



Florida Department of Environmental Protection

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

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Ryan E. Matthews
Interim Secretary

February 15, 2017

Ms. Kimberly Byer, P.G., Division Director
Hillsborough County Public Works Department, Solid Waste Management Division
925 E. Twiggs Street
Tampa, Florida 33602
byerk@hillsboroughcounty.org

Re: Proposed Consent Order OGC File No. 17-0058
Hillsborough Southeast County Landfill
Facility ID 41193
Hillsborough County

Dear Ms. Byer,

Enclosed is the proposed Consent Order, OGC File No. 17-0058, regarding the above-referenced facility. Please review, sign and return the Consent Order within **30 days** of receipt of this letter, if in agreement. If not in agreement, please contact the Department immediately. Upon return of the signed Consent Order, I shall execute it and a copy will be sent to you.

The executed Consent Order constitutes final agency action of the Department, which shall be enforceable pursuant to Sections 120.69 and 403.121, Florida Statutes. By countersigning the Consent Order, the Department waives its right to seek judicial imposition of damages, costs and expenses, or civil penalties for the alleged violations. By signing the Consent Order, you, as the Respondent, acknowledges and waives its right to a hearing and appeal of the terms of the Consent Order.

If the signed original Consent Order is not received by the Department within **30 days**, the Department will assume that you are not interested in the settlement of the above terms, and the matter may be referred to the Office of General Counsel for formal enforcement action. None of your rights or substantial interests are determined by the Consent Order until it is signed and filed with the Department.

Should you have any questions, please contact Steve Tafuni, Government Operations Consultant at (813) 470-5792 or via e-mail Steven.Tafuni@dep.state.fl.us. Thank you for your cooperation.

Sincerely yours,

A handwritten signature in blue ink that reads "Mary E. Yeargan".

Mary E. Yeargan, PG
Southwest District Director
Florida Department of Environmental Protection

MEY/mam

ec:

Larry Ruiz, Hillsborough County Public Works Dept., ruizle@hillsboroughcounty.org
Cindy Pelley, Hillsborough County Public Works Dept., pelleyca@hillsboroughcounty.org
Dave Adams, Hillsborough County Public Utilities Dept., adamsds@hillsboroughcounty.org
Jeffry Greenwell, Hillsborough County Public Utilities Dept., greenwellj@hillsboroughcounty.org
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Enclosures: Proposed Consent Order

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	SOUTHWEST DISTRICT
)	
v.)	OGC FILE NO. 17-0058
)	
HILLSBOROUGH COUNTY BOARD OF)	
COUNTY COMMISSIONERS)	
_____)	

CONSENT ORDER

This Consent Order (“Order”) is entered into between the State of Florida Department of Environmental Protection (“Department”) and Hillsborough County Board of County Commissioners (“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 administer and enforce the provisions of the Florida Resource Recovery and Management Act, Sections 403.702, et seq., 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 Sections 403.031(5) and 403.703(22), F.S.

3. Respondent is the operator of the Southeast County Class I Landfill, located at 15960 County Road 672, in Hillsborough County, Florida (“Facility”). The Facility WACS ID Number is 41193.

4. Respondent operates the Facility under Permit No. 35435-022-SO/01 (“Permit”) issued to Hillsborough County Public Utilities, Solid Waste Management Group, and expires on September 6, 2023.

5. Respondent contacted the Department on April 15, 2016 to discuss ground water quality changes at well TH-67 that were noted during the routine, semi-annual sampling event conducted during February 2016, and the confirmatory re-sampling event conducted during April 2016. Respondent provided written notification regarding the monitoring results to the Department on April 21, 2016, and proposed to investigate the source and to develop a corrective action plan. The Department provided conditional approval of the Respondent’s proposed investigation on April 27, 2016.

6. Respondent submitted a report entitled, Response to FDEP Comments Regarding TH-67 (“TH-67 Report”), to the Department on August 23, 2016 which further characterized ground water quality to the east of Phase II and indicated the source of the changes may be related to elevated leachate levels within Phase II. The Department conducted an inspection of facility on August 25, 2016, and transmitted the inspection report to the Respondent on September 6, 2016 which indicated that possible violations exist at the facility. According to all available information, leachate has accumulated within Phases I-VI in excess of the leachate collection system design criteria of one foot of head over the clay liner, as indicated by the TH-67 Report, the Department’s inspections, and communications between Department and the Respondent. The TH-67 Report indicated leachate elevations may be higher than the perimeter containment berm in the general area of well TH-67, which further

indicates that leachate may have discharged beyond the limits of the lined landfill. The Respondent and the Department have agreed that a plan for corrective action to resolve the impounded leachate and increased monitoring in the area surrounding TH-67 is necessary.

