



FLORIDA DEPARTMENT OF Environmental Protection

Northeast District
8800 Baymeadows Way West, Suite 100
Jacksonville, Florida 32256

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

March 31, 2023

Sent electronically to: mpersing@walshgroup.com

Mr. Matthew D. Persing
Vice President of Florida Region
4343 Anchor Plaza Parkway, #155
Tampa, Florida 33634

Corporation Service Company
1201 Hays Street
Tallahassee, Florida 32301

**Subject: Florida Department of Environmental Protection v. Archer Western
Contractors, LLC
FLG110967
OGC File No. 22-2834
Duval County – Wastewater Enforcement**

Dear Mr. Persing,

Enclosed is a copy of the executed Consent Order to resolve Case No. 22-2834. March 31, 2023 is the effective date of this Order, and all timeframes will be referenced from this date.

As a reminder, a Consent Order is a binding legal document and was voluntarily entered into by both parties.

Should you have any questions concerning the Consent Order, please contact Matthew Kershner, at (904) 256-1649. Your continued cooperation is appreciated.

Sincerely,

A handwritten signature in blue ink that reads "TG Kallemeyn".

Thomas G. Kallemeyn
Assistant District Director

ec: FDEP-NED – Joni Petry, Shannon Taylor, Matthew Kershner, Anna McClure, DEP
NED.
FDEP-OGC: Ronnie W. Hoenstine
Donald Cowan – dcowan@walshgroup.com; James Graham – jgraham@walshgroup.com
Erin Dubose – edubose@walshgroup.com; Mark Monreal - mmonreal@walshgroup.com
Quentin Hill – qhill@gaiconsultants.com; Emy Delgado – emy.delgado@dot.state.fl.us

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	NORTHEAST DISTRICT
)	
v.)	OGC FILE NO. 22-2834
)	
ARCHER WESTERN)	
CONTRACTORS, LLC)	
_____)	

CONSENT ORDER

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

The Department finds and Respondent neither admits or denies 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 (“Fla. Stat.”), and the rules promulgated and authorized in Title 62, Florida Administrative Code (“Fla. Admin. Code”). The Department has jurisdiction over the matters addressed in this Order.
2. Respondent is a person within the meaning of Section 403.031(5), Fla. Stat.
3. Respondent is the owner and is responsible for the operation of a concrete batch plant with a Type II wastewater containment system, consisting of three dirt bottom ponds with Facility ID Number FLG110967 (“Facility”). The Facility is located at the intersection of Interstate 95 and Interstate 295 on the east side of I-95, in Jacksonville, Duval County, Florida, 32256 (“Property”).
4. The Department finds that the following violation(s) occurred:
 - a) Although Respondent acquired a NPDES Stormwater Construction Generic Permit and Air General Permit prior to commencement of construction of the Facility, Respondent failed to obtain an industrial wastewater permit before commencement of construction of the discharge Facility, in violation of Rule 62-620.300(1), Fla. Admin. Code;

b) Photos received by the Department documented discharges of stormwater and industrial wastewater from the Facility on June 25, 2021, August 9, 2021 and September 16, 2021. Respondent failed to obtain an industrial wastewater permit prior to discharging water from the facility in violation of Rule 62-660.400(2)(b), Fla. Admin. Code; and

c) Although Respondent installed certain control systems, such as a wash out pond and settlement ponds with turbidity barriers at the perimeter of the Site, the Respondent control systems failed to meet the conditions required for a Generic Permit for Discharges From a Concrete Batch Plant pursuant to Chapter 62-621, Fla. Admin. Code..

5. The Department acknowledges that as of August 22, 2022, Respondent submitted a Notice of Intent to Use Generic Permit for Discharges from Concrete Batch Plants (“Notice of Intent”). On August 26, 2022, the Department sent a request to Respondent for additional information to complete the Notice of Intent, which included information that the Facility as currently configured would not meet the criteria required to use the Generic Permit for Discharges from Concrete Batch Plants. February 10, 2023, Respondent submitted final response to satisfy the request for additional information to complete the application.

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

ORDERED:

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

a) Beginning the issuance date of this Order, the Respondent shall commence surface water discharge and Type 2 wastewater pond monitoring as depicted in Attachment A incorporated into this Order. Water quality monitoring reports shall be emailed to DEP_NED@FloridaDEP.gov, Edward.E.Hughes@FloridaDEP.gov, Shannon.N.Taylor@FloridaDEP.gov. with the email subject line “Archer Western FLG110967 Monitoring Report”.

b) Every calendar quarter after the effective date of this Consent Order, and continuing until all corrective actions have been completed and upon decommissioning of the facility by Respondent, Respondent shall submit in writing to the Department a report containing information concerning the status and progress of projects being completed under

this Order, information as to 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 to be performed 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.

7. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$38,250.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$37,250.00 for civil penalties and \$1,000.00 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: \$4,500.00 for violation of Rule 62-620.300, Fla. Admin. Code; \$750.00 for violation of Rule 62-621.300(3), Fla. Admin. Code; \$8,000.00 for violation of Rule 62-660.400(2)(c), Fla. Admin. Code; and \$24,000.00 for violation of Rule 62-621.300(3) over the span of five years.

8. Respondent is also subject to corrective action of sediment removal from activities at the Concrete Batch Plant under Consent Order 21-1016. Acknowledging that some of the sediment removal under Consent Order 21-1016 may have been sourced from an activity other than Respondent's, the full removal of the sedimentation identified in paragraph 9 of Consent Order 21-1016, including whatever may have come from other sources, is recognized as having a value greater than one and a half times the assessed penalty of this Order as well as that assessed under Consent Order 21-1016, and therefore fulfills the Department's In-kind policy and satisfies the assessed penalty.

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 paragraph 6 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 "State of Florida Department of Environmental Protection" and shall include thereon the notations "OGC Case No. 22-2834" and "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 to the Department of Environmental Protection, 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida, 32256, with the notation "OGC Case No. 22-2834".

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. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, Fla. Stat., 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.

19. 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.

20. 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, Fla. Stat. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), Fla. Stat.

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

22. Respondent shall publish the following notice in a newspaper of daily circulation in Duval 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 Archer Western Contractors, LLC. pursuant to section 120.57(4), Fla. Stat. The Consent Order addresses the failure to obtain an industrial wastewater permit prior to commencement of construction activity of the Facility, failure to obtain authorization prior to discharging events, and failure to use certain pollution control devices at the Intersection of I 95 and 295, Jacksonville, Florida. 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 at 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida, 32256.

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, Fla. Stat. 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 (meaning 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 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida,, 32256. 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, Fla. Stat. 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, Fla. Stat. 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, Fla. Stat. and Rule 62-110.106(12), Fla. Admin. Code.

23. Rules referenced in this Order are available at:

<http://www.dep.state.fl.us/legal/Rules/rulelist.htm>.

FOR THE RESPONDENT:

**Matthew
Persing**

Digitally signed by Matthew
Persing
Date: 2023.03.27 12:40:43
-04'00'

03-27-2023

Matthew D. Persing
Manager

Date

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this ___ day of _____ 2023, in Duval County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Gregory J. Strong
District Director
Northeast District

TGK

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

Clerk

Date

FDEP vs. Archer Western Contractors, LLC

Consent Order, OGC No. 22-2834

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ec: FDEP-OGC: Lea Crandall, Ron Hoenstine (executed copy only)
FDEP-NED: Shannon Taylor, Joni Petry, Herndon Sims, Sarah Harris, DEP_NED
FDEP-DWMD: Jennifer Walters, Savanna Harris

Attachment A:

These are the monitoring requirements for the subject facility:

- Surface Water Discharge Monitoring requirements with no limits
 - Frequency of Analysis: Daily During Discharge
 - Sample Type: Grab Sample
 - Parameters
 - TSS – (mg/L)
 - pH – (s.u.)
 - specific conductance – (umhos/cm)
 - Petrol Hydrocarbons, Total Recoverable (mg/L)
 - Arsenic, Total Recoverable (mg/L)
 - Beryllium, Total Recoverable (mg/L)
 - Cadmium, Total Recoverable (mg/L)
 - Chromium, Total Recoverable (mg/L)
 - Lead, Total Recoverable (mg/L)
 - Manganese, Total Recoverable (mg/L)
 - Mercury, Total Recoverable (mg/L)
 - Nickle, Total Recoverable (mg/L)
 - Selenium, Total Recoverable (mg/L)
 - Zinc, Total Recoverable (mg/L)

- Type 2 wastewater pond Monitoring requirements and no limits
 - Frequency of Analysis: Monthly
 - Parameters
 - TSS (mg/L)
 - Specific conductance (umhos/cm)
 - TDS (mg/L)
 - pH (s.u.)
 - Petrol Hydrocarbons, Total Recoverable (mg/L)
 - Arsenic, Total Recoverable (mg/L)
 - Beryllium, Total Recoverable (mg/L)
 - Cadmium, Total Recoverable (mg/L)
 - Chromium, Total Recoverable (mg/L)
 - Lead, Total Recoverable (mg/L)
 - Manganese, Total Recoverable (mg/L)
 - Mercury, Total Recoverable (mg/L)
 - Nickle, Total Recoverable (mg/L)
 - Selenium, Total Recoverable (mg/L)
 - Zinc, Total Recoverable (mg/L)