

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

IN THE OFFICE OF THE  
SOUTHEAST DISTRICT

Complainant,

OGC FILE NO. 05-0864

vs.

SOUTH FLORIDA WATER MANAGEMENT  
DISTRICT,

Respondent.

\_\_\_\_\_ /

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department") and South Florida Water Management District ("SFWMD") to reach settlement of certain matters at issue between the Department and SFWMD.

The Department finds and SFWMD neither admits nor denies 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 chapters 376 and 403, Florida Statutes (Fla. Stat.), and the rules promulgated thereunder in Florida Administrative Code Title 62 (Fla. Admin. Code). The Department has jurisdiction over the matters addressed in this Consent Order.

2. SFWMD is a public corporation of the State of Florida existing by virtue of chapter 25270, Laws of Florida, 1949, and operating pursuant to chapter 373, Fla. Stat. and Fla. Admin.

Code Title 40E, as a multipurpose water management district with its principle office at 3301 Gun Club Road, West Palm Beach, Florida 33406.

3. SFWMD is a person within the meaning of sections 376.301 and 403.031, Fla. Stat. SFWMD is subject to the provisions of chapters 376 and 403, Fla. Stat., and the rules promulgated thereunder in Fla. Admin. Code Title 62.

4. In accordance with sections 376.303, 403.091, and 403.858, Fla. Stat., the Department has contracted with Miami-Dade County and Palm Beach County to perform compliance inspections and enforcement related activities associated with chapters 376 and 403, Fla. Stat. and Fla. Admin. Code chapters 62-761 and 62-762. Due to the overlap in jurisdictional boundaries of the violations addressed by this Consent Order, it has been agreed that the Department will act as enforcement lead for the purposes of addressing the violations cited in this Consent Order only. Any violations not specifically addressed by this Consent Order and all other enforcement related activities will continue to be handled by the appropriate County in accordance with their contracts with the Department.

5. SFWMD owns and operates storage tank systems at eleven pump stations located on non-residential property. The systems and their locations are as follows:

(1) Pump Station S-2 is located at 41000 First Avenue, South Bay, Palm Beach County and contains three regulated aboveground storage tank systems. Each system is made up of an aboveground storage tank (AST) with a capacity greater than 550 gallons in size that contains pollutants and its associated small diameter, single-walled aboveground or double-walled underground piping. The associated aboveground piping transports pollutants over surface waters of the state. The Department facility identification number associated with this Pump Station is 8623225.

(2) Pump Station S-3 is located at 47000 SR 80, Lake Harbor, Palm Beach County and contains two regulated aboveground storage tank systems. Each system is made up of an AST with a capacity greater than 550 gallons in size that contains pollutants and its associated small diameter, single-walled aboveground and double-walled underground piping. The associated aboveground piping transports pollutants over surface waters of the state. The Department facility identification number associated with this Pump Station is 8623290.

(3) Pump Station S-4 is located at the junction of the LD-1 and C-20 Canals, Lake Okeechobee, Glades County and contains two regulated aboveground storage tank systems. Each system is made up of an AST with a capacity greater than 550 gallons in size that contains pollutants and its associated small diameter, single-walled aboveground and double-walled underground piping. The associated aboveground piping transports pollutants over surface waters of the state. The Department facility identification number associated with this Pump Station is 8521007.

(4) Pump Station S-6 is located at the junction of L-6, L-7, L-15, and L-39 Canals, approximately 20 miles Southeast of Belle Glade, Palm Beach County and contains two regulated aboveground storage tank systems. Each system is made up of an AST with a capacity greater than 550 gallons in size that contains pollutants and its associated small diameter, single-walled aboveground and double-walled underground piping. The associated aboveground piping transports pollutants over surface waters of the state. The Department facility identification number associated with this Pump Station is 8623291.

(5) Pump Station S-127 is located at the junction of the L-48 Canal and Lake Okeechobee, Buckhead Ridge, Glades County and contains two regulated aboveground storage tank systems. Each system is made up of an AST with a capacity greater than 550 gallons in size that contains pollutants and its associated small diameter, single-walled aboveground and double-walled underground piping. The associated aboveground piping transports pollutants over surface waters of the state. The Department facility identification number associated with this Pump Station is 8626245.

