



The Florida Department of Environmental Protection, Panama City, and Lynn Haven

How “Enforcement” Turns Into Quiet Acknowledgment of the Inevitable

Over the years, Florida has assiduously labored to create an image of the state with a landscape of palm trees scattered along pristine beaches that meet the clear, gentle waters of the Gulf of Mexico or the Atlantic Ocean. Tranquil wetlands are also presented to the public as providing homes to multitudes of aquatic plants and animals. For decades, the images have been designed to showcase Florida’s natural beauty. It is an approach that has helped the state to grow financially, because it draws new residents and tourists who want to experience this would-be paradise. But the growth that has followed has consequences for both the residents who call Florida home and the environment. This report covers the Panama City area of north Florida, a region that until recently has been known for miles of unspoiled beaches, wetlands, and forests.

Overview of the Geographic Area Covered by this Report

Situated in Florida’s Panhandle, Bay County is among the communities that has invested heavily in advertising that is designed to showcase Florida’s natural beauty. Except for Panama City and surrounding suburbs, this largely undeveloped region bears the nickname “Forgotten Coast.” This panhandle county sits on the northern Gulf Coast. Although bounded on the south by the Gulf Coast, the region is dotted with multiple waterbodies, including Saint Andrews Bay, East Bay, Grand Lagoon, North Bay, Lynn Haven Bayou, Posten Bay, and Watson Bayou, to name a few. The Gulf beaches feature what many Floridians call, “sugar-sand,” a bright white sand that meets the emerald-green waters of the northern Gulf coast.

This entire region has also been heavily advertised as a vacation destination for tourists, especially during spring break. Though estimates vary, *USA Today* has [reported](#) that the population of Panama City Beach swells to 250,000 in the early Spring. In other times of the year, the beachside community is home to roughly 12,000 residents. Travel just a few miles north, however, and one finds a significant population of year-round residents who call the area home. Panama City is only a few miles north of the Gulf of Mexico and Panama City Beach. Panama City has over 36,000 residents and just to the north, an additional 21,000 residents call the suburb of Lynn Haven home. To the southeast of Panama City lies Tyndall Air Force Base, a military base that is bounded on the south by the Gulf of Mexico, and is home to roughly 20,000

civilian and active duty personnel.¹ In total, it is estimated that the [entire area](#) has a population of just over 171,000.

Three wastewater treatment facilities serve the Panama City and Lynn Haven geographical area.² Two of these facilities, St. Andrews and Millville, serve Panama City. Each is permitted to discharge 5 million gallons of treated wastewater to adjacent surface waters. The third wastewater treatment facility serves Lynn Haven. It is authorized to discharge 2.5 million gallons of treated wastewater to surface waters. Of the three, the Lynn Haven wastewater treatment plant is the furthest from the Gulf of Mexico, but still only a mere 9 miles away.

The surface waters that receive these wastewater discharges are critical to the environmental health of the area. It is an area rich in seagrasses and wetlands that provide shelter and food for wildlife. As the Florida Department of Environmental Protection (FDEP) [states](#) on its website,

“Seagrass communities are considered to be the most productive ecosystems in the world. They are a vital component of Florida’s coastal ecology and economy. Seagrass habitat is an integral part of the St. Andrews Bay system and performs several significant functions. Seagrasses provide nurseries, nutrition and shelter for a wide variety of commercial and recreational fish and invertebrate species; they provide critical habitat for animals such as wading birds, manatees and sea turtles; and their extensive root systems stabilize sediments on the bay bottom, helping to improve water quality and clarity which, in turn, keeps the bay healthy. The health and status of many commercially and recreationally important seafood species such as shrimp, crabs, scallops, redfish, trout and mullet is directly proportional to the health and acreage of seagrass habitat.”

The agency’s site [further states that](#),

“Seagrasses that are affected by propeller scarring may never completely recover, and areas that have been damaged have the potential to expand and merge with other injuries resulting in even greater cumulative impacts. Impaired water clarity due to turbidity, algal blooms, and improper disposal of dredged material as well as excessive nutrients and disease may also degrade valuable seagrass habitat. Elevated nitrogen levels stemming from increased commercial and residential development may lead to a decline in the relative abundance of seagrasses compared to phytoplankton and macroalgae, including epiphytes. High nutrient levels may also make seagrasses more susceptible to disease. St. Andrews Bay is a unique and fragile ecosystem that is host to abundant concentrations of marine grasses. Three different species of seagrasses are known to occur within the aquatic preserve: Cuban shoal grass (*Halodule wrightii*), manatee grass (*Syringodium*

¹ Tyndall Air Force Base is also less than 15 miles to the northwest of Mexico Beach, where, in October 2018, Category 5 Hurricane Michael caused catastrophic damage.

