

BEFORE THE STATE OF FLORIDA
FLORIDA DEPARTMENT OF HEALTH
PALM BEACH COUNTY

FLORIDA DEPARTMENT OF HEALTH)	
PALM BEACH COUNTY)	
)	
v.)	FILE NO. WP
)	
CITY OF DELRAY BEACH)	
_____)	

CONSENT ORDER

This Consent Order (Order) is entered into between the Florida Department of Health Palm Beach County (Department) and City of Delray Beach (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 water resources and to administer and enforce the provisions of the Florida Safe Drinking Water Act, Sections 403.850, et seq., 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 403.852(5), F.S.
3. Respondent is the owner and operator of a public water system, PWS No. 4500351, located at 200 SW 6th Street, Delray Beach, FL 33404 in Palm Beach County, Florida (System).
4. The Department finds that the following violations occurred:
 - a) Rule 62-555.360(2), F.A.C.: Respondent failed to implement its cross-connection control program.
 - b) Rule 62-560.410(1), F.A.C.: Respondent failed to issue public notice within 24 hours of discovery of cross-connections.
 - c) Rule 62-560.410(1), F.A.C.: Respondent failed to report cross-connections to the Department within 24 hours of discovery.

- d) Rule 62-555.360(1)(b) and Table 62-555.360-2, F.A.C.: Respondent failed to ensure adequate backflow protection is provided at all locations served by both potable drinking water and reclaimed water. City of Delray Beach admits cross connection inspections conducted to date reveal 581 customer connections without backflow protection.
- e) Rule 62-555.360(2), F.A.C.: Respondent failed to evaluate the customer's premises for cross-connections and adequate backflow protection at new or existing service connections whenever customer connects to reclaimed water.
- f) Rule 62-555.360(2): Respondent failed to conduct periodic inspections of customer connections.
- g) Rule 62-555.360(1), F.A.C.: Multiple cross-connections found by City of Delray Beach employees at service connections in the drinking water distribution system. City of Delray Beach cross connection inspections show 581 customer connections without backflow protection, a cross connection as defined by rule, and 4 customer connections with physical cross connections between the potable and reclaimed water service.
- h) Rule 62-550.720(3), F.A.C.: Respondent failed to maintain copies of written reports, summaries, or communications relating to cross-connection control program or sanitary surveys of the system including, but not limited to: records of installation, inspection, maintenance, and replacement of backflow prevention devices and assemblies.
- i) Rule 62-555.320(21)(b)(3), F.A.C.: Respondent failed to color code potable and reclaimed pipes and fixtures as required.
- j) Rule 62-560.310(1)(e), F.A.C.: Respondent submitted one or more false statements or representations.
- k) Rule 62-555.360(1)(a), F.A.C.: Respondent failed to implement enhanced public education in accordance with AWWA Manual M14.

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. Within 30 days of the effective date of this Order, Respondent shall issue Public Notice in accordance with Chapter 62-560 , F.A.C. In addition to the 10 Standard Elements of Public Notices required by Rule 62-560.410(5), the following language is required in the description of the violation: “The City of Delray Beach cannot assure utility customers that the drinking water produced and distributed met the standards of the Safe Drinking Water Act for the period from inception of the reclaimed water service beginning in 2007 to the time reclaimed water was deactivated on February 4, 2020.”
- b. Within 10 days of publication of the Public Notice, Respondent shall submit a Certification of Delivery of Public Notice to the Department.
- c. Within 30 days of the effective date of this Order, Respondent shall complete or cause the installation of backflow prevention devices at all properties marked “pending” on inspections submitted to the Department. Respondent shall report any remaining pending installations and submit proof of enforcement actions initiated by Respondent against noncompliant property owners.
- d. Within 30 days of the effective date of this Order, Respondent ascertain that all connections to the potable water system are in compliance with Rule 62-555.360, F.A.C., F.A.C. and report violations and corrective actions to the Department.
- e. Within 30 days of the effective date of this Order, Respondent shall provide a complete inventory of all properties connected to the potable water distribution system. The inventory shall include the type of property served, type of backflow protection installed, the backflow protection manufacturer, date of installation, expected date of replacement

in accordance with manufacturer's specifications, dates of inspection, and whether the property is served by reclaimed water.

