



Public Employees for Environmental Responsibility

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October 29, 2018

Trey Glenn
Regional Administrator
U.S. Environmental Protection Agency
Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

**RE: OVERFILE REQUEST—City of Venice, FL WWTP—NPDES Permit
FL0041441/FL0035335**

Dear Mr. Glenn:

Public Employees for Environmental Responsibility (PEER) formally requests that the U.S. Environmental Protection Agency initiate immediate action against the City of Venice, Florida (Venice, City or Permittee) in connection with the imminent and substantial threat to public health presented by the repeated violations of its National Pollutant Discharge Elimination System (NPDES) permit issued by the State of Florida, Department of Environmental Protection (FDEP) under its delegated authority pursuant to the Clean Water Act.

Specifically, PEER requests that the EPA, pursuant to the EPA's response authority under the Clean Water Act (CWA), 33 U.S.C. § 1251 et seq, immediately assert primary jurisdiction over the NPDES Permit and, with full public participation, take action to comprehensively assess and mitigate the imminent and substantial threat to public health and environmental harm caused by numerous permit violations, in connection with Venice's wastewater discharges. The permit in question is subject to the regulatory authority of the Florida, Department of Environmental Protection (FDEP) under § 403.0885, et. seq., Florida Statutes.

A. The Permit

Venice operates a wastewater discharge facility (Facility) under NPDES Permit Number FL00441441(Permit). The Permit was issued on February 1, 2017, and it expires on January 31, 2022. Under the terms of the Permit, the Facility's wastewater is discharged to multiple locations, the primary one being to Curry Creek; however, there is a secondary surface water discharge to Venice's reverse osmosis facility (RO Facility). The RO Permit, in turn authorizes a discharge of 3.42 MGD, and includes a mixing zone with its ultimate discharge being to Roberts Canal. Roberts Canal connects to the Gulf of Mexico. The RO Facility is permitted under NPDES Permit Number FL0035335 (RO Permit), that was issued on November 20, 2013, and expires on November 24, 2018.

The Facility is located in Sarasota County, Florida and is a major discharger. The Permit authorizes a surface water discharge of 3.0 MGD annual average daily flow (AADF) of effluent into Curry Creek, the receiving wetland. The Permit also authorizes the secondary surface water discharge of 1.0 MGD AADF to the RO Facility. Both Curry Creek and Roberts Canal are Class III fresh waterbodies. Under Florida law, Class III waterbodies are those that allow for fish consumption; recreation, propagation and maintenance of a healthy, well-balanced population of fish and [wildlife](#). See, § [62-302.400\(1\), F.A.C.](#)

In looking at how the two permits handle nutrient discharges, it is noteworthy that the wastewater Permit sets nutrient limits for the primary discharges (D-001) to Curry Creek. These are set forth in Section I.A.1. of the Permit. The secondary discharge (D-006) to Roberts Canal sets the same nutrient limits (Section I.A.7.). The RO Permit is different, however, in that Venice is only obligated, under Section I.A.1. of the RO Permit to report the level of nitrogen and phosphorus discharges to Roberts Canal. In other words, no maximum levels of either contaminate are in place for the discharges that ultimately end up in the Gulf of Mexico.

[According to ECHO](#), the Facility has been in noncompliance for 5 out of the past 12 quarters. It was in significant non-compliance during the 3rd quarter of 2017. The violations identified on Echo are primarily for nitrogen and phosphorus parameters. As you are no doubt aware, Florida has currently been experiencing a massive outbreak of blue-green algae, which is attributable to high nutrient concentrations in Lake Okeechobee. In addition, the state has been experiencing a major red tide bloom along the peninsula's west coast, a situation made worse by discharges of nitrogen and phosphorus that exacerbate the bloom. Therefore, the nitrogen and phosphorus violations are not inconsequential.

