



FLORIDA DEPARTMENT OF Environmental Protection

Southwest District Office
13051 North Telecom Parkway #101
Temple Terrace, Florida 33637-0926

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

October 4, 2023

Donald Everett Butler, Senior Vice President
Sunburst/Encore, L.P.
c/o Henry Lue, P.E.-Equity Lifestyle Properties
Two N Riverside Plaza, Suite 800
Chicago, IL 60606
henry_lue@equitylifestyle.com

Re: Executed Consent Order
Department of Environmental Protection v. Sunburst/Encore, L.P.
OGC File No. 22-2692
Barrington Hills WWTF
Facility ID No. FLA012811
Pasco County

Dear Mr. Butler:

Enclosed is the executed Consent Order, OGC File No. 22-2692, regarding the above-referenced facilities. The effective date of the Consent Order is the filing date entered by the designated Department Clerk on the signature page.

Should you have any questions, please contact Ms. Emmalise Hunter at (813) 470-5787, or via e-mail: Emmalise.C.Hunter@FloridaDEP.gov. Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kelley M. Boatwright".

For Ms. Kelley M. Boatwright
Southwest District Director
Florida Department of Environmental Protection

KMB/eh

Enclosures: Executed Consent Order

DEP v. Donald Everett Butler dba Sunburst/Encore L.P.
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Exhibit A: In-Kind Projects
Exhibit B: August 31, 2022, Corrective Action Plan

Cc: Pamala Vazquez, FDEP/SWD, Pamala.Vazquez@floridadep.gov
Emily Larson, FDEP/SWD, Emily.Larson@floridadep.gov
Emmalise Hunter, FDEP/SWD, Emmalise.C.Hunter@floridadep.gov
Madeline Kender, Kimley Horn, Madeline.Kender@kimley-horn.com
Terry Henry, US Water Corp, thenry@uswatercorp.net
Melisa Rotteveel, US Water Corp, mrotteveel@uswatercorp.net

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)
OF ENVIRONMENTAL PROTECTION)
v.)
SUNBURST/ENCORE L.P.)
_____)

IN THE OFFICE OF THE
SOUTHWEST DISTRICT

OGC FILE NO. 22-2692

CONSENT ORDER

This Consent Order (Order) is entered into between the State of Florida Department of Environmental Protection (Department) and Sunburst/Encore 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 Barrington Hills WWTF, an operation of an existing 0.060 million gallons per day (MGD) Three-Month Rolling Average Daily Flow (3MRADF) of basic disinfection with disposal to a two-cell Rapid Infiltration Basin (RIB) system (Facility). The Facility is operated under Wastewater Permit No. FLA012811 (Permit), which was issued on May 30, 2018, and will expire on May 29, 2028. The Facility is located at 9412 New York Ave, 34667-3430, in Pasco County, Florida (Property). Respondent owns the Property on which the Facility is located.

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

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a) On March 25, 2022, a Compliance Evaluation Inspection and Sanitary Sewer Overflow Prevention Inspection of the Facility was conducted by the Department. Noncompliance was observed under Rules 62-600.410(3) F.A.C. and 62-600.410(4), F.A.C, during the inspection. Severe corrosion and deterioration were observed on the piping from the surge tank, along the catwalk and at the first aeration basin.

b) Noncompliance was observed under Rule 62-600.410(4) F.A.C. regarding the effluent disposal area.

c) During the review period, noncompliance was observed under Rule 62-620.610(1) F.A.C. in which chronic effluent exceedances were reported for six consecutive months.

d) The Department was notified of several unauthorized discharges and sanitary sewer overflows from the Facility. This is in violation of Rule 62-604.130(1), F.A.C. which prohibits the release or disposal of excreta, sewage, or other wastewaters or residuals without providing proper treatment approved by the Department.

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:

a) **Within 30 days of the effective date of this Order**, Respondent shall implement the Corrective Action Plan (“CAP”) submitted by the facility on August 31, 2022, herein attached and referred to as Exhibit “B.” Respondent shall conduct the work specified in the CAP within the timeframes provided in the CAP. If the Department requires additional information for the CAP, the Department may notify the

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Respondent in writing of the deficiencies by issuing a Request for Additional Information (“RAI”). The Respondent shall submit the required information identified in the RAI within the timeframe provided for in the RAI. Failure to submit the information identified in the RAI within the timeframe specified by the RAI shall be a violation of this Order.

b) Respondent shall complete all corrective actions contained within the CAP and connect to a Publicly Owned Treatment Works (“POTW”) including associated measures required for connection and abandonment to be completed no later than **December 31, 2024**.

6. Every 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.

7. Notwithstanding the time periods described in the paragraphs above, Respondent shall complete all corrective actions within the respective deadlines specified thereunder and shall be in full compliance with the Facility Permit, Section 403.161(1)(a), F.S., and Rules 62-600, 62-604 and 62-620, F.A.C., by **December 31, 2024**.

8. **Within 30 days of the effective date of this Order**, Respondent shall pay the Department \$10,514.19 in settlement of the regulatory matters addressed in this Order. This amount includes \$10,014.19 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 2 violations that each warrant a penalty of \$2,000.00 or more.

