



Public Employees for Environmental Responsibility

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May 25, 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—Jacksonville Beach WWTP—NPDES Permit FL0020231

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 Jacksonville Beach (Jacksonville Beach 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 Jacksonville Beach'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.

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A. The Permit

Jacksonville Beach operates a wastewater discharge facility (Facility) under NPDES Permit Number FL0020231 (Permit). The Permit was issued on February 4, 2014, and it expires on February 3, 2019. The Facility is located in Duval County, Florida and is a major discharger that discharges an annual average of 4.5 MGD of effluent into the St. Johns River via a force main pipeline and appurtenances. The discharge point is on the Lower St. Johns River Basin. The St. Johns River is a Class III marine waterbody. There is a secondary surface water discharge to Cradle Creek (a fresh water system), an estuary of Pablo Creek, the latter of which is an Intracoastal Waterway, Class III marine 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.](#) The Permittee is also authorized to discharge 1.123 MGD monthly average daily flow via slow-rate public access reuse water to multiple application sites. The Permit also authorizes a mixing zone for Copper and Cyanide for the discharge to the St. Johns River. Technology-based effluents were set for CBOD5, TSS, pH, TRC and Fecal Coliform, while Water Quality Based Limits were set for a TMDL covering discharges of Iron and Mercury.

At the time of issuance of the Permit, the water segment of the St. Johns River to which the Facility's wastewater is discharged was listed on the EPA's 303(d) list as impaired for Copper, Iron and Mercury. The FDEP had proposed removing the listing for Copper, however. Cradle Creek was also listed on the 303(d) list as impaired for Dissolved Oxygen and Coliforms.

Historically, the site has had numerous reporting and effluent violations that have resulted in it being included repeatedly on different Quarterly Noncompliance Reports (QNCRs). The Facility has been listed on QNCRs for 39 of 68 quarters between the 4th quarter 1999 and the 4th quarter 2017.¹ The early violations were for lack of reporting and then devolved to effluent. Except for the 4th quarter of 2017, all the listings from 2015 forward have been for effluent exceedances. The Facility was in SNC for the 2nd and 3rd quarters of 2015 and the 1st quarter 2016. Looking at [more recent data](#) over the past 12 quarters, we found that the Facility had been listed on QNCRs 10 times and in was SNC for 3 quarters. The more recent exceedances have predominately been of the Permit's [Fecal Coliform and BOD limits](#). The Facility is currently listed on ECHO as being in noncompliance with its Permit. These issues will be more fully discussed below.

FDEP's enforcement response against Jacksonville Beach has fallen so 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.

¹ These listings are those that are indicated on documents supplied to PEER by the EPA in response to FOIA requests. PEER currently has a pending FOIA request for the most recent data. Therefore, there may be more QNCR listings than recited herein.

B. A History of Noncompliance

1. *Violations Immediately Prior to Permit Issuance*

On January 31, 2012, prior to issuance of the current Permit, the FDEP conducted a reconnaissance inspection at the Facility. In an email to the Permittee, the FDEP described the inspection as a “quick site inspection.” The FDEP found the Facility’s effluent to be "excessively turbid." In addition, a SBR (Sequential Batch Reactor) tank was inoperable. Apparently, the FDEP did not formally rate the Facility’s compliance status during this visit.

The next inspection was conducted on April 6, 2012. This was a Compliance Evaluation Inspection (CEI). The result of the inspection was that the Facility was found to be out of compliance because of effluent quality and effluent disposal issues. DMRs supplied by the Permittee showed six (6) copper and five (5) TSS violations. The disposal issues centered around a lack of reclaimed water signage at the golf course served by the Facility.

After the April 6, 2012 CEI, the FDEP conducted a file review of the Facility. This review was conducted on May 8, 2012. It uncovered multiple effluent violations. In addition to the violations identified during the April 2012 inspection, the file review found that there were violations of Fecal Coliform (1), Total Nitrogen (4), TKN (4), Cyanide (1), TDS (6), Nitrite and Nitrate (3), pH (36), and Sulfate (3) parameters. In addition, the Permittee reported no groundwater monitoring results for 4 quarters. Each of these failures constituted a separate permit violation. Because of this review, the Facility was rated as Significant-Out-of-Compliance.

