



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—Georgia-Pacific WWTP—NPDES Permit FL0002763

Dear Mr. Glenn:

Public Employees for Environmental Responsibility (PEER) formally requests that the U.S. Environmental Protection Agency initiate immediate action against Georgia-Pacific Consumer Operations LLC (Georgia-Pacific or Permittee) in connection with the imminent and substantial threat to public health presented by the repeated violations of its National Pollutant Discharge Elimination System (NPDES) permit issued by the State of Florida, Department of Environmental Protection (FDEP) under its delegated authority pursuant to the Clean Water Act.

Specifically, PEER requests that EPA, pursuant to 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 Georgia-Pacific's wastewater discharges. The permit in question is subject to the regulatory authority of the Florida, Department of Environmental Protection (FDEP) under § 403.0885, et. seq., Florida Statutes.

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A. The Permit

Georgia-Pacific operates a wastewater discharge facility (Facility) under NPDES Permit Number FL0002763 (Permit). The Facility is located in Putnam County, Florida and is a major discharger that discharges an annual average of 16 MGD of effluent into the Lower St. Johns River via a force main pipeline and appurtenances. Excess runoff is discharged from stormwater pond number 2 to wetlands that are adjacent to Rice Creek. The Permittee also operates two sludge ponds, an emergency spill pond and an existing internal outfall, the latter of which consists of wastewater from the Facility's bleach plant. The latter discharge is subject to 40 CFR Part 430, commonly referred to as the Cluster Rule.

The permit was most recently renewed on December 29, 2017 and expires on December 28, 2022. The new permit includes a plan of study for the dissolved oxygen (DO) discharge to Rice Creek (Sec. I. E 10) and a St. Johns River Biological Community Monitoring Plan POS (Sec. I. E. 11). A groundwater discharge is allowed within the Zone of Discharge and must be monitored (Sec. III). A BMP is in place (Sec. VII D, Permit Page 31) that implements the Cluster Rule requirements. 2,3,7,8-Tetrachlorodibenzo-P-Dioxin (TCDD) is a significant contaminate discharged by the Facility (Page 10, Fact Sheet) and falls under the Cluster Rule requirements. The Facility is required to monitor for this contaminate. As is set forth in Section I.A.8. of the Permit, mixing zones are included for the following water quality criteria: Total Ammonia Nitrogen (TAN); (ii) Turbidity; (iii) Specific Conductance; (iv) Color; and (v) Chronic Toxicity.

The segment of the St. Johns River to which the Facility discharges (through Outfall D-003) is listed as impaired for Mercury. However, the Facility's wastewater is not believed to include Mercury as a contaminate. On the 2010 303(d) list this segment of the St. Johns River was also considered to be impaired for Lead, Cadmium, Copper, Silver and Nutrients (Page 3, Fact Sheet). In addressing these contaminants, the FDEP stated on Page 9 of the Fact Sheet that "EPA has identified WBID 2213L as impaired for lead, cadmium, copper, silver, and nutrients; however, the Department has not verified metal impairment for this WBID. The Permittee has collected effluent samples for copper and silver which were below the applicable water quality standards, and therefore, the Georgia-Pacific wastewater discharge does not cause or contribute to copper or silver impairment in WBID 2231L." Consequently, in the Permit the FDEP does not require Georgia-Pacific to monitor or report on these parameters.

Notwithstanding the positive reviews given by the FDEP in the Fact Sheet, 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 repeatedly on different Quarterly Noncompliance Reports (QNCRs) and one Significant Noncompliance Report (SNC). The Facility has been listed on QNCRs for 29 of 54 quarters between the 3rd quarter 2000 and the 4th quarter 2013. The reason for the listings are mostly reporting violations. 4 of the listings from that period are for effluent violations. It was also listed as being in SNC during the 2nd quarter of 2005. Looking at [more recent data](#) over the past 12 quarters, we found that the Facility had been listed on QNCRs 9 times. The more recent

exceedances have predominately been of the Permit's [Fecal Coliform limits](#). These issues will be more fully discussed below.

FDEP's enforcement response against Georgia-Pacific 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 violator under its concurrent authority to enforce the CWA in Florida.