As with the other petitions that we've filed with your office, FDEP's enforcement response against Venice has essentially been designed to give the appearance of taking action, however, the agency's actions, when viewed closely are clearly little more than window dressing. In short, the agency has fallen far short of both the EPA's and the FDEP's own standards and policies, that protection of the environment and public health requires that the EPA assume responsibility for oversight over this permit. PEER, therefore, requests that the EPA's Region 4 take immediate and appropriate action against this violator under its concurrent authority to enforce the CWA in Florida.

B. A History of Noncompliance

In this section we will discuss violations dating back to 2014, together with the most recent Permit that was issued in 2017.

1. *What the FDEP's Inspections Reflect*

The inspection reports filed by the FDEP over the past few years are interesting, inasmuch as they initially seem to be a deliberate attempt to describe the Facility as a model Facility. For example, on July 17, 2014, the FDEP conducted an investigation that found the Facility to be in-compliance; however, the report that was generated concerning the investigation reads as if it was, frankly, sanitized. It contains no actual description of the site, or of the actual operation and maintenance of the Facility. Merely statements that “No problems or deficiencies [were] noted.” Effluent quality was rated as in-compliance, yet the only discussion is that it was not discharging at the time of the inspection. The same characterization was made for effluent disposal. Finally, the report mentions that there were no deficiencies concerning the SSO survey that was allegedly conducted. This latter point wholly ignores multiple SSOs that, as will be discussed below, were taking place during this time and that were in the FDEP's files.

The next, and last inspection to date, was conducted by the FDEP on March 14, 2018. As a result of this inspection, the Facility was found to be in non-compliance in 7 of the 12 areas that were inspected. Those areas (and associated sub-sections) are:

1. Whether or not the Facility was meeting compliance schedules. The basis for the rating was that Venice had not submitted documentation to the FDEP showing that it was not causing or contributing to nutrient impairment in Curry Creek. No mention was made of the secondary discharge to Roberts Canal.
2. The records supplied by Venice to the FDEP did not show when composite sample times ended.
3. While the Permit requires Venice to sample and report its discharges of Chlorodibromomethane and Dichlorobromomethane, the FDEP learned that it had discharged these contaminants on 4 different occasions, and that it had failed to sample these discharges or report to them to the FDEP.
4. According to Section 4.5 of the inspection report “[t]he daily pH calibration was not bracketing the expected sample pH approximately three standard units apart.” The inspector then noted that “[t]he facility uses a 2-point calibration with 4 and 7 buffers. Based upon the DMR review the facility pH range is 6.5-8.0.”
5. There were numerous problems found with the Discharge Monitoring Reports (DMRs). They were in 2 main categories:

- a. The DMRs were submitted late on 6 different occasions, all of which were in 2015. The delays varied from 1 to 3 days;
 - b. There were multiple problems with the nature of the reporting on the DMRs that Venice submitted. **Those problems were that Venice was using incorrect calculations in its reporting of monthly and weekly averages for its discharges of both nitrogen and phosphorus on 3 separate reporting cycles.** In addition, Venice did not report its annual average for flows on 6 separate reporting cycles. It likewise failed to report monthly and annual averages for CBOD, BOD and TSS on one set of DMRs that were submitted. **Finally, it did not report nitrogen or phosphorus results on 3 separate reporting cycles.**
6. With respect to the site itself, the FDEP found that there was no record of testing for the backflow prevention device that was onsite. Such devices are required to be tested at least once each year.
7. The flow calibration report at the site was not calibrated satisfactorily, i.e. it did not establish whether the “flow device as operating within +/- 10% of the actual flow.”
8. The Operation and Maintenance manual was not made available to the FDEP when the inspection was conducted. Whether or not it was present onsite is unknown.
9. The stair case that was between the filters and CCC (chlorine contact chamber) was uneven resulting in unsafe operating conditions.
10. The effluent quality was rated as being in-compliance, however, 2 separate DMRs showed violations of effluent requirements. Specifically, there were 6 different violations of nitrogen parameters and 1 violation of total suspended solids during a different reporting period.
11. The groundwater quality was rated as being out-of-compliance because:
 - a. The purging log was not available. The FDEP needed the log to review well-purging data for the monitoring wells.
 - b. The groundwater monitoring reports that were available showed parameter violations on **39** separate DMRs. These violations were found to be at the Capris Isles Golf Course, the Lake Venice Golf Course, and the Bay Indies Subdivision. They occurred in 2015, 2016, 2017, and 2018 at each location. While individual contaminate parameters differed from one location to another, the monitoring reports showed violations of (a) TDS, Cadmium, Sulfates, Arsenic, and pH at the Capris Isles Golf Course, (b) TDS, Cadmium, Sulfates, and pH at Lake Venice Golf Course, and (c) TDS, Cadmium, Sulfates, pH, and Chloride at the Bay Indies Subdivision.
12. While the FDEP allegedly conducted a Sanitary Sewer Overflow survey and found the Facility to be in-compliance, it referenced a Compliance Assistance Offer (CAO) as having been sent to Venice on October 20, 2017. A CAO was sent to Venice because the