² Excluding Tyndall Air Force Base, which is a federal installation.

filiforme), and turtle grass (*Thalassia testudinum*). These communities are critically important to the health and vitality of the waters of the bay; however, prominent and increasing propeller scar damage along with an increase in nutrient levels is evident and increasing in many areas. With increasing development and visitor use, these trends are expected to continue.”

Hurricane activity also demands that wetlands such as those to which these facilities discharge remain healthy. It is [well documented](#) that coastal wetlands provide a buffer against deadly storm surges and high waves associated with tropical systems. For example, [wetlands are credited](#) with reducing property damage by \$625 million when Hurricane Sandy struck the East Coast. Wetlands can be remarkably resistant to damage from hurricanes. In fact, [one study](#)³ has found that only 2% of the marshes were visually damaged from Category 5 Hurricane Michael, which, in October 2017, struck just to the east of Panama City. However, of the marshes that were damaged, “[84% had not recovered within six months](#)” of the storm. The study further pointed out that it is [critical to restore the health of aquatic vegetation](#) after an area, such as Bay County, is struck by a major hurricane.

The Ability of Wastewater Treatment Plants to Cause Significant Damage

Wastewater treatment plants (WWTPs or facilities) are expected to be designed to receive, treat, and discharge wastewater in quantities that reflect the population that they serve, and the environment within which they operate. This can mean that two different facilities serving similar-sized populations may have different designs if one of them typically receives higher and more frequent heavy rainfall events. If not designed properly, or if a facility is simply decrepit, rainfall can infiltrate these systems and cause them to malfunction. But, when operating as intended, the treated wastewater is normally discharged back into the environment, absent the harmful chemicals and nutrients, e.g., nitrogen and phosphorus that would otherwise damage the environment and/or harm the public’s health. Normally, these systems are reliable. However, when they malfunction, whether due to wear and tear or outside factors such as heavy rainfall events, they often discharge this polluted wastewater into the very areas that they are supposed to protect.

The harmful pollutants found in untreated wastewater vary from one facility to another, [but the following description by Riverkeeper.org](#) illustrates the problem of Combined Sewage Overflows (CSOs):

CSOs contain raw sewage from homes, businesses and industries, as well as stormwater runoff and all the debris and chemicals that wash off the street or are poured in storm drains. This toxic brew can be unappealing and quite dangerous. CSOs contain untreated human waste, oxygen-demanding substances, ammonia, pesticides (such as malathion sprayed on the city to fight West Nile Virus), nutrients, petroleum products (from sources such as gas stations, auto repair shops, and garages), and other potential toxins and

³ Published on October 14, 2021, in *Scientific Reports*, Article number: 20381

pathogenic microorganisms associated with human disease and fecal pollution.

The most significant pollutants in this mix are pathogenic bacteria and viruses; toxic substances; organic material and nutrients; and debris and other solid matter.

Human and animal waste contributes fecal coliform and enterococcus bacteria and 40 types of disease-causing pathogens can be are (sic) found in raw sewage that discharges in CSOs.

Toxic metals and other hazardous substances come from industrial effluent, street runoff, and from households that contribute paints, oils, solvents and cleaners down the sink drain or storm drains in the street. Pesticides also wash off lawns and gardens into storm sewers.

Debris that washes off the streets or is flushed down toilets includes syringes, tampon applicators, and other plastic products.

The fact that the Bay County facilities discussed in this report are allowed by the FDEP to discharge into multiple fragile waterbodies means that there is little room for error in the operation of the facilities. Unpermitted discharges of raw sewage that is typically high in nutrients and chemicals could endanger the vital seagrasses and the sea-life that depends upon them for survival. Moreover, the waterbodies that receive these discharges are connected to the Gulf of Mexico, which causes further problems for the public that frequents the adjoining beaches should the discharges not be properly controlled.

