



Public Employees for Environmental Responsibility

962 Wayne Avenue, Suite 610 • Silver Spring, MD 20910

Phone: (202) 265-PEER • **Fax:** (202) 265-4192

Email: info@peer.org • **Web:** <http://www.peer.org>

February 4, 2019

Mary Walker
Acting 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—Howard F. Curren AWTP, City of Tampa—NPDES Permit FL0020940

Dear Ms. Walker:

Public Employees for Environmental Responsibility (PEER) formally requests that the U.S. Environmental Protection Agency initiate immediate action against the Howard F. Curren Advanced Wastewater Treatment Plant (AWTP) that serves the City of Tampa, Florida (Tampa or Permittee). We are seeking this action on EPA's part due to 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 Tampa'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.

A. A General Overview of the Permit

Tampa operates a wastewater discharge facility (Facility) under NPDES Permit Number FL0020940-019 (Permit). The Permit was issued on November 23, 2015, and it expires on November 22, 2020. The Facility is located in Hillsborough County, Florida and is a major discharger that is authorized to discharge an annual average of 96.00 MGD annual average daily flow of effluent into Hillsborough Bay (Upper). Hillsborough Bay is a Class III fresh waterbody that, under Florida law, is a waterbody that is supposed to 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 Permit is jointly administered by the Hillsborough County, Environmental Protection Commission (HCEPC), pursuant to [Chapter 84-446](#), Laws of Florida, as amended by Chapter 87-495.

[According to ECHO](#), this site has been in noncompliance for 6 of the past 12 quarters and in SNC for 2 of the past 12 quarters. Echo currently lists it as being in noncompliance. The [Effluent Exceedances Report](#) indicates that the majority of the violations have been for pH and IC25 violations. Though not listed on the current Effluent Exceedances Report, previous reports showed at least 365 days in which the Facility had Dichlorobromomethane exceedances. Historical records show that it has been on QNCRs for 29 of 49 quarters from 2005 through the first quarter of 2017, and 15 of the 29 have been since 2013. Additionally, all but 2 of the appearances on QNCRs have been for effluent exceedances, as opposed to reporting violations.

FDEP's enforcement response against Tampa has essentially been designed to give the appearance of taking action, but realistically it's nothing more than window dressing. The agency has fallen far short of both the EPA's and the FDEP's own standards and policies. Consequently, protection of the environment and public health requires that the EPA assume responsibility for oversight over this permit. PEER, therefore, requests that the EPA's Region 4 take immediate and appropriate action against this violator under its concurrent authority to enforce the CWA in Florida.

B. A History of Noncompliance

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

1. *Violations Between January 2012 and Permit Issuance in 2015*

There have been six inspections of the Facility between January 2012 and the date upon which the Permit was renewed on November 23, 2015. Despite violations being documented at each inspection, the FDEP has appeared to go out of its way to give the Facility favorable ratings.

The first of these inspections took place on March 2, 2012, at which time the Facility was rated

as being in “minor non-compliance.” Only two sections were marked as being in non-compliance, despite other sections having problems, i.e. some violations were written off. The inspection report notes that there were no “major deficiencies” found in the laboratory. The report does not itemize the violations that were found. The Records and Reports section notes that a DMR showed the wrong number of chlorine exceedances. The report further notes that some equipment at the Facility was non-functional, but Operation and Maintenance was marked as being in-compliance. While there were sanitary sewer overflows, those were deemed as being covered under an existing consent order, though that section was marked as being in significant non-compliance. Finally, the section for effluent quality was rated as being in non-compliance because DMRs showed violations for fecal coliform, chlorine residual and chlorine disinfection.

The next inspection was conducted on December 19, 2013, by the Hillsborough County Environmental Protection Commission. The Facility was rated as being in-compliance at that inspection, despite multiple effluent exceedances. The effluent exceedances included twelve exceedances of Dibromochloromethane, two Copper exceedances, three exceedances of Total Residual Chlorine, one pH exceedance and Fecal Coliform exceedances, all but one of which, the HCEPC wrote off. There were also multiple toxicity test failures for Ceriodaphnia Dubia.

