



Public Employees for Environmental Responsibility

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November 13, 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 Clewiston WWTP—NPDES Permit FL0040665-018

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 Clewiston (Clewiston 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 Clewiston's wastewater discharges. The permit

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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

Clewiston operates a wastewater discharge facility (Facility) under NPDES Permit Number FL0040665-018 (Permit). The Permit was issued on September 7, 2016, and it expires on September 6, 2021. It was accompanied by Administrative Order number AO-2016-40665 (AO). The Facility is located in Hendry County, Florida and is a major discharger that discharges an annual average of 1.47 MGD annual average daily flow of effluent into Sugarland Drainage District Canal Number 3, a receiving wetland that is a Class III fresh waterbody. 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.](#)

[According to ECHO](#), this site has been in noncompliance for each of the past 12 quarters. Echo currently lists it as being in noncompliance. The [Effluent Exceedances Report](#) indicates that the majority of the violations have been for flow violations (Clewiston has had at least 7,300 days with such exceedances), but there have also been violations of total Phosphorus limits. As you know, Florida has currently been experiencing a massive outbreak of blue-green algae, which is attributable to high nutrient concentrations in Lake Okeechobee and in this basin in general. Notably, the Phosphorus violations have largely occurred in 2018, prior to the instant algae bloom. Therefore, the Phosphorus violations are not inconsequential. Going back further, we found that the site has been listed on Quarterly Noncompliance Reports (QNCRs) for thirty-four (34) of thirty-eight (38) quarters between the 3rd quarter of 2004 to the 4th quarter of 2013.

FDEP's enforcement response against Clewiston has essentially been designed to give the appearance of taking action, but realistically it's nothing 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

This section addresses violations dating back to 2012 and continuing through the present.

1. *Violations Between January 2012 and Permit Issuance*

According to a Compliance Assistance Offer (CAO) sent by the FDEP to Clewiston on December 31, 2012, a review of DMRs submitted by Clewiston showed multiple violations that included total suspended solids (TSS), as well as multiple violations of permit limits for

carbonaceous biochemical oxygen demand (CBOD5). Clewiston responded a week later and advised the FDEP that the DMRs cited contained incorrect information. Clewiston thereupon filed revised DMRs with new results that showed the TSS and CBOD5 results to be within normal limits. The alleged discrepancy was written off as a “math error.”

The next inspection was conducted on February 27, 2014 and included a second inspection on August 8, 2014. The Facility was rated as being in significant non-compliance (SNC). The sub-categories that were in violation were:

- Compliance Schedules (SNC)—Facility modifications were to have been completed by April 1, 2012. They were not. The inspection report advised Clewiston to seek modification of its permit and to develop a sanitary sewer overflow (SSO) program.
- Records & Reports (SNC)—records were missing that were required by the permit to be kept on site. In addition, it was discovered that Clewiston was not reporting spills and abnormal events. There was no reporting either orally or via written submission.
- Facility Site Review (SNC)—the inspector noted that, “[t]he structural integrity of the oxidation ditches, digesters, and chlorine storage building is creating an unsafe work environment, and allowing waste water to discharge onto the ground. . . [t]he oxidation ditches have a large volume of grit and sand accumulated in the bottom of the treatment tanks. The sand accumulation is reducing the treatment capacity of the facility. . . [t]he clarifier weirs are not level in both clarifiers which is causing short circuiting. . . [r]ags, grit, and screenings were being disposed of on the facility grounds.”
- Flow Measurement—“The partial flume flow measuring device does not appear to be measuring flow properly.”
- Operation & Maintenance—“The facility is leaking wastewater onto the ground.” In addition, the report noted that “[l]eaks were noted in the walls/pipes of the treatment plant” and that “[h]and rails/catwalks/ladders were in disrepair providing for unsafe conditions.” Finally, Clewiston only employed 2 licensed operators for the Facility.
- SSO Survey (SNC)—Clewiston had no SSO program. In addition, spills and/or overflows were not being reported.

Notably absent from the inspection were evaluations of the Facility’s effluent quality, effluent disposal, biosolids disposal and groundwater quality. The FDEP also conducted no sampling.