FDEP had actually found that Venice had been in non-compliance due to a SSO on September 11, 2017, i.e. when the region was struck by Hurricane Irma. The Facility discharged “[o]ver 3,000 gallons of untreated wastewater” into “Hatchett Creek and the intercostal waterway.” The discharge occurred because of power outages at the Facility, as well as “inflow and infiltration” (I&I) that entered the collection system at that time. Frankly, the permit required that the Facility be operated properly, and this should have included backup power to handle the increased loads associated with storms such as these. We will further discuss additional SSOs below.

On April 17, 2018, to address these violations found during the March 2018, inspection, the FDEP sent a CAO to Venice. No formal enforcement was initiated.

2. *Notifications to the FDEP of Abnormal Events*

As we noted above, the FDEP inspected the Facility on July 7, 2014, and concluded that the Facility was operating in compliance. It had been over two and a half years between the 2014 inspection and the previous inspection. During that time there were a total of **42 abnormal events** that occurred and were reported to the FDEP. These abnormal events were wastewater spills, i.e. SSOs, of varying amounts, and 13 of them occurred in 2013 alone.

The abnormal events continued after the July 7, 2014, inspection was conducted. These events included spills of raw wastewater as well as spills of treated wastewater and/or reuse water. They included spills to surface waters, as well as spills from manhole covers and spills of wastewater onto the grounds at the Facility. There were 51 of them between July 7, 2014, and the March 14, 2018, inspection conducted by the FDEP. One of these SSOs was not reported by the Facility, but rather, was discovered from a citizen complaint of raw sewage being discharged “from a pipe off the beach of Service Club Park in Venice.” The complaint was filed on March 28, 2017. The complainant later told the FDEP that she had contacted Venice and was told that this was a routine stormwater release. No testing was conducted by the FDEP or Venice linked to this discharge.

There have also been 7 spills since that last inspection on March 14, 2018, one of which was from the RO Facility. The most recent overflow occurred on September 7, 2018.

C. Enforcement Taken by the FDEP

As we have noted throughout this report, the FDEP has consistently responded to findings of violations by sending Compliance Assistance Offers to Venice, advising the permittee that formal enforcement would be avoided if Venice would cooperate with the agency. There has been no enforcement taken by the FDEP in response to the multiple violations occurring at the Facility.

An example of the haphazard nature of the FDEP's approach to enforcement can be seen in its actions after two SSOs on September 11, 2017. The first was at 1219 East Gate Drive. This was an overflow of untreated wastewater that Venice asserted was caused by a power outage resulting from Hurricane Irma. The amount of wastewater discharged exceeded 1,000 gallons. That same day, there was a similar discharge of over 1,000 gallons at the intersection of W. Venice Avenue and Esplanade. This wastewater affected both stormwater ponds and the Gulf of Mexico. The FDEP's response was to send the Venice a CAO in order to assist it in avoiding formal enforcement. The irony is that from 2014 to the present there have been 56 other SSOs, none of which were caused by a hurricane, but rather occurred as a result of negligence or degraded infrastructure, and yet none of them resulted in even a CAO from the FDEP.