One month later, on January 23, 2014, the FDEP conducted a file review of the Facility’s DMRs and concluded that there were multiple effluent violations and therefore rated the Facility as being in significant non-compliance (SNC). This review was narrow, in the sense that the FDEP apparently only looked at the Dibromochloromethane exceedance. Essentially, the FDEP confirmed the findings of the HCEPC. The action taken by the FDEP was to send the Permittee a Compliance Assistance Offer (CAO) that did not, at that point, demand the payment of civil penalties or other actions on the part of the Permittee beyond telling the FDEP what the Permittee was doing to resolve the violations.

The FDEP then conducted a compliance evaluation inspection (CEI) on February 25, 2014, a month after the file review was completed. The Facility was again rated as being SNC after this inspection. The Facility’s effluent quality was once again found to be the problem, and, just as before, the Dibromochloromethane levels were found to be too high. In addition, the FDEP noted that there were four Fecal Coliform exceedances, as well as two Total Recoverable Copper exceedances. The FDEP did not evaluate the Facility’s laboratory or conduct a sanitary sewer survey.

After this CEI the FDEP began formal enforcement that resulted in Tampa entering into consent order number 14-0156 (CO 14-0156). That consent order was directed at resolving the Dibromochloromethane exceedances. It approached the problem by establishing a schedule that Tampa was required to meet. The schedule required Tampa to study the mixing zone that had been established for Dibromochloromethane discharges and it required Tampa to successfully resolve these discharges within 24 months of the date of the consent order, June 12, 2014. It also raised the acceptable annual average level of Dibromochloromethane in the effluent from 39

µg/L to 60 µg/L. CO-14-0156 also assessed a \$5,000.00 civil penalty, in addition to a cost assessment of \$250.00. No adjustments were made for the economic benefit realized with the unlawful discharges, or for multi-day violations of these discharges.

The next inspection was conducted on February 23, 2015, the sole purpose of which was to evaluate the Facility's effluent quality. The FDEP rated the effluent quality as in-compliance. However, it was noted that the algal growth potential (AGP) in the effluent was 105 mg/L. According to the inspection report, a value in excess of 5 mg/L is considered to be indicative of a problem for nutrient enrichment in freshwaters. A separate test designed to show impacts to saltwater receiving bodies indicated that the effluent had an AGP of 65.4 mg/L. A result exceeding 10 mg/L constitutes a nutrient-enrichment "problem" for saltwater receiving bodies. No other aspect of the Facility was evaluated.

2. *Tampa's Recent Permit and Compliance History*

The current Permit was issued on November 23, 2015, and authorized a 96.0 MGD discharge into Hillsborough Bay, which is a Class III marine waterbody. The permit included a 1.0-meter circular radius (3.14 square meters) mixing zone for Dibromochloromethane at each of the 3 discharge points used by the Facility. Under the Permit, the maximum allowed level of discharge of Dibromochloromethane was an annual average of 39.00 µg/L.

Four months after the Permit was issued, the FDEP conducted another inspection. The inspection was actually a file review and it took place on March 29, 2016. Only two parameters were evaluated for this review, the Facility's effluent quality and Tampa's adherence to a compliance schedule. While Tampa was complying with its compliance schedule (which required completion of modifications by June 30, 2016), the Facility's effluent once again was in violation of the limits established for Dibromochloromethane. The FDEP handled this by rating the effluent quality as SNC, but not giving an overall Facility rating.

The FDEP conducted another inspection on November 18, 2016. The Facility was again found to be in non-compliance with its Permit. The main problem found by the FDEP was the effluent quality. The annual average Permit limits for Dibromochloromethane had been exceeded, as were the limits for Fecal Coliform and Total Suspended Solids. The Facility had also failed to meet the required level for Total Chlorine Residual. In addition to the effluent limits, the maximum limits for Mercury had been exceeded at the residual/sludge monitoring site. Finally, the inspection report noted that several groundwater exceedances for Fecal Coliform (6) and Total Dissolved Solids (24) had occurred. Meanwhile, the sanitary sewer survey was rated as in-compliance. The FDEP handled the numerous violations by sending a CAO to Tampa. No enforcement was taken. On December 22, 2016, the FDEP wrote to Tampa and informed the city that it appeared as though the violations had been corrected.

