

RESOLUTION 23-10

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AS TO FORM AND CONTENT THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION CONSENT ORDER 22-1926 RELATED TO SEWAGE AND RECLAIMED WATER SPILLS DURING CALENDAR YEARS 2020 AND 2021.

BE IT RESOLVED that the City of Panama City Beach, Florida, does hereby approve as to form and content the Florida Department of Environmental Protection Consent Order, relating to sewage and reclaimed water spills during calendar years 2020 and 2021.

AND BE IT FURTHER RESOLVED that the City Council elects to _____ pay civil penalties in the amount of \$33,990.02;

OR

 X implement the following in-kind penalty project having a value equal to or greater than \$50,985.03: Increase local match for Laguna Beach septic to sewer project; and the appropriate officers and employees of the City are authorized and directed to take all necessary actions to implement, or begin implementation of, this election.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 13th day of October, 2022.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk



City of
Panama City Beach

PCB City Hall
17007 PCB Parkway
PCB, FL. 32413
P: (850) 233-5100
F: (850) 233-5108
www.pcbfl.gov

July 8, 2022

Ms. Elizabeth Mullins Orr
Northwest District Director
Northwest District
Florida Department of Environmental Protection
160 W. Government Street, Suite 308
Pensacola, FL 32502

RE: Proposed Consent Order – Florida Department of Environmental Protection v.
City of Panama City Beach, Florida
OGC File No. 22-1926

Dear Ms. Mullins Orr:

As indicated in our letter dated July 5, 2022; this is to provide comments on the referenced draft Consent Order. Item 5. on Page 2 of the draft Order indicates that the following:

"5. The Department finds that the following violation(s) occurred:

- a) Respondent's SSOs, listed in Exhibit A are in violation of Rule 62-604.130(1), F.A.C. which prohibits the release of excreta, sewage or other wastewaters or residuals without providing treatment.*
- b) Respondent's domestic wastewater collection and transmission system allowed SSOs to occur, and therefore was not maintained to provide proper, uninterrupted service in violation of Rules 62-604.500(2)-(3), F.A.C."*

Exhibit A of the Order lists the following incidents:

SWO Number	Incident Date	Spill Location	Volume (gallons)	Comments
2020-3419	6/28/20	17501 Panama City Beach Pkwy	850	Communication failure to Lift Station 73 caused all three pumps to trip with spill.
2020-4327	8/18/2020	1438 Wild Heron Way	400	
2020-4485	8/24/2020	206 N. Gulf Blvd	12,000	
2020-4591	8/29/2020	9500 Panama City Beach Parkway	10,000	
2020-5038	9/15/2020	9500 Panama City Beach Parkway	10,000	Heavy rain and storm surge from Hurricane Sally
2020-5039	9/15/2020	22819 Panama City Beach Parkway	10,000	Heavy rain and storm surge from Hurricane Sally
2020-5040	9/15/2020	6922 Vernon Avenue	7500	Heavy rain and storm surge from Hurricane Sally

Mayor
Mark Sheldon

Vice Mayor
Paul Casto

Ward 2
Phil Chester

Ward 3
Mary Coburn

Ward 4
Michael Jarman

City Manager
Drew Whitman

SWO Number	Incident Date	Spill Location	Volume (gallons)	Comments
2020-5153	9/16/2020	470 Wahoo Road	73,800	Heavy rain and storm surge from Hurricane Sally
2020-5038	9/16/2020	9500 Panama City Beach Parkway	10000	Heavy rain and storm surge from Hurricane Sally
2020-7064	12/22/2020	3003 Joan Avenue LS 40	11,900	
	4/09/2021	3003 Joan Avenue LS 40	300	
2021-4677	8/22/2021	206 N. Gulf Blvd.	4500	Transformer fire resulting in reclaimed water spill.
2021-5026	9/7/2021	2529 Joan Avenue	4500	
2021-5738	10/07/2021	3003 Joan Avenue	23,969	
2021-5739	10/07/21	Thomas Drive LS 59	12,574	
2021-5740	10/07/21	17550 Panama City Beach Pkwy	75,446	
2021-5741	10/7/2021	9500 Panama City Beach Pkwy	43,816	
2021-5916	10/15/21	102 Cabana Cay Circle	3500	Customer pipe downstream of meter broken by contractor working for others and reclaimed water spill.
2021-6100	10/22/21	01 Lullwater	2800	Operator failed to move switch back to auto after manual testing.
	10/31/21		500	Power surge tripped breaker without calling for ATS/generator operation

The City's record shows a consistent practice of responsibility of self-reporting. We apply the same high level of stewardship in operating and maintaining our wastewater and reclaimed systems in every effort to maintain regulatory compliance. The City very much understands the incalculable value of the beautiful environment of our service area and our responsibilities to be good stewards of it. It is believed that these factors have been taken into consideration by your enforcement group but not to the extent warranted.