In order to address these violations found during the February/August 2014 inspection, the FDEP sent a CAO to Clewiston. No formal enforcement was initiated.

A year later, on July 20, 2015, the FDEP conducted a Compliance Sampling Inspection. Ultimately, the Facility was rated as being in non-compliance (NC). The FDEP notified Clewiston of the results on February 4, 2016, over 6 months after the inspection was conducted. The individual areas that were evaluated and found to be deficient were:

- **Permit**—A renewal application was required to be submitted at least 180 days before the permit expired, in this case, the application was due on or before September 26, 2015, which was 180 days prior to March 24, 2016. Clewiston missed this deadline. This was not the first time Clewiston had failed to submit a timely renewal application. The same thing happened in 2011, and that act alone was seen by the FDEP as a basis for initiating formal enforcement.
- **Sampling**—field meters (chlorine) were not properly calibrated, SOPs weren't being followed for chlorine and pH meters, calibration standards/buffers were out of date, “[e]ffluent composite samples were not being collected proportional to the flow as required by the Permit,” and thermometers were not properly certified.
- The FDEP conducted its own sampling during this inspection and the results were troubling for the issue of nutrient enrichment. Specifically, the report noted that “[t]he effluent Algal Growth Potential (AGP) was 39.4 A mg dry wt/L of the unicellular green alga, *Pseudokirchneriella subcapitata*, formerly known as *Selenastrum capricornutum*. Raschke and Schultz (1987) determined that AGP values above 5.0 mg dry weight/L, which represents a ‘problem’ threshold for fresh receiving waters, imply nutrient enrichment. The analytical chemistry suggests that the effluent is nitrogen-limited (Miller et al. 1978).” (Page 2, Effluent Quality Assessment Report)
- **Records and Reports**—a copy of the lab’s certification was not available, yet this section was rated as being in compliance.
- **Flow measurement**—calibration of the flow meter was out of date.
- **Effluent Quality**—effluent limits were violated for “dissolved oxygen, fecal coliform, and mercury.”

The FDEP did not evaluate the SSO or groundwater quality during this inspection.

In addition, the inspector noted that Clewiston failed to submit a renewal permit application at least 180 days prior to the time that its permit would expire. The practical effect of this late filing was that the operation permit would not be administratively continued should the renewal permit not be issued prior to its expiration.

As in the past, the FDEP sent a CAO to the facility and initiated no formal enforcement.

2. *Clewiston’s Recent Permit History*

Clewiston’s permitting history has been in a bit in flux since 2011, when the FDEP renewed its existing permit on March 25, 2011. That NPDES permit was given permit number FL0040665-013, and it allowed Clewiston’s Facility to operate its reuse system with a maximum flow level prior to entering the chlorine contact chamber of 1.5 MGD. That permit required Clewiston to also report its volume of surface water discharges, but it did not limit the volume of flow coming

out of the Facility. The fact sheet that accompanied the permit noted (Section 9) that Clewiston had entered into a consent order with the FDEP, because Clewiston failed to apply for a renewal permit in a timely manner.

Shortly after the issuance of that permit, Clewiston became aware of a new subdivision that was expected to come online in the near future. Consequently, it applied for, and received a revised permit (this one given permit number FL0040665-014) that authorized an additional .75 MGD of capacity to be discharged via underground injection, while the reuse limit of 1.50 MGD remained the same. The revised permit was issued on May 27, 2011.

The permit was again revised on July 13, 2011, when the FDEP changed the sample type for total recoverable mercury from 8-hour flow composite to a grab sample. This applied to the surface water discharge, and the permit revision was given number FL0040665-015.

Less than 2 years after FL0040665-015 was issued, Clewiston's engineer asked the FDEP to reduce sampling for 4 contaminants, mercury, cyanide, chromium, and silver. The basis for this request was that, according to the engineer, the Facility's effluent showed very low levels of these contaminants. The FDEP complied with this request and on November 25, 2013, issued a revised permit that reduced the sampling frequency of these contaminants to every 9 months. The new permit was given permit number FL0040665-016.¹

Meanwhile, the expected subdivision that had prompted permit revision number FL0040665-014 never materialized. Consequently, on July 21, 2015, Clewiston's engineer requested that the FDEP abandon the new permit and revert to the requirements of permit number FL0040665-13, i.e. the permit with a flow capacity of 1.5 MGD. The FDEP granted this request and issued the newly revised permit number FL0040665-17 on August 11, 2015. This permit retained the limited reporting requirements for mercury, cyanide, chromium, and silver.