When looking at the performance of these facilities in 2021, we found that there is significant reason for the public to be concerned about the present and long-term health of the ecosystem in Bay County. As we discuss below, over the course of 2021, these facilities dumped *100s of thousands of gallons of untreated wastewater* into the multiple bays and bayous that ultimately discharge to the Gulf of Mexico. Unfortunately, the problem appears to be chronic and systemic. Equally disturbing is the FDEP's seeming inability to address the problem in a meaningful way.

The Panama City Area

Panama City is served by three WWTPs, Millville and St. Andrews, both of which are considered to be “major” dischargers, i.e., having the capacity to treat/discharge at least one million gallons of wastewater per day.⁴ The third WWTP is located in Lynn Haven, a short distance from downtown Panama City. It also has the capacity to treat/discharge at least one million gallons of wastewater per day. Each of the three WWTPs have separate wastewater

⁴ Panama City Beach is a separate governmental entity. According to the EPA, it has no major wastewater treatment facilities, but there are 66 permitted NPDES stormwater facilities, each of which has what is known as a “generic permit.” Generic permits are issued by the FDEP and essentially contain no specific conditions of operation. Of the 66 generic permits, only 4 were issued to Panama City Beach. 4 others were issued to other governmental entities. The remainder were issued to private parties, e.g., hotels. In 2021, there were 19 sewage overflows reported in the Panama City Beach area, and all of them were associated with either the City of Panama City Beach or the U.S. Navy. The 19 overflows accounted for at least **166,778** gallons of sewage that was discharged in 2021 and are not included in the totals reported for the 3 major facilities covered in this report.

permits, each of which is issued by the FDEP as part of the agency's National Pollutant Discharge Elimination System (NPDES), a federal program, the administration of which the EPA delegated to the FDEP in 1995.

A. Millville AWT Facility

Panama City operates the Millville AWT Facility (Millville) under NPDES Permit number FL0170909 (Millville Permit). The Millville Permit expired on June 30, 2020; however, Millville timely applied for a renewal permit, thus extending the Millville Permit until a new permit is issued by the FDEP. Millville is authorized to discharge up to an annual average of 5.0 million gallons per day from this facility. The discharge point is the Martin Lake outfall, just west of St. Andrew Bay, Class III Marine Waters. At the time of issuance in 2015, the Millville Permit was accompanied by an Administrative Order that required the facility to come into compliance with dissolved oxygen limits by August 1, 2017, a requirement that was expected to require upgrades to the facility's structure.

Despite the expectations of improved performance, the Millville facility had multiple permit violations over the years. As a result, on October 29, 2020, Panama City entered into a consent order (Consent Order) with the FDEP to address various noncompliance issues with both the Millville and St. Andrews WWTPs. The Millville facility was cited for sewage overflows,⁵ a noncompliant ultraviolet system, and multiple effluent violations. There were 11 fecal coliform exceedances (in a period from 2/28/2017 through 8/31/2019) and 13 ultraviolet light dosage violations (the system was providing insufficient ultraviolet disinfection) during the same period. In addition, there were unspecified unauthorized connections of the wastewater collection system to the facility's stormwater discharge system. Finally, the Consent Order cited 36 sanitary sewage overflows (SSOs) that occurred between September 16, 2016, and October 31, 2019. The Consent Order does not provide details on which facility was responsible for each overflow.

Panama City was ordered to provide the FDEP with multiple engineering reports addressing the violations and to bring the facility into full compliance within 2 years. The FDEP assessed Panama City the sum of \$126,262.61 as a combined penalty to address the violations at both facilities. Further, the Consent Order provided for the assessment of graduated stipulated penalties up to \$10,000/day for each unauthorized future discharge from each facility.

On August 25, 2021, 10 months after the Consent Order was issued, the FDEP conducted an inspection of the Millville facility. The inspector found that the facility was out of compliance with permit requirements for records and reports, overall operation and maintenance, and its effluent quality. Among other things, it was noted that the facility was not maintaining proper UV records, leaks were found in the tanks, debris was lying around, and a security gate had been left unlocked. It was also noted that there had been multiple (72) SSOs since the Consent Order had been entered.⁶ Once again, there were UV violations, and 14 effluent exceedances were identified.

⁵ See, infra.

