

BEFORE THE STATE OF FLORIDA
FLORIDA DEPARTMENT OF HEALTH
PALM BEACH COUNTY

RECEIVED
DEPARTMENT OF HEALTH
2021 NOV 11 PM 10:37
OFFICE OF THE CLERK

FLORIDA DEPARTMENT OF HEALTH)
PALM BEACH COUNTY)
v.)
CITY OF DELRAY BEACH)
_____)

FILE NO. WP 038-20
Rendition No.: DOH-21-1562-S-HO
DOH Case No.: 2021-0253

CONSENT ORDER

This Consent Order (Order) is entered into between the Florida Department of Health Palm Beach County (Department) and the City of Delray Beach (Respondent) to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and Respondent neither admits nor denies the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's water resources and to administer and enforce the provisions of the Florida Safe Drinking Water Act, Sections 403.850, et seq., Florida Statutes (F.S.), and the rules promulgated and authorized in Chapter 62, Florida Administrative Code (F.A.C.). The Department has jurisdiction over the matters addressed in this Order.
2. Respondent is a person within the meaning of Section 403.852(5), F.S.
3. Respondent is the owner and operator of a public water system, PWS No. 4500351, located at 200 SW 6th Street, Delray Beach, FL 33404 in Palm Beach County, Florida (System).
4. The Department finds that the following violations occurred:
 - a) Rule 62-555.360(2), F.A.C.: Respondent failed to implement its cross-connection control program. Specifically, Respondent failed to 1); conduct inspections to ensure its distribution system was protected from hazards; 2) have a dedicated employee conducting initial and follow-up inspections, testing, and complaint investigations; 3) ensure backflow prevention was installed at all properties where a health, pollution or system hazard to the

water exists; 4) evaluate customer's premises for cross-connections and adequate backflow protection at new or existing service connections whenever customer connects to reclaimed water; and 5) conduct periodic inspections of customer connections.

- b) Rule 62-560.410(1), F.A.C.: Respondent failed to issue public notice within 24 hours of discovery of a cross connection on June 6, 2019 at 120 N. Ocean Blvd.
- c) Rule 62-560.410(1), F.A.C.: Respondent failed to a report cross connection at 120 N. Ocean Blvd. to the Department within 24 hours of discovery on June 6, 2019
- d) Rule 62-555.360(1)(b) and Table 62-555.360-2, F.A.C.: Respondent failed to ensure adequate backflow protection is provided at all locations served by both potable drinking water and reclaimed water. Respondent admits cross-connection inspections conducted to date reveal 609 customer connections without backflow protection.
- e) Rule 62-555.360(1), F.A.C.: Respondent identified 5 physical cross-connections between potable water service and reclaimed water service at service connections in Respondent's distribution system. The locations where the physical cross-connections were found are: 801 S. Ocean, 120 S. Ocean, 1029 Langer, 120 N. Ocean and 1008 Vista Del Mar.
- f) Rule 62-550.720(3), F.A.C.: Respondent failed to maintain copies of written reports, summaries, or communications relating to cross-connection control program or sanitary surveys of the system including, but not limited to: records of installation, inspection, maintenance, and replacement of backflow prevention devices and assemblies.
- g) Rule 62-555.320(21)(b)(3), F.A.C.: Respondent failed to color code potable and reclaimed pipes and fixtures as required.
- h) Rule 62-560.310(1)(e), F.A.C.: Respondent submitted one or more false statements or representations.

- i) Rule 62-555.360(1)(a), F.A.C.: Respondent failed to implement enhanced public education in accordance with AWWA Manual M14.

Having reached a resolution of the matter, Respondent and the Department mutually agree and it is **ORDERED**:

5. Respondent shall comply with the following corrective actions within the stated time periods:
 - a. Within 30 days of the effective date of this Order, Respondent shall issue Public Notice in accordance with Rule 62-560.410(5) , F.A.C. for its failure to implement its Cross-Connection/Backflow Prevention Program in accordance with Rule 62-555.360, F.A.C.
 - b. Within 10 days of publication of the Public Notice, Respondent shall submit a Certification of Delivery of Public Notice to the Department.
 - c. Within 180 days of the effective date of this Order, Respondent shall complete or cause the installation of backflow prevention devices at all properties marked "pending" on inspections submitted to the Department, or shall indicate that reclaimed service is discontinued at such properties and will remain discontinued until and unless such properties have backflow prevention devices installed as part of the resumption of reclaimed service. Respondent shall report any remaining pending installations, or instances where service is discontinued, and submit proof of enforcement actions initiated by Respondent against noncompliant property owners. Attached as Exhibit I is a spreadsheet showing all of the "pending" properties. Within 180 days of the effective date of this Order, Respondent shall provide a complete inventory of all properties connected to the potable water distribution system. The inventory shall include the type of property served, type of backflow protection installed, the backflow manufacturer (if known), date of installation, and the date of replacement in accordance with the manufacture's specifications. If the Respondent cannot determine the manufacturer of the device placed in the ground, the City will have to replace or test the device in accordance with

