

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT )  
OF ENVIRONMENTAL PROTECTION )  
 )  
v. )  
 )  
GULF POWER COMPANY )  
\_\_\_\_\_ )

IN THE OFFICE OF THE  
NORTHWEST DISTRICT

OGC FILE NO. 17-1224

**CONSENT ORDER**

This Consent Order ("Order") is entered into between the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION ("Department") and GULF POWER COMPANY ("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 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 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 the James F. Crist Electric Generating Plant (Plant Crist), an electric power generating facility ("Facility"). Respondent operates the Facility under Department-issued National Pollutant Discharge Elimination System (NPDES) Industrial Wastewater Permit No. FL0002275 ("IW Permit") which was issued on January 28, 2011. On September 8, 2016, the Department issued a Notice of Draft Permit for Respondent's permit renewal. As of the date of entry of this Order, Permit No. FL0002275 remains administratively continued pending final agency action of Respondent's application for permit renewal pursuant to section 120.60(4), F.S. The Facility is located at 11999 Pate Street, in Escambia County, Florida ("Property").

4. This Consent Order resolves an enforcement action and will bring the Respondent back into compliance with applicable law. The alleged violations concern a) an unpermitted industrial wastewater discharge from the Respondent's closed coal ash landfill into waters of the state, and b) copper exceedances with respect to the effluent limitations in Respondent's IW permit. The Consent Order imposes civil penalties, requires the Respondent to initiate certain rehabilitative and corrective actions, and establishes a framework and timeline for compliance.

Closed Coal Ash Landfill

5. The site contains an inactive, unlined coal ash disposal landfill ("Closed Ash Landfill") located on the south end of an island lying between Governor's Bayou and the Escambia River. The Closed Ash Landfill is owned and maintained by the Respondent.

6. The Closed Ash Landfill received coal ash from 1970 until 1981 (The Respondent has not placed any coal ash into the landfill in over 35 years). The Respondent closed the landfill in the early 1980's. The Respondent submitted a report titled "Crist Electric Generating Plant Groundwater Monitoring Plan, Volume 1", dated February 1984, to the Department's Solid Waste Program. The report indicated a potential for a discharge to waters of the state. As a result, the Department's approval of the groundwater monitoring plan included a requirement for the Respondent to also monitor the surface water quality in Governor's Bayou for potential impacts from the landfill. The surface water quality monitoring was conducted by Respondent during the summer of 1985, and a final report submitted to the Department in September 1985. The water quality monitoring results in the final report indicated that there were no adverse impacts to surface waters.

7. The Closed Ash Landfill has coverage for stormwater discharges under a Department-issued NPDES Stormwater Multi-Sector General Permit (MSGP). However, the Respondent's current IW Permit for industrial wastewater discharges does not authorize additional discharges from the Closed Ash Landfill to waters of the state.

8. On October 13, 2017, the Department conducted a site visit at the Closed Ash Landfill. Visual observations made during the site visit included: (a) a small depression in the

center of the landfill that appears to have been caused by subsidence; (b) potentially exposed coal ash due to insufficient or eroded soil cover; and (c) excessive vegetative growth.

9. On December 9, 2017, Respondent collected water quality samples at multiple stations upstream, downstream and adjacent to the Closed Ash Landfill. Respondent conducted the sampling pursuant to the Department's request. On December 13, 2017, the Respondent submitted water quality monitoring data, collected on December 9, 2017. Monitoring results did not detect a surface water quality standard violation in the Escambia River and Governor's Bayou. However, although boron is naturally occurring in the Escambia River and Governor's Bayou, elevated levels of boron in the vicinity of the Closed Ash Landfill indicate the presence of wastewater. To the extent that there may be a release of wastewater from the Coal Ash Landfill, such a release is an unpermitted discharge to the waters of the state, and the Department finds that the Respondent is in violation of Rule 62-620.300(2), F.A.C., and sections 403.087(1), 403.088(1), and 403.161(1)(b), F.S.

Exceedances of IW Permit Limits for Total Recoverable Copper

10. In July 2017, Respondent submitted to the Department the Discharge Monitoring Report (DMR) for the parameters that the Respondent is required to monitor once during the second quarter of 2017 under the IW Permit. The reported value for total recoverable copper at Outfall D-010 exceeded both the daily maximum and monthly average limitations in the IW Permit, which is a violation of Rule 62-302.530(47), F.A.C. The Department recognizes that the exceedance was a onetime event and not habitual.

**ORDERED:**

Respondent shall comply with the following rehabilitative and corrective actions within the stated time periods:

Closed Coal Ash Landfill

11. As it pertains to the rehabilitation of the Closed Ash Landfill, Respondent shall initiate and complete rehabilitation of the site, as described below.