The FDEP revised the Permit (Revised Permit) after the inspection, and this also posted-dated the studies that Tampa performed on the issue of its Dibromochloromethane discharges as mandated by CO-14-0156. The Revised Permit, which was issued on December 7, 2016, increased the size of the mixing zone to “17 meters radius, with a total surface area of 908 square meters, centered over the outfall(s).” This discharge is allowed at all 3 discharge points used by the Facility. The Revised Permit did more than that, however, it also increased the amount of Dibromochloromethane that Tampa can discharge into the receiving waters. The annual average was increased from 39.00 µg/L to 59.3 µg/L (essentially equal to the interim levels that had been allowed by CO-14-0156).

On November 28, 2018, the FDEP conducted the next, and last inspection to date. Despite finding the effluent quality and groundwater quality to be in violation with the Permit, the FDEP rated the Facility as being in compliance. There were two pH violations in 2018 in which the minimum pH requirements were not met, as well as a toxicity violation in June 2018. There were 12 groundwater violations, all but one of which were for total dissolved solids (TDS) exceedances. Eight of the eleven TDS violations occurred in 2018. One was for a fecal coliform exceedance on December 31, 2017. The FDEP’s November 2018, CEI did not include an evaluation of the sanitary sewer problems at the Facility.

3. *Sanitary Sewer Problems since 2012*

The Facility’s history of sanitary sewer problems is significant. In 2005, the FDEP and Tampa’s Environmental Protection Commission entered into Consent Order 05-0259 necessitated by multiple sanitary sewer overflows that had occurred under the then operative permit. Under that consent order the FDEP required the implementation of Facility improvements that would be documented by interim reports to the FDEP. In addition, the FDEP imposed a fine of \$170,000 because of the multiple overflows that it had documented. Tampa paid this fine, submitted its reports documenting certain upgrades and eventually concluded that it had complied with the terms of that consent order. The FDEP thus closed its case on or about November 20, 2013.

The upgrades undertaken by Tampa did not, however, result in a cessation of the overflows. In fact, they continued. In addition to the multiple permit exceedances and other violations, there have been 288 sanitary sewer overflows since January 2012. 193 (an average of 50 each year) of those occurred between January 2012 and November 2015, prior to the Permit renewal on November 23, 2015. And while the FDEP did demand stipulated penalties of \$46,000 for 53¹ of the overflows from late 2011 through September 12, 2012, there has been no enforcement concerning the overflows that occurred during this period.

¹ There were 23 other overflows that occurred in 2012 as well that were not covered by the demand for stipulated penalties.

Since the Permit was issued in November 2015, and the filing of this petition there have been 93 additional overflows, for an average of approximately 30 each year. The number of overflows did drop in 2017; however, one overflow, that occurred during Hurricane Irma resulted in 94,925 of wastewater being spilled into Stevenson Creek and Clearwater Harbor. The FDEP did address this SSO by issuing a warning letter a month later, on October 20, 2017. This ultimately led to the issuance of a short-form consent order that assessed civil penalties of \$3,250.00 against Tampa. The remaining SSOs were ignored. Further, while the annual number of these overflows began to decline in 2017, 2018 is seeing a renewed upward trend. None have been addressed by the FDEP.

C. Health and Environmental Risks

The documents amassed in this case pointedly demonstrate a lack of reasonable assurance that this Facility has been operated in the past in a manner that considers the public health, safety and welfare as its top priority. There have been multiple violations of Dibromochloromethane, and the FDEP's initial response has been to assess a minimal fine on one occasion and to require studies to be performed by Tampa. While the studies were performed, Tampa continued to violate this parameter, and the FDEP's ultimate response was to revise the Permit to increase the size of the mixing zone, while at the same time raising the amount of allowed Dibromochloromethane so that the Facility would not be deemed to be in non-compliance.