D. Health and Environmental Risks

The documents amassed in this case pointedly demonstrate a lack of reasonable assurance that this Facility has been operated in the past in a manner that considers the public health, safety and welfare as its top priority. There have been multiple permit exceedances since 2014 in wastewater that is being discharged into surface waters, as well as wastewater that is being generated for reuse.

It should not go unnoticed that this Facility is discharging into an area that is known to be experiencing serious problems with blue-green algae blooms, as well as red tide. There have been known violations of both nitrogen and phosphorus parameters, yet no enforcement was taken by the FDEP. In addition, however, it is clear from the March 2018, inspection that the DMRs submitted by Venice are not trustworthy inasmuch as the FDEP concluded that Venice was incorrectly calculating the nitrogen and phosphorus levels in the Facility's wastewater.

As the Water Research Center notes on its [website](#):

“Phosphorus is one of the key elements necessary for the growth of plants and animals and in lake ecosystems it tends to be the growth-limiting nutrient and is a backbone of the Krebs Cycle and DNA. The presence of phosphorus is often scarce in the well-oxygenated lake waters and importantly, the low levels of phosphorus limit the production of freshwater systems (Ricklefs, 1993). Unlike nitrogen, phosphate is retained in the soil by a complex system of biological uptake, absorption, and mineralization. Phosphates are not toxic to people or animals unless they are present in very high levels. Digestive problems could occur from extremely high levels of phosphate. The soluble or bio-available phosphate is then used by plants and animals. The phosphate becomes incorporated into the biological system, but the

key areas include ATP, DNA, and RNA. ATP, adenosine triphosphate, which is important in the storage and use of energy and a key stage in the Krebs's Cycle. RNA and DNA are the backbones of life on this planet, via genetics. Therefore, the availability of phosphorus is a key factor controlling photosynthesis.”

The last inspection also noted that the Facility was not reporting discharges of Chlorodibromomethane and Dichlorobromomethane. These chemicals are not benign. As for Dichlorobromomethane, the CDC states [on its website](#) that:

Bromodichloromethane (BDCM) is a colorless, heavy, nonburnable liquid. BDCM does not usually exist as a liquid in the environment. Rather, it usually is found evaporated in air or dissolved in water.

Most BDCM in the environment is formed as a byproduct when chlorine is added to drinking water to kill disease-causing organisms. Small amounts of BDCM are also made in chemical plants for use in laboratories or in making other chemicals. A very small amount (less than 1% of the amount coming from human activities) is formed by algae in the ocean.

And Bromodichloromethane has [significant negative health effects](#), both to humans and to animals.

The effects of BDCM depend on how much is taken into the body. In animals, the main effect of eating or drinking large amounts of BDCM is injury to the liver and kidneys. These effects can occur within a short time after exposure. High levels can also cause effects on the brain, leading to incoordination and sleepiness. There is some evidence that BDCM can be toxic to developing fetuses, but this has not been well-studied. Studies in animals show that intake of BDCM for several years in food or water can lead to cancer of the liver, kidney and intestines. Although effects of BDCM have not been reported in humans, effects would probably occur if enough BDCM were taken into the body.

And [NOAA states](#) that with respect to Chlorodibromomethane:

This compound is harmful if ingested, inhaled or absorbed through the skin. It is an irritant of the skin, eyes, mucous membranes and

upper respiratory tract. It may also be irritating to the lung and cornea. When heated to decomposition it emits toxic fumes of carbon monoxide, carbon dioxide, hydrogen bromide gas and hydrogen chloride gas. It may also emit toxic fumes of chloride ion and bromide ion. It also decomposes to phosgene analogs. It may cause narcosis. (NTP, 1992)

The FDEP's response to this is to send a CAO to Venice in hopes that it will suddenly find the wherewithal to comply with its permit.