It was during the permit revision episodes that the FDEP's inspectors were finding continued problems with the way in which the Facility was being operated. Nevertheless, the FDEP issued the revised permit as requested without an apparent concern about the new mercury violation, or whether Clewiston could realistically handle increased capacities at the Facility. Nevertheless, the near continual findings of permit violations by the FDEP's inspectors could not go unaddressed forever, and they eventually required the agency to address the Facility's operation when its permit came up for renewal in 2016. On February 16, 2016, when Clewiston's engineer of record submitted Clewiston's renewal application, he stated under Section 6.3. that there had not been any violations "during the last six months." He also stated under Section 6.6 that ". . . all previous permit conditions, including pretreatment requirements, monitoring requirements, and operator attendance [had] been complied with." While the former assertion, i.e. that there had been no violations within the past 6 months, was marginally true, the latter statement, i.e.

¹ Clewiston would then go on to violate the mercury limit in 2015.

that Clewiston had complied with all permit conditions, was demonstrably false.

Upon concluding its review of Clewiston's renewal application, the FDEP issued a draft permit that included a proposed administrative order and fact sheet. The draft permit was issued on July 22, 2016. The fact sheet that accompanied the draft permit indicated:

- That the FDEP had concluded that Clewiston was reporting its annual average daily flows incorrectly (Fact Sheet, Page 3);
- That the receiving water body was impaired for nutrients and dissolved oxygen, but that the FDEP had concluded that the Facility's wastewater would not contribute to that impairment (Fact Sheet, Page 5);
- That, according to its DMRs, the Facility's wastewater included mercury (Fact Sheet, Page 5);
- That, in the interest of reducing Clewiston's "Regulatory Burden," several contaminants would no longer need to be monitored at the surface water discharge point (D-002). Mercury was one of the contaminants removed from those monitoring requirements, except that it would still be reported on the DMR showing annual sampling results (Fact Sheet, Page 8);
- That the Facility's ability to meet its permitted capacity was doubtful, thus necessitating the issuance of an administrative order with the final permit (Fact Sheet, Page 8).

The fact sheet did not mention that the Facility had been found to be out of compliance in each of the 3 inspections conducted immediately prior to the issuance of the draft permit, and that in 2 of the 3 inspections the Facility was deemed to be in significant non-compliance. Neither did it mention that the FDEP had sent CAOs to Clewiston on each of those occasions, as opposed to taking formal enforcement.

The FDEP issued the final permit (Permit) on September 7, 2016. It was given number FL0040665-018. **Up until the point that this Permit was issued, Clewiston had been operating the Facility on an expired permit since March 24, 2016, the date that FL0040665-013 (and its revisions) expired.**

The Permit differed from the previous permits in several ways.

- It abandoned the underground injection well concept, something that Clewiston had never utilized anyway;
- It put a flow limit of 1.47 MGD on the surface water discharge. (Condition I.A.1.) None of the earlier permits dating back to FL0040665-013 had placed a limit on the surface water discharge. Even though the receiving waterbody was known to have impairments, particularly for nutrients;

- Even though the Permit abandoned the underground injection well, the reuse flow limit of 1.50 MGD was maintained (Conditions B.1. and C.1.);
- It removed the limit on mercury discharges; and
- It required a mercury minimization plan to be submitted within 180 days (Condition VI. 2.)
- It required compliance with the incorporated Administrative Order (AO) (Condition Vi.1.)