- a. No later than 90 days after the effective date of this Order, Respondent shall submit to the Department a Plan of Study (POS) for conducting a geological and

engineering site evaluation. The POS shall determine the extent of the rehabilitation area; evaluate the integrity of the Closed Ash Landfill cap; and identify any seeps and discharges as well as the quantity and quality of those discharges to waters of the state from the Closed Ash Landfill.

b. For purposes of identifying the extent of the rehabilitation area and water quality of discharges to waters of the state, Respondent's POS shall include a proposed sampling and monitoring plan for the following parameters using Department protocols required by Chapter 62-160, F.A.C.: antimony, arsenic, barium, beryllium, boron, cadmium, chloride, total chromium, copper, lead, mercury, nickel, selenium, thallium, vanadium, and pH. Sampling and monitoring locations shall include both groundwater and surface water.

c. Within 30 days of the Department's approval, the Respondent shall implement the POS. No later than 12 months after the date of the Department's approval of the POS, Respondent shall submit to the Department a report (Report). The Report shall contain the findings of the POS and an evaluation of engineering solutions to rehabilitate the landfill, which may include stabilizing the cap; minimizing soil erosion, water penetration into and through the stored ash material, and stormwater runoff to the extent it contributes to erosion and sedimentation; controlling further penetration of tree and shrub roots through the material stabilizing the Closed Ash Landfill; and eliminating or minimizing discharges to waters of the state. Options evaluated should include improvements to the cap, installation of slurry walls, and harvesting of trees and shrubs with extensive root systems and any invasive exotic plants listed as Category I on the 2017 Florida Exotic Pest Plant Council List of Invasive Plants (<http://www.fleppc.org/list/list.htm>) and replacing them with perennial grasses or other suitable vegetation. In addition, the Report shall specify the rehabilitation actions to be taken by the Respondent and a schedule with milestones.

d. The rehabilitation actions shall eliminate or minimize discharges to waters of the state. For any discharges to waters of the state that remain after the rehabilitation actions,

the Respondent shall provide reasonable assurance that applicable water quality standards are met and that the designated use of contiguous waters of the state are not impaired. The rehabilitation actions shall be completed within 48 months from the date of submission of the Report Required under subparagraph 11.c.

e. The Respondent shall submit quarterly progress reports, in accordance with the schedule in paragraph 17 of this Order, on the status of implementation of the rehabilitative actions.

f. Within 30 days of completing the rehabilitation actions, Respondent shall submit for Department approval a one-year sampling and monitoring plan to confirm the effectiveness of the rehabilitation actions. Sampling shall be conducted on a monthly basis for antimony, arsenic, barium, beryllium, boron, cadmium, chloride, total chromium, copper, lead, mercury, nickel, selenium, thallium, vanadium, and pH. The plan shall identify the monitoring sites, which shall include, at a minimum, the nine monitoring sites where sampling was conducted on December 9, 2017, and any groundwater monitoring wells installed as part of the POS. Within 30 days of the Department's approval, the Respondent shall begin implementation of the sampling and monitoring plan.

g. No later than 90 days after completion of the one-year sampling and monitoring, Respondent shall submit a final report (Final Report) summarizing all data and analyses. The purpose of the Final Report is to provide the Department with reasonable assurance that any discharges from the Closed Ash Landfill are not causing or contributing to a violation of applicable water quality standards and that the designated use of contiguous waters of the state are not impaired.

12. As it pertains to unpermitted discharges to waters of the state from the Closed Ash Landfill, Respondent shall initiate the actions necessary to bring the Facility into compliance with sections 403.087(1) and 403.088(1), F.S., and the applicable provisions of Chapters 62-520 and 62-620, F.A.C. In that regard:

- a. The Respondent and Department acknowledge and agree that the pending draft renewal permit for the Respondent's IW Permit will include coverage for discharges from the closed coal ash landfill to waters of the state.
- b. The Final Report provided for under paragraph 11(g) of this Order shall demonstrate reasonable assurance that discharges from the closed coal ash landfill are not causing or contributing to a violation of applicable water quality standards and that the designated use of contiguous waters of the state are not impaired.
- c. Pending a demonstration of reasonable assurance as required by paragraph 12(b) of this Order, Respondent shall comply with an interim limitation of report, at the sampling locations identified in the POS required by paragraph 11(a), for antimony, arsenic, barium, beryllium, boron, cadmium, chloride, total chromium, copper, lead, mercury, nickel, selenium, thallium, vanadium, and pH.
- d. Respondent may petition the Department for an appropriate moderating provision provided for under Chapters 120 and 403, and the rules promulgated thereunder.

