

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	SOUTHWEST DISTRICT
)	
v.)	OGC FILE NO. 18-0112
)	
PINELLAS COUNTY UTILITIES)	
_____)	

SECOND AMENDED CONSENT ORDER

This Second Amended Consent Order is entered into between the State of Florida Department of Environmental Protection (“Department”) and Pinellas County Utilities - South Cross Bayou (“Respondent”) to amend Consent Order, OGC File No. 18-0112, effective May 4, 2018 (“Original Order”). The Department and Respondent hereby enter into this Second Amended Consent Order (OGC File No. 18-0112, “Second Amended Consent Order”), which replaces and supersedes the Original Order and all previous Amended Consent Orders.

The Department finds and Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida’s air and water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes (“F.S.”), and the rules promulgated and authorized in Title 62, Florida Administrative Code (“F.A.C.”). The Department has jurisdiction over the matters addressed in this Second Amended Consent Order
2. Respondent is a person within the meaning of Section 403.031(5), F.S.
3. Respondent is the owner and is responsible for the operation of South Cross Bayou Advanced Water Reclamation Facility (AWRF) - FL0040436 and associated Collection Systems (Systems) located in Pinellas County.
4. Respondent’s Domestic Wastewater Permit FL0040436 (“Permit”), Condition I.A.I entitled Reclaimed Water and Effluent Limitations and Monitoring

Requirements sets effluent limitations for the following parameters:

dichlorobromomethane (DCBM) and dibromochloromethane (DBCM).

5. The First Amended Consent Order set an annual average interim limit for DCBM at 30.0 ug/L. A review of the Respondent’s discharge monitoring reports (DMRs) for the period of October 2019 – February 2020 indicated the interim limits were exceeded, as shown in Table 1, below:

Table 1: DMR Exceedances

Date	Parameter	Result	Limit	Units	Statistical Base
02/29/2020	Dichlorobromomethane	31.6	30.0	UG/L	AB - Annual
01/31/2020	Dichlorobromomethane	30.5	30.0	UG/L	AB - Annual
02/29/2020	Dibromochloromethane	50.0	34.0	UG/L	AB - Annual
01/31/2020	Dibromochloromethane	47.6	34.0	UG/L	AB - Annual
12/31/2019	Dibromochloromethane	44.6	34.0	UG/L	AB - Annual
11/30/2019	Dibromochloromethane	40.4	34.0	UG/L	AB - Annual
10/31/2019	Dibromochloromethane	36.5	34.0	UG/L	AB - Annual

The exceedances for DCBM listed in Table 1 above, are violations of the established interim limits as set forth in the First Amended Consent Order. The exceedances for DBCM listed in Table 1 above are violations of 62-604.130(1), Florida Administrative Code (F.A.C.), which states that it is a violation to fail to comply with the terms, conditions, requirements, limitations, and restrictions set forth in the Permit. These exceedances are also violations of Rule 62-600.410(1), F.A.C., which provides that “all domestic wastewater facilities shall be operated and maintained in accordance with the applicable provisions of this chapter and related regulations so as to attain, at a minimum, the reclaimed water or effluent quality required by the wastewater facility permit.”

6. This Second Amended Consent Order is to allow the Respondent time to resolve the exceedances for DCBM and DBCM. Having reached a resolution of the matter Respondent and the Department mutually agree and it is

ORDERED

7. By May 31, 2025, and thereafter, Respondent shall reduce DCBM and DBCM through reduction of the sources of this constituent or by treatment so that the Facility's effluent complies with the water quality standard for DCBM and DBCM, as defined in Rule 62-302.530, F.A.C. Respondent shall take whatever corrective actions are necessary to meet the limit for DCBM and DBCM in the South Cross Bayou Facility's effluent. However, if a permit revision or additional Department permit is required for the corrective actions, Respondent must obtain the permit revision or Department permit prior to placing the modifications into operation. Respondent must govern its actions through submittal of appropriate information, applications, pertinent data, and responses to Department requests for additional information to comply with the water quality standard for DCBM and DBCM.