The Permit was accompanied by the AO. The AO simply indicated that the Facility was exceeding its maximum capacity for treatment and that Clewiston had therefore not provided reasonable assurances that it would be able to comply with the new Permit (AO, Pages 1-2). Indeed, the last two inspections conducted by the FDEP had found problems with the flow meters that were being used at the Facility. Consequently, the AO imposed additional restrictions upon the Facility, all of which centered around the need to investigate the cause of the flow exceedances and to report the results of that investigation to the FDEP. More specifically, Clewiston was ordered to:

- Visit each lift station and trace unusual flows by September 30, 2016;
- Visit each manhole that was known to be associated with “inflow and infiltration issues,” said visits to be concluded by October 31, 2016;
- Perform smoke tests of suspected areas by November 30, 2016;
- Submit a written report with findings to the FDEP on or before December 31, 2016;
- “Budget and expended” monies necessary to address the serious inflow and infiltration issues were to be identified in Clewiston’s report. This was to be completed by September 30, 2017.

Notably absent from the AO was any mention of problems that had been uncovered in July 2015, with Clewiston’s reporting under its then-existing permit, or of the Facility’s effluent exceedances, one of which was mercury. There was likewise no mention of dissolved oxygen problems in wastewater that was being discharged into a surface water that had nutrient and dissolved oxygen impairments.

3. *Inspections Post-Permit Issuance*

The FDEP inspected the Facility on December 1, 2016, which was less than 3 months after the Permit (with its accompanying AO) was issued. This inspection, like the 3 that preceded it, found the Facility to be out-of-compliance. This inspection found that:

- The field meters were not properly calibrated and that chlorine meter verifications weren’t available;

- The Facility's thermometer certification had expired, and the thermometer did "not appear to be functioning properly;"
- The certification for the laboratory used by the Facility was not available;
- The operator's daily logbook was incomplete;
- DMRs were submitted late, one by as much as 284 days;
- Sample values were not reported for every parameter on the 3rd quarter monitoring period;
- Weekly averages were reported incorrectly on the DMRs;
- Monthly average flows on the DMRs did not match for outfalls handling reuse;
- Clewiston wasn't reporting values for chromium, hexavalent, silver, **mercury**, and cyanide;
- Monthly average values for total nitrogen were calculated and reported incorrectly;
- Monthly average values for phosphorus were calculated and reported incorrectly;
- The clarifier weirs weren't level;
- "Floating scum/debris was observed on the surface of the chlorine contact chamber;
- "The chart recorder for the flow meter was not operational at the time of the inspection;"
- "Excessive (suspended solids, foam, grease, scum, color) were present in the discharge stream" and popups were being discharged over the effluent weir;
- Vegetation had overgrown the disposal pond berms;
- DMRs for 3 monitoring periods concerning groundwater values were submitted late;
- There were 5 total dissolved solids exceedances, 2 total fecal coliform exceedances and 2 total coliform exceedances.

As a result of this inspection, the FDEP charitably rated the Facility as being out-of-compliance, rather than significant-out-of-compliance. The FDEP sent Clewiston a CAO 4 weeks after the inspection.

To date there have been no additional inspections since December 1, 2016.

Recent DMRs filed by Clewiston do, however, point to continued violations at the Facility. The July 2018 DMR showed that flows are continuing to exceed permitted limits, as are the levels of total phosphorus.

4. *Sanitary Sewer Problems Post-Permit Issuance*

In addition to problems found during the December 1, 2016, inspection, the FDEP began receiving notices that abnormal events, i.e. sanitary sewer overflows (SSOs), were occurring. The first such notice was filed on June 20, 201, and 6 additional events followed in 2017, for a total of 7 events that year. 2 of the 7 may have been customer related, though the reports are

unclear on that point. So far there have been 3 overflows in 2018, all of which occurred in January.

C. Enforcement Taken by the FDEP

As we have noted throughout this petition, the FDEP has consistently responded to findings of violations by sending Compliance Assistance Offers to Clewiston, advising the permittee that formal enforcement would be avoided if Clewiston would cooperate with the agency. Initially, this approach was also followed after one of the SSOs. The SSO in question was an overflow that occurred on September 12, 2017 at the 500 block of Avenedo Del Rio and Del Monte drives. This was a 350-gallon overflow of untreated wastewater that Clewiston asserted was caused by a power outage resulting from Hurricane Irma. Clewiston reported the overflow to the State Watch Office, which apparently forwarded it to the FDEP. Consequently, on October 20, 2017, the FDEP sent a CAO to Clewiston. Clewiston responded to the CAO on February 5, 2018 and advised in its response that it was conducting a capacity analysis of its lift stations and that it was developing a plan to mitigate inflow and infiltration of its sanitary sewer system.