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9. In lieu of making cash payment of \$10,014.19 in civil penalties as set forth in paragraph 8 above, Respondent may elect to offset this amount by implementing an in-kind penalty project, which must be approved by the Department. An in-kind project 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 penalty project shall be one and a half times the civil penalty off-set amount, which in this case is the equivalent of at least \$15,021.29. If the Respondent chooses to implement an in-kind project, Respondent shall notify the Department of its election electronically or by certified mail within 15 days of the effective date of the Long Form Consent Order. If Respondent elects to implement an in-kind project, then Respondent shall comply with all of the requirements and time frames in Exhibit A entitled In-Kind Projects. **Notwithstanding the election to implement an in-kind project, payment of the remaining \$500.00 in costs must be paid within 30 days of the effective date of the Consent Order.**

10. 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 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>
\$1,000.00	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 10 below.

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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.

11. 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.

12. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Domestic Wastewater section, Compliance Assurance Program, attention: Emmalise Hunter, Environmental Specialist, Department of Environmental Protection, Southwest District Office, 13051 North Telecom Parkway, Suite #101, Temple Terrace Florida, 33637, or via email at SWD_DW@floridadep.gov.

13. 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.

14. 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.

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15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

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22. 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.

23. Respondent shall publish the following notice in a newspaper of daily circulation in Pasco County, Florida. The notice shall be published one time only within 30 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 SUNBURST/ENCORE L.P. pursuant to section 120.57(4), Florida Statutes. The Consent Order addresses the deteriorating infrastructure, effluent quality exceedances, and sanitary sewer overflows, at 9412 New York Ave, in Pasco County, 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, 13051 North Telecom Parkway Suite #101, Temple Terrace Florida, 33637.

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

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- 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 13051 North Telecom Parkway Suite #101, Temple Terrace Florida 33637. 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.

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

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FOR THE RESPONDENT:

Donald E. Butler

Donald Everett Butler
Senior Vice President

10/3/2023 | 7:10 AM PDT

Date

DONE AND ORDERED this 4th day of October, 2023, in
Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Pamala Vazquez

Ms. Kelley M. Boatwright
District Director
Southwest District

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



Clerk

October 4, 2023

Date

Final Copies furnished To:
Lea Crandall, Agency Clerk
Mail Station 35

Exhibit A: In-Kind Projects

I. Introduction

Proposal

a. Within 60 days of the effective date of this Consent Order, or, of the Department's notification that applying civil penalties to an in-kind project is acceptable, Respondent shall submit, either electronically or by certified mail, a detailed in-kind project proposal to the Department for evaluation. The proposal shall include a summary of benefits, proposed schedule for implementation and documentation of the estimated costs which are expected to be incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the in-kind project.

Proposal Certification Form

b. The proposal shall also include a Certification by notarized affidavit from a senior management official for the Barrington Hills WWTF who shall testify as follows:

My name is _____ (print or type name of senior management official) and do hereby testify under penalty of law that:

A. I am a person with management responsibilities for Barrington Hills WWTF's budget and finances. During the eighteenth month period prior to the effective date of Consent Order OGC Case No.: 22-2692 there has not been any transfer or use of funds obtained by Barrington Hills WWTF from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System.

B. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowingly submitting false information in this certification.

Sworn to and subscribed before me, by means of physical presence or online notarization, this ____ day of _____, 20__ by

Personally, known or by Production of the following Identification _____

OGC File No. 22-2692
Barrington Hills WWTF
Pasco County

Notary Public, State of Florida

Printed/typed or stamped name:

My Commission Expires: _____

Commission/Serial No.: _____

Annual Certification Form

My name is _____ (print or type name of senior management official) and do

hereby testify under penalty of law that:

A. I am a person with management responsibilities for Barrington Hills WWTF's budget and finances. During the twelve-month period immediately preceding the notary date on this Certification, there has not been any transfer or use of funds obtained by Barrington Hills WWTF from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System.

B. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowingly submitting false information in this certification.

Sworn to and subscribed before me, by means of physical presence or online notarization, this ____ day of _____, 20__ by

Personally, known or by Production of the following Identification _____

Notary Public, State of Florida

Printed/typed or stamped name:

My Commission Expires: _____

Commission/Serial No.: _____

c. If the Department requests additional information or clarification due to a partially incomplete in-kind project proposal or requests modifications due to deficiencies with Department guidelines, Respondent shall submit, either electronically or by certified mail, all requested additional information, clarification, and modifications within 15 days of receipts of written notice.

d. If upon review of the in-kind project proposal, the Department determines that the project cannot be accepted due to a substantially incomplete proposal or due to substantial deficiencies with minimum Department guidelines; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the proposal. Respondent shall correct and redress all the matters at issue and submit, either electronically or by certified mail, a new proposal within 30 days of receipt of written notice. In the event that the revised proposal is not approved by the Department, Respondent shall make cash payment of the civil penalties as set forth in the Consent Order, within 30 days of Department notice.