8. Upon the effective date of this Second Amended Consent Order and lasting through May 31, 2025, the South Cross Bayou Facility's effluent discharged to Joe's Creek shall meet the following criteria: The effluent shall not contain more than 50.0 µg/L of DCBM and 80.0 µg/L of DBCM on an annual average basis as the interim limit. The interim limits shall become effective upon the first day of the month following the effective date of this Second Amended Consent Order and remain in effect until May 31, 2025. A copy of the Discharge Monitoring Report ("DMR") to be used for reporting the interim limit values is incorporated herein and attached as Exhibit A. Sampling, analysis and reporting of DCBM and DBCM shall be in accordance with the permit. This interim limit does not act as a State of Florida Department of Environmental Protection wastewater permit effluent limitation or modified permit limitation, nor does it authorize or otherwise justify violation of the

Florida Air and Water Pollution Control Act, Part I, Chapter 403, Florida Statutes (F.S.), during the pendency of this Second Amended Consent Order.

9. By May 31, 2025, Respondent shall be in compliance with its permit and all applicable Department rules or shall cease discharging to surface waters.

10. Every calendar quarter after the effective date of this Second Amended Consent Order, Respondent shall submit in writing to the Department, a report containing information concerning the status and progress of projects being completed under this Second Amended Consent Order, information as to compliance or noncompliance with the applicable requirements of this Second Amended Consent Order including construction requirements and effluent limitations, and any reasons for noncompliance. These reports shall also include a projection of the work to be performed pursuant to this Second Amended Consent Order during the 12-month period which will follow the report. These reports shall be submitted to the Department within 30 days following the end of the calendar quarter.

11. Within 30 days of the effective date of this Second Amended Consent Order, Respondent shall pay the Department \$6,500.00 in settlement of the regulatory matters addressed in this Second Amended Consent Order. This amount includes \$6,000.00 in civil penalties for violations of Rules 62-600.410(1) and 62-604.130(1), F.A.C., and \$500.00 for costs and expenses incurred by the Department during the investigation of this matter.

12. In lieu of making cash payment of \$6,000.00 in civil penalties as set forth in paragraph 11 above, Respondent may elect to off-set this amount by implementing an in-kind penalty project, which must be approved by the Department. An in-kind project must be either an environmental enhancement, environmental restoration or a capital/facility improvement project. The Department may also consider the donation of environmentally sensitive land as an in-kind project. The value of the in-kind penalty project shall be one and a half times the civil penalty off-set amount, which in this case is the equivalent of at least **\$9,000.00**. If Respondent chooses to implement an

in-kind project, Respondent shall notify the Department of its election electronically or by certified mail within 15 days of the effective date of this Second Amended Consent Order. If Respondent elects to implement an in-kind project, then Respondent shall comply with all of the requirements and time frames in Exhibit A entitled In-Kind Projects.

Notwithstanding the election to implement an in-kind project, payment of the remaining \$500.00 in costs must be paid within 30 days of the effective date of the Second Amended Consent Order.

13. Respondent agrees to pay the Department stipulated penalties in the amount of \$1,000.00 per month for each and every month Respondent fails to timely comply with the requirements of paragraph(s) 7 through 10 of this Second Amended Consent Order. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Second Amended Consent Order. If the Department is required to file suit to recover stipulated penalties, the Department will not be foreclosed from seeking civil penalties for violations of the Second Amended Consent Order, or any other provision of law in an amount greater than the stipulated penalties under this paragraph.

14. Upon the effective date of this Second Amended Consent Order, Respondent shall pay the Department stipulated penalties for any discharges of wastewater from the WWTF and/or collection/transmission system. Respondent shall pay stipulated penalties as follows:

Amount per Day per Discharge	Discharge Volume
\$500.00	up to 5,000 gallons
\$1,000.00	5,001 to 10,000 gallons
\$2,500.00	10,001 to 25,000 gallons
\$5,000.00	25,001 to 100,000 gallons
\$10,000.00	in excess of 100,000 gallons

15. Respondent shall make all payments required by this Second Amended Consent Order by check, money order or on-line payment. Check or money order shall be made payable to the “Department of Environmental Protection” and shall include both the OGC number assigned to this Second Amended Consent Order and the notation “Water Quality Assurance Trust Fund.” Online payments by e-check can be made by going to the DEP Business Portal at: <http://www.fldepportal.com/go/pay/>. It will take a number of days after this order becomes final and effective filed with the Clerk of the Department before ability to make online payment is available.