The FDEP responded to Clewiston's response by sending a proposed consent order that was partially based upon the September 12, 2017, SSO associated with Hurricane Irma. In addition, however, the consent order alleged that Clewiston had constructed a master pumping station without a permit, and that its December 2017 DMR showed that the annual average daily flow for calendar year 2017 was 1.732 MGD, an exceedance of the 1.50 MGD limit. None of the violations associated with the December 1, 2016, or previous inspections were addressed in the proposed consent order.

Clewiston accepted the terms of the proposed consent order (CO) and executed it on March 13, 2018. Under the terms of the CO Clewiston was obligated to:

1. Develop an Operation and Maintenance Manual by May 1, 2018;
2. Develop a Capacity, Management, Operation and Maintenance (CMOM) program by September 30, 2018;
3. Upgrade the pumping capability of its lift stations by December 31, 2019;
4. Purchase 2 portable generators by June 30, 2019;
5. Update "plans and budgets to accelerate the City's existing I&I program by at least 20% by December 31, 2018;
6. Submit an application to resolve the flow exceedance by June 30, 2018;
7. Complete construction projects associated with flow exceedance issues by December 31, 2019;
8. Submit an estimate dealing with the costs associated with reducing SSOs by May 15, 2018;
9. Submit quarterly reports detailing the status of projects identified in the CO;
10. Complete all corrective actions by December 31, 2019;

11. Pay a civil penalty of \$4,750 plus \$500 in costs.

This CO was amended 5 months later by adding a provision giving Clewiston until December 31, 2020 to submit a permit application to resolve the inflow and infiltration issues, should the previous efforts have proven to be unsuccessful. The Amended CO was executed on August 24, 2018.

While the FDEP recently took enforcement to deal with the issue of SSOs and the problems with flows exceeding the permitting limits, the fact is that the agency has taken no enforcement in response to the multiple permit violations found in the 2014, 2015, and 2016 inspections. Moreover, this Facility was allowed to operate for over 5 months without a valid permit, a major violation in itself, with no enforcement taken by the FDEP. In doing this, the FDEP has violated the clear requirements of its own Directive 923. Meanwhile, the economic benefit of noncompliance has also been waived, and there have been no upward adjustments in the amount of civil penalty assessments for what has been a repeated history of noncompliance by this permittee.

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. Indeed, the FDEP's AO that was issued with the Permit explicitly states that the FDEP does not have reasonable assurance that the Facility will be operated in compliance with its Permit and associated administrative rules. 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, and the FDEP's own sampling in 2015 suggests that these discharges could exacerbate such a situation. In 2016, the FDEP also found that Clewiston wasn't correctly calculating its effluent values for nitrogen and phosphorus. Further, the discharges are into areas that are already known to be impaired for nutrients and dissolved oxygen.

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 FDEP’s response to these violations has almost always been to send a CAO to Clewiston in hopes that it will suddenly find the wherewithal to comply with its permit.

The receiving waters involved with this Facility are also known to be impaired for another contaminate, mercury. The FDEP’s inexcusable response to this problem has not been to tighten the levels of mercury that can be discharged by the Facility. Instead, in the name of easing the supposed burden of compliance with regulations (at the expense of the environment), the FDEP eliminated the limits for mercury and other contaminants from the Permit, even though the Facility violated its mercury limits in 2015, subsequently failed to even report discharge levels of mercury and has not provided reasonable assurances that its total flow outputs are even accurate.

The unfortunate fact is that Clewiston’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, even when the Facility was being operated without a valid NPDES permit. 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 is currently listed by the EPA as being in noncompliance and there is no indication that the FDEP intends to do anything about it, beyond issuing the current Amended CO that fails to address most of the violations committed by Clewiston. 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 consistency in 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, then-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 Clewiston'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 or, in some instances underpenalized. 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 begin civil enforcement proceedings against Clewiston 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 both the past permit as well as the current Permit,

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Regional Administrator
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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 Clewiston. 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,

Jerrel E. Phillips
Director, *Florida* PEER

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