e. Within 120 days of the effective date of this Consent Order, or, of the Department's notification that applying penalties to an in-kind project is acceptable Respondent shall obtain approval for an in-kind project from the Department. If an in-kind project proposal is not approved by the Department within 120 days of the effective date of this Consent Order, or, of the Department's notification that applying civil penalties to an in-kind project is acceptable then Respondent shall make cash payment of the civil penalties as set forth in the Consent Order, within 30 days of Department notice.

f. Within 180 days of obtaining Department approval for the in-kind proposal or in accordance with the approved schedule submitted pursuant to paragraph (a) above, Respondent shall complete the entire in-kind project.

g. During the implementation of the in-kind project, Respondent shall place appropriate sign(s) at the project site indicating that Respondent's involvement with the project is the result of a Department enforcement action. Respondent may remove the sign(s) after the project has been completed. However, after the project has been completed Respondent shall not post any sign(s) at the site indicating that the reason for the project was anything other than a Department enforcement action.

h. In the event, Respondent fails to timely submit any requested information to the Department, fails to complete implementation of the in-kind project or otherwise fails to comply with any provision of this paragraph, the in-kind penalty project option shall be forfeited, and the entire amount of civil penalties shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the civil penalty, no additional penalties shall be assessed for failure to complete the requirement of this paragraph.

i. Within 15 days of completing the in-kind project, Respondent shall notify the Department, either electronically or by certified mail, of the project completion and request a verification letter from the Department. Respondent shall submit supporting information verifying that the project was completed in accordance with the approved proposal and documentation showing the actual costs incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the project.

j. If upon review of the notification of completion, the Department determines that the project cannot be accepted due to a substantially incomplete notification of completion or due to substantial deviations from the approved in-kind project; Respondent shall be notified, in

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Barrington Hills WWTF
Pasco County

writing, of the reason(s) which prevent the acceptance of the project. Respondent shall correct and redress all the matters at issue and submit, either electronically or by certified mail, a new notification of completion within 15 days of receipt of the Department's notice. If upon review of the new submittal, the Department determines that the in-kind project is still incomplete or not in accordance with the approved proposal, the in-kind penalty project option shall be forfeited, and the entire amount of civil penalty shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the civil penalty no additional penalties shall be assessed for failure to complete the requirements of this paragraph.

From: [Henry Lue](#)
To: [Hunter, Emmalise C](#)
Cc: [Peck, Erica](#); [Kautz, Lance](#); [Marluz Lopez](#); [Kender, Madeline](#)
Subject: RE: Teams Meeting Follow Up
Date: Wednesday, August 31, 2022 4:22:33 PM

EXTERNAL MESSAGE

This email originated outside of DEP. Please use caution when opening attachments, clicking links, or responding to this email.

Emmalise,

Please see the proposed schedules for the rehabilitation and connection projects below. Note; we will be installing noise reduction insulation to control the noise from the blower as a temporary measure. The permanent solution is to replace and relocate the equipment. We will purchase and install a new blower and attenuation packages and relocate them to ground level. Right now, we are hearing the delivery time for the new blower and attenuation packages is about 8-9 months.

US Water’s Proposed Schedule

Barrington Hills WWTP Rehabilitation Project	Start Date	Completion Date
Install noise reduction insulation on existing blowers	Sept. 2, 2022	Sept. 23, 2022
Reskin surge tank	Sept. 6, 2022	Oct. 3, 2022
Purchase and install new blower and sound attenuation package)	Sept. 6, 2022	July 2023
Site prep for new blower package	Sept 6, 2022	Dec. 4, 2022

Kimley Horn Proposed Schedule

FORCE MAIN DESIGN & CONSTRUCTION

Description of Task	Task Start Date	Duration (Weeks)	Task End Date
Notice to Proceed	8/26/2022	0	8/26/2022
Design & Permitting Duration	8/26/2022	30	3/24/2023
Design Completion & Bid	3/24/2023	4	4/21/2023
Start Construction	4/21/2023	0	4/21/2023
Construction Duration	4/21/2023	52	4/19/2024

End Construction	4/19/2024	0	4/19/2024
Wastewater Decommissioning	4/19/2024	12	7/12/2024
Total		98	

Bobby Lue, P.E.
Environmental Engineer
Equity Lifestyle Properties, Inc.
4300 W. Cypress Street #400
Tampa, FL 33607
(813) 282-5934 (Office)
(813) 541-2765 (Cell)

From: Hunter, Emmalise C <Emmalise.C.Hunter@FloridaDEP.gov>
Sent: Friday, August 26, 2022 2:38 PM
To: Henry Lue <bobby_lue@equitylifestyle.com>
Subject: Teams Meeting Follow Up

CAUTION: This message originated externally, please use caution when clicking on links or opening attachments!

Good Afternoon,

The department greatly appreciates your time and cooperation to communicate on your on-going progress. As discussed in our Teams meeting this afternoon, the department expects the submittal of a corrective action plan by COB Wednesday August 31, 2022.

Thank you very much for your time,



Emmalise Hunter
Environmental Specialist
Compliance Assurance Program
Southwest District
Emmalise.C.Hunter@FloridaDEP.gov
Office: 813-470-5787

Please consider the environment before printing this e-mail.

[Redacted signature area]