



# FLORIDA DEPARTMENT OF Environmental Protection

**Ron DeSantis**  
Governor

**Jeanette Nuñez**  
Lt. Governor

**Shawn Hamilton**  
Secretary

South District  
PO Box 2549  
Fort Myers FL 33902-2549  
[SouthDistrict@FloridaDEP.gov](mailto:SouthDistrict@FloridaDEP.gov)

August 24, 2022

Kelly M. Crowe, P.E., Utilities Director  
City of Key West  
3140 Flagler Ave  
Key West, FL 33040  
Email: [kcrowe@cityofkeywest-fl.gov](mailto:kcrowe@cityofkeywest-fl.gov)

Re: Monroe County – Domestic Wastewater  
OGC Case No. 21-0581  
Richard A. Heyman WWTP – Key West  
Facility ID No. FLA147222

Dear Mr. Crowe:

Enclosed is the signed and entered Consent Order to resolve the above referenced case. This copy is for your records. Please note that all compliance dates begin from the date of entry of this Order, which is August 24, 2022.

Upon satisfactory completion of all conditions of the Order, we will close this case and place it in our inactive file.

If you have any questions, please contact Gary Hardie at [Gary.Hardie@FloridaDEP.gov](mailto:Gary.Hardie@FloridaDEP.gov) or 305-289-7074. Your cooperation in resolving this case is appreciated.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jennifer L. Carpenter".

Jennifer L. Carpenter  
Acting District Director  
South District Office  
Department of Environmental Protection

Enclosure: Executed Consent Order

cc: Lea Crandall, FDEP [Agency\\_Clerk@dep.state.fl.us](mailto:Agency_Clerk@dep.state.fl.us)

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT )	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION )	SOUTH DISTRICT
)	
v. )	OGC FILE NO. 21-0581
)	
CITY OF KEY WEST )	
_____ )	

**CONSENT ORDER**

This Consent Order (Order) is entered into between the State of Florida Department of Environmental Protection (Department) and City of Key West (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 Richard A. Heyman WWTP-Key West (Facility), an existing 10.0 million gallons per day (MGD), annual average daily flow (AADF) domestic wastewater treatment facility. The headworks consist of three mechanical bar screens at 10 MGD, AADF, two grit removal systems and an odor control system. The biological treatment units consist of: two aeration basins (total volume 3.33 MG), one anoxic basin (0.97 MG), and one re-aeration basin (0.11 MG). Solids are removed from the effluent by two clarifiers with a capacity of 10 MGD each and four cloth media filters. The ultraviolet disinfection system consists of two UV-reactors. The facility has two offline chlorine contact tanks (no chlorination). The residuals system consists of two sludge storage tanks (total volume 0.44 MG) and two belt-filter presses (fed at 600 - 900 pounds dry solids per hour). The

effluent disposal method is by an underground injection well system consisting of 2 Class V underground injection wells permitted under Department permit number(s) 327710-001-UO/5W and 327710-002-UO/5W discharging to Class G-III ground water. The Facility is operated under Wastewater Permit No. FLA147222 (Permit), which was issued on January 23, 2019 and will expire on January 22, 2024. The Facility is located at Trumbo Point Annex-Fleming Key, in Monroe County, Florida (Property). Respondent owns the Property on which the Facility is located.

4. The Department finds that the following violations occurred:

a) Respondent reported 9 unpermitted or unauthorized discharges not involving surface or groundwater quality violations. Spill details are in Exhibit B attached and incorporated to this Order. The Department finds that the discharges violated Rule 62-604.130(1), F.A.C., and Section 403.161(1)(a), F.S.

b) Respondent reported an additional 2 unpermitted or unauthorized discharges on September 13, 2020 that resulted in surface water quality violations at Flagler Avenue and the Trumbo Point Annex. Spill details are in Exhibit B attached and incorporated to this Order. The Department finds that the discharges violated Rules 62-604.130(1) F.A.C., Rule 62-302.530(6)(c) F.A.C., and Section 403.161(1)(a), F.S.

c) Respondent has sampling data indicating elevated levels of Enterococcus at various sampling locations within the City of Key West. The Department finds that these elevated levels of bacteria violate Rule 62-302.530(6)(c) F.A.C. and Rule 62-302.300(15) F.A.C. Sampling data was provided by the Respondent for the spills documented below:

1) Sampling data associated with two spills on December 23, 2019 at Front and Duval Streets and manholes on Flagler indicate levels of Enterococcus exceeding surface water quality standards at Linda Avenue, 15<sup>th</sup> Street, 18<sup>th</sup> Street, 11<sup>th</sup> Street and Venetian sampling locations.