- f. Within 30 days of the effective date of this Order, Respondent shall submit an accurate Cross Connection Program Annual Report Form 62-555.900(13), F.A.C..
- g. Within 30 days of the effective date of this Order, Respondent shall submit a copy of its Cross-Connection Control Program for review and approval.
- h. Ensure all violations are published in the 2020 Consumer Confidence Report.

6. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$XXXXXXXX in settlement of the regulatory matters addressed in this Order. This amount includes \$XXXXXXXX for civil penalties and \$XXXXXX 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 X violations that each warrant a penalty of \$XXXXXX or more.

7. Respondent shall make all payments required by this Order by cashier's check or money order. Cashier's check or money order shall be made payable to the "Florida Department of Health" and shall include the file number assigned to this Order and the notation "Program 58-Civil Penalty."

8. Respondent agrees to pay the Department the following stipulated penalties:
- a) In the amount of \$XXXXX per day for each day Respondent fails to perform the corrective actions established in Paragraph 5 above.
 - b) In the amount of \$XXXXX for each violation identified in accordance with the requirements of Paragraph 5 (d) above.
 - c) In the amount of \$XXXXX for each property listed in the inventory required by Paragraph 5 (e) above that does not have adequate backflow prevention in compliance with Rule 62-555.360, F.A.C..
 - d) 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 9, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph 6 of this Order.

9. A separate stipulated penalty shall be assessed for each violation of this Order under paragraph 8 above. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to the Department by check or money order. The instrument shall be made payable to the "Florida Department of Health Palm Beach County" and shall include thereon the File No. WPXXXX assigned to this Consent Order and the notation "Program 58 - Stipulated Penalty". The Department may make demands for payment at any time after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Consent Order. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 6 of this Order. If the Department is required to file a lawsuit to recover stipulated penalties under this paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Order in an amount greater than the stipulated penalties due under this paragraph.

The Respondent may request review of any decision related to penalties assessed under paragraph 10 of this Order to the Department's Director of Environmental Public Health. In the event the Respondent disagrees with the decision of the Division Director, the Respondent may, within thirty (30) calendar days, submit an appeal to the Environmental Appeals Board in accordance with Section 17, Chapter B (Environmental Control Rule II), Article 15 - Health Regulations, of the Palm Beach County Unified Land Development Code.

10. Except as otherwise provided, all submittals and payments required by this Order shall be sent to the Florida Department of Health Palm Beach County, 800 Clematis Street, P.O. Box 29, Fourth Floor, West Palm Beach, Florida 33402.

11. 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.

12. 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.

13. 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.

14. 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 the terms of this Order.

15. 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.

16. 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.

17. 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 \$5,000.00 per day per violation, and criminal penalties.

18. 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.

19. 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.

20. 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.

21. 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.

22. Persons who are not parties to this Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department's final action may be different from the position it has taken in the Consent Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Consent Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- d) A statement of when and how the petitioner received notice of the Consent Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

The petition must be filed (received) at the Department's Legal Office, 800 Clematis Street, Fifth Floor, West Palm Beach, Florida 33402 within 21 days of receipt of this notice. 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 Code²³.

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

FOR THE RESPONDENT:

Name Date

Title

DONE AND ORDERED this ____ day of _____, 2020, in Palm Beach County, Florida.

FLORIDA DEPARTMENT OF HEALTH
PALM BEACH COUNTY

Alina M. Alonso, MD, Director
Florida Department of Health Palm Beach County

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

Clerk Date

Copies furnished to:
FDEP SW District Office
FDOHPBC File: WP-