16. Except as otherwise provided, all submittals and payments required by this Second Amended Consent Order shall be sent to Southwest District, Department of Environmental Protection, 13051 N. Telecom Parkway, Suite 101, Temple Terrace, Florida, 33637.

17. Respondent shall allow all authorized representatives of the Department access to the Facility and the Property at reasonable times for the purpose of determining compliance with the terms of this Second Amended Consent Order and the rules and statutes administered by the Department.

18. In the event of a sale or conveyance of the Facility or of the Property upon which the Facility is located, if all of the requirements of this Second Amended Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Facility or Property, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility, and (c) provide a copy of this Second Amended Consent Order with all attachments to the purchaser, operator, or person(s) in control of the Facility. The sale or conveyance of the Facility or the Property does not relieve Respondent of the obligations imposed in this Second Amended Consent Order.

19. 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 Second Amended Consent 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.

20. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Second Amended Consent 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 Second Amended Consent Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Second Amended Consent Order.

21. This Second Amended Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Second Amended Consent 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 Second Amended Consent Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

22. 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 Second Amended Consent Order.

23. Respondent is fully aware that a violation of the terms of this Second Amended Consent Order may subject Respondent to judicial imposition of damages, civil penalties up to \$10,000 per day per violation, and criminal penalties.

24. 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 Second Amended Consent Order. Respondent also acknowledges and waives its right to appeal the terms of this Second Amended Consent Order pursuant to section 120.68, F.S.

25. 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 Second Amended Consent Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

26. The terms and conditions set forth in this Second Amended Consent 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 Second Amended Consent Order constitutes a violation of section 403.161(1)(b), F.S.

27. This Second Amended Consent 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 Second Amended Consent Order will not be effective until further order of the Department.

28. Respondent shall publish the following notice in a newspaper of daily circulation in Pinellas County, Florida. The notice shall be published one time only within 14 days of the effective date of the Second Amended Consent Order. Respondent shall provide a certified copy of the published notice to the Department within 10 days of publication.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF SECOND AMENDED CONSENT ORDER

The Department of Environmental Protection (Department) gives notice of agency action of entering into a Second Amended Consent Order with PINELLAS COUNTY pursuant to section 120.57(4), Florida Statutes. The Second Amended Consent Order addresses exceedances of dichlorobromomethane (DCBM) and dibromochloromethane (DBCM) from the Pinellas County South Cross Bayou WWTF. The Second Amended Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, 13051 N. Telecom Parkway, Suite 101, Temple Terrace, Florida 33637.

Persons who are not parties to this Second Amended Consent 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 Second Amended Consent Order means that the Department's final

action may be different from the position it has taken in the Second Amended Consent Order.

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

- a) The OGC Number assigned to this Second Amended Consent 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 Second Amended Consent Order;
- d) A statement of when and how the petitioner received notice of the Second Amended Consent 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 Second Amended Consent Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Second Amended Consent 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 Second Amended Consent Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the Southwest District Office at 13051 N. Telecom Parkway, Suite 101, Temple Terrace, Florida 33637. 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 Second Amended Consent 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 Code.

29. Rules referenced in this Second Amended Consent Order are available at <https://softlive.dep.state.fl.us/ogc/ogc/content/rules>.



FOR THE RESPONDENT:

Pat Gerard

Commissioner Pat Gerard
Chair
Board of County Commissioners

June 23, 2020
Date

ATTEST: KEN BURKE, CLERK

By: [Signature]
Deputy Clerk

APPROVED AS TO FORM

By: [Signature]
Office of the County Attorney

DONE AND ORDERED this _____ day of _____, 2020, in
Hillsborough County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Mary E. Yeargan, P.G.
District Director
Southwest District

FILED, on this date, pursuant to section 120.52, Fla. Stat., with the designated
Department Clerk, receipt of which is hereby acknowledged.

Clerk

Date

Copies furnished to:
Lea Crandall, Agency Clerk