⁶ There were 9 in the balance of 2019, 19 in 2020, and 69 in 2021. (3 of the 19 SSOs in 2020 occurred after the Consent Order was issued.) The CEI addressed the SSOs as "being addressed through formal enforcement. No further actions required for this matter at this time."

In reviewing SSOs originating from the Millville facility, FL PEER has found that in calendar year 2021, 102 overflows originated from the Millville facility. These overflows totaled **1,906,494** gallons of raw sewage. **1,788,300** gallons of this total was discharged into surface waters—largely St. Andrew Bay, Watson Bayou and/or Massalina Bayou.

Other than sending warning letters to Panama City, the FDEP’s response to date has been to assess stipulated penalties. The first stipulated penalties were assessed on August 18, 2021. These penalties totaled \$65,500 for discharges originating from a combination of the Millville and St. Andrews facilities. These discharges occurred between April 1 and June 30, 2021, and \$52,000 of the \$65,500.00 in stipulated penalties were attributable solely to the Millville WWTP. In addition, \$14,000.00 in additional stipulated penalties were assessed because of UV violations from the Millville WWTP. Thus, the total assessed against the Millville facility was \$66,000. Panama City responded to this demand by submitting an “in-kind” proposal that provided for the purchase of an Elgin Crosswindl Regenerative Air Sweeper (a street sweeper) to help prevent waste from entering the city’s stormwater system. The FDEP accepted this proposal on September 27, 2021, which meant that Panama City was allowed to resolve the stipulated penalty demand by paying a substantially higher amount, \$286,911.00.⁷ However, the upgrades would not result in a reduction in sewer overflows.

The FDEP has now assessed a second round of stipulated penalties for the period of July 1, 2021, through September 30, 2021. The total assessment on January 25, 2022, is \$345,000.00, all but \$2,000.00 of which is the result of more sewer overflows. \$262,000.00 of the \$343,000.00 assessment is due to sewer overflows from the Millville facility. Panama City has responded to this demand by indicating that it will satisfy them with yet another in-kind project, the details of which are not yet available.

B. St. Andrews WWTP

The St. Andrews WWTP (St. Andrews) operates under NPDES Permit number FL0020451 (St. Andrews Permit). The St. Andrews Permit was issued on January 25, 2017, and expired on January 24, 2022, but has been administratively continued inasmuch as the renewal application was timely submitted. St. Andrews has an annual average daily flow of 5.0 MGD; however, the permit authorizes construction to upgrade the facility to a 10 MGD facility, an expansion that is expected to be completed by 2030. The facility discharges to St. Andrew Bay, a Class III fresh waterbody.

The St. Andrews facility was inspected on August 6, 2020, at which time the FDEP found it to be in noncompliance. Toxicity values were not being reported, and there were also 24 fecal coliform violations, 5 Total Phosphorus exceedances, 10 Total Nitrogen exceedances, 2 Total Suspended Solids exceedances, 6 Enterococci exceedances, 1 Total Residual Chlorine violation and 1 pH violation. SSOs were not evaluated. These violations were not addressed in the October 29, 2020, Consent Order.

⁷ The street sweeper was to have been placed into service withing 4 months of the FDEP’s September 27, 2021, project approval. However, on January 31, 2022, Millville requested an extension due to “supply chain” delays. On February 10, 2022, the FDEP extended the deadline to September 30, 2022.

St. Andrews has had 52 SSOs in 2021. These SSOs have illegally discharged **1,475,857** gallons of raw sewage into the environment. Of that, **1,425,664** gallons (from 41 of the 52 SSOs) were discharged into surface waters, including St. Andrews Bay, Massalina Bayou, Watson Bayou, Johnson Bayou, Lake Caroline, Lake Huntington, Poston Bayou Goose Bayou, and Lake Ware.

To date, the FDEP has simultaneously assessed stipulated penalties against both Millville and St. Andrews. The first assessment (on August 18, 2021) assessed \$13,500 for SSOs that originated from the St. Andrews facility. Out of the \$343,000 demand in stipulated penalties that was just issued, \$81,000 was for 24 SSOs that originated from St. Andrews.

Lynn Haven

Situated less than 8 miles to the north of Panama City sits the small, but growing city of Lynn Haven, Florida. The 21,000 residents are served by a WWTP that has a history of compliance issues with which the FDEP has had to deal. On April 18, 2018, *Florida PEER* [wrote to the EPA](#) concerning this facility because of multiple unauthorized sewage overflows and effluent quality violations. EPA failed to respond to our complaint.