2) Sampling data associated with the spill on September 13, 2020 at Flagler Avenue indicate levels of Enterococcus exceeding surface water quality

standards at canal outfalls at Linda Avenue, Riviera Canal boat ramp, and Riviera Street and 18<sup>th</sup> Street.

3) Sampling data associated with the spill on September 13, 2020 at Trumbo Point Annex indicate levels of Enterococcus exceeding surface water quality standards at Fleming Channel.

4) Sampling data associated with the spill on August 11, 2021 at Seminal and Thompson Streets indicate levels of Enterococcus exceeding surface water quality standards at the Jose Marti Lagoon, at Garrison Bight and Roosevelt and at Garrison Bight Bridge North sampling locations.

5) Sampling data associated with the spill on August 17, 2021 at Roosevelt and Kennedy Streets indicate levels of Enterococcus exceeding surface water quality standards at the Ibis Bay Lagoon, Parrot Key Bridge, Gulf View and Marriott Courtyard sampling locations.

d) Respondent failed to submit required notification to the Department in a timely manner for the unauthorized discharge on July 23, 2020. The discharge was reported on March 15, 2021. The Department finds that the failure to report in a timely manner violated Rule 62-604.550(2)(c) F.A.C.

e) Respondent failed to meet permit imposed effluent limitations for Ultraviolet Light Transmittance, Total Nitrogen, Total Suspended Solids (TSS), Ultraviolet Light Dosage, Total Phosphorus, Biological Oxygen Demand (BOD) and Fecal Coliform from April 2020 to June 2021. Each exceedance is a violation of Rule 62-600.410(1) F.A.C.

1) The Respondent had exceedances for Ultraviolet Light Transmittance in January 2021, December 2020, October 2020 and September 2020. Details are in Exhibit C attached and incorporated in this Order.

2) The Respondent had exceedances for Total Nitrogen in December 2020, November 2020, September 2020 and August 2020. Details are in Exhibit C attached and incorporated in this Order.

- 3) The Respondent has exceedances for TSS in November 2020, October 2020, and September 2020. Details are in Exhibit C attached and incorporated in this Order.
- 4) The Respondent had an exceedance for Ultraviolet Light Dosage in September 2020. Details are in Exhibit C attached and incorporated in this Order.
- 5) The Respondent had exceedances for Total Phosphorus in November 2020 and September 2020. Details are in Exhibit C attached and incorporated in this Order.
- 6) The Respondent had an exceedance for BOD in September 2020. Details are in Exhibit C attached and incorporated in this Order.
- 7) The Respondent had exceedances for Fecal Coliform in June 2021, September 2020, May 2020 and April 2020. Details are in Exhibit C attached and incorporated in this Order.

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 submit to the Department an evaluation conducted by a professional engineer registered in the state of Florida, of the UV disinfection system, to discover the cause or causes of the violations identified in paragraph 4 above, and design modifications to the UV disinfection system to prevent recurrence and improve reliability such that with the largest flow capacity unit out of service, the flow capacity of the remaining units shall be sufficient to handle the peak wastewater flow.	August 31, 2022
As an interim short-term corrective action to improve UV system	August 31, 2022