Dibromochloromethane and similar pollutants in this family are not benign chemicals. The CDC states [on its website](#) that:

Bromodichloromethane (BDCM) is a colorless, heavy, nonburnable liquid. BDCM does not usually exist as a liquid in the environment. Rather, it usually is found evaporated in air or dissolved in water.

Most BDCM in the environment is formed as a byproduct when chlorine is added to drinking water to kill disease-causing organisms. Small amounts of BDCM are also made in chemical plants for use in laboratories or in making other chemicals. A very small amount (less than 1% of the amount coming from human activities) is formed by algae in the ocean.

And Bromodichloromethane has [significant negative health effects](#), both to humans and to animals.

The effects of BDCM depend on how much is taken into the body. In animals, the main effect of eating or drinking large amounts of BDCM is injury to the liver and kidneys. These effects can occur

within a short time after exposure. High levels can also cause effects on the brain, leading to incoordination and sleepiness. There is some evidence that BDCM can be toxic to developing fetuses, but this has not been well-studied. Studies in animals show that intake of BDCM for several years in food or water can lead to cancer of the liver, kidney and intestines. Although effects of BDCM have not been reported in humans, effects would probably occur if enough BDCM were taken into the body.

The CDC has also discussed the health effects of Dibromochloromethane. [It states on its website that:](#)

The effects of bromoform and dibromochloromethane on your health depend largely on the amount you take into your body and the duration of exposure. In general, the more you take in, the greater the chance that an effect will occur. The main effect of swallowing or breathing large amounts of bromoform is a slowing of normal brain activities, resulting in sleepiness or sedation occurring quickly after the chemicals enter your body. In humans, these effects tend to disappear within a day. Exposures capable of producing these effects include swallowing 1-4 drops of liquid bromoform, an amount much greater than is usually found in a glass of drinking water. At much higher amounts, a person may become unconscious or die. The amount of dibromochloromethane taken by mouth that would affect humans is not known, but is probably similar to bromoform.

Some studies in animals indicate that exposure to high doses of bromoform or dibromochloromethane may also lead to liver and the kidney injury within a short period of time. Exposure to low levels of bromoform or dibromochloromethane do not appear to seriously affect the brain, liver, or kidneys. Other animal studies suggest that typical bromoform or dibromochloromethane exposures do not pose a high risk of affecting the chance of becoming pregnant or harming an unborn baby. However, studies in animals indicate that long-term intake of either bromoform or dibromochloromethane can cause liver and kidney cancer. Although cancer in humans cannot be definitely attributed to these chemicals, it is an effect of special concern, since many people are exposed to low levels of bromoform and dibromochloromethane in chlorinated drinking water.

The International Agency for Research on Cancer (IARC) concluded that bromoform and dibromochloromethane are not classifiable as to human carcinogenicity. The EPA classified bromoform as a probable human carcinogen and dibromochloromethane as a possible human carcinogen.

The FDEP's response to this has been to essentially shirk its obligation to the public, as well as to the environment, just so that it won't incur Tampa's dissatisfaction. Moreover, just 73 miles to the south of Tampa is the City of Venice and, as we noted in the [overfile petition that we sent to you](#) on October 29, 2018, that wastewater treatment plant, is discharging the same chemical into surface waters at levels that exceed state standards. In that case, just as in the case before you, the FDEP is looking the other way.

Since 2012 there have been at least 288 sanitary sewer overflows attributed to this Facility. The health risks associated with these overflows are significant. According to the EPA's Office of Wastewater Management [website](#) these overflows can include raw sewage, and:

“Raw sewage contains disease-causing pathogens, including viruses, bacteria, worms, and protozoa. Diseases resulting from enteric pathogens range from stomach flu and upper respiratory infections to potentially life-threatening illnesses such as cholera, dysentery, Hepatitis B, and cryptosporidiosis. Children, the elderly, and people with suppressed immune systems face added risk of contracting serious illnesses.”