7. Rule 62-701.500(8)(b), F.A.C. requires that the operator shall maintain the leachate collection system as designed for the design period. In addition, Specific Condition C.12.a. of the Facility's Permit requires that the leachate system be maintained so that leachate is not discharged from the system.

8. The Department finds that Respondent violated the Facility's permit and Rule 62-701.500(8)(b), F.A.C., by failing to maintain the leachate collection system, which allowed an accumulation of leachate greater than one foot within the landfill and caused a discharge beyond the limits of the leachate containment system.

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

ORDERED:

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

a) Within 60 days of the effective date of this order, Respondent shall prepare and submit a corrective action plan ("Plan") to the Department. The objective of the plan is to address the inadequacies of the leachate collection system and provide a proposal for evaluating and reducing leachate levels to less than one foot from the top of clay in all phases of the Phase I-VI landfill. The plan shall include a schedule for implementation and completion

of the plan. The plan shall also reference the supplemental monitoring and reporting activities to investigate groundwater quality impacts east of Phase II. In the event that continued impacts to ground water quality are observed east of Phase II, the Department reserves the right to require the Respondent to implement evaluation monitoring in accordance with 62-701.510(6)(a), F.A.C.

b) Upon review of the Plan, the Department may request additional information. Respondent shall submit additional information to the Department within 30 days of receipt of the Department's written request therefore.

c) Upon Department approval, the Plan shall be incorporated herein and made a part of this Order and Respondent shall implement the proposals in the Plan pursuant to the approved schedule.

d) If, upon review of the Plan, and any requested additional information, the Department determines that the objectives of Paragraph 9. a) have not been adequately addressed, the Department, at its option, may choose to either:

- i. Draft specific modifications to the Plan and notify the Respondent that these modifications are incorporated in the Plan; or
- ii. Notify Respondent that it has failed to meet the requirements for submittal of an acceptable Plan, and take legal action to enforce compliance with this Order pursuant to all its remedies in Chapter 403, F.S.

e) Respondent shall, monthly until this Order has been satisfied, submit a progress report to the Department that documents the activities completed during the previous calendar month. The report shall include the preceding monthly leachate generation rates and weekly piezometers readings for the site. The progress report must be received by the Department by the 15th of the month.

f) Respondent shall on a quarterly basis, beginning with the event conducted during November 2016 and continuing until this Order has been satisfied, conduct supplemental ground water sampling events to characterize ground water quality trends east of Phase II. Ground water samples shall be collected from surficial aquifer wells TH-20B, TH-38B, TH-66A, TH-67 and TH-79 for analysis of sodium, ammonia, chloride and total dissolved solids (TDS). Respondent shall submit the results of the supplemental ground water sampling events to the Department in accordance with the requirements of Rule 62-701.510(8)(a), F.A.C. (including ADaPT files), within 60 days from completion of laboratory analyses.

10. Respondent agrees to pay the Department stipulated penalties in the amount of \$100 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph(s) 9 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 12, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms 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 becomes final and effective 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 Steve Tafuni, Government Operations Consultant, Department of Environmental Protection, Southwest District Office, 13051 North Telecom Parkway, Temple Terrace, Florida, 33637.

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. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for violations outlined in this Order. This waiver is conditioned upon (a) Respondent's complete compliance with all of the terms of this Order, and (b) the remediation of contaminated areas to the applicable site rehabilitation levels. The Department's cause of action for damages accrues when the Department concludes that remediation of contaminated areas to the applicable site

rehabilitation levels is not feasible or that the Respondent failed to completely implement the Department-approved remedial or corrective action plan (however designated). If the Department and Respondent fail to reach agreement on the payment of the damages, the Department may initiate appropriate legal action to recover the damages as provided by law.

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 \$10,000.00 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, 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.

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

21. 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.

22. 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 OGC Number assigned to this Consent Order;

- b) The name, address, and telephone number of each petitioner; 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;
- c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- d) A statement of when and how the petitioner received notice of the Consent Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 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 Southwest District, 13051 North Telecom Parkway, 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.

23. Rules referenced in this Order are available at

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

FOR THE RESPONDENT:

Stacy White, Chairman
Hillsborough Board of County Commissioners

[Date](#)

DONE AND ORDERED this ____ day of _____, 2017, in Hillsborough, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Mary Yeargan, P.G.
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

Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35