<p>reliability, Respondent shall install a working alarm system that immediately alerts operators to at least the following UV system malfunctions:</p> <ul style="list-style-type: none"> <li>• Lamp/Ballast failure.</li> <li>• Low UV Dose.</li> <li>• Low UV Intensity.</li> <li>• Low UV Transmittance.</li> </ul>	
<p>(B) Respondent shall submit to the Department a plan and schedule (hereinafter, I&amp;I Plan) to reduce infiltration and inflow (I&amp;I) into the collection system. Referring to the EPA Quick Guide for Estimating Infiltration and Inflow dated June 2014 which is attached to this Order and also available at the following link:   <a href="https://www3.epa.gov/region1/sso/pdfs/QuickGuide4EstimatingInfiltrationInflow.pdf">https://www3.epa.gov/region1/sso/pdfs/QuickGuide4EstimatingInfiltrationInflow.pdf</a>, (copy provided as Attachment 1), the I&amp;I Plan shall reduce ADW flow to less than 120.0 gallons per person per day (gppd), reduce infiltration rate in gallons per day per inch of diameter per mile of pipe (gpd/idm) to less than 1,500.0 gpd/idm, and reduce the Average WWF divided by the population served to less than 275.0 gallons per person per day (gppd).</p> <p>The actions in the I&amp;I Plan shall have a completion date no later than June 30, 2025.</p> <p>If the Facility has not returned to compliance after completing the actions in the I&amp;I Plan, Respondent shall, submit to the Department a permit application with a schedule to expand or upgrade the Facility to bring Respondent into compliance with Permit FLA147222 and Fla. Admin. Code Chapters 62-600, 62-604, 62-610, 62-620, and 62-640.</p>	<p>September 30, 2023</p> <p>June 30, 2025</p> <p>September 30, 2025</p>

<p>(C) Respondent shall submit a plan and schedule (hereinafter, Lift Station Plan) to the Department for approval to bring all of the Facility’s lift stations into compliance with the standards specified in the “Recommended Standards for Wastewater Facilities,” the current version of which is referenced in Rule 62-604.300(5)(g), Florida Administrative Code.</p> <p>The Lift Station Plan shall have a completion date no later than June 30, 2025.</p> <p>If the Facility has not returned to compliance after completing the actions in the Lift Station Plan, Respondent shall, submit to the Department a permit application with a schedule to expand or upgrade the system to bring Respondent into compliance with Permit FLA147222 and Fla. Admin. Code Chapters 62-600, 62-604, 62-610, 62-620, and 62-640.</p>	<p>September 30, 2023</p>          <p>June 30, 2025</p>          <p>September 30, 2025</p>
<p>(D) Develop and implement a Pollutant Reduction Plan to address elevated Enterococcus bacteria levels at Linda Avenue, Riviera Canal boat ramp, Riviera Street and 18<sup>th</sup> Street outfalls, and any other areas known to have elevated Enterococcus bacteria levels, such as the Jose Marti Lagoon and Venetian area. The Plan shall include measures to identify and eliminate sources of Enterococcus bacteria within the City of Key West and shall be submitted to the Department for review and approval.</p>	<p>June 30, 2023</p>
<p>(E) Conduct and submit quarterly sampling data for at least 1 year/4 quarters to the Department for the areas referenced in subparagraph 5 (D) above (minimum 2 stations per area) and other areas known to have elevated bacteria levels, such as the Jose Marti Lagoon and</p>	<p>September 30, 2022 December 31, 2022 March 31, 2023 June 30, 2023</p>

<p>Venetian area. The sampling shall continue until bacteria levels fall within surface water quality criteria for at least two consecutive quarters.</p>	<p>And continue until elevated bacteria levels fall within surface water quality criteria for at least two consecutive quarters.</p>
<p>(F) Investigate the effluent exceedances to avoid violating permit limitations in the future and provide a report indicating what the City of Key West will do to prevent such future violations from occurring.</p> <p>Corrective actions shall be completed by May 31, 2023.</p>	<p>August 31, 2022</p> <p>May 31, 2023</p>
<p>(G) Fully implement a documented Capacity, Management, Operation, and Maintenance (CMOM) program in accordance with US EPA document 305-B-05- 002 dated January 2005 (“Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems”).</p>	<p>September 1, 2024</p>
<p>(H) Document reasonable further progress in implementing the CMOM in semiannual reports in accordance with subparagraph 5 (G) of this order.</p>	<p>January 31, 2023</p> <p>July 31, 2023</p> <p>January 31, 2024</p> <p>And so on until the CMOM program is fully implemented.</p>
<p>(I) Provide a report indicating the list of projects that the City of Key West is doing to improve aging infrastructure.</p>	<p>August 31, 2022</p>
<p>(J) Submit a list of all known pump stations and collection systems connected to the City of Key West that are not under the direct control of the City of Key West, including the portion(s) of the FKAA collection system and any private collection systems. Include</p>	<p>August 31, 2022</p>



