



Public Employees for Environmental Responsibility

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May 25, 2018

Trey Glenn
Regional Administrator
U.S. Environmental Protection Agency
Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

RE: OVERFILE REQUEST—City of Palatka WWTP, NPDES Permit Number FL0040061

Dear Mr. Glenn:

Public Employees for Environmental Responsibility (PEER) formally requests that the U.S. Environmental Protection Agency initiate immediate action against the City of Palatka (Palatka or City or Permittee) Wastewater Treatment Facility (Facility). We request this action because Palatka has continuously operated the Facility in a manner that constitutes an imminent and substantial threat to public health presented by the repeated violations of its National Pollutant Discharge Elimination System (NPDES) permit.

The chronic pattern of misconduct and irresponsibility detailed in the record, and spotlighted here below, particularly includes illegally placing additional pollution burdens on the already impaired and sensitive St. Johns River, with significant adverse effects on the beneficial uses of those waters of the United States. Some of those beneficial uses most notably include the recognized uses by the other communities downstream, those who enjoy tourism and recreation and fishing in the St. Johns River, as well as the federally-endangered Florida manatees that live there and that depend on protection of the water quality of the river.

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The State of Florida, Department of Environmental Protection (FDEP, or Department), issued this NPDES permit under its delegated authority pursuant to the Clean Water Act, and subject to the regulatory authority of the FDEP under § 403.0885, et. seq., Florida Statutes.

Specifically, PEER requests that EPA, pursuant to EPA's response authority under the federal Clean Water Act (CWA), 33 U.S.C. § 1251 *et seq.*:

- 1) Immediately assert primary jurisdiction over the NPDES Permit; and
- 2) With full public participation, act to comprehensively assess and mitigate the imminent and substantial threat to public health and environmental harm caused by numerous permit violations involving wastewater discharges, relating to the operation of the Facility.

Palatka operates the Facility under NPDES Permit Number FL0040061 (Permit). The Facility is a major discharger, authorized to discharge 3.5 MGD annual average daily flow of effluent into the St. Johns River, which is Class II fresh waters. Class III waterbodies are those that, according to the State of Florida, 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 Facility is also authorized to discharge up to 3.50 MGD annual average daily flow via land application using a slow-rate public access system. The Permit was renewed on April 16, 2015, and there has been one modification after the renewal. The permit revision, which occurred on December 20, 2016, requires the Permittee to comply with its reporting requirements by submitting electronic discharge monitoring reports (DMRs).

As is more fully described below, what is occurring at the site is a repeated pattern of violations that have been systematically ignored by the FDEP. Historically, the site has had numerous reporting and effluent violations that have resulted in it being included on at least thirty-three (33) different Quarterly Noncompliance Reports (QNCRs) and six (6) Significant Noncompliance Reports (SNC) since the 4th quarter of 1999.

[According to ECHO](#), the facility has been in noncompliance for 8 of the past 12 quarters. EPA issued an Administrative Order in March 2017 for failure to report effluent quality, but no penalties were sought. EPA's [Exceedances Report](#) indicates that the violations are largely solids and phosphorus.

In addition, there have been well over seventy (70) documented violations since mid-2013. The FDEP has not taken formal enforcement on any of those violations.

FDEP's enforcement response against Palatka has fallen so far short of both EPA's and FDEP's own standards and policies that protection of the environment and public health requires that the

EPA assume responsibility for oversight over this permit. PEER, therefore, requests that EPA Region 4 take immediate and appropriate action against this chronic violator under its concurrent authority to enforce the CWA in Florida.

