



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

June 8, 2023

Cory Norris
Manager for CH Realty IX-Legacy MHC Orlando Enchanted Lakes, GP, L.L.C, General Partner
for CH Realty IX-Legacy MHC Orlando Enchanted Lakes, L.P.
10810 N. Tatum Boulevard
Suite 102-301
Phoenix, AZ 85028

Re: Enchanted Lakes Estates
DE Facility ID FLA010421
OGC Case #23-0362

Dear Mr. Norris:

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 Sean Boyles at 407-897-4164 or via e-mail at Sean.Boyles@FloridaDEP.gov.

Your cooperation in this matter will be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "AW", is written over a light blue horizontal line.

On behalf of:

Aaron Watkins
Director, Central District

Enclosure

cc: Lea Crandall, OGC
Anitra Spencer, Daun Festa, Sean Boyles, Central District
Andrew Fells, afells@legacymhc.com
Kayla Vawter, kvawter@legacymhc.com

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. 23-0362
)	
CH REALTY IX-LEGACY MHC)	
ORLANDO ENCHANTED LAKES, L.P.)	
_____)	

CONSENT ORDER

This Consent Order (Order) is entered into between the State of Florida Department of Environmental Protection (Department) and CH Realty IX-Legacy MHC Orlando Enchanted Lakes, L.P. (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 Enchanted Lakes Estates WWTF, a 0.010 million gallon per day permitted capacity [0.014 MGD maximum monthly average daily flow (MMADF)] extended aeration domestic wastewater with two sprayfields and two drainfields for effluent disposal (Facility). The Facility is operated under Wastewater Permit No. FLA010421-005 (Permit), which was effective on June 10, 2014, and expires on June 9, 2025. The Facility is located at 750 Malabar Road, Malabar, in Brevard County, Florida (Property). Respondent owns the Property on which the Facility is located.
4. The Department finds that the following violation(s) occurred:

a) At the time of the inspection several of the Permit Compliance Schedules had not been completed, in violation of Section 403.161(1)(b), F.S. Specifically, the items below were not completed:

- i. Repair plugged spray heads every thirty days
- ii. Post warning signs on the reuse areas and plant as recommended
- iii. Remove excess vegetation from the south sprayfield
- iv. Submit an updated capacity analysis report (CAR), per Permit Condition V.B.1

b) During the Discharge Monitoring Report (DMR) review, it was noted that sampling for pH and total residual chlorine (TRC) was only done 4 times a week for one week out of the following months: July 2022, August 2022, and October 2022, in violation of Chapter 62-620.610(18), F.A.C.

c) The following items were noted at the time of the Sampling Calibration/Verification Log Quality Assurance (QA) Audit performed on December 7, 2022, in violation of Chapter 62-160.210(1), F.A.C.:

- i. No times for calibration/verification events were recorded.
- ii. There were no units of the standards used.
- iii. There are no acceptance criteria noted for the calibration/verifications.
- iv. There is no indication that calibrations/verifications passed.
- v. There is nothing noting the name of the individual that did the maintenance or calibrations/verifications.
- vi. There is no unique identifier for the sonde/probe used for the calibrations/verifications.
- vii. There is nothing noting that any corrective actions were needed.
- viii. There appears to be no chronological bracketing being done before and after the sampling events.
- ix. There is nothing noting that quantitative bracketing was done for the calibrations/verifications.

- d) Samples reported on Part A did not match what was reported on Part B, for several months of the DMR review, in violation of Chapter 62-600.680(1)(a)-(b), F.A.C.
- e) For all months of the DMR review, Fecal Coliform Maximum (R-001) was left blank, in violation of Chapter 62-600.680(1)(a)-(b), F.A.C.
- f) For all months of the DMR review, Fecal Coliform Maximum (R-002) was left blank, in violation of Chapter 62-600.680(1)(a)-(b), F.A.C.
- g) For all months of the DMR review, Biosolids Quantity (Landfilled) (RMP-Q) was left blank. For the month of August 2022, the Biosolids Quantity (Transferred) was also left blank, in violation of Chapter 62-600.680(1)(a)-(b), F.A.C.
- h) In December 2021, R-002 for Part A of the DMR was not submitted, in violation of Chapter 62-620.610(18), F.A.C.
- i) During the following months, March 2022, May 2022, June 2022, and July 2022, the lab qualifier "I" was reported next to the samples on both Part A and Part B for TSS. For the following months, August 2022 and October 2022, the lab qualifier "I" was reported next to the samples on both Part A and Part B, for CBOD, in violation of Chapter 62-600.680(1)(a)-(b), F.A.C.
- j) During the DMR review, the following DMRs were received late: January 2022, June 2022, July 2022, and August 2022, in violation of Chapter 62-620.610(18), F.A.C.
- k) Flow exceedances were reported for several months of the DMR review.
- l) An exceedance was marked for the FLW-3 Annual Average on the January 2022 DMR, but it was not an exceedance, in violation of Chapter 62-600.680(1)(a)-(b), F.A.C.
- m) During the QA Audit for August 2022, completed on December 7, 2022, it was noted that Percent (%) Capacity is not being calculated correctly. Percent Capacity was reported at 57% Capacity and was calculated during the QA Audit at 69% Capacity, in violation of Chapter 62-600.680(1)(a)-(b), F.A.C.