responsible party contact information, estimated flow from the pump station, the location of the pump station, and any known complaints or problems since September 2017/Hurricane Irma.	
(K) Submit in writing to the Department, every 6 months, a report containing information concerning the status and progress of projects completed under this Order. The report shall include projection of the work to be performed pursuant to this Order. The report shall include status update of any In-Kind projects.	September 30, 2022  March 31, 2023  September 30, 2023  And so on until the Consent Order is closed.
(L) Submit to the Department a Final Report demonstrating that all conditions and corrective actions required in this consent order have been completed.	December 31, 2025

6. Notwithstanding the time periods described in the paragraphs above, Respondent shall complete all corrective actions required by paragraph 5 on or before December 31, 2025, and be in full compliance with Section 403.161(1)(a), F.S., and Permit FLA147222, and Fla. Admin. Code Chapters 62-302, 62-600, 62-604, 62-610, 62-620, and 62-640, regardless of any intervening events or alternative time frames imposed in this Order.

7. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$58,125.73 in settlement of the regulatory matters addressed in this Order. This amount includes \$57,625.73 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 8 violations that each warrant a penalty of \$2,000.00 or more.

8. In lieu of making cash payment of \$57,625.73 in civil penalties as set forth in paragraph 7 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 and may not be a corrective action requirement of the Order or otherwise required by law. 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 \$86,438.60. If Respondent chooses to implement an in-kind project, Respondent shall notify the Department of its election by certified mail within 15 days of the effective date of this Consent Order. 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.

9. If Respondent elects to implement an in-kind project as provided in paragraph 8, then Respondent shall comply with all the requirements and time frames in Exhibit A entitled In-Kind Projects attached and incorporated to this 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 Consent 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 11, 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 7 of this Order.

11. In lieu of making a cash payment of the amount required under paragraph 10 (stipulated penalties) above, the Department, at its discretion, may allow Respondent to offset this amount by implementing an in-kind 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 and may not be a corrective action requirement of this Consent Order or otherwise required by law. 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 portion of the stipulated penalty amount for which the approved project off-sets. The Respondent shall request consideration of applying stipulated penalties toward an in-kind project within 15 days of notification by the Department that stipulated penalties are being assessed under paragraph 10. If acceptable, the Respondent shall comply with all the requirements and timeframes in Consent Order Exhibit A, entitled In-Kind Projects. If not acceptable, the Respondent will pay the stipulated penalties within 30 days of receipt of the Department's notification that applying the stipulated penalties to an in-kind project is not acceptable.

12. In the event that Respondent elects to offset civil penalties, including stipulated penalties, by implementing an in-kind penalty project which is approved by the Department, during the period that this Consent Order remains in effect or during the effective date of any Department issued Permit to Respondent whichever is longer (Prohibited Transfer Duration), Respondent shall not transfer or use funds obtained by the Respondent 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 (hereinafter, Prohibited Transfer). Respondent shall annually certify to the Department using the Annual Certification Form located within Exhibit A to this Consent Order that no Prohibited Transfer has occurred. In the event of any Prohibited

Transfer, the In-Kind project option shall be forfeited, and entire civil penalty shall immediately become due and owing to the Department irrespective of any expenditures by the Respondent in furtherance of the In-Kind project.

13. 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.

14. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Gary Hardie, Environmental Specialist III, Department of Environmental Protection, 2796 Overseas Highway, Suite 221, Marathon, FL 33050, or via e-mail at [Gary.Hardie@FloridaDEP.gov](mailto:Gary.Hardie@FloridaDEP.gov).

15. 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.

16. 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.

17. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in

complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor 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 shall be considered circumstances beyond the control of Respondent (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, Respondent shall notify the Department by the next working day and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent 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 Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. Respondent shall publish the following notice in a newspaper of daily circulation in Monroe County, Florida. The notice shall be published one time only within 14 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 the City of Key West pursuant to section 120.57(4), Florida Statutes. The Consent Order addresses the unauthorized discharges to ground and surface waters, violations to water quality standards, failure to report required notification in a timely manner and effluent exceedances at Richard A. Heyman WWTP.