To the casual observer the incidents and basis of violation cited could lead the reader to perceive a lack of stewardship on the City's part. This would be a disservice to the dedicated leadership and staff at the City of Panama City Beach. Although there are always areas where something can be improved, there are some of the incidents cited in the draft Order that do not meet the stated basis of violation and in nearly all of the cases listed below, would not have been avoided with the corrective measures indicated in the proposed Order as follows:

Ms. Elizabeth Mullins Orr
July 8, 2022
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SWO Number	Basis of Challenge
2020-3419	Communication failure due to signal interference by others. Not under the control of the City and all systems compliant with industry standards. Not a lack of equipment or maintenance.
2020-5038,5039,5040,5153,5038	Hurricane Sally caused not only record rainfall but also staged surface water bodies above the 100-year flood elevation which is Ten States Standards basis of design inundating some lift stations. Not a maintenance, operations errors or lack of equipment. Act of God.
2021-6100	Operator error. Not a maintenance or other issue.
2021-4677	Transformer fire resulted from power line failure caused by high winds associated with Tropical Storm Fred. Transformer fire destroyed conductors to automatic transfer switch. All electrical systems and standby systems were fully functional and in serviceable condition. Act of God not a lack of proper equipment or maintenance. Spilled reclaimed water was fully treated and does not meet the violation standard cited in Paragraph 5.a).
2021-5916	Failed pipe was customer side of meter and not a City asset to maintain or operate or protect. Damaged by contractor working for others. Spilled reclaimed water was fully treated and does not meet the violation standard cited in Paragraph 5.a)
10/27/21	Contractor working for other party struck line. Not due to the actions of the City or lack or equipment or maintenance. None of the proposed remedies would prevent from recurring.
10/31/21	Pump trip not due to lack or equipment or maintenance. Monitoring system caught high level but response could not make to site in time to prevent spill. No proposed remedies would prevent this.

It is requested the incidents cited be re-evaluated based upon the factors indicated and the proposed Order and associated stipulated penalties for the past events and possible future issues modified accordingly.

Sincerely,



Mark E. Shaeffer, P.E.
Utilities Director

MES/mes



FLORIDA DEPARTMENT OF Environmental Protection

Northwest District
160 W. Government Street, Suite 308
Pensacola, Florida 32502

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

September 26, 2022

Mark Shaeffer, Utilities Director
Panama City Beach WWTP #1,
206 N Gulf Blvd
Panama City Beach, 32413
mark.shaeffer@pcbfl.gov

Re: Proposed Consent Order; Department of Environmental Protection v. City of Panama City Beach, OGC File No.: 22-1926; Bay County

Dear Mr. Shaeffer,

Enclosed is the 3rd proposed Long Form Consent Order, which addresses issues related to the subject facility. The revisions that have been incorporated include reduction of civil penalties for spills related to weather events (SWOs 2020-5038, 2020-5039, 2020-5040, 2020-5153, 2021-4677, 2021-5738, 2021-5739, 2021-5740, and 2021-5741) and SWO 2021-5916 caused by a contractor that hit the customer-side pipe. In addition, Item 7 has been updated to reflect the approved 25-day extension to the deadline. The new deadline for item 7 will be October 26th, 2022. Please review the document, and if acceptable, sign and return it within 30 days for final execution. A copy of the executed Consent Order will be forwarded to you for your records. If the document is not acceptable, please contact the Department regarding your objections within 15 days of your receipt of the document.

Please note the requirements of the Long Form Consent Order for which you are responsible and fulfill all pertinent actions accordingly. Unless otherwise noted, all deadlines for completing requirements and actions in the Long Form Consent Order are to be calculated from its executed date, which is the date the Consent Order was filed with the Department Clerk, as noted on the signature page.

Your cooperation in resolving this matter is greatly appreciated. If you have any questions, please contact Dominic Bertelli at Dominic.Bertelli@FloridaDEP.gov or via phone (850) 595-0682.

Sincerely,



Elizabeth Mullins Orr
Director
Northwest District

EMO / db

cc: Albert Bock, (albert.bock@pcbfl.gov)
Jeff Crigler, (jeff.crigler@pcbfl.gov)
Leah Bailey, (leah.bailey@pcbfl.gov)
Drew R. Whitman, (drew.whitman@pcbfl.gov)

Enclosure: Proposed Long Form Consent Order

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT) OF ENVIRONMENTAL PROTECTION)	IN THE OFFICE OF THE) NORTHWEST DISTRICT)
v.)	OGC FILE NO. 22-1926)
CITY OF PANAMA CITY BEACH))
_____))