The unfortunate fact is that Venice's operation of the Facility is on a level that is hit or miss as to whether or not its operation will comply with its Permit. The most recent inspection revealed wholesale failures to properly maintain the Facility as well as problems with instrument calibration and failures to properly report effluent discharges. All of this has been going on for years, and the FDEP has done very little of consequence. This type of performance does nothing to assure the public that its health, safety and welfare is being protected. The same is obviously true for the direct impacts to the environment that the FDEP is supposed to protect.

E. EPA Overfiling Is Necessary to Protect Public Health and the Environment

Simply stated, the FDEP has effectively ignored the multiple maintenance, operation and effluent violations committed by this Permittee over the duration of the Permit and its predecessor. The Facility was listed by the EPA as being in significant noncompliance during the 3rd quarter of 2017, yet the FDEP has done nothing. Meanwhile, the public and the environment are both exposed to contaminated wastewater on a regular basis. The FDEP is a regulatory agency that is supposed to protect both residents and tourists from the harm associated with the types of violations seen in this case. It is also supposed to protect the wildlife and fauna, i.e. the environment, that are also exposed. However, this agency seems to have entirely forgotten that aspect of its statutory reason for existing. Instead, it has adopted an approach of being wholly protective of the polluters that it is supposed to regulate. We continue to ask the question, then, of who exactly is protecting the public and environment from the damage caused by these polluters?

The CWA, 33 U.S.C. § 1319(a)(3), bestows upon the EPA the concurrent authority to overfile, or bring enforcement actions against violators when authorized state programs have failed to properly enforce these statutes. EPA regulations under this statute allow the EPA to withdraw state program authorization altogether when a state's enforcement program fails to act on violations and to seek adequate enforcement penalties. 40 C.F.R. 271.22; 40 C.F.R. 123.63(3). Finally, and most importantly, the EPA has repeatedly made strong public policy pronouncements regarding the agency's interest in consistent enforcement, declaring that EPA will intervene in state enforcement cases when necessary to prevent a race to the bottom.

EPA has long had a policy of requiring that economic benefits from environmental violations be recovered. In testimony before the U.S. Senate, EPA Assistant Administrator for Enforcement Steve Herman forcefully defended EPA's overfiling policy, stating that EPA can and will take action against violators especially when delegated state agencies have failed to recover the economic benefit the violator has gained from its noncompliance or when serious harm to public health or the environment is at stake. (Testimony before Senate Environment and Public Works Committee, June 10, 1997). The FDEP repeatedly fails to even attempt to recover the economic benefit that violators enjoy in failing to comply with their permits. Such is the case now before you.

More recently, Former-Administrator Pruitt, in an October 18, 2017, [interview](#) with *Time* stated: "I don't spend any time with polluters. I prosecute polluters." We maintain that the EPA, in keeping with Administrator Pruitt's assertions to *Time*, should take the lead in this case and prosecute polluters such as the Permittee in this case.

As regards Venice's performance, the FDEP has failed to take adequate enforcement action by EPA standards. Despite the violator's egregious records of environmental noncompliance, the FDEP has dragged its heels and ultimately allowed violations of substantial gravity to go entirely unpenalized. Clearly, in this case the FDEP cannot be viewed as meeting its delegated mandate to provide a credible deterrent against violations of federal environmental laws.

PEER, therefore, formally requests that EPA immediately take over the administration of this Permit and RO Permit and to then begin civil enforcement proceedings against Venice as appropriate in connection with the environmental violations described above and any others that may be discovered. PEER suggests that these measures should include immediate injunctive relief to require that the Permittee cease discharging wastewater that violates the terms of its Permit. The EPA should also assess civil penalties for violating the current Permit, including penalties to recover the economic benefits enjoyed by the Permittee as a result of those violations.

PEER has in its possession voluminous materials from the FDEP case files substantiating the violations committed by Venice. PEER would be more than willing to provide any additional documentation if requested.

Thank you very much for your attention to these matters. Please do not hesitate to contact me to discuss.

Sincerely,

Trey Glenn
Regional Administrator
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Jerrel E. Phillips
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