed 800 fecal coliform values per 100 mL of sample, and the arithmetic mean of the geometric means of the fecal coliform values collected during an annual period shall not exceed 200 fecal coliform values per 100 mL of effluent sample.

b) Respondent failed to submit discharge monitoring reports ("DMR") Part and A and B for June 2020, and Part B for February 2021, as required by the Permit. Rule 62-600.650(5), F.A.C., requires the permittee to submit the monitoring results on DMR Form 62-620.910(1), F.A.C., in accordance with the schedules and deadlines required in the Permit.

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

ORDERED:

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

6. Within thirty (30) days of the effective date of this Order, Respondent shall submit to the Department an evaluation conducted by a professional engineer registered in the state of Florida, of the Facility, including the effluent disposal system and associated collection system, to discover the cause or causes of the violations identified in paragraph 4(a), above.

The evaluation shall include “good engineering practice” recommended design modifications to ensure reliable and compliant future operation of the Facility.

7. Within thirty (30) days of the due date for submission of the evaluation in paragraph 6, Respondent shall submit to the Department Facility design modifications (if any such modifications are recommended in the evaluation), prepared and submitted under seal by a professional engineer registered in the state of Florida, to remedy the cause or causes of the violations identified in paragraph 4(a) above and ensure the Facility and effluent disposal system will function in full and consistent compliance with all applicable rules; or a professional engineer registered in the state of Florida shall provide a submittal to the Department Facility confirming the Facility, as current designed and constructed, is adequate to ensure the Facility and effluent disposal system will function in full and consistent compliance with all applicable rules.

8. If any design modifications are recommended in the evaluation, then within thirty (30) days of the due date for submission of the design modification(s) in paragraph 7, Respondent shall submit a complete application for a Department wastewater permit to construct the modifications submitted pursuant to paragraph 7, if such a permit is required. In the event the Department requires additional information to process the permit application Respondent shall provide a written response containing the information requested by the Department within 15 days of the date of the request.

9. Within sixty (60) days after issuance of the wastewater permit referenced in paragraph 8 above, or if no permit is required, within sixty (60) days of the approval of the design modification(s) in paragraph 7 (if any are recommended), Respondent shall complete construction of the modification(s) submitted pursuant to paragraph 7; unless the Respondent and the Department have agreed to a different schedule during permit application processing and that different schedule is included in the wastewater permit as an enforceable permit condition.

10. Within thirty (30) days after completion of the construction, or if no new construction is required, then within thirty (30) days following issuance of the certification

required in paragraph 7 above, Respondent shall submit to the Department a Certification of Completion, prepared and sealed by a professional engineer registered in the State of Florida, stating that modifications to the Facility, effluent disposal system, and collection system have been constructed in accordance with the provisions of the Permit or, if no Permit is required, in accordance with the certification required pursuant to paragraph 7.

11. Every calendar quarter after the effective date of this Order and continuing until all corrective actions have been completed, Respondent shall submit to the Department a written report containing information about the status and progress of projects being completed under this Order, information about compliance or noncompliance with the applicable requirements of this Order, including construction requirements and effluent limitations, and any reasons for noncompliance. These reports shall also include a projection of the work Respondent will perform pursuant to this Order during the 12-month period which will follow the report. Respondent shall submit the reports to the Department within 30 days of the end of each quarter.

12. Within sixty (60) days of the effective date of this Order, Respondent shall submit to the Department a detailed Operation and Maintenance Performance Report meeting all of the requirements of Rule 62-600.735, F.A.C.

13. Immediately upon the effective date of this Order, and continuing until the above referenced corrective actions are completed, Respondent shall increase the sampling frequency of the effluent fecal coliform parameter to 5 days per week and the test results shall be reported monthly on the DMR Form 62-620.910(1), F.A.C. In addition, Respondent agrees to pay the Department stipulated penalties in the amount of \$1,000.00 for each fecal coliform limit exceedance, or for each failure to monitor in accordance with paragraph 13.

14. Notwithstanding the time periods described in the paragraphs above, Respondent shall complete all corrective actions required by paragraphs 5 through 13 within one hundred and eighty (180) days of the effective date of this Order and be in full compliance with Rules 62-600.410(1), F.A.C., 62-600.440 (5) (a), F.A.C., 62-600.650(5), F.A.C., and all applicable requirements of the Permit, regardless of any intervening events or alternative time

frames imposed in this Order other than those excused delays agreed to by the Department, as described in paragraph 22.

15. Within thirty (30) days of the effective date of this Order, Respondent shall submit a written estimate of the total cost of the corrective actions required by this Order to the Department. The written estimate shall identify the information the Respondent relied upon to provide the estimate.

16. Within thirty (30) days of the effective date of this Order, Respondent shall pay the Department \$21,450.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$20,750.00 for civil penalties, \$200.00 for economic benefit of noncompliance 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 penalties are apportioned as follows: \$20,000.00 for violation of rules 62-600.410(1) and 62-600.440 (5) (a), F.A.C., and \$750.00 for violation of Rule 62-600.650(5), F.A.C.

17. Respondent agrees to pay the Department stipulated penalties in the amount of \$1,000.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph(s) 5 through 15 of this Order. Additionally, Respondent shall pay the Department stipulated penalties for any discharges of wastewater from the WWTF and/or collection/transmission system. Respondent shall pay penalties as follows:

<u>Amount p/day p/discharge</u>	<u>Discharge Volume</u>
\$1000.00	up to 5,000 gallons
\$2,000.00	5,001 to 10,000 gallons
\$5,000.00	10,001 to 25,000 gallons
\$10,000.00	25,001 to 100,000 gallons
\$15,000.00	in excess of 100,000 gallons

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 18, 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 16 of this Order.

18. 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.

19. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Gary Hardie, Environmental Specialist III, Department of Environmental Protection, South District Marathon Office, via e-mail at Gary.Hardie@FloridaDep.gov, or via regular mail to 2796 Overseas Highway, Suite 221, Marathon, FL 33050.

20. 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.

21. 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.

22. 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.

23. 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 (as well as violations related thereto) 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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 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 South District Office at PO Box 2549, Fort Myers, FL 33902-2549 or via e-mail at SouthDistrict@FloridaDEP.gov. 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.

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

FOR THE RESPONDENT:

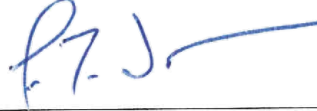


Jamie Colee, Vice President

11/11/21
Date

DONE AND ORDERED this 15th day of November, 2021, in Lee County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Jon M. Iglehart
Director of District Management
South District

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



Clerk

November 15, 2021
Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35