CONSENT ORDER

This Consent Order (Order) is entered into between the State of Florida Department of Environmental Protection (Department) and City of Panama City 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 air and water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes (F.S.), and the rules promulgated and authorized in Title 62, Florida Administrative Code (F.A.C.). The Department has jurisdiction over the matters addressed in this Order.
2. Respondent is a person within the meaning of Section 403.031(5), F.S.
3. Respondent is the owner and is responsible for the operation of the Panama City Beach WWTP #1, an advanced wastewater treatment (AWT) plant with a treatment capacity of 14 million gallons per day (MGD) 3-Month Rolling Average daily flow (3MADF). The wastewater treatment facility (WWTF) operates in the extended aeration mode. The WWTF includes pretreatment [three influent rotary drum screens (total capacity of 24,900 gallons per minute (gpm) at peak flow) and two vortex degritting units (capacity of 12 MGD, each at peak flow) and one grit concentrator, four modified orbal sim-preprocess biological nutrient removal (BNR) basins [capacity for three units at 3.0 MGD, each and one unit at 5.0 MGD - anaerobic/anoxic volume of 3.91 million gallons (MG), aeration volume of 2.9 MG, 2nd anoxic volume of 1.524 MG and reaeration of 0.381 MG], four secondary clarifiers (unit surface area of 6,400 ft² for three smaller units, each and 9,600 ft², for the one larger unit), seven filters (three automatic backwash (ABW) traveling bridge filter surface units of 896 ft², each and four disk filter units rated at 2.5 MGD each), a dual channel chlorination disinfection basins (561,000 gallons) using sodium hypochlorite for disinfection, reclaimed water discharged to the wetlands is dechlorinated

utilizing sodium bisulfite. Biosolids are treated in five aerobic digesters (digesters 1 thru 5 having volumes of 0.92, 0.42, 0.42, 0.92 and 0.93 MG, respectively), with biosolids dewatered by two belt filter presses, capacity of 240 gpm. The facility is equipped with two 5.0 MG reuse storage tanks and a 13.16 MG lined reject water storage pond (Facility).

4. The Facility is operated under Wastewater Permit No. FL0021512 (Permit), which was issued on December 5, 2013, and expired on December 4, 2018. The Facility applied on June 7, 2018, for a permit. The permit renewal application was determined complete by the Department on February 25, 2019. The facility permit is administratively continued until final agency action is determined on the permit renewal. The Facility is located at 206 N Gulf Blvd, Panama City Beach in Bay County, Florida (Property). Respondent owns the Property on which the Facility is located.

5. The Department finds that the following violation(s) occurred:

a) Respondent's SSOs, listed in Exhibit A, are in violation of Rule 62-604.130(1), F.A.C., which prohibits the release of excreta, sewage, or other wastewaters or residuals without providing proper treatment.

b) Respondent's domestic wastewater collection and transmission system allowed SSOs to occur, and therefore was not maintained to provide proper, uninterrupted service in violation of Rules 62-604.500(2)-(3), F.A.C.

c) Respondent's failure to comply with Department rules is a violation of Section 403.161(1)(b), F.S.

Having reached a resolution of the matter Respondent and the Department mutually agree and it is

ORDERED:

6. Respondent shall comply with the following corrective actions within the stated time periods:

7. By October 26, 2022, Respondent shall complete transitioning the functions of the See-Click-Fix software, implemented in November 2021, to the ESRI Cityworks Program. These functions include;

- a) issue reporting,
- b) generating response tickets for tracking work orders,
- c) historic trending for future maintenance needs.

Collection System

8. **If Infiltration and Inflow Program Needs to be Created or Improved:**

a) Within 120 days of the effective date of this Order, Respondent shall submit to the Department a plan and schedule (hereinafter, I&I Plan) to reduce infiltration and inflow (I&I) into the collection system within three year(s) of the Department's written acceptance of the I&I Plan. The I&I plan shall describe how the percent reduction in I&I will be measured and shall have a completion date no later than three years after the effective date of this Consent Order.

b) If the Facility has not returned to compliance 90 days after completing the actions in the I&I Plan, Respondent shall, within 180 days of completing the plan, submit to the Department a permit application with a schedule to expand or upgrade the Facility to bring Respondent into compliance with Chapter 62-604 F.A.C

9. **If One or More Pump Stations Need Repair, Rehabilitation, or Replacement:**

a) Within 120 days of the effective date of this Consent Order, Respondent shall submit a plan and schedule (hereinafter, Lift Station Plan) to the Department for approval to bring all of the Facility's lift stations into compliance with the standards specified in the "Recommended Standards for Wastewater Facilities," the current version of which is referenced in Rule 62-604.300(2)(g), F.A.C. The Lift Station Plan shall have a completion date no later than two years after the effective date of this Consent Order.

b) The Lift Station shall include but is not limited to all of the following;

i. a schedule and plan to improve SCADA system communications. The improvements shall include but is not limited to all of the following;

1. new VT SCADA software and hardware,
2. an updated control radio frequency for the lift stations. The updated radio frequency shall have less interference from neighboring users and a significant reduction in communication interference,

ii. a schedule to deploy a standby pump to Lift Station 3,

iii. a schedule and plan to gain the necessary property to replace and expand

Lift Station 3.

c) If the Facility has not returned to compliance 90 days after completing the actions in the Lift Station Plan, Respondent shall, within 180 days of completing the Lift Station Plan, submit to

the Department a permit application with a schedule to expand or upgrade the system to bring Respondent into compliance with Chapters 62-600, F.A.C. and 62-604, F.A.C.