(6) Pump Station S-129 is located at the junction of the L-49 Canal and Lake Okeechobee, south of Buckhead Ridge, Glades County and contains two regulated aboveground storage tank systems. Each system is made up of an aboveground AST with a capacity greater than 550 gallons in size that contains pollutants and its associated small diameter, single-walled aboveground and double-walled underground piping. The associated aboveground piping transports pollutants over surface waters of the state. The Department facility identification number associated with this property is 8626247.

(7) Pump Station S-131 is located at the junction of the L-50 Canal and Lake Okeechobee, north of Moore Haven, Glades County and contains two regulated aboveground storage tank systems. Each system is made up of an AST with a capacity greater than 550 gallons in size that contains pollutants and its associated small diameter, single-walled aboveground and double-walled underground piping. The associated aboveground piping transports pollutants over surface waters of the state. The Department facility identification number associated with this Pump Station is 8626246.

(8) Pump Station S-133 is located at 2780 SE Hwy 441, Okeechobee, Okeechobee County and contains two regulated aboveground storage tank systems. Each system is

made up of an AST with a capacity greater than 550 gallons in size that contains pollutants and its associated small diameter, single-walled aboveground and double-walled underground piping. The associated aboveground piping transports pollutants over surface waters of the state. The Department facility identification number associated with this Pump Station is 8731937.

(9) Pump Station S-135 is located at 7.25 Miles North of Port Mayaca on the L-47 Canal, Port Mayaca, Martin County and contains two regulated aboveground storage tank systems. Each system is made up of an AST with a capacity greater than 550 gallons in size that contains pollutants and its associated small diameter, single-walled aboveground and double-walled underground piping. The associated aboveground piping transports pollutants over surface waters of the state. The Department facility identification number associated with this Pump Station is 8520115.

(10) Pump Station S-236 is located at 50000 SR 80, Lake harbor, Palm Beach County and contains one regulated aboveground storage tank system. The system is made up of an AST with a capacity greater than 550 gallons in size that contains pollutants and its associated small diameter, single-walled aboveground and double-walled underground piping. The associated aboveground piping transports pollutants over surface waters of the state. The Department facility identification number associated with this Pump Station is 8623222.

(11) Pump Station S-331 is located at 19755 SW 168<sup>th</sup> St., Miami, Miami-Dade County and contains two regulated aboveground storage tank systems. Each system is made up of an AST with a capacity greater than 550 gallons in size that contains pollutants and its associated small diameter, single-walled aboveground and double-walled underground

piping. The associated aboveground piping transports pollutants over surface waters of the state. The Department facility identification number associated with this Pump Station is 8522015.

6. The Department finds that the following violations occurred at each of the eleven facilities referenced in paragraph 5 above: SFWMD did not upgrade the aboveground piping which transports pollutants over surface waters of the State at the eleven pump stations delineated in paragraph 5 above with secondary containment by December 31, 2004, as required by Fla. Admin. Code Rule 62-762.511(1)(e).

7. SFWMD notified the Department that these 11 pump stations did not meet the December 31, 2004, regulatory deadline for having secondary containment for piping over surface water. SFWMD has executed contracts to have secondary containment installed for the aboveground piping transporting pollutants over surface waters at the 11 pump stations.

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

ORDERED:

8. Effective immediately, SFWMD shall forthwith comply with all applicable requirements of chapters 376 and 403, Fla. Stat., and chapters 62-761 and 62-762, Fla. Admin. Code.

9. All work necessary for SFWMD to comply with the requirements of Fla. Admin. Code 62-762.511(1)(e) and thereby resolve the violations at issue in this Consent Order shall be completed by June 1, 2006.

10. Within 30 days of the effective date of this Consent Order, SFWMD shall pay the Department \$250.00 for costs and expenses incurred by the Department during the investigation

of this matter and the preparation and tracking of this Consent Order. Payment shall be made by cashier's check or money order. The instrument shall be made payable to the "Department of Environmental Protection" and shall include thereon the notations: "OGC number 05-0864" and "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the Florida Department of Environmental Protection, 400 North Congress Avenue, Suite 200, West Palm Beach, Florida 33401.

