



Florida Department of Environmental Protection

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

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Noah Valenstein
Secretary

June 12, 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 Agreement OGC File No. 17-0058
Hillsborough Southeast County Landfill
Facility ID 41193
Hillsborough County

Dear Ms. Byer,

Enclosed is the proposed Consent Agreement, OGC File No. 17-0058, regarding the above-referenced facility. Please review, sign and return the Consent Agreement 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 Agreement, I shall execute it and a copy will be sent to you.

The executed Consent Agreement 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 Agreement, 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 Agreement, you, as the Respondent, acknowledges and waives its right to a hearing and appeal of the terms of the Consent Agreement.

If the signed original Consent Agreement 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 Agreement 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. Yeagan".

Mary E. Yeagan, 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
Jeffrey Greenwell, Hillsborough County Public Utilities Dept., greenwellj@hillsboroughcounty.org
Ernest Ely, Waste Management of Florida, eely@wm.com
Ron Cope, HCEPC, cope@epchc.com
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Cory Dilmore, FDEP, cory.dilmore@dep.state.fl.us
Henry Freedenberg, FDEP, Henry.Freendenberg@dep.state.fl.us
Brad Butler, FDEP, Bradley.butler@dep.state.fl.us

Enclosures: Proposed Consent Agreement

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, FLORIDA)	
<hr/>)	

CONSENT AGEEMENT

This Consent Agreement (“Agreement”) is entered into between the State of Florida Department of Environmental Protection (“Department”) and Hillsborough County, Florida (“Respondent”) to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and Respondent neither admits nor denies 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 Agreement.
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. The Facility was designed as a single phosphatic clay liner system.

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. In prior Facility Permit No. S029-256427, issued October 30, 1996, the Respondent was previously authorized to operate the leachate collection system at a head over liner in excess of 12 inches, including provisions for low, normal and high level operation. It is understood by the parties that the Respondent will apply to the Department for an alternate procedure pursuant to Rule 62-701.310, F.A.C., to reauthorize Respondent to operate at a head over liner in excess of 12 inches to remedy this situation.

5. Respondent contacted the Department on April 15, 2016 to discuss ground water quality changes at surficial aquifer ground water monitoring 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. Since identifying the water quality changes, the Respondent has been actively performing investigations and evaluating several different methods to assess the head over liner in Phases I-VI, and remove leachate from the Phase II area that is immediately adjacent to TH-67.

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 available information, leachate has accumulated within portions of the Phase I-VI disposal area in excess of the currently permitted leachate collection system 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 Agreement, 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 in Phases I-VI, consistent with the terms of this Agreement and with the Facility's approved limit. 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) 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:

- i. Draft specific modifications to the Plan and notify the Respondent that these modifications are incorporated in the Plan which shall there upon become an enforceable part of this Agreement.
- d) Upon Department approval, the Respondent shall implement the proposals in the Plan pursuant to the approved schedule and otherwise comply with the requirements of the Plan. Modifications to the Plan may be made by agreement of the parties and with written Department approval. The Director of the Respondent's Public Works Department, or designee, is authorized to approve modifications to the Plan on behalf of Respondent. Upon approval of any modified Plan, the Respondent shall implement the modified Plan pursuant to its approved schedule and comply with the modified Plan.
- e) The parties agree that any failure by Respondent to meet the requirements of the Plan or modified Plan, once approved by the Department, shall be considered a breach of this Consent Agreement, and the Department may take legal action to enforce compliance with this Agreement pursuant to all its remedies in Chapter 403, F.S.
- f) Respondent shall, monthly until this Agreement 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.
- g) Respondent shall on a quarterly basis, beginning with the event conducted during November 2016 and continuing until this Agreement 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, TH-79, TH-80, TH-81 and TH-82 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. Prior to the approval of the Plan, the operating head over liner may be greater than 12 inches in Phases I-VI, subject to the requirements of an approved alternate procedure.

11. 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 or the Plan incorporated in this Agreement. 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 13, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Agreement.

12. Respondent shall make all payments required by this Agreement 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 Agreement 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 Agreement becomes final and effective filed with the Clerk of the Department before ability to make online payment is available.

13. Except as otherwise provided, all submittals and payments required by this Agreement shall be sent to Steve Tafuni, Government Operations Consultant, Department of Environmental Protection, Southwest District Office, 13051 North Telecom Parkway, Suite 101, Temple Terrace, Florida, 33637.

14. 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 Agreement and the rules and statutes administered by the Department.

15. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Agreement, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for violations outlined in this Agreement. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Agreement. The Department's cause of action for damages accrues when the Department concludes that the Respondent has failed to completely implement the Plan. 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.

16. This Agreement is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Agreement 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 Agreement 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 Agreement.

18. Respondent is fully aware that a violation of the terms of this Agreement may subject Respondent to judicial imposition of damages, civil penalties up to \$10,000.00 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 Agreement. Respondent also acknowledges and waives its right to appeal the terms of this Agreement 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 Agreement 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 Agreement 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 Agreement constitutes a violation of section 403.161(1)(b), F.S.

22. This Consent Agreement 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 Agreement will not be effective until further order of the Department.

23. Persons who are not parties to this Consent Agreement, 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 Agreement means that the Department's final action may be different from the position it has taken in the Consent Agreement.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Consent Agreement;
- 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 Agreement;

- d) A statement of when and how the petitioner received notice of the Consent Agreement;
- 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 Agreement;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Agreement; 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 Agreement.

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, 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 Agreement 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

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