Spill Response and Emergency Operations Plans

10. If a Sewer Overflow Response Plan (SORP) is Needed (for individual spills):

a) Within 60 days of the effective date of this Consent Order, Respondent shall provide to the Department an updated Sanitary Sewer Overflow Response Plan (SORP). The updated SORP shall include the following components:

i. Where and how equipment or materials may be obtained, how staff may be dispatched, and how contractors may be mobilized to respond to the discharge and to repair the damage or correct the problem that resulted in the discharge;

ii. Where and how equipment or materials may be obtained, how staff may be dispatched, and how contractors may be mobilized to respond to the discharge and to repair the damage or correct the problem that resulted in the discharge;

iii. How and when the required notifications will be made and updates provided to the Department, other regulatory agencies, and the public, including:

1. notification via the web form on the Department's Public Notice of Pollution webpage at <http://prodenv.dep.state.fl.us/DepPNP/user/pnpRequest> for unauthorized discharges greater than 1,000 gallons or that may endanger public health or the environment within 24 hours of discovery.

11. If an Emergency Operations Plan (EOP) is Needed (for major storms, etc.):

a) Within 60 days of the effective date of this Consent Order, Respondent shall provide to the Department an updated Emergency Operations Plan (EOP) to address larger events such as hurricanes, flooding, or significant power outages. The updated EOP shall be designed to build on the SORP and shall include the following components:

b) a public education campaign with 3 components:

i. outreach to customers via social media and other means prior to hurricane season, addressing sanitary sewer overflow prevention through maintenance of service connections and grease traps, not opening cleanouts or manholes, and preventing blockages,

ii. outreach as a predicted event approaches (e.g., hurricane), addressing what

customers should do or should avoid to prevent or be prepared for sanitary sewer overflows, and how customers can get information regarding their system before the storm,

iii. outreach after the event, addressing how to deal with backups and floodwaters, proper cleanup, health precautions, and how to get information about the sewer system's status or report problems.

CMOM and ASSET Management

12. **Mapping and Inventory:**

a) Within 90 days of the effective date of this Consent Order, Respondent shall submit a Mapping and Inventory Plan (hereinafter, MI Plan) with a scheduled completion date no later than two years of the effective date of this Consent Order.

b) The MI Plan shall include the location, size, type, and material for all existing or in-construction force mains, gravity mains, service laterals, isolation or control valves, air release valves, access and conflict manholes, pump stations, fixed backup power supplies, bypass hookups, portable generator hookups, and tie-ins of Satellite collection systems or bulk customers Satellite collection systems are sanitary sewers owned or operated by another entity that conveys sewage or industrial wastewater to the facility. The maps shall show directional flow routes of all wastewater flows.

c) For satellite systems and bulk customers, mapping and inventory shall include the names, responsible parties and contact information, and as much of the information listed in this paragraph as can be obtained.

13. **Assessment:**

a) Within two years of the effective date of this Consent Order, Respondent shall complete an Capacity, Management, Operations, and Maintenance (CMOM) assessment/assessment of the existing condition of all force mains, gravity mains, connections, isolation or control valves, air release valves, pump stations, and manholes in the collection system. The assessment shall be based on age, materials, estimated remaining life span under actual environmental and usage conditions, the maintenance and surveillance history, the capacity and actual loading of mains and pump stations, and any other information that bears on potential for failures. The assessment shall be done in sufficient detail that the resulting information can be used to prioritize and schedule improvements and preventive maintenance.

b) Within 180 days of the completion of the CMOM assessment, Respondent shall

submit to the Department a report summarizing the results of the assessment, identifying areas of highest vulnerability for failure resulting in unauthorized discharges, and outlining Respondent's plan to repair, rehabilitate, or replace the most vulnerable components of the system.

14. CMOM and Asset Management Program:

a) Within three years of the effective date of this Consent Order, Respondent shall submit to the Department a Capacity, Management, Operations and Maintenance and Asset Management Program (CMOM and AM Program). The CMOM and AM Program shall be scaled to fit Respondent's Facility and shall be designed to keep the collection system and wastewater treatment and disposal facility operating properly at all times. The CMOM and AM Program shall be consistent with the United States Environmental Protection Agency's guidance contained in the references below:

i. EPA's *CMOM Program Self-Assessment Checklist*

<https://www.epa.gov/sites/production/files/2015-10/documents/cmomselfreview.pdf>

ii. *Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems*, EPA 305-B-05-002,

https://www.epa.gov/sites/production/files/2015-10/documents/cmom_guide_for_collection_systems.pdf

iii. *Asset Management: a Best Practices Guide*, EPA 816-F-08-014,

<https://nepis.epa.gov/Exe/ZyPDF.cgi/P1000LP0.PDF?Dockey=P1000LP0.PDF>

b) The CMOM and AM Program shall include the elements listed below:

i. an Information Management System element that maintains detailed information on location, type, capacity, age, condition, failure history, maintenance history, and projected maintenance or replacement schedule for each component as determined by manufacturers' recommendations and information on actual condition and performance, Operations and Maintenance Manuals, including the information developed through the Mapping and Inventory and the Assessment of the collection system,

ii. an Inspection and Surveillance Program Element to monitor flows and the condition and performance of collection system components by remote monitoring and telemetry via a SCADA system, on-site inspections, and other means as applicable to each component, with an automatic alarm or alert system (e.g., autodialers) to notify staff when a malfunction occurs that compromises operation,