n) A garden hose was fitted to the piping coming from the dosing tank area. This piping was observed discharging into the woods. This item constitutes an illegal discharge, in violation of Section 403.161(1)(a), F.S.

o) There were no signs noting the nature of the activity area at the two sprayfields, in violation of Chapter 62-610.518(1), F.A.C.

p) The south sprayfield was unmaintained and was covered with overgrown with vegetation, in violation of Chapter 62-610.419(1)(b), F.A.C.

q) Multiple heads at both sprayfields were not operating as designed, in violation of 62-620.610(7), F.A.C.

r) It was noted in the Facility paperwork that at times, untreated biosolids were being taken to treatment facilities that the Facility does not have a contract with, in violation of Chapter 62-640.880(1)(c), F.A.C.

s) Corrective actions have been completed for the violations noted in paragraphs 4a i-iii, b, c i-ix, d, e, f, g, h, i, j, k, l, m, n, o, p, q, and r. No further response is needed at this time for these paragraphs.

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. Immediately beginning with the effective date of this Order, the Respondent shall ensure that all DMR reporting, and calculations are completed properly and accurately, within the requirements of the permit.

7. Within ninety (90) days of the effective date of this Order, the Respondent shall submit an updated Capacity Analysis Report to the Department. The updated Capacity Analysis report is required to be completed by an engineer Certified in the State of Florida.

8. Within thirty (30) days of the effective date of this Order, Respondent shall pay the Department \$13,500.00 in settlement of the regulatory matters addressed in this Order.

This amount includes \$13,000.00 for civil penalties 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 penalty in this case includes two violations that each warrant a penalty of \$2,000.00 or more.

9. In lieu of making cash payment of \$13,000.00 in civil penalties as set forth in Paragraph 8, Respondent may elect to off-set the amount of \$13,000.00 by implementing a Pollution Prevention (P2) Project, which must be approved by the Department. P2 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. If Respondent chooses to implement a P2 Project, Respondent shall notify the Department of its election by certified mail within fifteen (15) days of the effective date of this Order. Within thirty (30) days of the effective date of this Order, Respondent must pay a total \$500.00 for costs and expenses incurred by the Department, during the investigation of this matter, and the preparation and tracking of this Order.

10. If Respondent elects to implement a P2 Project as provided in Paragraph 9, Respondent shall submit a completed P2 Project Plan (Plan) within thirty (30) days of the effective date of this Order. The Plan must be completed using Exhibit A, "P2 Project Plan" template.

11. In the event the Department requires additional information to process the Plan described in Paragraph 10; Respondent shall provide a modified Plan containing the information requested by the Department within thirty (30) days of the date of the request.

12. If any balance remains after the entire P2 credit is applied to the allowable portion of the civil penalty, Respondent shall pay the difference within thirty (30) days of written notification by the Department to Respondent that the balance is due.

13. 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 Paragraphs 6-7 of this Order. The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within thirty (30) days of the Department's issuance of written demand for payment and shall do so as further described in Paragraph 14, 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.

14. 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 23-0362" 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.

15. Except as otherwise provided, all submittals and payments required by this Order shall be sent to, Department of Environmental Protection, Central District, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803, or by email at DEP_CD@FloridaDEP.gov.

16. 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.

17. 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 thirty (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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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

Department of Environmental Protection, Central District, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803. 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.

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

FOR THE RESPONDENT:



Cory Norris

Manager for CH Realty IX-Legacy MHC Orlando Enchanted Lakes, GP, L.L.C, which is the General Partner for CH Realty IX-Legacy MHC Orlando Enchanted Lakes, L.P.


6/5/2023

Date

For Department Use Only: Please do not write below this line

DONE AND ORDERED this 8th day of June, 2023, in
Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



on behalf of

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.



Clerk

June 8, 2023

Date

Final Clerked Copy furnished to:

Lea Crandall, Agency Clerk
Mail Station 35

Exhibit A

P2 Project Plan (Plan)

Enchanted Lakes Estates WWTF
750 Malabar Road
Malabar, Florida 32950
(Preparer Name/Title)

A. **Project Description:** (Summarize P2 Projects selected. Describe the processes or operations to be modified, and the specific changes to be made. Include details such as the specific equipment to be installed, materials to be substituted, and the actual changes to be made to processes or operations. Include manufacturer or vendor information, and specifications.)

