



FLORIDA DEPARTMENT OF Environmental Protection

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Interim Secretary

Southeast District Office
3301 Gun Club Road, MSC 7210-1
West Palm Beach, FL 33406
561-681-6600

June 25, 2021

Michael O’Friel, Senior Vice President
Wheelabrator Technologies, Inc.
90 Arboretum Drive, Suite 310
Portsmouth, NH 03801
mofriel@win-waste.com

Re: Department of Environmental Protection vs. Wheelabrator South Broward, Inc.
IW Facility ID #FLS267562
SW Facility ID #53209
Broward County

Dear Mr. O’Friel:

Enclosed is the executed Consent Order to resolve the above referenced case. This copy is for your records. Please be mindful of all required deadlines within the Order to ensure compliance.

Your cooperation in this matter is appreciated. Should you have any questions or comments, please contact Konstantin Dubov at 561-681-6694 or via e-mail at Konstantin.Dubov@floridadep.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Andreotta".

Jason Andreotta
Director, Southeast District
Florida Department of Environmental Protection

Enclosure

ec: Lea Crandall, OGC
Ann Seiler, DEP SCO, Ann.Seiler@floridadep.gov
Cindy Mulkey, DEP SCO, Cindy.Mulkey@dep.state.fl.us
David Jones, WTI Energy, djones@wtienergy.com
Nicole Walters, WTI Energy, nwalters@wtienergy.com



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Noah Valenstein
Secretary

BEFORE THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	SOUTHEAST DISTRICT
)	
v.)	OGC FILE NO. 21-0318
)	
WHEELABRATOR SOUTH BROWARD,)	
INC.)	

CONSENT ORDER

This Consent Order (“Order”) is entered into between the State of Florida Department of Environmental Protection (“Department”) and Wheelabrator South Broward, Inc. (“Respondent”), pursuant to section 120.57(4), Florida Statutes (“F.S.”) 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, 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 a waste to energy facility, located at 4400 South State Road 7, Fort Lauderdale, in Broward County, Florida (“Wheelabrator South Broward Resource Recovery Facility” or “Facility”). The Wheelabrator South Broward Resource Recovery Facility

ID Number is FLS267562 for the Wastewater Program and 53209 for the Solid Waste Program. The Facility is also certified under the Power Plant Siting Act with Site Certification number PA85-21.

4. The Department finds that the following violation(s) occurred:
Respondent had six unauthorized discharges due to substantial rain events and miscalculations of increased flow during substantial rain events. The events caused rainwater to divert into two sub-cells of the ash monofill and overwhelm the leachate management system, resulting in unauthorized discharges of industrial wastewater into a stormwater retention pond on six occasions. All events were reported to the State Watch Office (“SWO”) as required. The following table provides details of the discharges:

Date	SWO #	Volume (gallons)	Duration (days)
9/14/2020	2020-4883	100,000	1
9/21/2020	2020-5181	110,000	1
9/26/2020	2020-5351	100,000	2
10/21/2020	2020-5834	958,600	2
10/25/2020	2020-5900	950,000	3
11/9/2020	2020-6179	668,000	3

- a) Wastewater Program
 - i. Respondent experienced six unauthorized discharges of untreated industrial wastewater, from September 2020 to November 2020, in violation of Rule 62-620.300, F.A.C.
- b) Solid Waste Program
 - ii. Respondent failed to properly maintain leachate control equipment or systems on six occasions which led to the discharge of leachate, in violation of Rules 62-701.500(8) and 62-701.400(9), F.A.C. Per 62-701.200(59), F.A.C., “leachate” means liquid that has passed through or emerged from solid waste and may contain soluble, suspended or miscible materials. Based on this definition, rainwater that encounters a solid waste is considered “leachate.”

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) Respondent shall follow all written procedures described in the "Wheelabrator South Broward Leachate Management Standard Operating Procedure" (SOP) approved by the Department on January 28, 2021.

b) At least twice a year, Respondent shall verify that all preparedness procedures and calculations in the SOP referenced in sub-paragraph 5.a. above are accurate and account for substantial rain events that may overwhelm the facility's design capacity to prevent unauthorized discharges. A written report on the verification shall be kept on-site and be readily available for Department inspection upon request.

c) If Respondent wishes to revise the approved SOP described in Paragraph 5.a., within 30 days of determining such proposed revisions, Respondent shall submit a proposed revised copy of the SOP for Department review and approval, **prior to implementation**. Respondent shall not implement any revision unless it is previously approved by the Department.