- iii. a Security and Emergency Management Program Element that incorporates the SORP and EOP and addresses routine security throughout the system,
- iv. an Infiltration and Inflow (I & I) Reduction Program Element to identify and eliminate sources of water other than domestic wastewater or authorized industrial wastewater flows entering the collection system,
- v. a Fats, Oils, and Grease (FOG) Control Program Element, including regulation of customers' grease traps via municipal ordinance or any other measures to prevent excessive loading of FOG into the wastewater treatment facility,
- vi. a Satellite System and Bulk Customer Program, if applicable, that maintains information about the composition and volume of flows entering Respondent's system, and that provides for control of unauthorized discharges, I & I and FOG in the satellite or bulk customers' system(s),
- vii. a Corrosion Control Program Element to control hydrogen sulfide and any other corrosive gases or liquids that have been found to deteriorate the system,
- viii. a Spare Parts Inventory Program Element, to prevent delays in responding to emergencies by maintaining a stock of commonly-used or hard-to-acquire critical spare parts and expediting internal processes for authorization, documentation, deployment, and restocking,
- ix. a Repair and Rehabilitation Program Element to promptly address existing or imminent failures and malfunctions,
- x. a Preventive Maintenance Program Element that schedules maintenance, replacements, and upgrades based on the information gathered under this paragraph and integrated in the Information Management System,
- xi. an Asset Management Program Element that plans for and funds the repairs, replacements, upgrades, and expansions of equipment and structures projected to be needed by the system during the life of the system.
- xii. a schedule for implementing each of the elements in this paragraph, with all elements implemented no later than four years after the effective date of this Consent Order.

Electronic Spill Reporting

15. Within 60 days of the effective date of this order, Respondent shall report all noncompliance events related to sanitary sewer overflows or bypass events to the Department

electronically using the Department's Business Portal at <http://www.fldepportal.com/go/> (via "Submit" followed by "Report" or "Registration/Notification").

Prefatory Language Applicable to All Corrective Action Paragraphs

16. As to paragraphs 6 through 15 of this Order the following shall apply:
 - a) The Department shall provide Respondent with its written approval, approval with conditions or modifications as a contingency of approval, or disapproval for any submittal, specification, or schedule submitted for Department approval pursuant to or required by this Order.
 - b) Respondent shall revise any submittal, specification, or schedule in accordance with the Department's written comments within thirty (30) days of Respondent's receipt of the Department's written comments unless such comments specify an alternative due date, in which case Respondent shall submit to the Department any revised submittal, specification, or schedule in accordance with the due date specified by the Department. Revised submittals are also subject to approval, approval with conditions and/or modifications, or disapproval by the Department following these approval procedures. Any revised submittal that is not approved or is not approved with conditions and/or modifications is considered noncompliant with the terms of this Order.
 - c) Upon receipt of the Department's written approval, or approval with conditions and/or modifications, Respondent shall implement any approved work plan in accordance with the schedule and provisions contained therein which shall be deemed an enforceable part of this Order.
 - d) Notwithstanding the time periods described in the paragraphs above, Respondent shall complete all corrective actions required by the paragraphs above within five years of the effective date of this Order and be in full compliance with Chapters 62-600, F.A.C. and 62-604, F.A.C., regardless of any intervening events or alternative time frames imposed in this Order, other than those excused delays agreed to by the Department, as described in paragraph 29.
17. Every quarter after the effective date of this Order and continuing until all corrective actions have been completed, Respondent shall submit to the Department a written report containing information about the status and progress of projects being completed under this Order, information about compliance or noncompliance with the applicable requirements of this Order, including construction requirements and effluent limitations, and any reasons for noncompliance. These reports shall also include a projection of the work Respondent will perform pursuant to this Order during the 12-

month period which will follow the report. Respondent shall submit the reports to the Department within 30 days of the end of each quarter.

18. Respondent's completion of all corrective actions required by paragraphs 6 through 15 within the respective deadlines specified thereunder shall constitute full compliance with Chapters 62-600, F.A.C. and 62-604, F.A.C.

19. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$34,490.02 in settlement of the regulatory matters addressed in this Order. This amount includes \$33,990.02 for civil penalties and \$500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order. The civil penalty in this case includes 11 violations of Rule 62-604.130(1), F.A.C. that each warrant a penalty of \$2,000.00 or more.