A. A History of Noncompliance

Since 2013, there have been multiple instances of noncompliance at the Facility. The FDEP has documented these during its inspections. On August 22, 2013, the FDEP conducted a compliance inspection of the Facility. The inspector concluded that the Facility was in compliance. However, the report's narrative suggests otherwise:

- The Facility's Sampling was rated as in compliance under Item 4; however, the notes indicated that "[t]he pH, turbidity and DO calibration log was missing the pass/fail criteria." The Facility was allowed to correct the deficiency and the report was marked as in compliance.
- Effluent quality was also rated as in compliance, even though, in Section 9.3 of the report it was noted that, according to DMRs there was 1 fecal coliform exceedance; 4 total suspended solids violations and 2 total recoverable silver violations (one of which was 500 µg/L, while the maximum was .07 µg/L). These violations occurred over a 10-month period.
- Effluent disposal was likewise rated as being in compliance, although the inspector noted that "No signs were posted around the WWTF where reclaimed water was being used." Once again, the Facility was allowed to correct the deficiency and the report was marked as in compliance.
- Groundwater monitoring wells were not locked and marked at the time of the inspection. This was rated as being in compliance.
- The inspector reviewed groundwater monitoring reports and found **27** separate groundwater violations, including violations of arsenic, pH, TDS and nitrate standards.
- The facility was applying reuse water on some of the monitoring wells.
- No SSO Plan was available at the time of the inspection. The facility was allowed to correct this so that the rating would show that the facility was in compliance.

The next inspection took place on March 27, 2014. Once again, the FDEP rated the Facility as being in compliance. During that inspection, however, the inspector noted the following problems subsequent to the previous inspection:

- The DMRs showed a dissolved oxygen violation, two violations of the total phosphorus limits, and a total suspended solids violation. The effluent quality was nevertheless rated as being in compliance.
- Groundwater violations were continuing to occur. There were 22 separate violations of groundwater standards. The parameters that were violated included total dissolved

solids (TDS), pH, fecal coliform, nitrates, and chloride. The groundwater quality was nonetheless rated as being in compliance.

The next – and to date, the last – inspection of the Facility took place on June 29, 2016. At that time the FDEP rated the Facility as being out of compliance. The basis for this rating was that effluent quality was found to be in noncompliance. All other aspects of the Facility were apparently considered to be okay. Yet, the report’s narrative reveals that:

- Sampling requirements were not being followed. Specifically, the inspector noted that “Records documenting the continue calibration verification (CCV) for DO and specific conductance were not in accordance to department SOP.” The Facility was allowed to correct the deficiency in order for the section to be rated as being in compliance.
- As noted above, it was the effluent quality that caused the Facility to be rated as being out of compliance. Specifically, DMRs indicated that there were violations of unionized ammonia (1), total organic nitrogen (1), and mercury (3). These exceedances all occurred at the main surface water discharge point. Additional violations were found in the reuse discharge. The Department documented four (4) total suspended solids (TSS) violations and two (2) fecal coliform violations in that discharge.
- Groundwater violations were found, but this area was nevertheless marked as being in compliance. The twenty-nine (29) violations that were itemized by the inspector included violations of pH, TDS, nitrates, and fecal coliform.

FDEP’s approach to finding the Facility to be out of compliance was to send the Permittee a Compliance Assistance Offer (CAO), the purpose of which was to allow the Facility to avoid formal enforcement for those violations if the Permittee did one of three things. Those were to:

1. “Describe what you have done to resolve the issue (see corrective action comments throughout the report),
2. Provide information that either mitigates the concerns or demonstrates them to be invalid, or
3. Arrange for one of our inspectors to visit your facility to offer suggested actions to return to compliance without enforcement.”

With that, the enforcement case against the Facility was dropped by FDEP.

In addition, the FDEP’s files reflect that there were five (5) sanitary sewer overflows (SSOs) associated with the Facility in 2017 (excluding the SSOs associated with Hurricane Irma). Four (4) of the SSOs occurred in just one month, October 2017.

The FDEP’s files reflect no enforcement being initiated as a result of any of those outstanding issues.

B. 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 repeated situations in which either treated or

untreated wastewater have been improperly discharged to surface waters, stormwater retention ponds and/or to sanitary sewers.

Yet, in each and every case the FDEP chose to treat the matter as of little or no consequence.