Exceedances of IW Permit Limits for Total Recoverable Copper

13. As it pertains to the exceedances of the IW Permit limits for total recoverable copper, Respondent shall prepare and submit to the Department, within 90 days after the effective date of this Order, a Plan of Study that addresses the identification of potential copper sources at the Facility and evaluation of engineering solutions to meet the limitation in the IW Permit for total recoverable copper at Outfall D-010. Engineering solutions may include on-site reuse, corrosion inhibitors, or treatment. No later than 12 months after the effective date of this Order, Respondent shall submit to the Department a report (Cu Report). The Cu Report shall identify the engineering solution and an implementation schedule. Sampling for total recoverable copper shall be in accordance with the Quality Assurance and Quality Control protocols included in the IW Permit.

14. The Department shall review and approve the implementation schedule for the total corrective actions identified in the Cu Report. The corrective actions shall be completed within 36 months of the effective date of this Order.

15. Until compliance with the copper limitations in Part I.A.1 of the IW Permit is achieved as required in Paragraph 13 of this Order, Respondent shall comply with an interim copper limitation of report at the discharge from Outfall D-010. In addition, Respondent shall submit quarterly progress reports, in accordance with the schedule in paragraph 17 of this Order, on the status of implementation of the rehabilitative actions.

16. The Respondent may petition the Department for an appropriate moderating provision or other available relief provided for under Chapters 120 or 403, F.S., and the rules promulgated thereunder.

General

17. Every quarter after the effective date of this Consent Order, and continuing until all rehabilitative and corrective actions have been completed, Respondent shall submit in writing to the Department a report containing information concerning the status and progress of projects being completed under this Order, information as to compliance or noncompliance with the applicable requirements of this Order including construction requirements and effluent limitations, and any reasons for noncompliance. These reports shall also include an estimated projection of the work to be performed pursuant to this Order during the 12-month period which will follow the report. Respondent shall submit the reports to the Department within 30 days of the end of each calendar quarter.

18. Within 90 days of the effective date of this Order, Respondent shall pay the Department \$32,500 in settlement of the regulatory matters addressed in this Order. This amount includes \$30,000 for civil penalties and \$2,500 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order.

19. 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 all of the terms of this Order.

20. Respondent agrees to pay the Department stipulated penalties in the amount of \$100 per day for each and every day Respondent fails to timely comply with any of the requirements of this Order. 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 21, 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 this Order.

21. Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this 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.

22. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Northwest District Assistant Director, Department of Environmental Protection, 160 W. Government Street, Pensacola, Florida 32502.

23. 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 Order and the rules and statutes administered by the Department.

24. 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 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 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 Order.

25. 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). Failure of regulatory agencies to issue required permits consistent with this Order shall be considered a circumstance beyond the control of Respondent if Respondent acted with due diligence in the permit application process. 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.

26. 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.

27. 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.

28. 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 \$10,000.00 per day per violation, and criminal penalties.

29. 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.

30. 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.

31. 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.

32. This 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 Consent Order will not be effective until further order of the Department.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

NOTICE OF CONSENT ORDER

The Department of Environmental Protection ("Department") gives notice of agency action of entering a Consent Order with GULF POWER COMPANY pursuant to section 120.57(4), Florida Statutes. The Consent Order addresses a) site rehabilitation with respect to a closed coal ash landfill, and b) copper exceedances with respect to the National Pollutant Discharge Elimination System permit for the Gulf Power Company Plant Crist facility located at 11999 Pate Street in Escambia County. The 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, 160 W. Government Street, Pensacola, Florida 32502.

Persons who are not parties to this 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 Consent Order means that the Department's final action may be different from the position it has taken in the Consent Order.

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

- a) The OGC Number assigned to this 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 Consent Order;
- d) A statement of when and how the petitioner received notice of the 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 Consent Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the 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 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 District Office at 160 W. Government Street, Pensacola, Florida 32502. 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.

33. Rules referenced in this Order are available at:

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

EXECUTED THIS 24<sup>th</sup> day of January 2018, on behalf of GULF POWER COMPANY:

By: Richard M. Markey  
Richard M. (Mike) Markey  
Director of Environmental Affairs

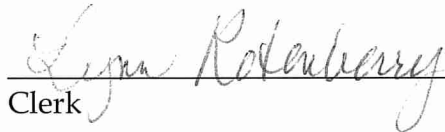
DONE AND ORDERED this 25<sup>th</sup> day of January 2018, in Escambia County, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



**Emile D. Hamilton, District Director,**  
**Northwest District Office**  
Department of Environmental Protection

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

  
Clerk

Jan. 25, 2018

Copies furnished to:

Lea Crandall, Agency Clerk  
Mail Station 35