These risks occur when the public is exposed to this sewage through activities such as swimming, drinking the water, or eating seafood that has been contaminated with the sewage. See, https://www3.epa.gov/npdes/pubs/ss0_casestudy_control.pdf. The same website notes that there are impacts to natural resources:

“The environmental impacts of sewage include hypoxia, harmful algal blooms, habitat degradation, floating debris, and impacts to threatened or endangered species (CERI 1999). According to the U.S. Fish and Wildlife Service, more than 50% of threatened and endangered species are water-dependent (USFS 2000).”

The trade magazine, Water Conditioning & Purification [notes that](#) “[o]ther economic burdens mount due to the closure of beaches and impact of harvesting and consumption of shellfish and mollusks. Sewage overflows also contribute to turbidity increases in waterways, which can also have an adverse effect on aquatic fish, plants and the ecosystem as a whole. Burdens extend beyond dollars and inconvenience to include human health impacts.”

While not always the case, the FDEP's response to these violations has largely been to ignore the substantial number of violations occurring because of this Facility. The agency seems to have taken the approach that it will address violations only when they are significant in scope, while it looks the other way at smaller violations that nonetheless can expose the public to harmful pathogens associated with sewage discharges.

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

Simply stated, the FDEP has effectively ignored the multiple maintenance, operation and effluent violations committed by this Permittee over the duration of the Permit and its predecessor. The Facility is currently listed by the EPA as being in noncompliance and there is no indication that the FDEP intends to do anything about it, beyond token enforcement actions that historically have been ineffective. Its only other response has been to raise the levels of Dibromochloromethane so that the Facility won't be seen as being in violation. 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 to these contaminants. However, this agency seems to have entirely forgotten that aspect of its statutory reason for existing. Instead, it has adopted an approach of being wholly protective of the polluters that it is supposed to regulate. We continue to ask the question, then, of who exactly is protecting the public and environment from the damage caused by these polluters?

The CWA, 33 U.S.C. § 1319(a)(3), bestows upon the EPA the concurrent authority to overfile, or bring enforcement actions against violators when authorized state programs have failed to properly enforce these statutes. EPA regulations under this statute allow the EPA to withdraw state program authorization altogether when a state's enforcement program fails to act on violations and to seek adequate enforcement penalties. 40 C.F.R. 271.22; 40 C.F.R. 123.63(3). Finally, and most importantly, the EPA has repeatedly made strong public policy pronouncements regarding the agency's interest in consistency in enforcement, declaring that EPA will intervene in state enforcement cases when necessary to prevent a race to the bottom.

EPA has long had a policy of requiring that economic benefits from environmental violations be recovered. In testimony before the U.S. Senate, EPA Assistant Administrator for Enforcement Steve Herman forcefully defended EPA's overfiling policy, stating that EPA can and will take action against violators especially when delegated state agencies have failed to recover the economic benefit the violator has gained from its noncompliance or when serious harm to public health or the environment is at stake. (Testimony before Senate Environment and Public Works Committee, June 10, 1997). The FDEP repeatedly fails to even attempt to recover the economic

benefit that violators enjoy in failing to comply with their permits. Such is the case now before you.

More recently, then-Administrator Pruitt, in an October 18, 2017, [interview](#) with *Time* stated: “I don’t spend any time with polluters. I prosecute polluters.” We maintain that the EPA, in keeping with former-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 Tampa’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 Tampa 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 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 Tampa. PEER would be more than willing to provide any additional documentation if requested.

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

Sincerely,

Jerrel E. Phillips
Director, *Florida* PEER

cc: Noah D. Valenstein, Secretary, Florida, Department of Environmental Protection: 3900
Commonwealth Boulevard, M.S. 49, Tallahassee, Florida 32399

Susan Bodine, Assistant Administrator, Office of Enforcement and Compliance
Assurance: Environmental Protection Agency 1200 Pennsylvania Avenue, N.W., Mail
Code 2201A, Washington, DC 20460