B. A History of Noncompliance

The FDEP inspected the Facility on September 10 and 11, 2012, and rated the Facility as being in-compliance (IC). In fact, all areas inspected were rated as being IC. The FDEP notified the Permittee of this finding on October 18, 2012. Yet, despite the formal rating, the inspection report completed by the FDEP stated that the DMRs filed by the Permittee indicated that there were seven (7) Dissolved Oxygen exceedances and one (1) Fecal Coliform exceedance. The FDEP ignored these Permit violations and took no enforcement.

Roughly a year later, on September 16, 2013, the FDEP conducted its next Compliance Evaluation Inspection (CEI). Once again, the FDEP rated the Facility as being IC, and all subareas that were evaluated were similarly rated. The FDEP notified the Permittee of its findings on October 31, 2013. Notwithstanding the formal rating, during the inspection the FDEP had found errors in alkaline sampler #2 and the refrigerator #1 temperature acceptance criteria. The Facility's diffuser outfall pipe was also "floating near the surface" (for which there was no explanation). There were also four (4) DMR exceedances (DO, Solids and TSS). In addition, the Sodium level in the groundwater well exceeded the Permit's groundwater limit.

The September 2013, CEI was followed by a FDEP notice on August 15, 2014, that it had evaluated the Facility's stormwater system and found it to be in compliance. There was no mention in this notice that there had been system overflows (discussed below) reported to the FDEP during this time period.

The next CEI was conducted on March 26, 2015. In keeping with its past performance, the FDEP rated the Facility (including all subgroups) as being IC. The Permittee was so notified on May 15, 2015. A review of the inspection report, however, revealed that calibration verification was not being documented as required by SOP for pH, Temperature, Specific Conductivity and Dissolved Oxygen. There were 5 DMR exceedances from October 2013 through February 2015. They were pH, DO, and Fecal Coliform. According to the FDEP's report, "[t]hese exceedances are not considered significant." Because of mishandling of bioassay samples by the FDEP, the bioassay values were reported as no result. During the period covered by the CEI there were multiple incident reports, yet they were not mentioned in the CEI. The FDEP took no enforcement.

The FDEP's next interaction with the Facility was on February 20, 2017, when it conducted a file review of the Facility's records. This review noted that there were five (5) system overflows and on three (3) of them the review pointed out that "no clean-up [was] performed." Yet, the FDEP rated the Facility as being IC.

The February 2017 file review was followed by a CEI on March 6, 2017. This would be the last CEI that the FDEP would perform prior to acting on the Permittee's application to renew its NPDES Permit. The Facility was rated IC at the conclusion of this inspection and, once again, all subgroups marked IC. The Permittee was notified of this result on March 20, 2017. What was not mentioned in the correspondence to Georgia-Pacific was that, according to the CEI, there were 13 recorded DMR exceedances. They were of Fecal Coliform, Turbidity, IC25, pH, and TSS. In keeping with past FDEP conduct concerning this Facility, the report stated that "[t]hese are not considered significant non-compliance because of the infrequency of the exceedances." The FDEP took no enforcement.

Finally, it should be noted that FDEP records indicated that there have been multiple system overflows connected with this Facility. There were three (3) in 2012, four (4) in 2014, four (4) in 2015, four (4) in 2016, and ten (10) in 2017 (one of which was due to Hurricane Irma).

C. Enforcement Taken by the FDEP

The files maintained by the FDEP indicate that until December 2017 the FDEP has taken no enforcement against this Facility. The Fact Sheet that was issued with the new Permit notes only that a short-form consent order (SFCO 17-1034) was entered into between the parties on December 12, 2017. Beyond this, the Fact Sheet (Section 9, Page 27) gave the public no reason to suspect that this Facility was failing to comply with the requirements of its previous permit. Consequently, challenges to the issuance of the new Permit were likely stymied.

The only enforcement taken by the FDEP against Georgia-Pacific from 2012, to the present has been the issuance of the previously-referenced short-form consent order, SFCO 17-1034. This consent order dealt with a total of three (3) sanitary sewer overflows that occurred in September and October 2017. The first of these (on September 13, 2017) was potentially secondary to Hurricane Irma's landfall. In addition, a water sample had been taken on September 14, 2017, and the results showed that there the Nephelometric Turbidity Units (NTU) level was 112, an exceedance of the 29 NTU limit established by rule. While it is unknown what caused the FDEP to take enforcement in this instance, it may well be because a third party notified the FDEP on September 15, 2017, that the St. Johns River was visibly turbid near the Georgia Pacific diffuser. Thus, an explanation had to be given. The result was that the FDEP, under the terms of the consent order, fined Georgia-Pacific \$7,000 in penalties, plus \$500 in costs.