Stipulated Penalties

20. For unauthorized discharges from any part of Respondent's wastewater collection system or wastewater treatment and disposal facilities, Respondent agrees to pay stipulated penalties to the Department as follows:

a) Stipulated penalties shall be assessed according to the volume of the discharge and the number of days the discharge continued and/or impacted surface water, as shown below:

<u>Amount per day per Discharge or</u>	<u>Amount per day per Water Quality Violation</u>	<u>Discharge Volume</u>
\$500.00		Up to 1,000 gallons
\$1,000.00		1,001 to 5,000 gallons
\$2,500.00		5,001 to 10,000 gallons
\$5,000.00		10,001 to 25,000 gallons
\$10,000.00		in excess of 25,000 gallons

b) For each instance where Respondent fails to meet any final completion date for corrective actions scheduled pursuant to this Consent Order, including plans and schedules accepted in writing by the Department or compliance schedules incorporated in permits issued pursuant to the terms of this Consent Order, Respondent agrees to pay stipulated penalties in the amount of \$1,000.00 per day.

c) 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 21, 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 19 of this Order.

21. Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at: <http://www.fldepportal.com/go/pay/>. It will take a number of days after this order is final, effective and filed with the Clerk of the Department before ability to make online payment is available.

22. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Erin Rasnake, Assistant Director, Department of Environmental Protection, Northwest District Office at 160 West Government Street, Suite 308, Pensacola, Florida 32502. Respondent shall copy NWD_WastewaterCompliance@floridadep.gov for all submittal-related emails.

In-Kind Projects

23. In lieu of making cash payment of \$33,990.02 in civil penalties as set forth in paragraph 19 above, Respondent may elect to off-set this amount by implementing an in-kind penalty project, which must be approved by the Department. An in-kind project must be either an environmental enhancement, environmental restoration or a capital/facility improvement project and may not be a corrective action requirement of the Order or otherwise required by law. The Department may also consider the donation of environmentally sensitive land as an in-kind project. The value of the in-kind penalty project shall be one and a half times the civil penalty off-set amount, which in this case is the equivalent of at least \$50,985.03. If Respondent chooses to implement an in-kind project, Respondent shall notify the Department of its election by certified mail within 15 days of the effective date of this Consent Order. Notwithstanding the election to implement an in-kind project, payment of the remaining \$500.00 in costs must be paid within 30 days of the effective date of the Consent Order.

24. If Respondent elects to implement an in-kind project as provided in paragraph 23, then Respondent shall comply with all the requirements and time frames in Exhibit B entitled In-Kind Projects.

25. In-Kind Projects to offset Stipulated Penalties

a) In lieu of making cash payment of civil penalties and stipulated penalties required under paragraph 19 and paragraph 20 above, the Department, **at its discretion**, may allow Respondent to off-set this amount by implementing an in-kind project, which must be approved by the Department. An in-kind project must be either an environmental enhancement, environmental restoration or a capital/facility improvement project. The Department may also consider the donation of environmentally sensitive land as an in-kind project. The value of the in-kind penalty project shall be one and a half times the portion of the stipulated penalty amount for which the approved project off-sets. The Respondent shall request consideration of applying stipulated penalties toward an in-kind project within 15 days of notification by the Department that stipulated penalties are being assessed under paragraph 20. If acceptable, the Respondent shall comply with all the requirements and timeframes in Exhibit B, entitled In-Kind Projects. If not acceptable, the Respondent will pay the stipulated penalties within 30 days of receipt of the Department's notification that applying the stipulated penalties to an in-kind project is not acceptable.

26. In the event that Respondent elects to off-set civil penalties including stipulated penalties by implementing an in-kind penalty project which is approved by the Department, during the period that this Order remains in effect or during the effective date of any Department issued Permit to Respondent whichever is longer (Prohibited Transfer Duration), Respondent shall not transfer or use funds obtained by the Respondent from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System (hereinafter, Prohibited Transfer). Respondent shall annually certify to the Department using the Annual Certification Form located on Exhibit B to this Order that no Prohibited Transfer has occurred. In the event of any Prohibited Transfer, the In-Kind project option shall be forfeited, and entire civil penalty shall immediately become due and owing to the Department irrespective of any expenditures by the Respondent in furtherance of the In-Kind project.

27. 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.

28. 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.

29. 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.

30. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

31. 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.

32. 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.

33. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties up to \$15,000.00 per day per violation, and criminal penalties.

34. 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.

35. 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.

36. 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.

37. 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.

38. Respondent shall publish the following notice in a newspaper of daily circulation in Bay County, Florida. The notice shall be published one time only within 15 days of the effective date of the

Order. Respondent shall provide a certified copy of the published notice to the Department within 10 days of publication.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF CONSENT ORDER

The Department of Environmental Protection (“Department”) gives notice of agency action of entering into a Consent Order with CITY OF PANAMA CITY BEACH pursuant to section 120.57(4), Florida Statutes. The Consent Order addresses the sanitary sewer overflows occurring from the domestic wastewater treatment plant and its collection system at 206 N Gulf Blvd, Panama City Beach in Bay County, Florida. The Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Northwest District Office at 160 West Government Street, Suite 308, Pensacola, Florida 32502-5740.