6. Within 60 days of the effective date of this Order, Respondent shall pay the Department a total penalty amount of \$78,000.00 for settlement of the regulatory matters addressed in this Order. This amount includes \$77,000.00 for civil penalties and \$1,000.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order, and is apportioned as follows:

a) Wastewater Program

\$50,500.00 in settlement of the wastewater regulatory matters addressed in this Order. This amount includes \$50,000.00 for civil penalties and \$500.00 for costs and expenses. The civil penalty in this case includes 6 violations that each warrant a penalty of \$2,000.00 or more.

b) Solid Waste Program

\$27,500.00 in settlement of the solid waste regulatory matters addressed in this Order. This amount includes \$ 27,000.00 for civil penalties and \$500.00 for costs and expenses. The civil penalty in this case includes 6 violations that each warrant a penalty of \$2,000.00 or more.

7. Respondent agrees to pay the Department stipulated penalties for unauthorized discharges from any part of Respondent’s industrial wastewater/leachate; Respondent agrees to pay stipulated penalties to the Department as follows:

a) Stipulated penalties shall be assessed according to the volume of the discharge and the number of days the discharge continued and/or impacted surface water, as shown below:

<u>Amount per day per Discharge or</u> <u>Amount per day per Water Quality Violation</u>	<u>Discharge Volume</u>
\$1,000.00	Up to 1,000 gallons
\$2,000.00	1,001 to 10,000 gallons
\$5,000.00	10,001 to 50,000 gallons
\$10,000.00	50,001 to 100,000 gallons
\$15,000.00	in excess of 100,000

The Department may demand stipulated penalties at any time after violation occurs. 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 paragraphs 12 and 13, 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 6 of this Order.**

8. In lieu of making cash payment of \$78,000.00 in civil penalties as set forth in Paragraph 6, Respondent may elect to off-set the amount of \$78,000.00 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 15 days of the effective date of this Order. Within 30 days of the effective date of this Order, Respondent must pay \$1,000.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order.

9. If Respondent elects to implement a P2 Project as provided in Paragraph 8, Respondent shall submit a completed P2 Project Plan (Plan) within 45 days of the effective date of this Order. The Plan must be completed using Exhibit I, "P2 Project Plan" template.

10. In the event the Department requires additional information to process the Plan described in Paragraph 8, Respondent shall provide a modified Plan containing the information requested by the Department within 30 days of the date of the request.

11. 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 Respondent that the balance is due.

12. 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, effective and 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 Order shall be sent to:

For Wastewater Matters: Konstantin Dubov, Environmental Specialist II or Lisa Self, Environmental Consultant, Department of Environmental Protection Southeast District, 3301 Gun Club Road, MSC 7210-1, West Palm Beach, FL 33406.

For Solid Waste Matters: Kelly Purdy, Environmental Specialist II, Department of Environmental Protection Southeast District, 3301 Gun Club Road, MSC 7210-1, West Palm Beach, FL 33406

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 Order 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 all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for alleged violations 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.

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 Broward 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 WHEELABRATOR SOUTH BROWARD, INC. pursuant to section 120.57(4), Florida Statutes. The Consent Order addresses the waste to energy

operations at Wheelabrator South Broward Resource Recovery Facility. 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, Southeast District Office, located at 3301 Gun Club Road, MSC 7210-1, West Palm Beach, Florida 33406.

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 **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 Southeast District Office at 3301 Gun Club Road, MSC 7210-1, West Palm Beach, Florida 33406. 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>.
25. The undersigned certifies that as President and Chief Executive Officer of Respondent corporation, he is authorized and empowered to negotiate, enter into, and execute, in the name and on behalf of the Respondent, WHEELABRATOR SOUTH BROWARD INC., any agreements, documents, instruments, or certificates, including and without limitation, this Consent Order entered into between Respondent and the State of Florida Department of Environmental Protection.

FOR THE RESPONDENT:



Robert C. Boucher, Jr.
President and Chief Executive Officer

7/17
Date

Michael O'Neil
Senior Vice President

DONE AND ORDERED this 25th day of June, 2021, in Orange County Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Jason Andreotta
Director
Southeast District

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

Mandakini Patel

Clerk

June 25, 2021

Date

Copies furnished to:
Lea Crandall, Agency Clerk

[This template is to be used as a Long Form Consent Order Exhibit when regulatory corrective actions, or P2 Projects require time to be resolved or developed. This template must be completed to describe P2 Projects once identified. The document must be approved prior to P2 Project implementation. The Plan must contain the following information.]

Exhibit 1

P2 Project Plan (Plan)

(Note: Provide the information specified and delete existing text within parentheses)

(Facility Name)

(Address)

(Telephone)

(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 is 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.