As we mentioned above, according to EPA's Echo information, this Facility has had repeated Fecal Coliform excursions over the past 12 quarters. These excursions are not new to this

Facility. The records indicate that there have been Fecal Coliform violations since at least 2012. Yet, the FDEP has taken no enforcement against the Permittee as a result of its Permit violations.

D. 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 permit exceedances since 2012 in wastewater that is being discharged into an impaired waterbody, i.e. the St. Johns River. There have also 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 with the exception of late in 2017, just before the permit was being renewed, in each and every case the FDEP chose to treat the matter as of little or no consequence.

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

It would appear that each and every time the FDEP took no enforcement against Georgia-Pacific it acted because of a perception that Georgia-Pacific was doing the best that it can and is supposedly trying to abide by the Permit. Frankly, it is either that, or it is because the FDEP is reluctant to be on the wrong side of this politically influential polluter. Regardless, the result is that, just as with other cases that we've seen out of the FDEP, years pass with a consistent pattern of excused misconduct.

[On its website](#), Georgia-Pacific states that, “[s]ustainability comes naturally to people at Georgia-Pacific. Not only do our products help improve people’s lives, but we also operate in ways that enhance the quality of life in our communities, help ensure the economic stability of our company and help protect our environmental resources.” One must wonder how Georgia-Pacific believes that it is helping to “protect our environmental resources” when it is continuously violating its effluent limits and discharging polluted wastewater into an impaired waterbody. Now the company has determined that it will [expand its operation](#) in Palatka with a \$400 million investment in order to grow its tissue and towel business. One would expect that, with so much available cash, the company would have no problems complying with its Permit. Yet, in practice the company acts far differently.

It is clear from the Facility’s history that the FDEP has consistently failed or refused to consider previous violations when deciding whether or not to take enforcement. The failure of Georgia-Pacific to promptly and accurately report its discharge data to the FDEP has been consistently treated as a minor inconvenience to the FDEP; rather than emblematic of a permittee who has a rather callous disregard of the health, safety and welfare of the public. One thing that most inspectors will tell you is that a facility that routinely reports effluent violations to a regulatory agency such as the FDEP, quite often has other, much more serious, problems with its operation.

Such is the case before you. Instead of aggressively moving on the evidence presented, the FDEP chose to treat it as an inconvenience.

The CWA, 33 U.S.C. § 1319(a)(3), bestows upon the EPA the concurrent authority to overfile, or bring enforcement actions against violators when authorized state programs have failed to properly enforce these statutes. EPA regulations under this statute allow the EPA to withdraw state program authorization altogether when a state's enforcement program fails to act on violations and to seek adequate enforcement penalties. 40 C.F.R. 271.22; 40 C.F.R. 123.63(3). Finally, and most importantly, the EPA has repeatedly made strong public policy pronouncements regarding the agency's interest in consistency in enforcement, declaring that EPA will intervene in state enforcement cases when necessary to prevent a race to the bottom. EPA has long had a policy of requiring that economic benefits from environmental violations be recovered. In testimony before the U.S. Senate, EPA Assistant Administrator for Enforcement Steve Herman forcefully defended EPA's overfiling policy, stating that EPA can and will take action against violators especially when delegated state agencies have failed to recover the economic benefit the violator has gained from its noncompliance or when serious harm to public health or the environment is at stake. (Testimony before Senate Environment and Public Works Committee, June 10, 1997). Such is the case now before you. More recently, Administrator Pruitt, in an October 18, 2017, [interview](#) with *Time* stated: "I don't spend any time with polluters. I prosecute polluters." We maintain that the EPA, in keeping with Administrator Pruitt's assertions to *Time*, should take the lead in this case and prosecute polluters such as the Permittee in this case.

As regards Georgia-Pacific'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 Georgia-Pacific 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, and the assessment of civil penalties for violating its past 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 Georgia-Pacific. PEER would be more than willing to provide any additional documentation if requested.

Trey Glenn
Regional Administrator
Page 7
May 25, 2018

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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