The Lynn Haven WWTP (Lynn Haven) is operated by the City of Lynn Haven under NPDES permit number FL0169978 (Lynn Haven Permit). This permit was issued on February 28, 2020, and expires on February 27, 2025. It authorizes Lynn Haven to operate at a capacity of 2.5 MGD annual average daily flow. The facility discharges to East Bay, the western segment of St. Andrews Bay, which is a Class III Marine Waterbody. Reclaimed water is permitted to be discharged via a slow-rate public access system.

The FDEP's latest inspection of Lynn Haven was on August 26, 2021. At that time, the facility was rated as being in significant noncompliance, largely because of problems with recordkeeping/reporting, its laboratory, effluent violations and SSOs. The facility's laboratory was in violation because of a failure to calibrate thermometers. Lynn Haven personnel were also improperly completing discharge monitoring reports that they sent monthly, as part of a permit requirement to advise the FDEP of the status of the facility's effluent. There were also violations of permit limits on toxicity, total suspended solids, total recoverable copper, and total nitrogen. With respect to sewage spills, the report states that, "[t]he City reported over 100 spills in the monitoring period, with multiple at same location, with the same cause, which is considered a chronic SSO." On October 28, 2021, the FDEP followed the inspection with issuance of a warning letter to Lynn Haven, signaling that formal enforcement would be taken.

Lynn Haven responded to the warning letter on November 9, 2021, by stating that it was correcting the issues cited in the inspection. It also argued that City of Lynn Haven was still recovering from the aftermath of Hurricane Michael (October 2017) and that it was engaged in new construction at the facility.⁸

Sewage overflows have been numerous at Lynn Haven. In calendar year 2021, this town of only 21,000 residents had **forty-eight** SSOs that, in total, discharged **3,605,700** gallons of raw sewage into the environment. Just under half of the overflows went to surface waters. The total discharge

⁸ The permit was revised on November 4, 2021, to allow for major modifications to the Lynn Haven facility.

to surface waters was 1,717,200 gallons and most of the discharges went to North Bay; although St. Andrew Bay, Lynn Haven Bayou and Anderson Bayou also received raw sewage. All but 4 of these sewage overflows to surface water occurred after the FDEP inspected Lynn Haven on August 26, 2021.

To date, other than sending warning letters, there has been no formal enforcement action by the FDEP against Lynn Haven for the violations that it has documented as occurring in 2021.

Combined Sewage Impact

The three above-named wastewater treatment plants have had an oversized impact on the Panama City area. Each of the three WWTPs had a history of sewage overflows leading up to 2021. Without question, some of those overflows were the result of Hurricane Michael, which ravaged the area in October 2017. But that was over 3 years ago, and these three WWTPs are continuing to cause significant harm to the environment. In just 2021, the number of gallons illegally discharged were:

WWTP	Number of Overflows in 2021	Gallons Discharged to Surface Waters	Non-Surface Water Gallons Discharged	Total Gallons Discharged in 2021
Millville	102	1,788,300	118,194	1,906,494
St. Andrews	52	1,425,664	50,193	1,475,857
Lynn Haven	48	1,717,200	1,888,500	3,605,700
Totals of All 3	202	4,931,164	2,056,887	6,988,051

What these numbers mean is that almost 5 million gallons of raw sewage was illegally discharged into the surface waters that are found in the Panama City area.⁹ According to [62-302.400 \(1\), F.A.C.](#), which was adopted by the FDEP, these Class III waters are supposed to be used for “Fish consumption; Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife.” In other words, according to the State of Florida, the public is supposed to be able to swim in these waters and to eat fish caught in them. Likewise, they are supposed to be suitable for maintaining a healthy wildlife population. Dumping raw sewage into them is hardly consistent with that legal requirement.

A review of the notices submitted by Panama City and Lynn Haven reveal what can only be described as one excuse after another for each SSO. But cumulatively, the cities invariably blame heavy rainfall as the cause, meaning that the facilities are not equipped to handle the amount of water that flows into them when these rain events occur.¹⁰ And therein lies the problem. This is Florida. Heavy rain events are a fact of life, as are tropical systems that move through the area—

⁹ Not included in this figure is the 166,778 gallons of raw sewage spilled in 2021 into the area by Panama City Beach.