B. **Environmental and Economic Benefits:** (Explain why and how each Project proposed constitutes P2.

Specify how each material, chemical, water and energy are saved, and from which processes or operations. Specify how each solid and hazardous waste, industrial wastewater and air emissions are generated, the waste type, and from which processes or operations. **Describe generally in paragraph format.**

Estimate the *annual* savings in *resources* - raw materials, chemicals, water, and energy at the process or operation front end. Estimate the *annual* reductions in *wastes* - solid and hazardous waste, wastewater, and air emission reductions at the process or operation back end.

Figures quoted should represent weights or volumes annually and should be equalized for production rate changes. Associated cost savings should be included. **Describe specifically using the tables provided.**

Complete the first table for each per Project individually. Add or average corresponding figures from each Project table to complete the Plan table, *for multiple Projects.*)

<i>(Project Name)</i>							
Annual Resource Consumption Comparison							
Item	Quantity Used (gal/lb/kwh-specify)			Purchasing Cost (\$)			Percent (%) Reduction
	Before	After	Reduction	Before	After	Reduction	
Water							
Chemicals							
Materials							
Energy							

Total Annual Cost Savings =							
Annual Waste Generation Comparison							
Item	Quantity Generated (gal/lb/tons-specify)			Disposal Cost (\$)			Percent (%) Reduction
	Before	After	Reduction	Before	After	Reduction	
Hazardous Waste							
Industrial Wastewater							
Solid Waste							
Air Emissions							
Total Annual Cost Savings =							
Total Annual Avoided Cost Savings =							

<i>Summary of All P2 Projects</i>							
Annual Resource Consumption Comparison							
Item	Quantity Used (gal/lb/kwh-specify)			Purchasing Cost (\$)			Percent (%) Reduction
	Before	After	Reduction	Before	After	Reduction	
Water							
Chemicals							
Materials							
Energy							
Total Annual Cost Savings =							
Annual Waste Generation Comparison							
Item	Quantity Generated (gal/lb/tons-specify)			Disposal Cost (\$)			Percent (%) Reduction
	Before	After	Reduction	Before	After	Reduction	
Hazardous Waste							
Industrial Wastewater							
Solid Waste							
Air Emissions							
Total Annual Cost Savings =							
Total Annual Avoided Cost Savings =							

C. **Project Cost:** (Include per Project the itemized, subtotal and Project total costs. A projected payback period in months or years needs to be included.

Provide a grand total cost for all Projects and an averaged projected payback period, *for multiple Projects. Use list or table format for all.*)

D. **Implementation Schedule:** (Provide a brief discussion of the steps necessary to implement the Projects and expected time frames for completion. A table or list format is preferred. The schedule shall include a list of milestones with dates, or timeframes based

on Plan approval date, including Progress and Final Report submittals. Provide a description of any anticipated problems and options. *The implementation should take no longer than six months to complete.*)

E. Project Reporting:

1. Within 90 days of approval of the Project Plan, the Respondent shall submit a P2 Project Progress Report to the Department that describes the Respondent's progress in implementing the P2 Project and meeting the requirements in the Plan, and includes a list of equipment ordered, purchased, and/or installed.

2. Within 180 days of approval of the Plan, the Respondent shall submit to the Department a P2 Project Final Report that includes the following.

a. A confirmation that the information presented in Sections A-C of the Summary is unchanged, or an updated version with the sections changed appropriately. A statement that the Project(s) was/were implemented successfully. An explanation of any problems encountered, and corrections applied.

b. Attached expense reports, receipts, purchasing instruments and other documents itemizing costs expended on preparing and implementing the Project.

3. The Department shall review the Final Report and determine:

a. Whether the project was properly implemented; and

b. Which expenses apply toward pollution prevention credits.

4. A \$1.00 pollution prevention credit for each \$1.00 spent on applicable costs will be applied against the portion of the civil penalty that can be offset.

a. The following costs are allowable to offset the allowable amount of the civil penalty:

i. Preparation of the P2 Project;

ii. Design of the P2 Project;

iii. Installation of equipment for the P2 Project;

iv. Construction of the P2 Project;

v. Testing of the P2 Project;

vi. Training of staff concerning the implementation of the P2 Project; and

vii. Capital equipment needed for the P2 Project.

b. The following costs shall not apply toward P2 credit:

i. Costs incurred in conducting a waste audit;

ii. Maintenance and operation costs involved in implementing the P2 Project;

iii. Monitoring and reporting costs;

iv. Salaries of employees who perform their job duties;

v. Costs expended to bring the facility into compliance with current law, rules and regulations;

vi. Costs associated with a P2 Project that is not implemented;

vii. Costs associated with a P2 Project that has not been approved by the

Department; and

viii. Legal costs.

c. If any balance remains after the entire P2 credit is applied to the allowable portion of the civil penalty, Respondent shall pay the difference within 30 days of written notification by the Department to the Respondent that the balance is due.

5. The Department may terminate the P2 Project at any time during the development or implementation of it, if the Respondent fails to comply with the requirements in this document, act in good faith in preparing and implementing the project or develop and implement the P2 Project in a timely manner. The Respondent may terminate the P2 Project at any time during its development or implementation.