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, South District Branch Office, 2796 Overseas Highway, Suite 221, Marathon, FL 33050, phone (305) 289-7070.

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:

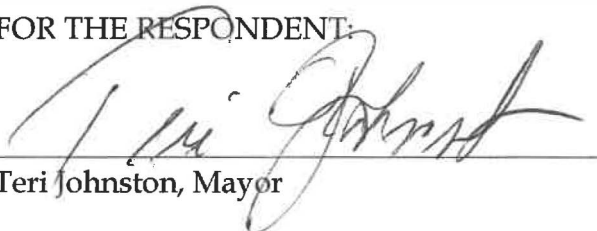
- a) The name and address of each agency affected and each agency’s file or identification number, if known;
- b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the 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 South District Branch Office at Department of Environmental Protection, South District Branch Office, 2796 Overseas Highway, Suite 221, Marathon, FL 33050 or via e-mail at SouthDistrict@FloridaDEP.gov. 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.

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

FOR THE RESPONDENT:

  
\_\_\_\_\_  
Teri Johnston, Mayor

8/27--  
Date



DONE AND ORDERED this 24th day of August, 2022, in Lee  
County, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



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Jennifer L. Carpenter  
Acting Director of District  
Management South District Office

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



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Clerk

August 24, 2022

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Date

Final Clerked 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 stipulated penalties to an in-kind project is acceptable, Respondent shall submit, 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 \_\_\_\_\_ (insert name of Respondent) 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 \_\_\_\_\_ (print or type name of Respondent) budget and finances. During the eighteenth month period prior to the effective date of Consent Order OGC Case No.: \_\_\_\_\_ there has not been any transfer or use of funds obtained by the \_\_\_\_\_ (print or type name of Respondent) 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.: \_\_\_\_\_

**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 \_\_\_\_\_ (print or type name of Respondent) 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 the \_\_\_\_\_ (print or type name of Respondent) 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, 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, 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 paragraphs 7 and 10 above, 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 stipulated 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 stipulated penalties to an in-kind project is acceptable then Respondent shall make cash payment of the civil penalties as set forth in paragraphs 7 and 10 above, 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 entire amount of civil penalties and stipulated penalties due, no additional penalties shall be assessed under paragraphs 7 and 10 for failure to complete the requirement of Exhibit A.

i. Within 15 days of completing the in-kind project, Respondent shall notify the Department, 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 writing, of the reason(s) which prevent the acceptance of the project. Respondent shall correct and redress all the matters at issue and submit, 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 entire amount of civil penalties and stipulated penalties due, no additional penalties shall be assessed under paragraphs 7 and 10 for failure to complete the requirement of Exhibit A.

**Exhibit B**

Table of Sanitary Sewer Overflows

SWO #	Incident Start Date	Incident End Date	Number of Days Discharging	Reached Surface Water?	Final Spill Volume (Gallons)	Reported Recovered Volume (Gallons)	Location	Spill Characteristic
2022-843	2/11/22	2/11/22	1	N	2,000	2,000	1620 Steven Ave	RAW WASTEWATER
2021-4549	8/17/21	8/17/21	1	Y	2,000	1,000	Roosevelt & Kennedy	RAW WASTEWATER
2021-4410	8/11/21	8/11/21	1	Y	450	350	Seminal & Thompson St	RAW WASTEWATER
2021-2919	6/5/21	6/5/21	1	Y	50,000	25,000	Trumbo Point Annex	Treated Effluent
2020-4863	9/13/20	9/13/20	1	Y	6,000	-	4 <sup>th</sup> and 16 <sup>th</sup> at Flagler Ave	RAW WASTEWATER
2020-4862	9/13/20	9/13/20	1	N	1,000	-	Amelia and Thomas Street	RAW WASTEWATER
2020-4861	9/13/20	9/13/20	1	Y	50,000	10,000	Trumbo Point Annex	Partially Treated
None	7/23/20	7/23/20	1	N	19,000	17,000	At Plant	Treated Effluent
2020-2024	4/17/20	4/17/20	1	Y	5,000	1,000	1329 Seminary Street (LS D)	RAW WASTEWATER
2019-7169	12/23/19	12/23/19		Y	1,000	-	Manholes at Front & Duval St	RAW WASTEWATER
2019-7168	12/23/19	12/23/19		Y	5,000	-	Manholes on Flagler	RAW WASTEWATER

