



FLORIDA DEPARTMENT OF Environmental Protection

Central District Office
3319 Maguire Blvd., Suite 232
Orlando, Florida 32803

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

May 20, 2022

Braun, Stephen H., President
C/O Hometown America
110 N. Wacker DR. Suite 4500
Chicago, IL 60606
APizer@hometownamerica.net

Re: Fairways Country Club WWTF
PW Facility ID # FLA010823
OGC Case #21-0706

Dear Mr. Braun:

Enclosed is the executed Consent Order to resolve the above referenced case. This copy is for your records.

Should you have any questions or comments, please contact Dr. Phil Kane at 407-897-4156 or via e-mail at phil.kane@floridadep.gov.

Your cooperation in this matter will be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Watkins".

Aaron Watkins
Director, Central District

Enclosure Consent Order OGC#21 0706

cc: Lea Crandall, OGC
Zoey Carr, Central District
Daun Festa, Central District

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	CENTRAL DISTRICT
)	
v.)	OGC FILE NO. 21-0706
)	
FAIRWAYS SPE LLC)	
_____)	

CONSENT ORDER

This Consent Order (Order) is entered into between the State of Florida Department of Environmental Protection (Department) and FAIRWAYS SPE 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 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 Fairways Country Club WWTF, an existing 0.150 million gallon per day (MGD) annual average daily flow (AADF) permitted capacity conventional contact stabilization beyond secondary domestic wastewater treatment plant consisting of flow equalization, contact and stabilization, reaeration, secondary clarification, chemical feed, filtration, chlorination and aerobic digestion of biosolids. During periods of low flows, this facility may be operated in the extended aeration mode. (Facility). The Facility is operated under Wastewater Permit No. FLA010823 (Permit), which was issued on February 22, 2017 and will expire on February 21, 2022. The Facility is located at 14205 E Colonial Dr Orlando, Florida 32826, in Orange County, Florida (Property). Respondent owns the Property on which the Facility is located.

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

a) The surge tank was leaking in violation of Rule 62-620.610(7) F.A.C. A June 29, 2021 email confirms correction.

b) The table below lists the permit limit exceedances noted during Discharge Monitoring Report (DMR) review period in violation of Rule 62-600.440 (6) F.A.C.

Month	Parameter	Location	Results	Limit
July 2020	TSS Max	R001	12 mg/L	5 mg/L
	Fecal Max	R001	167 #/100mL	25 #/100 mL
	Fecal Less Detection	R001	61.1%	≥75%
August 2020	Fecal Less Detection	R001	66.7%	≥75%
January 2021	Fecal Max	R001	20000 #/100mL	25 #/100 mL
	TSS Max	R001	7.8 mg/L	5 mg/L
	Fecal Max	R002	20000 #/100mL	25 #/100 mL
March 2021	Fecal Max	R001	20000 #/100mL	25 #/100 mL
	Fecal Max	R002	20000 #/100mL	25 #/100 mL

c) An Operation and Maintenance Manual for the collection system was not available on site in violation of Rule 62-604.500(4) F.A.C.

d) On September 13, 2021 the Department was notified by the State Watch Office (SWO# 2021-5118) of an unauthorized discharge of 5,000 gallons of untreated wastewater from the surge tank.

e) On September 18, 2021 the Department was notified by the State Watch Office (SWO# 2021-5242) of an unauthorized discharge of 5,000 gallons of untreated wastewater from the surge tank.

f) On February 15, 2022 the Department was notified of surge tank failure, which caused an unauthorized discharge of 850 gallon of untreated wastewater.

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:

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6. By December 31, 2022, Respondent shall complete sealant work to the manholes located within basin 3 as identified on Exhibit A, which shall consist of the application of sealant to the rims and inlet areas, or such other commercially acceptable application, to address any possible leaking within such manholes.

7. Respondent shall replace the surge tank at the Facility pursuant to the plans submitted as part of the in the permit renewal application for FLA010823-006, by June 30, 2022.