11. Within 30 days of the effective date of this Consent Order, SFWMD shall pay an administrative penalty of \$33,000.00 for the violations of chapter 376, Fla. Stat., and chapter 62-762, Fla. Admin. Code. The civil penalty in this case includes one violation of \$2,000.00 or more for each site listed in paragraph 5. Payment shall be made by cashier's check or money order. The instrument shall be made payable to the "Department of Environmental Protection" within 30 days of the effective date of this Consent Order and shall include thereon the notations "OGC number 05-0864" and "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the Florida Department of Environmental Protection, 400 North Congress Avenue, Suite 200, West Palm Beach, Florida 33401.

12. In lieu of making cash payment of \$33,000.00 in administrative penalties as set forth in the paragraph above, SFWMD may elect to off-set this amount by implementing a pollution prevention project, which has been approved by the Department. The pollution prevention project must be a source reduction, waste minimization, or on-site recycling project. If SFWMD chooses to implement the pollution prevention project, SFWMD shall notify the Department of its election by certified mail within 15 days of the effective date of this Consent Order. Notwithstanding this election, payment of the \$250.00 in costs, as referenced in paragraph 10 above, must be paid within 30 days of the effective date of this Consent Order.

13. If SFWMD elects to implement the pollution prevention project (Project), then SFWMD shall comply with the following time frames and specifications:

- a. Within 60 days of the execution of this agreement, SFWMD shall submit a Pollution Prevention Project Plan that includes detailed engineering drawings, a construction schedule, and a maintenance plan for the Project which has been proposed to the Department. The Project proposed entails a capital investment of at least \$33,000.00 in the purchase and installation of a double-walled diesel fuel day tank or tanks at Pump Station S-7 located in southern Palm Beach County, which will potentially prevent future spills inside the building and to surface waters;
- b. On or before June 1, 2006, SFWMD must have completed the Project in accordance with the plan in subparagraph 13.a. above;
- c. On or before August 1, 2006, SFWMD shall provide documentation to the Department that the equipment has been purchased and installed according to the Project plan. The documentation shall demonstrate the actual costs incurred by SFWMD in implementing the Project;
- d. If SFWMD implements the Project, as outlined in this Consent Order, the Department shall apply a \$1 pollution prevention credit for each dollar spent of allowable costs against the administrative penalty of \$33,000.00; and
- e. If SFWMD terminates the Project for any reason, SFWMD will notify the Department in writing.

14. The following costs will apply toward Pollution Prevention credits:

- a. preparation of a Pollution Prevention Project Plan
- b. design of the project(s)

- c. installation of equipment for the project(s)
- d. construction of the project(s)
- e. testing of the project(s)
- f. training of staff concerning the implementation of the project(s)
- g. capital equipment needed for the project(s)

15. The following costs will not apply toward Pollution Prevention credits:

- a. costs incurred in conducting a waste audit
- b. maintenance and operation costs involved in implementing the project(s)
- c. monitoring and reporting costs
- d. salaries of employees who perform their regular job duties
- e. costs expended to bring the facility into compliance with current law
- f. costs associated with a project(s) that has not been approved by the Department.

16. In the event of any of the following conditions: (1) the Project, as delineated in paragraph 12 and 13 above, is not completed within the time limits referenced; (2) the documentation does not support a conclusion that the value of the Project is at least \$33,000.00; or (3) if SFWMD terminates the Project for any reason; then, within 30 days of written notice from the Department, SFWMD shall pay the remaining balance after any applicable pollution prevention credits are applied. Payment of the balance of the \$33,000.00 shall be paid in accordance with paragraph 11.

17. SFWMD agrees to pay the Department stipulated penalties in the amount of \$50.00 per day for each and every day SFWMD fails to timely comply with any of the requirements of paragraphs 8 through 13 of this Order. A separate stipulated penalty shall be

assessed for each violation of this Consent Order. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to the "The Department of Environmental Protection" by cashier's check or money order and shall include thereon the notations "OGC number 05-0864" and "Ecosystem Management and Restoration Trust Fund." The Department may make demands for payment at any time after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Consent Order. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 11 of this Consent Order. If the Department is required to file a lawsuit to recover stipulated penalties under this paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this paragraph.