**Exhibit C**

<b>Effluent Exceedances</b>						
Monitoring Group	Date	Description	Result	Limit	Units	Statistical Base
U-001	6/30/2021	Coliform, Fecal	1244	800.0	#/100mL	MB - Maximum
U-001	1/31/2021	Ultraviolet Light Transmittance	63	65.0	percent	ME - Minimum
U-001	12/31/2020	Ultraviolet Light Transmittance	62	65.0	percent	ME - Minimum
U-001	12/31/2020	Nitrogen, Total	8.02	6.0	mg/L	MB - Maximum
U-001	11/30/2020	Solids, Total Suspended	14	10.0	mg/L	MB - Maximum
U-001	11/30/2020	Nitrogen, Total	25.7	6.0	mg/L	MB - Maximum
U-001	11/30/2020	Nitrogen, Total	7.2	4.5	mg/L	WA - Weekly Average
U-001	11/30/2020	Phosphorus, Total (as P)	6.8	2.0	mg/L	MB - Maximum
U-001	11/30/2020	Phosphorus, Total (as P)	1.55	1.5	mg/L	WA - Weekly Average
U-001	10/31/2020	Solids, Total Suspended	22.5	10.0	mg/L	MB - Maximum
U-001	10/31/2020	Ultraviolet Light Transmittance	60	65.0	percent	ME -



U-001	9/30/2020	BOD, Carbonaceous 5 day, 20C	15	10.0	mg/L	MB - Maximum
U-001	9/30/2020	Ultraviolet Light Dosage	0	35.0	mW-s/sqcm	ME - Minimum
U-001	9/30/2020	Solids, Total Suspended	11	6.25	mg/L	MK - Monthly Average
U-001	9/30/2020	Solids, Total Suspended	45.1	7.5	mg/L	WA - Weekly Average
U-001	9/30/2020	Solids, Total Suspended	158	10.0	mg/L	MB - Maximum
U-001	9/30/2020	Ultraviolet Light Transmittance	26	65.0	percent	ME - Minimum
U-001	9/30/2020	Coliform, Fecal	1244	800.0	#/100mL	MB - Maximum
U-001	9/30/2020	Nitrogen, Total	7.41	6.0	mg/L	MB - Maximum
U-001	9/30/2020	Phosphorus, Total (as P)	2.7	2.0	mg/L	MB - Maximum
U-001	8/31/2020	Nitrogen, Total	4.7	4.5	mg/L	WA - Weekly Average
U-001	5/31/2020	Coliform, Fecal	1336	800.0	#/100mL	MB - Maximum
U-001	4/30/2020	Coliform, Fecal	1473	800.0	#/100mL	MB - Maximum



*EPA New England Water Infrastructure Outreach provides tools, examples, and technical assistance for water infrastructure operators and managers, local officials, and other decision-makers for more effective and sustainable water infrastructure management. For more information see <http://www.epa.gov/region1/ssof/toolbox.html>*

## Quick Guide for Estimating Infiltration and Inflow For Region 1 NPDES Annual Reporting

June 2014

### Addressing Permit Requirements to:

Submit a calculation of the annual infiltration and inflow (I&I), maximum daily, weekly, and monthly infiltration and the maximum daily, weekly, and monthly inflow for the reporting year. For further details on Infiltration and Inflow, see '[Guide for Estimating Infiltration and Inflow](#)'.

### Definitions

#### **Infiltration**

Groundwater that infiltrates a sewer system through defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from inflow. Infiltration is generally measured during seasonally high ground water conditions, during a dry period.

#### **Inflow**

Water other than sanitary flow that enters a sewer system from sources which include, but are not limited to, roof leaders, cellar drains, yard drains, area drains, drains from wet areas, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, stormwater, surface runoff (including leaking manhole covers), street wash-water, or drainage. Inflow does not include, and is distinguished from infiltration. Inflow is generally measured during wet weather.