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

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

- a) The name and address of each agency affected and each agency’s file or identification number, if known;
- b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner’s representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner’s substantial interests will be affected by the agency determination;
- c) A statement of when and how the petitioner received notice of the agency decision;
- d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency’s proposed action;
- f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency’s proposed action, including an explanation of how the alleged

facts relate to the specific rules or statutes; and

- g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 or received via electronic correspondence at Agency_Clerk@floridadep.gov, within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at 160 West Government Street, Suite 308, Pensacola, Florida 32502-5740. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

39. Rules referenced in this Order are available at <https://floridadep.gov/ogc/ogc/content/rules>.

ATTEST:

FOR THE RESPONDENT:


Lynne Fasone, City Clerk


Drew Whitman, City Manager

10-18-22
Date

DONE AND ORDERED this ___ day of _____, 2022, in _____, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Elizabeth Mullins Orr
Director
Northwest District

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:

Lea Crandall, Agency Clerk
Mail Station 35

Exhibit A

Table 1 - Sanitary Sewer Overflows - Panama City Beach WWTP #1 - Facility ID: FL0021512

SWO Number	Incident Date	Spill Location	Volume (gal.)	Recovered Volume (gal.)	WW Characteristic	Cause
2020-3419	06/28/2020	17501 Panama City Beach Pkwy	850	0	Untreated	Communication Failure
2020-4327	08/18/2020	1438 Wild Herring Way	400	0	Untreated	Equipment Failure
2020-4485	08/24/2020	206 North Gulf Boulevard	12,000	0	Untreated	Heavy Rain/Equipment Failure
2020-4591	08/29/2020	9500 Panama City Beach Parkway	10,000	0	Untreated	Heavy Rain/Equipment Failure
2020-5038	09/15/2020	9500 Panama City Beach Parkway	10,000	0	Untreated	Hurricane Sally
2020-5039	09/15/2020	22819 Panama City Beach Parkway	10,000	0	Untreated	Hurricane Sally
2020-5040	09/15/2020	6922 Vernon Avenue	7,500	0	Untreated	Hurricane Sally
2020-5153	09/16/2020	470 Wahoo Road	73,800	1,000	Untreated	Hurricane Sally
2020-7064	12/22/2020	3003 Joan Avenue LS #40	11,900	0	Untreated	Blockage - Grease/Baby Wipes
/	04/09/2021	3003 Joan Avenue	300	0	Untreated	Heavy Rain
2022-4677	08/22/2021	206 N Gulf Boulevard	4,500	10,000	Reuse/effluent	Tropical Storm Fred

2021-5026	09/07/2021	2529 Joan Avenue	5,000	0	Untreated	Equipment Failure
2021-5738	10/07/2021	3003 Joan Avenue LS #40	23,969	0	Untreated	October Rain Event
2021-5739	10/07/2021	Thomas Drive LS #59	12,574	0	Untreated	October Rain Event
2021-5740	10/07/2021	17550 Panama City Beach Parkway LS #73	75,446	0	Untreated	October Rain Event
2021-5741	10/07/2021	9500 Panama City Beach Parkway LS #96	43,816	0	Untreated	October Rain Event
2021-5916	10/15/2021	79 West Apartments, 102 Cabana Cay Circle	3,500	0	Reuse	Contractor - Customer Side Pipe
2021-6100	10/22/2021	01 Lullwater Drive LS #126	2,800	0	Untreated	Accident
/	10/27/2021	Beach Drive and Dolphin Drive	650	0	Untreated	Contractor Error
/	10/31/2021	5720 Magnolia Beach Road	500	500	Untreated	Contractor Error

Exhibit B

In-Kind Projects

I. Introduction

Proposal

a. Within 60 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable, Respondent shall submit, by certified mail, a detailed in-kind project proposal to the Department for evaluation. The proposal shall include a summary of benefits, proposed schedule for implementation and documentation of the estimated costs which are expected to be incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the in-kind project.

Proposal Certification Form

b. The proposal shall also include a Certification by notarized affidavit from a senior management official for _____ (insert name of Respondent) who shall testify as follows:

My name is _____ (print or type name of senior management official) and do hereby testify under penalty of law that:

A. I am a person with management responsibilities for _____ (print or type name of Respondent) budget and finances. During the eighteenth month period prior to the effective date of Consent Order OGC Case No.: _____ there has not been any transfer or use of funds obtained by the _____ (print or type name of Respondent) from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System.

B. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowingly submitting false information in this certification.