On June 28, 2012, following the site inspection in April 2012 and the file review in May 2012, the FDEP sent a warning letter to the Facility, signaling the initiation of formal enforcement. The actual enforcement taken will be discussed below.

On January 14, 2013, about a year before the then-applicable NPDES permit would be renewed (and after the Facility had entered into a long-form consent order with the FDEP), the FDEP conducted a sampling inspection at the Facility. During the inspection there were multiple permit violations identified, including a failure to include all sampling data on DMRs (copper results apparently were missing), refrigerator temperatures were faulty, the Permittee had not notified the FDEP that filters were offline, and current operations and maintenance manuals were not available. In addition, there were effluent quality violations. In an email sent to the Permittee on the 14th, the inspector advised the Permittee that exceedances would not necessarily result in the Facility’s being rated as out-of-compliance. He stated, “I should know sometime within this week if the exceedances experienced at the facility will put the facility out of compliance. As soon as this determination is made I will be sure to let you know. The inspection letter will be sent out three weeks from today. All bulleted items above that are adequately addressed within this timeframe will not be mentioned as deficient in the inspection letter.”

2. *Violations After Permit Issuance*

In February 2014, the same month in which the new Permit was issued, the FDEP received the following anonymous complaint about the Facility: “Complainant indicated that the Jacksonville Beach WWTF is not meeting effluent limits, does not have an O&M Manual (something which the FDEP had also found in its last inspection), there are no shop drawings on-site, and that the staff working at the facility lacks formal training.” Given the nature of the complaint, it would appear that it was sent by an employee at the Facility. In any event, the FDEP’s files reflect that on February 20, 2014, FDEP staff contacted the Permittee, advised them of the complaint and told the Permittee that they would be conducting an inspection at the Facility. When the FDEP arrived at the site all manuals were available, and operator’s licenses were made available. Not surprisingly, the inspector’s decision was that no problems existed in those areas. Effluent exceedances, while confirmed, were written off as being due to weather events. The FDEP thus concluded that the complaint was unfounded.

The next CEI was conducted on April 17, 2015, and the Facility was determined to be in-compliance. This is despite a finding that there were a total of seven (7) effluent exceedances identified on DMRs. These exceedances were for BOD, Total Suspended Solids (2), Cyanide, Fecal Coliform (2) and Copper. The inspector concluded that the exceedances would not impact the Facility’s rating because they were infrequent.

The FDEP conducted another CEI on March 29, 2017. At that time the FDEP identified thirty-seven (37) effluent exceedances that had occurred between May 1, 2015 and April 18, 2017. These were identified on DMRs submitted by the Permittee. The exceedances were for:

- Fecal Coliform (6)—All of which were to the Reuse Discharge;
- TSS (12)—In discharges to both St. Johns River and Cradle Creek;
- Total Nitrogen (2)—Both of which were to the Reuse Discharge;
- BOD, Carbonaceous (8)—In discharges to both St. Johns River and Cradle Creek;
- Silver (1)—Cradle Creek Discharge;
- Mercury (1)—Cradle Creek Discharge;
- Copper (1)—Cradle Creek Discharge;
- Cyanide (2)—Both of which were to the St. Johns River Discharge;
- IC25 Statre 7day Chr Ceriodaphnia (4)—St. Johns River Discharge;

It should be noted that the receiving water for the wastewater discharged by the Facility was impaired for Cyanide, making those exceedances especially harmful. Notwithstanding the plethora of exceedances, the inspector didn't consider them to be significant because, in the inspector’s opinion, there were not enough of them! After the inspection, the FDEP wrote to the Permittee that the FDEP considered the Facility to be operating in compliance.