Estimations for reporting:

Term	Definition or How to Calculate
<b>Average Dry Weather (ADW) flow</b>	Use highest 7 to 14 day average per day flow without precipitation and during high seasonal groundwater. Includes domestic wastewater and infiltration.
<b>Groundwater Infiltration (GWI)</b>	During ADW flow period, average the low nighttime flows (midnight to 6am) per day for the same time period, minus significant industrial or commercial flows.
<b>Groundwater Infiltration (GWI)</b>	Subtract GWI from ADW flow.
<b>Maximum Daily Infiltration</b>	Subtract BSF from highest daily flow after a dry period of three days or more during high seasonal groundwater.
<b>Maximum Weekly Infiltration</b>	Subtract BSF from highest 7 day average flow after a dry period of three days or more during high seasonal groundwater.
<b>Maximum Monthly Infiltration</b>	Subtract BSF from highest monthly flow during dry or minimal rain period during high seasonal groundwater.

<b>Maximum Daily Inflow</b>	Measured during wet weather. Determine infiltration rate for dry period preceding rain event. Subtract BSF plus infiltration rate from the highest daily flow during the event.
<b>Maximum Weekly Inflow (includes delayed inflow)</b>	Determine infiltration rate for dry period preceding rain event(s). Subtract BSF plus infiltration from the highest 7 day average wet weather flow.
<b>Maximum Monthly Inflow</b>	Determine infiltration rate for dry period preceding rain event(s). Subtract BSF plus infiltration rate from the highest monthly average flow.
<b>Maximum Monthly Infiltration and Inflow</b>	Subtract BSF from highest monthly average flow.
<b>Average Annual Flow</b>	The total annual volume divided by 365 days. The average annual flow can also be calculated by averaging the monthly average flows.
<b>Average Annual Infiltration and Inflow</b>	Subtract the BSF rate from the average annual flow.
<b>Average Annual Infiltration</b>	Average of the monthly minimum flows.
<b>Average Annual Inflow</b>	Subtract the BSF and average annual infiltration from the average annual flow.
<b>Average Wet Weather Flow (Average WWF)</b>	The average daily flow during a period of significant rainfall (excludes significant commercial and industrial flow).
<b>Peak Hourly Wet Weather Flow (Peak WWF)</b>	The highest one hour flow rate during a significant rain event.

**Notes:**

If your system experiences SSOs or backups, you may have excessive inflow, although infiltration also contributes to the problem. Even where a system is not suffering from SSOs, systems experiencing surcharging should be evaluating their I&I, as should systems where new growth is expected and existing collection system infrastructure may be inadequate or marginal for handling new customers.

Other calculations used by state agencies to determine whether infiltration and/or inflow are excessive include:

**Is your Infiltration Rate Excessive?**

Some states have an excessive infiltration criterion based on gallons per person per day (gppd) and other states use a criterion of gallons per day per inch of diameter per mile of pipe (gpd/idm).

To determine gppd, divide the ADW flow by the population served. If the ADW flow exceeds 120 gppd, your state agency may consider the infiltration excessive.

To determine gpd/idm, first determine your total inch diameter-miles of pipe (idm). As an example, for a sewer system that has 36 miles of 4 inch diameter laterals, 36 miles of 8 inch diameter, 6 miles of 10 inch diameter, and 6 miles of 12 inch diameter gravity sewers, the total number of inch – miles is:

$36 \times 4 + 36 \times 8 + 6 \times 10 + 6 \times 12 = 564$ inch diameter miles
---

To determine gpd/idm, divide the dry weather infiltration rate during seasonal high groundwater (GWI from B above) by the total inch miles. In this example, if the GWI is 2 mgd, with 564 inch diameter-miles of pipe, then the gpd/idm would be:

$2 \text{ mgd divide by } 564 \text{ idm} = 3546 \text{ gpd/idm}$
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Metcalf & Eddy's text "*Wastewater Engineering: Collection and Pumping of Wastewater*", suggests that infiltration rates for whole collection systems (including service connections) that are lower than 1500 gpd/idm are not usually excessive. The Massachusetts Department of Environmental Protection document "*Guidelines for Performing I/I Analyses*" recommends (as a rule-of-thumb) sewer subsystems of about 20,000 linear feet that exhibit infiltration rates above 4000 gpd/idm be investigated for contributing potentially excessive infiltration. For more information on design standards consult the Technical Report, "*Guidelines for the Design of Wastewater Treatment Works, New England Interstate Water Pollution Control Commission TR-16*".