¹⁰ Panama City and Lynn Haven are not alone in using heavy rainfall as an excuse for permit violations. Such rain events are used throughout the state by WWTPs that are not constructed to handle the increased water loading.

events that expected to increase in number and severity with climate change. Consequently, it should be expected that these WWTPs be constructed to a level that will enable them to maintain compliance with their permits even with these rain events. Equally important, the FDEP should not issue permits to these facilities if the agency is not assured that they can operate in compliance with those permits even during such rain events.

The area's surface waters were not the only areas to which these facilities illegally discharged raw sewage. Over 2 million gallons of raw sewage was also spilled last year onto a) the grounds of these 3 WWTPs where public employees work, and b) onto the streets and yards owned and frequented by the public. While the facilities' employees are no doubt equipped to protect themselves from contact with this sewage, the public is not.

The Issue of FDEP Enforcement

As noted above, the FDEP has actually taken enforcement actions against Panama City because of the violations committed at Millville and St. Andrews. The agency has assessed \$328,000.00 in penalties against Millville, and \$94,500.00 against St. Andrews, resulting in a combined penalty of \$422,500.00. \$16,000.00 of the penalty assessments has been attributed to effluent violations, while \$406,500.00 is the result of stipulated penalties assessed after raw sewage overflows.

Looking at just Millville and St. Andrews, the end result concerning penalty assessments is that for each of the combined 154 overflows released, the permittees have, on average, been assessed \$2,639.61 (\$406,500.00 penalties assessed/154 overflows).

Meanwhile, Lynn Haven has been assessed nothing.

Under [§ 403.141\(1\), Fla. Stat.](#) the violations identified by the FDEP are each punishable by the assessment of a civil penalty of not more than \$15,000. The statute further provides that, “[i]f a violation is an unauthorized discharge of domestic wastewater, each day the cause of the violation is not addressed constitutes a separate offense until the violation is resolved by order or judgment.”¹¹ And the Florida legislature has made it clear that civil and/or criminal penalties are to be assessed liberally. It has done so by the adoption of [§ 403.161\(6\), Fla. Stat.](#), which states that “[i]t is the legislative intent that the civil penalties and criminal fines imposed by the court be of such amount as to ensure immediate and continued compliance with this section.”

So, how does the Consent Order negotiated by the FDEP in October 2020, comport with the legislative intent that environmental violations be punished “to ensure immediate and continued compliance with this section,” as stated in § 403.161(6), Fla. Stat.? First, it is obvious that consent orders are the FDEP's preferred means of resolving environmental violations. They provide a mechanism for resolution without the need for resorting to litigation, be it administrative or judicial, thus saving costs and time. And consent orders commonly use stipulated penalties to address possible future violations thereby reducing the need for further

¹¹ The statute does not clarify what it means to “address” an offense.

litigation costs. Viewed from that perspective, the Consent Order somewhat achieved its purpose, because it was executed in a timely manner.

But that is where the FDEP's own compliance with its statutory mandate ended. It was abundantly clear that the FDEP was faced with a violator that was committing serious violations and that would likely continue to commit those violations into the foreseeable future. After all, the Consent Order identified 36 SSOs that had occurred in a 12-month period that ended one year prior to the execution of the Consent Order.¹² And, according to filings with the FDEP by Panama City, there had been twenty-three (23) SSOs (most of which were to surface waters) that occurred between October 2019 and October 2020, when the Consent Order was executed. Those SSOs totaled 236,548 gallons and averaged 10,752 gallons.

So, it was, or should have been, clear to the FDEP that SSOs were a chronic problem at the Panama City WWTPs. Likewise, while the Consent Order addressed the collection system in general (Paragraph 9), it is unclear whether or not the language applies to both Millville and St. Andrews. The progress reports that Panama City has submitted speak to work done at the Millville lift stations, but not to those in St. Andrews. St. Andrews' NPDES provides for facility upgrades, but they are not required to be completed until 2030. Meanwhile, in spite of the work being done, the SSOs continue and are arguably worsening at both WWTPs.