8. Respondent shall demonstrate that the TSS and Fecal Coliform results reported on the R001 and R002 DMRs are within permit limits for a period of 6 consecutive months. If at any time a TSS or Fecal Coliform results exceed the permit limit, the 6 consecutive month time period shall start over from that month until 6 consecutive months of compliance for both parameters is obtained.

9. Every calendar quarter after the effective date of this Order and continuing until the corrective action identified in Paragraph 6 and 7 above has 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.

10. Notwithstanding the time periods described in the paragraphs above, Respondent shall complete all corrective actions required by Paragraphs 6 and 7 above and be in full compliance with Rule 62-620, 62-600, and 62-604F.A.C. by December 31, 2022, regardless of any intervening events or alternative time frames imposed in this Order.

11. Subject to Paragraph 12 below, within 30 days of the effective date of this Order, Respondent shall pay the Department \$9,280.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$9,030.00 for civil penalties and \$250.00 for costs and expenses incurred by the Department during the investigation of this matter and the

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preparation and tracking of this Order. The civil penalty in this case includes 2 violations that warrant a penalty of \$2,000.00 or more.

12. For any unauthorized discharges from any part of Respondent's wastewater collection system or wastewater treatment and disposal facilities occurring after the effective date of this Order, Respondent agrees to pay stipulated penalties to the Department as follows:

(i) Stipulated penalties shall be assessed according to the volume of the discharge and the number of days the discharge continued and/or impacted surface water, as shown below:

Amount per day per discharge	Discharge Volume
\$500.00	Up to 1,000 gallons
\$1,000.00	1,001 to 5,000 gallons
\$2,500.00	5,001 to 10,000 gallons
\$5,000.00	10,001 to 25,000 gallons
\$10,000.00	in excess of 25,000 gallons

13. **Within 30 days of the effective date of this Order**, Respondent may elect to offset any portion of the \$9,030.00 in civil penalties assessed in Paragraph 11 herein by implementing a Pollution Prevention (P2) Project or an In-Kind Project, as set out herein, approved by the Department in accordance with (i) or (ii) below.

(i) Pollution Prevention (P2) Project

A Pollution Prevention (P2) Project (a "P2 Project"), which must be approved by the Department, is a process improvement that reduces the amount of pollution that enters the environment; by conserving resource (including water, raw materials, chemicals, and energy) use, or by minimizing waste generation (including domestic and industrial wastewater, solid and hazardous waste, and air emissions). A P2 Project must reduce pollution or waste within the process beyond what is required by federal, state, or local law, in order to be eligible for civil penalty offset under this Order.

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If Respondent chooses to implement a P2 Project, Respondent shall notify the Department of its election within 15 days of the effective date of this Order. Election to implement an P2 Project does not relieve Respondent of its obligation to submit payment in the amount of \$250.00, for costs and expenses incurred by the Department associated with this Order in accordance with Paragraph 11 above.

If Respondent timely elects to implement a P2 Project, Respondent shall submit a completed P2 Project Plan (Plan) within 30 days of the effective date of this Order. The Plan must be completed using the Department-approved "P2 Project Plan" template, attached hereto and incorporated herein as Exhibit B. In the event the Department requires additional information to process the Plan, Respondent shall provide a modified Plan containing the information requested by the Department within 30 days of the date of the Department's request.

If any balance remains after the entire P2 credit is applied to the allowable portion of the civil penalty assessed in Paragraph 11 herein or portion of stipulated penalties assessed by the Department pursuant to Paragraph 12 of this Order, Respondent shall pay the difference within 30 days of the date of written notification by the Department to Respondent that such balance is due.

(ii) In-Kind Project

An In-Kind Project (an "In-Kind Project"), which must be approved by the Department, 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 project shall be one and a half times the portion of the civil penalty and/or stipulated penalty amount for which the approved project off-sets.