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

The FDEP's excuse for failing to initiate formal enforcement against Palatka is that the City has purportedly been doing the best that it can and is supposedly trying to abide by the standards and legal requirements of their Permit. The public consequence is that years pass with a consistent pattern of excused misconduct.

The CWA, 33 U.S.C. § 1319(a)(3), bestows upon EPA the concurrent authority to overfile, or bring enforcement actions against violators when authorized state programs have failed to enforce these statutes properly. EPA regulations under this statute allow 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).

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).

Finally, and most importantly, 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. Such is the case now before you.

In this case 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. The

files in this case show that, except for the last inspection in 2016, the Department's approach to finding violations is all about making the Permittee look good to the public. It does this by:

- Allowing the Permittee to correct the violations and then rewarding the Permittee by granting a rating of being in compliance, when, in reality, the Facility was not in compliance at the time of the inspection, and
- Ignoring documented effluent violations found on DMRs.

This is nothing short of a governmental agency being complicit with a regulated entity's noncompliance and officially enabling it in violation of the rule of law and fundamental principles of behavioral conditioning and the long-established legal system of compliance enforcement of laws that protect human health and the environment. Yet, even when the agency does see fit to properly evaluate a facility and issue a deserved rating of noncompliance, it quickly side-steps enforcement by issuing a letter that lets the facility off the hook if it supposedly promises to operate in compliance down the road.

That kind of manipulation of the compliance enforcement system cannot honestly be described as "informal" enforcement, either.

The FDEP's approach to situations such as this is not without serious consequences. By failing to honestly and accurately assign ratings after conducting inspections and creating an appearance of compliance, the result is that if subsequent violations occur – as has been the case here – any formal enforcement will be viewed as the "first time" that the Facility has failed to abide by its permit. Consequently, if civil penalties are sought there can be no upward adjustment of the penalty amount because of the FDEP's cover-up of the actual history of noncompliance.

In other words, reality is distorted by FDEP's substandard and reckless breach of its entrusted duties to actually protect the environment. FDEP also, thereby, distorts the perception of the public and the regulated community who are being misled and deceived by FDEP's inexcusably poor performance. And, meanwhile, the water quality of the St. Johns River continues to be degraded by these chronic illegal and unlawful activities.

To further illuminate EPA on this systemic FDEP problem: when it comes time to renew the permit, the Fact Sheet that the FDEP issues with the Notice of Intent to renew the permit will state that the facility does not have a history of formal enforcement. And even when the Department will often (as happened with this permit) itemize some of the effluent violations that occurred over the course of the prior permit, the fact that formal enforcement was not taken would necessarily lead the average citizen to conclude that the violations were insignificant—even if such was not the case.

We will never know whether or not this type of behavior avoided permit challenges in this case,

but the point is that the public should be entitled to know that the FDEP has effectively gone out of its way to avoid taking any enforcement against this Facility, to the point of drafting inspection reports so that they lead the reader to falsely conclude that the Facility is being operated in compliance with its permit. Clearly, in this case the FDEP cannot be viewed as meeting its delegated mandate to provide a credible deterrent against violations of the federal Clean Water Act.

PEER, urges that EPA immediately take over the administration of this permit and begin civil enforcement proceedings against the City of Palatka as appropriate because of the environmental violations described above and any others that may be discovered to have occurred in the interim. PEER suggests that these measures should, at minimum, include entry into a consent order that requires Palatka to engage in a plan of study to identify the fundamental causes of the effluent violations in both the surface water and groundwater discharges, followed by the adoption of concrete measures dedicated to curtailing said violations. Further, civil penalties should be imposed for the myriad violations that have occurred over the course of the past four (4) years, including the economic benefit of Palatka's extended noncompliance.

PEER has in its possession the relevant materials from the FDEP case files substantiating the violations committed by the City of Palatka. PEER would be more than willing to provide any additional documentation if requested. These documents can also be obtained by EPA by visiting the FDEP's [Oculus site](#) and entering the Facility's Permit number: FL0040061.

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

Sincerely,

/s/

Jerrel E. Phillips
Director, *Florida* PEER

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