18. If any event, including administrative or judicial challenges by third parties unrelated to SFWMD, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, SFWMD shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of SFWMD and could not have been or cannot be overcome by SFWMD's due diligence. Economic circumstances shall not be considered circumstances beyond the control of SFWMD, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of SFWMD, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, SFWMD shall notify the Department orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the

Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which SFWMD intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of SFWMD, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of SFWMD to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of SFWMD's right to request an extension of time for compliance with the requirements of this Consent Order.

19. SFWMD shall allow all authorized representatives of the Department access to the properties and facilities at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the Department.

20. Entry of this Consent Order does not relieve SFWMD of the need to comply with applicable federal, state or local laws, regulations or ordinances. However, if a County, as referenced in paragraph 4 of this Consent Order, has adopted the requirements of Florida Administrative Code Chapter 62-761 and 762, into its local ordinances, then it has been agreed that to the extent that this Consent Order addresses the resolution of violations of any of those ordinances at the properties or facilities addressed in this Consent Order, the local County will not pursue enforcement, and SFWMD will proceed in accordance with the terms of this Consent Order.

21. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, Florida Statutes. Failure to

comply with the terms of this Consent Order shall constitute a violation of section 403.161(1)(b), Florida Statutes.

22. SFWMD is fully aware that a violation of the terms of this Consent Order may subject SFWMD to judicial imposition of damages, civil penalties of up to \$10,000 per day per violation and criminal penalties.

23. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the terms of this Consent Order, including but not limited to undisclosed releases, contamination, or polluting conditions.

24. The Department, for and in consideration of the complete and timely performance by SFWMD of the obligations agreed to in this Consent Order, hereby waives its right to seek judicial imposition of damages or civil penalties for alleged violations outlined in this Consent Order.

25. SFWMD acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, Florida Statutes, on the terms of this Consent Order. SFWMD acknowledges its right to appeal the terms of this Consent Order pursuant to section 120.68, Fla. Stat., and waives that right upon signing this Consent Order.

26. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both SFWMD and the Department.

27. All submittals and payments required by this Consent Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, 400 North Congress Avenue, Suite 200, West Palm Beach, Florida 33401.

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

29. Persons who are not parties to this Consent Order but whose substantial interests are affected by this Consent Order have a right, pursuant to section 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, 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 named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to section 120.57, Florida Statutes.

The petition shall contain the following information:

(a) The name, address, and telephone number of each petitioner; the Department's Consent Order identification number and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of the Consent Order; (c) A statement of how each petitioner's substantial interests are affected by the Consent Order; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Consent Order; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order; and (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes, before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at

3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

(a) The names, addresses, and telephone numbers of any persons who may attend the mediation;

(b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;

(c) The agreed allocation of the costs and fees associated with the mediation;

(d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;

(e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;

(f) The name of each party's representative who shall have authority to settle or recommend settlement; and

(g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference; and

(h) The signatures of all parties or their authorized representatives.

As provided in section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by sections 120.569 and 120.57, Florida Statutes, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If

mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under sections 120.569 and 120.57, Florida Statutes, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

30. This Consent Order is a final order of the Department pursuant to section 120.52(7), Fla. Stat., 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, Florida Statutes. Upon the timely filing of a petition this Consent Order will not be effective until further order of the Department.

For the Respondent:

**Before the South Florida Water Management  
District Governing Board**

\_\_\_\_\_  
George L. Horne  
Deputy Executive Director  
Operations and Maintenance Resources

\_\_\_\_\_  
Date

For the Department:

\_\_\_\_\_  
Kevin Neal  
Director of District Management  
State of Florida Department of Environmental Protection

\_\_\_\_\_  
Date

KRN/JRP/JL/jl

DONE AND ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2005, in West Palm Beach, Florida.

**FILING AND ACKNOWLEDGMENT**

FILED, on this date, pursuant to Chapter 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

\_\_\_\_\_  
Department Clerk

\_\_\_\_\_  
Date

Kathy Carter, OGC - Mail Station 35 – [Kathy.Carter@dep.state.fl.us](mailto:Kathy.Carter@dep.state.fl.us)  
Vince Mele, DEP/SD – [vince.mele@dep.state.fl.us](mailto:vince.mele@dep.state.fl.us)  
Self, Michael – [Michael.self@dep.state.fl.us](mailto:Michael.self@dep.state.fl.us)  
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