



FLORIDA DEPARTMENT OF Environmental Protection

South District
Post Office Box 2549
Fort Myers, FL 33902-2549
SouthDistrict@FloridaDEP.gov

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

December 14, 2022

Wal-Mart Stores East LP
c/o James Sbanotto, Sr. Manager I
3451 Tamiami Trail E
Naples, FL 34112
Email: james.sbanotto@walmart.com

Re: Collier County – DW Program
OGC Case No. 22-2554
Wal-Mart Naples (SFCO); Facility ID FLSS0A457

Dear Mr. Sbanotto:

Enclosed is the signed and entered copy of Consent Order OGC Case No. 22-2554 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 **December 14, 2022**.

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 Landon Reigelman at Landon.Reigelman@FloridaDEP.gov or 239-344-5633. Your cooperation in resolving this case is appreciated.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jennifer L. Carpenter".

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

Enclosure(s): Executed Consent Order

cc: Toni McCrory (via email: Toni.McCrory@walmart.com)
Michael Odom (via email: Michael.Odom@colliercountyfl.gov)



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November 28, 2022

Wal-Mart Stores East LP
c/o James Sbanotto, Sr. Manager I
3451 Tamiami Trail E
Naples, FL 34112

SUBJECT: Department of Environmental Protection v. Wal-Mart Stores East LP,
OGC File No.: 22-2554
Wal-Mart Naples – FLSS0A457

Mr. Sbanotto:

The State of Florida Department of Environmental Protection ("Department") finds that Wal-Mart Stores East LP ("Respondent") had an unauthorized discharge or unpermitted sanitary sewer overflow ("SSO") of approximately 200 gallons on May 19, 2022, causing at least three violations of water quality standards at the Wal-Mart Naples (FLSS0A457) in violation of Chapter 403, Florida Statutes ("Fla. Stat."), and Rules 62-604 and 62-620, Florida Administrative Code ("Fla. Admin. Code"). 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 \$7,500.00 in civil penalties and \$500.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$8,000.00. The civil penalty in this matter includes 1 violation(s) of \$3,000.00 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 at Florida Department of Environmental Protection, South District, 2295 Victoria Ave, Suite 364,

P.O. Box 2549, Fort Myers, Florida 33902 (or via e-mail at Louise.Chang@FloridaDEP.gov) by December 15, 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, Mr. Sbanotto:

- (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 \$7,500.00 in civil penalties and \$500.00 for 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 Louise Chang at (239) 566-5630 or at Louise.Chang@FloridaDEP.gov.

Sincerely,



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

FOR THE RESPONDENT:

I, Wendy Brant [Type or Print Name], **HEREBY ACCEPT**
THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.

By: Wendy Brant Date: Dec. 13, 2022
[Signature]

Title: VP, EHS Compliance
[Type or Print]

The remainder of this page is left blank intentionally.

FOR DEPARTMENT USE ONLY

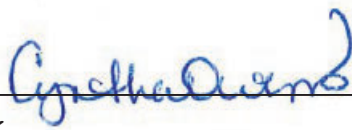
DONE AND ORDERED this 14 day of December, 2022, in Lee County,
Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Jennifer L. 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

December 14, 2022

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.

Penalty Calculation Worksheet

Facility ID:

FLSS0A457

Violator's Name: Wal-Mart Stores East LP

Date of Initial Computation:

9/9/2022

Name of Department Staff Responsible for Penalty Computations:

Landon Reigelman

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
WW	An unpermitted or unauthorized discharge or effluent limitation exceedance that resulted in a surface water or groundwater quality violation.	Raw wastewater spill occurring on 5/19/22 with 200 gallons spilled with 200 recovered. Sampling results indicate water quality violations for E. Coli for at least 3 days.	403.121(3)(b)	\$10,000.00	1			\$10,000.00

Part II - Adjustments

Adjustment	Justification	Dollar Amount
Good faith/Lack of good faith prior to discovery		
Good faith/Lack of good faith after discovery	Implementation of guidance on reporting and water quality sampling procedures for SSOs with all contractors in the State of Florida. 25% reduction of penalty amount (\$10,000.00 * 0.25 = \$2,500.00).	-\$2,500.00
History of Non-compliance		
Ability to pay		
Other Unique Factors		

Economic Benefit

Item	Delayed or Avoided or Direct	Description	Dollar Amount

Penalty Calculation Worksheet

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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

\$500.00

Penalty with Department Costs and Expenses: \$8,000.00

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: \$8,000.00