In hindsight, the FDEP would have been better advised to forego administrative remedies such as issuing the Consent Order and, instead, to have sought judicial intervention and injunctive relief so that more serious oversight would have been conducted. At the very least, if the agency was intent on avoiding judicial intervention, the stipulated penalties that it sought should have been higher, because it was clear at the time, and is now even clearer that they were simply ineffective from a deterrence standpoint.

All of the above address only Millville and St. Andrews. As we stated above, however, to date, no consent order has been issued and no penalties have been assessed against Lynn Haven. This is a facility that has long been in noncompliance, an issue that [we reported on](#) in 2018. That noncompliance included multiple ongoing SSOs. Yet, for whatever reason, the FDEP has chosen not to firmly address the problem. Under the circumstances, immediate judicial intervention would be more than justified.

A Tale of Two Cities

How does the FDEP's handling of the violations in the Panama City area compare with its handling of similar violations committed at roughly the same time in Fort Lauderdale? These two cities are roughly 560 miles apart, the former being in densely populated south Florida and the latter being in the lesser populated Panhandle.¹³ Fort Lauderdale's population is reported by the [census bureau](#) as 182,760, whereas Panama City's population is reported to be 36,000. Despite

¹² In addition to multiple serious effluent violations.

¹³ There are political differences as well, Fort Lauderdale being heavily progressive and Panama City being just as heavily conservative.

the differences in population, however, both cities are popular tourist destinations, particularly during spring break, when both see sizeable increases in their respective populations. The two cities also operate under different FDEP district offices, the Southeast District oversees Fort Lauderdale, whereas the Panama City falls under the Northwest District's administrative responsibility. In both cases, the FDEP was well aware of the failure of these three WWTPs (2 in Panama City and 1 in Fort Lauderdale) to abide by the NPDES permits that they held when they entered into the administrative consent orders that oversee their operations. But that would seem to be where the similarities end.

The City of Fort Lauderdale is no stranger to sewage overflows. It has been operating under its own consent order since 2016.¹⁴ Under the terms of this order, Fort Lauderdale was to pay the FDEP \$339,577.00 in civil penalties. And, just like Panama City, the FDEP provided for the payment of stipulated penalties, albeit of somewhat higher amounts, e.g. \$5,000 for new spills of 25,001 to 100,000 gallons and \$10,000.00 for spills exceeding 100,000 gallons.¹⁵ But the situation worsened considerably in December 2019, [when the city had major spills](#) that exceeded 200 million gallons. After this round of sewage spills, the FDEP, in well publicized events, [demanded nearly \\$1.8 million in penalties](#) from Fort Lauderdale. The penalties were high, as they should have been. Interestingly, however, had the FDEP operated in accordance with the consent order that was then governing Fort Lauderdale's WWTP, the penalties would have been much less, because stipulated penalties would have applied and set the penalties for each spill at a maximum of \$10,000. Instead, the FDEP opted to disregard the stipulated penalties, and threatened Fort Lauderdale with filing suit.¹⁶

For whatever reason, FDEP has chosen not to treat the 202 raw sewage discharges in the Panama City area on the same level as it did in Fort Lauderdale. Instead, it has opted to abide by the Panama City's Consent Order at the same time that it takes no enforcement against Lynn Haven. Meanwhile, the discharges into the bays and wetlands in the Panama City area continue.

Conclusion

The near continuous discharge of raw sewage into the wetlands, bays and bayous that are found in Bay County seems to be unending. Rather, the situation is one in which the FDEP, with now-expected regularity simply issues a new demand for the payment of stipulated penalties to the Panama City as though those assessments will solve the problem. But, as the FDEP on its own website acknowledges, these discharges are taking place in a very fragile ecosystem that has already been hit hard by Hurricane Michael just 4 years ago. Timelines that provide distant completion dates for facility improvements are little comfort, or defense, against future storms that can cause even more damage because of wetlands that have severely weakened by the failure of these facilities to operate as intended. They are likewise no comfort to the public that

¹⁴ FDEP OGC File No. 16-1487.

¹⁵ Paragraph 10. a), Fort Lauderdale Consent Order.

¹⁶ Apparently using paragraphs 11 and 20 of the consent order as justification. Paragraphs that are also found in paragraphs 20 and 29 of the Panama City Consent Order.

comes into contact with the polluted water that comes from the discharge of millions of gallons of raw sewage. Sadly, the term “Forgotten Coast” could not be more apt.