If the Respondent chooses to implement an In-Kind project, Respondent shall notify the Department within 15 days of the effective date of the Order. Notwithstanding the election to implement an In-Kind project for a portion of the civil penalties assessed in Paragraph 11,

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payment of any remaining balance of the civil penalties must be paid within 30 days of the effective date of the Order.

Should Respondent elect to implement an In-Kind project, then Respondent shall comply with all requirements and time frames set out in Exhibit C "In-Kind Projects," attached to and incorporated herein. Election to implement an In-Kind project does not relieve Respondent of its obligation to submit payment in the amount of \$250.00, for costs and expenses incurred by the Department associated with this Order in accordance with Paragraph 10 above.

In the event that Respondent elects to off-set any portion of the civil penalties assessed in Paragraph 11 herein by implementing an In-Kind project, which is approved by the Department, during the period that this Order remains in effect or during the effective date of any Department issued Permit to Respondent relating to the In-Kind project, whichever is longer ("Prohibited Transfer Duration"), Respondent shall not transfer or use funds obtained by the Respondent from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System (including Respondent's domestic wastewater collection, transmission, treatment, reuse, and disposal systems) or to any capital improvement of the Sewer System (hereinafter referred to as "Prohibited Transfer"). Respondent shall annually certify to the Department, using the Annual Certification Form set out in Exhibit C.b, that no Prohibited Transfer has occurred. In the event of any Prohibited Transfer, the In-Kind project option shall be forfeited, and entire amount of civil penalties assessed in Paragraph 11 herein shall immediately become due and owed to the Department irrespective of any expenditures by the Respondent in furtherance of any In-Kind project not fully completed at the time the Prohibited Transfer occurred.

14. Respondent agrees to pay the Department stipulated penalties in the amount of \$1000.00 per day for each and every day Respondent fails to timely comply with any of the requirements of Paragraphs 6 thru 11 of this Order. The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed

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within 30 days of the Department's issuance of written demand for payment, and shall do so as further described in Paragraph 15, 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 11 of this Order.

15. 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.

16. Except as otherwise provided above for on-line payments, all submittals and payments required by this Order shall be sent to Dr. Phil Kane, Department of Environmental Protection, Central District 3319 Maguire BLVD Suite 232 Orlando, Florida 32803.

17. Respondent shall allow all authorized representatives of the Department access to the Facility and the Property at reasonable times and upon prior notice made to the Community Manager for the Property for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

18. 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, the sale or conveyance of the Facility or the Property shall not relieve Respondent of the obligations imposed in this Order, unless (a) Respondent shall, within 30 days following the sale or conveyance of the Facility or Property, 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 (such person or entity, the "New Owner"), (c) provide a copy of this Order with all attachments to the New Owner, (d) such New Owner assumes the obligations

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of Respondent imposed in this Order in writing and a copy of such assumption shall be provided to the Department, and (e) the Department agrees to modify the Order pursuant to paragraph 25, below. If the conditions in (a) through (e) are satisfied, Respondent shall be fully released from any obligation hereunder from and after the date of such assumption.

19. 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 within seven calendar days of the occurrence of such event, which notice shall include (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.

20. 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

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described above up to the date of the filing of this Order. This waiver is conditioned upon Respondent's compliance with all of the terms of this Order in all material respects.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

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Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

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 District Office at 3319 Maguire BLVD Suite 232 Orlando, Florida 32803. Failure to file a petition within the 21-

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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.

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

RESPONDENT:

FAIRWAYS SPE LLC, a Delaware limited liability company

DocuSigned by:
Ken Kravenas
By: D48FBBED0634418...
Name: Ken Kravenas
Its: Authorized Agent
Date: 5/19/2022

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DONE AND ORDERED this 20th day of May, 2022, in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

**Aaron
Watkins**

Digitally signed by Aaron
Watkins
Date: 2022.05.20 09:44:30
-04'00'

Aaron Watkins
District Director
Central District

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

Amita L. Spencer

Clerk

May 20, 2022

Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35