[According to ECHO](#), the Facility has also been in noncompliance (and thus listed on QNCRs) for the 4th quarter of 2016, the 1st quarter of 2017, the 3rd quarter of 2017, the 4th quarter of 2017 and the 1st quarter of 2018. These violations are largely V(NonRNCV) violations, meaning that “[the facility has effluent, compliance schedule, permit schedule, or single-event violations in the current quarter, however, is not considered to be in RNC or SNC.](#)”

C. Enforcement Taken by the FDEP

The June 28, 2012, warning letter that the FDEP sent to the Permittee as a result of Copper exceedances (discussed above) ultimately resulted in the parties executing a long-form consent order. This occurred on November 7, 2012. The FDEP reaffirmed that the Permittee was conducting studies associated with its problems with Copper excursions. However, there were still eleven (11) excursions identified by the FDEP. These were excursions of interim limits that were put in place by the FDEP. The former permit (which was issued on February 4, 2009) set a limit for Total Recoverable Copper discharges to Cradle Creek at 3.7 µg/L. The Department subsequently increased those limits to 15 µg/L because the Facility was unable to meet the previously imposed restrictions. The eleven (11) exceedances identified by the FDEP in 2011/2012 were thus violations of that higher limit that allowed the Facility to discharge higher levels of Copper into Cradle Creek.

In the November 2012 consent order, the FDEP’s approach to this situation was to set even higher interim limits, this time to 28.3 µg/L. These new limits meant that all but one (1) of the discharges identified as violations in the November consent order would have been wiped out, had the higher limit been in effect at the time. The other action taken by the FDEP in the consent order was to impose a penalty. The penalty was \$4,000 and the Permittee was also ordered to pay \$500 in costs associated with the enforcement action. There was no effort to recoup the economic benefits enjoyed by the Permittee in repeatedly violating the terms of its permit. In addition, the FDEP set a token stipulated penalty of \$100 per day for each day that the Facility’s wastewater discharge to Cradle Creek contained Copper concentrations that exceeded the new, higher, interim limits set forth in the consent order.² Finally, the consent order is silent with respect to the other effluent violations that were identified by the FDEP over the course of the same time period. Thus, the penalty assessment was incomplete.

No enforcement has been taken against the Permittee for Facility violations under the new Permit.

D. Health and Environmental Risks

² Due to changes in the Facility, the new Permit, issued in 2014, indicates that the primary discharge of Copper will be back to the St. Johns River (which was impaired for Copper). It sets the limit at 16 µg/L at the end of pipe (Section I.A.1., Permit) and establishes a mixing zone for Copper discharges such that the concentration at the edge of the mixing zone must be no greater than 3.7 µg/L (Section I.A.8., Permit).

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 2012 in wastewater that is being discharged into an impaired waterbody, i.e. the St. Johns River, as well as Cradle Creek. These effluent violations have been significant in that they not only include substances such as Fecal Coliform, but other harmful substances such as Mercury, Silver, Cyanide and Copper.

If we just look at the Fecal Coliform contamination we find how serious the problems are. The Water Research Center [states that](#):

“At the time this occurs, the source water may be contaminated by pathogens or disease producing bacteria or viruses, which can also exist in fecal material. Some waterborne pathogenic diseases include ear infections, dysentery, typhoid fever, viral and bacterial gastroenteritis, and hepatitis A. The presence of fecal coliform tends to affect humans more than it does aquatic creatures, though not exclusively. While these bacteria do not directly cause disease, high quantities of fecal coliform bacteria suggest the presence of disease causing agents. The presence of fecal contamination is an indicator that a potential health risk exists for individuals exposed to this water. During high rainfall periods, the sewer can become overloaded and over flow, bypassing treatment. As it discharges to a nearby stream or river, untreated sewage enters the river system. Runoff from roads, parking lots, and yards can carry animal wastes to streams through storm sewers.”

Yet with the exception of late in 2012, in each case the FDEP chose to treat the matter as of little or no consequence.

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

Simply stated, the FDEP has ignored the multiple effluent violations committed by this Permittee over the duration of the Permit. 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. 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. One must ask the question, then, of who exactly is protecting the remaining 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). Such is the case now before you. More recently, 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 Jacksonville Beach'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 Jacksonville Beach 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, 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 Jacksonville Beach. PEER would be more than willing to provide any additional documentation if requested.

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

Sincerely,

/s/

Jerrel E. Phillips
Director, *Florida* PEER

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