the shortest replacement or testing period as specified by the manufacturer of the devices used by the City and provided to the Department in this inventory. Respondent shall also provide the dates of inspection, and whether the property is served by reclaimed water. For those areas in the City where backflow prevention is not required by state law or local ordinance, the City shall state and list those addresses; however, the City is not required to do a physical inspection of every connection in such areas. Respondent shall supply the Department with monthly progress reports of the inventory during the 180-day period until this corrective action is completed.

- d. Within three (3) years of the effective date of this Order, Respondent shall ensure that all connections to the potable water system are in compliance with Rule 62-555.360, F.A.C., F.A.C. For those areas in the City where backflow prevention is not required by state law or local ordinance, the City shall state and list those addresses; however, the City is not required to do a physical inspection of every connection in such areas.
- e. Respondent shall provide the Department with quarterly progress reports of connections during the three-year period until this corrective action is completed.
- f. Within 30 days of the effective date of this Order, Respondent shall submit an amended 2020 Cross-Connection Program Annual Report Form, 62-555.900(13), F.A.C., if needed, to correct any inaccuracies, or indicate to the Department in writing that the 2020 Cross-Connection Program Annual Report was correct as originally submitted.
- g. Within 30 days of the effective date of this Order, Respondent shall submit a copy of its Cross-Connection Control Program for review and approval.
- h. Ensure all violations are published in the 2021 Consumer Confidence Report.

6. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$1,021,193.90 in settlement of the regulatory matters addressed in this Order. This

amount includes \$1,000,000.00 for civil penalties and \$21,193.90 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order.

7. Respondent shall make all payments required by this Order by cashier's check or money order. Cashier's check or money order shall be made payable to the "Florida Department of Health Palm Beach County", and shall include thereon the File No. WP 038-20 assigned to this Order and the notation "Program 58-Civil Penalty."

8. Respondent agrees to pay the Department the following stipulated penalties:

- a) In the amount of \$5,000 per day for each day Respondent fails to perform the corrective actions established in Paragraph 5 above, including the subparagraphs thereof.
- b) The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment and shall do so as further described in paragraph 9, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph 6 of this Order.

9. A separate stipulated penalty shall be assessed for each violation of this Order under paragraph 8 above. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to the Department by check or money order. The instrument shall be made payable to the "Florida Department of Health Palm Beach County" and shall include thereon the File No. WP 038-20 assigned to this Order and the notation "Program 58 - Stipulated Penalty". The Department may make demands for payment at any time after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Order. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 6 of this Order. If the Department is required to file a lawsuit to recover stipulated penalties under this paragraph, the Department will not be foreclosed from seeking

civil penalties for violations of this Order in an amount greater than the stipulated penalties due under this paragraph.

10. Except as otherwise provided, all submittals and payments required by this Order shall be sent to the Florida Department of Health Palm Beach County, 800 Clematis Street, Fourth Floor, West Palm Beach, Florida 33402.

11. Respondent shall allow all authorized representatives of the Department access to the System at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

12. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond the control of Respondent (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department by the next working day and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

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

14. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

15. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Order.

16. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties up to \$5,000.00 per day per violation, and criminal penalties.

17. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this Order. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to section 120.68, F.S.

18. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

19. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), F.S.

20. This Order is a final order of the Department pursuant to section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition

for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition, this Order will not be effective until further order of the Department.

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

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

- a) The OGC Number assigned to this Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Order;
- d) A statement of when and how the petitioner received notice of the Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Order.