Sworn to and subscribed before me, by means of physical presence or online notarization, this ____ day of _____, 2022 by

Personally, known or by Production of the following Identification _____

Notary Public, State of Florida

Printed/typed or stamped name:

My Commission Expires: _____

Commission/Serial No.: _____

Annual Certification Form

My name is _____ (print or type name of senior management official)

and do hereby testify under penalty of law that:

A. I am a person with management responsibilities for _____ (print or type name of Respondent) budget and finances. During the twelve month period immediately preceding the notary date on this Certification, there has not been any transfer or use of funds obtained by the _____ (print or type name of Respondent) from the collection of sewer rates for any purpose not related to the management, operation, or maintenance of the Sewer System or to any capital improvement needs of the Sewer System.

B. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowingly submitting false information in this certification.

Sworn to and subscribed before me, by means of physical presence or online notarization, this ____ day of _____, 2022 by

Personally, known or by Production of the following Identification _____
Notary Public, State of Florida
Printed/typed or stamped name:
My Commission Expires: _____
Commission/Serial No.: _____

c. If the Department requests additional information or clarification due to a partially incomplete in-kind project proposal or requests modifications due to deficiencies with Department guidelines, Respondent shall submit, by certified mail, all requested additional information, clarification, and modifications within 15 days of receipts of written notice.

d. If upon review of the in-kind project proposal, the Department determines that the project cannot be accepted due to a substantially incomplete proposal or due to substantial deficiencies with minimum Department guidelines; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the proposal. Respondent shall correct and redress all the matters at issue and submit, by certified mail, a new proposal within 30 days of receipt of written notice. In the event that the revised proposal is not approved by the Department, Respondent shall make cash payment of the civil penalties as set forth in paragraph 19, within 30 days of Department notice.

e. Within 120 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable Respondent shall obtain approval for an in-kind project from the Department. If an in-kind project proposal is not approved by the Department within

120 days of the effective date of this Consent Order, or, of the Department's notification that applying stipulated penalties to an in-kind project is acceptable then Respondent shall make cash payment of the civil penalties as set forth in paragraph 19 or stipulated penalties as set forth in paragraph 20 above, within 30 days of Department notice.

f. Within 180 days of obtaining Department approval for the in-kind proposal or in accordance with the approved schedule submitted pursuant to paragraph I(a) above, Respondent shall complete the entire in-kind project.

g. During the implementation of the in-kind project, Respondent shall place appropriate sign(s) at the project site indicating that Respondent's involvement with the project is the result of a Department enforcement action. Respondent may remove the sign(s) after the project has been completed. However, after the project has been completed Respondent shall not post any sign(s) at the site indicating that the reason for the project was anything other than a Department enforcement action.

h. In the event, Respondent fails to timely submit any requested information to the Department, fails to complete implementation of the in-kind project or otherwise fails to comply with any provision of this paragraph, the in-kind penalty project option shall be forfeited, and the entire amount of civil penalties shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the \$33,990.02 penalty or stipulated penalties assessed under paragraph 20, no additional penalties shall be assessed under paragraph 20 for failure to complete the requirement of this paragraph.

i. Within 15 days of completing the in-kind project, Respondent shall notify the Department, by certified mail, of the project completion and request a verification letter from the Department. Respondent shall submit supporting information verifying that the project was completed in accordance with the approved proposal and documentation showing the actual costs incurred to complete the project. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the project.

j. If upon review of the notification of completion, the Department determines that the project cannot be accepted due to a substantially incomplete notification of completion or due to substantial deviations from the approved in-kind project; Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the project. Respondent shall correct and redress all the matters at issue and submit, by certified mail, a new notification of completion within 15 days of receipt of the Department's notice. If upon review of the new submittal, the Department determines that the in-kind project is still incomplete or not in accordance with the approved proposal, the in-kind penalty project option shall be forfeited, and the entire amount of civil penalty shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the \$33,990.02 penalty or stipulated penalties assessed under paragraph 20, no additional penalties shall be assessed under paragraph 20 for failure to complete the requirement of this paragraph.

1. Increase local match for Laguna Beach septic to sewer project
2. Lift Station 19 replacement (upgrade 40+ year old lift station to current technology and expand to handle higher development demands).
3. Power and pump upgrades for Brandywine (Lift Station 37) and possible additional land acquisition.
4. Secure additional property for replacement/expansion of Lift Station 73 (in front of La Quinta) and replace existing lift station. *This project is dependent on lift station property acquisition.*
5. Lift Station 2 replacement project (very old lift station on Front Beach Road right of way needing replacement and relocation) *This project is dependent on lift station property acquisition.*
6. Lift Station 3 replacement project (very old lift station by Lullwater Lake needing replacement and relocation). *This project is dependent on lift station property acquisition.*
7. Purchase another lift station site for Grand Lagoon Sewer project. *This project is dependent on lift station property acquisition.*
8. Connect West Bay Water Pumping Station operations building to City sewer and abandon septic system.
9. Lift Station 96 screening improvements (regional lift station across from Hombre needing pretreatment improvements)