**Is your inflow excessive?**

Divide the Average WWF by the population served to determine the gallons per person per day (gppd). If the Average WWF exceeds 275 gppd your state agency may consider the inflow excessive. This calculation should exclude major industrial or commercial flows.

A calculation for gpd/idm can also be determined for wet weather.

**Estimating your cost to treat Infiltration and Inflow**

Wastewater collection and treatment cost can range from \$2 to \$5 per thousand gallons. An annual I&I volume of 150 million gallons would cost between \$300,000 and \$750,000 per year to transport and treat. For many older collection systems infiltration can be quite substantial, and has been calculated as high as fifty percent of the flow.

If your treatment facility is at or near capacity and an upgrade will be necessary, the cost of reducing I&I to free up capacity at the existing treatment facility should be measured against the cost of building additional treatment capacity.

RESOLUTION NO. 22-180

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING AND ACCEPTING THE ATTACHED "CONSENT ORDER" OGC FILE No. 21-0581 BETWEEN THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP) AND THE CITY OF KEY WEST, TO SETTLE MATTERS RELATED TO VIOLATIONS IN CONJUNCTION WITH THE OPERATION OF THE RICHARD A. HEYMAN WASTEWATER TREATMENT PLANT (WWTP) AND THE SANITARY SEWER COLLECTIONS SYSTEM, AND AUTHORIZING THE MAYOR TO EXECUTE THE CONSENT ORDER ON BEHALF OF THE CITY; AUTHORIZING ANY NECESSARY BUDGET AMENDMENTS OR ADJUSTMENTS; PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, the Richard A. Heyman Wastewater Treatment Plant (WWTP) is operated under State of Florida Domestic Wastewater Facility Permit No. FLA147222, with effluent disposal to two Class V underground injection wells permitted through FDEP Permit numbers 327710-001UO/5W and 327710-0020UO/5W. Through these permits, the City and Operations Management International, Inc. (OMI) are responsible for compliance with the permit requirements; and

WHEREAS, FDEP issued a draft Consent Order and the City issued comments on January 5, 2022, in response to certain violations of the permit allowances. In June 2022, City staff had a second opportunity to review the Order and issue comments related to the proposed compliance timeline. The purpose of the Consent Order is to establish an agreement on achievable terms to improve the City's sanitary sewer system and WWTP operations; and

WHEREAS, a penalty fee is established as a component of the Consent Order, however, FDEP at its discretion may allow the City to perform in-kind projects in lieu of payment of the penalty amount; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached "Consent Order" (OGC File No. 21-0581) between the State of Florida Department of Environmental Protection and the City of Key West, to settle matters related to violations in conjunction with the operation of the Richard A. Heyman Wastewater Treatment Plant and the Sanitary Sewer Collections System, is hereby approved and accepted, and the Mayor is authorized to execute the Consent Order on behalf of the City.

Section 2: Funds for the stipulated penalty in the amount of \$58,125.73, or in-kind services alternate in the amount of \$87,188.60, if approved by FDEP, shall be budgeted in wastewater and/or sewer accounts. Funding for future projects related to the corrective actions will be budgeted into the wastewater and/or sewer accounts within the appropriate fiscal year that funding is needed. Any necessary budget transfers or adjustments are hereby approved.

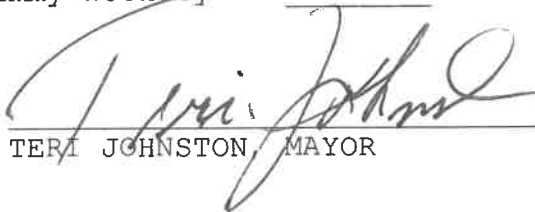
Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the Presiding Officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 16th day of August, 2022.

Authenticated by the Presiding Officer and Clerk of the Commission on 17th day of August, 2022.

Filed with the Clerk on August 17, 2022.

Mayor Teri Johnston	<u>Yes</u>
Vice Mayor Sam Kaufman	<u>Yes</u>
Commissioner Gregory Davila	<u>Yes</u>
Commissioner Mary Lou Hoover	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>

  
TERI JOHNSTON, MAYOR

ATTEST:

  
KERI O'BRIEN, DEPUTY CITY CLERK