The petition must be filed (received) at the office of Agency Clerk, Office of General Counsel, Florida Department of Health, 4052 Bald Cypress Way, Bin A-02, Tallahassee, Florida 32399 or by facsimile to (850) 413-8743 within 21 days of receipt of this notice. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569

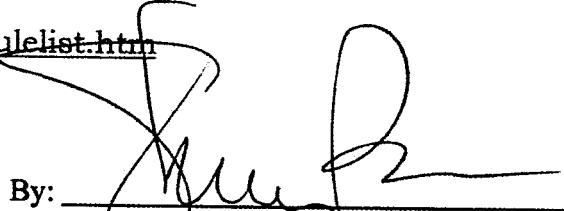
and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code²³.

22. Rules referenced in this Order are available at

<http://www.dep.state.fl.us/legal/Rules/rulelist.htm>

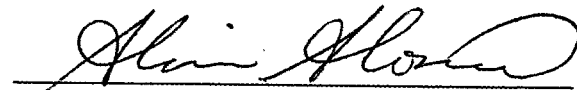
ATTEST:


Katerri Johnson, City Clerk

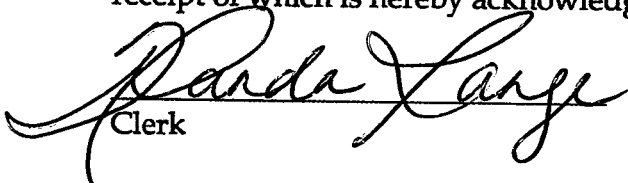
By: 
Shelly Petrolia, Mayor

DONE AND ORDERED this 12th day of November, 2021, in Palm Beach County, Florida.

FLORIDA DEPARTMENT OF HEALTH
PALM BEACH COUNTY


Alina M. Alonso, MD, Director
Florida Department of Health Palm Beach County

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.


Clerk

11/12/2021
Date

Copies furnished to:
FDEP SW District Office
FDOHPBC File: WP-038-20

**City of Delray Beach Utilities Department
Reclaimed Water Pending List
November 9, 2021**

| Address | Description | Action(s) Pending | Notices Sent | Notes | Restoral Status |
|------------------------|--------------------------|----------------------------------|--|--|---|
| 1001 E Atlantic Avenue | Bank / Retail | Needs RPZ Installation | 1st letter notice sent 12/28/20 2nd notice sent 06/14/2021 Permit pulled extension granted | 5/17/21: Bldg Permits Pending; 3x RP installed 1 RP getting installed by contractor | Reclaimed Service Locked - CCI done BH, Permits pending completion |
| 2455 W Atlantic Avenue | Commerdal; School HS | RPZ Certifications pending | 1st letter notice sent 12/28/20 2nd notice sent 06/14/2021 Final notice sent 08/02/2021 | Potable Backflows certified in VEPO Fire Backflows not certified in VEPO | Reclaimed Services Locked - CCI done BH, Waiting for backflow certification |
| 39 Gleason Street | Parking Lot - Commercial | Needs RPZ Installation | 1st letter sent 12/28/2020 2nd notice sent 06/14/2021 Final notice sent 09/22/2021 | DEL104320/1 tested and passed DEL104320/2 tested and passed DEL104320/3 RPZ needs to be installed | Reclaimed Stubout Locked / Not active Site - CCI done CF |
| 134 Gleason Street | Multistory Residential | Needs RPZ Installation | 1st letter notice sent on 5/28/20 2nd notice sent 06/14/2021 Final notice sent 9/22/2021 - Final returned undeliverable - update mailing address | DEL249880 /1 RPZ needs to be installed | Reclaimed Service Locked |
| 88 S Ocean Blvd | Multi Unit/Residential | Replace DuC | 1st notice sent 06/14/2021 | DEL251460/1 installed and certified DEL306250/1 existing DuC needs replaced | Reclaimed Stubout Locked / Not active Site - CCI done BH |
| 107 MacFarlane Dr | Multi unit Residential | Needs RPZ Installation | 1st letter sent 06/14/2021 2nd letter sent 09/21/2021 | Permit pulled DEL113130/1 RPZ installation pending | Reclaimed Stubout locked |
| 50 East Rd | Multistory Residential | Needs three (3) RPZ installation | 2nd letter sent | DEL108840/1 Building permits filed/ Installation pending DEL108840/2 Building permits filed/ Installation pending DEL108840/3 Building permits filed/ Installation pending DEL108840/4 Building permits filed/ Installation pending | Reclaimed Stubout locked - CCI Done BH |
| 143 NW 6th Ave- Church | Church | Needs RPZ Installation | Final notice sent 09/22/2021 CF knocked on door, no answer phone lines not connected | DEL86320/1 | Reclaimed Service locked |