

Agenda Item #: 3D-2

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: December 19, 2006

Consent       Regular  
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For:

**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to: approve Consent Order with the Florida Department of Environmental Protection (DEP), obligating the County to take corrective action to bring its bridge tender houses into compliance with waste discharge requirements for County bridges over the Intracoastal Waterway, and obligating the County to pay \$500.00 to DEP for costs and expenses incurred during DEP's investigation.

**Summary:** DEP has advised the County that it believes the County's current waste treatment facilities for the bridge tender houses on the County's bridges may violate Section 403.021(2), Florida Statutes and Section 62-604.130(1), Florida Administrative Code. DEP has proposed that the parties agree to a Consent Order that provides for corrective action to bring the bridge tender houses into compliance with state requirements, and for payment of \$500.00 to DEP for administrative costs. Countywide (ATP)

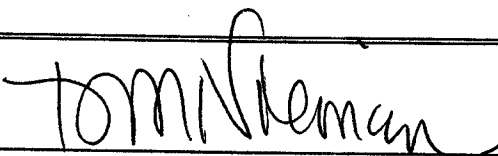
**Background and Justification:** The County operates bridge tender houses at the Intracoastal waterway bridges on the following roads: Linton Boulevard, George Bush Boulevard, Donald Ross Road, Ocean Avenue (Lantana), Southeast 15th Ave, and Palmetto Park Road. For over 15 years the County has used Coast Guard Approved waste treatment devices, which are commonly used aboard private ocean going vessels, for these bridge tender facilities. DEP has determined that this type of device may violate current Florida statutory requirements regarding waste discharge into the Intracoastal waterway and has requested the County to stop using this device. Upon receiving DEP's notice, the County stopped using the treatment device and is in the process of taking corrective action. DEP has proposed a Consent Order which would provide for corrective action on the part of the County, as well as the payment of \$500 for administrative expenses incurred in DEP's investigation.

**Attachments:**

1. Consent Order

Recommended by: \_\_\_\_\_

County Attorney



Date

12/08/06

Approved by: \_\_\_\_\_

N/A

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

| Fiscal Years             | 2007                 | 2008              | 2009              | 2010              | 2011              |
|--------------------------|----------------------|-------------------|-------------------|-------------------|-------------------|
| Capital Expenditures     | <u>-0-</u>           | <u>-0-</u>        | <u>-0-</u>        | <u>-0-</u>        | <u>-0-</u>        |
| Operating Costs          | <u>\$ 500</u>        | <u>-0-</u>        | <u>-0-</u>        | <u>-0-</u>        | <u>-0-</u>        |
| External Revenues        | <u>-0-</u>           | <u>-0-</u>        | <u>-0-</u>        | <u>-0-</u>        | <u>-0-</u>        |
| Program Income (County)  | <u>-0-</u>           | <u>-0-</u>        | <u>-0-</u>        | <u>-0-</u>        | <u>-0-</u>        |
| In-Kind Match (County)   | <u>-0-</u>           | <u>-0-</u>        | <u>-0-</u>        | <u>-0-</u>        | <u>-0-</u>        |
| <b>NET FISCAL IMPACT</b> | <u><b>\$ 500</b></u> | <u><b>-0-</b></u> | <u><b>-0-</b></u> | <u><b>-0-</b></u> | <u><b>-0-</b></u> |

**# ADDITIONAL FTE POSITIONS (Cumulative)** \_\_\_\_\_

Is Item Included in Current Budget? Yes  X  No    
 Budget Acct No.: Fund 1201 Dept. 363 Unit R008 Object 4606.  
 Program

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

County Transportation Trust Fund  
 Bridge Improvements/Major Repairs

This \$500 covers the costs incurred by the Dept of Environmental Protection during investigations. The total cost to implement corrective action has already begun. The estimated total cost is expected to be \$16,000. A total of \$7,021 has already been expended to implement corrective action. The remaining costs will be funded through the County Transportation Trust Fund.

C. Departmental Fiscal Review: Atwillhite for Bob Ward

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Dev. and Control Comments:**

Edizuluth Cross 12/13/06  
 OFMB  
 12/13/2006  
 12/13/06 CN  
 12-13-06 CN  
 12-11-06  
Jim J. Joseph 12/14/06  
 Contract Dev. and Control  
 12/14/06

B. Approved as to Form and Legal Sufficiency:  
Amey Taylor Petrick  
 Assistant County Attorney

C. Other Department Review:  
 \_\_\_\_\_  
 Department Director

**This summary is not to be used as a basis for payment.**

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION,

IN THE OFFICE OF THE  
SOUTHEAST DISTRICT

Complainant,

vs.

OGC FILE NO. 06-1943

PALM BEACH COUNTY ROAD AND  
BRIDGE DIVISION,

Respondent.

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**CONSENT ORDER**

This Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department") and Palm Beach County Road and Bridge Division ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and the 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, and the rules promulgated thereunder, Title 62, Florida Administrative Code. The Department has jurisdiction over the matters addressed in this Consent Order.
2. Respondent is a person within the meaning of Section 403.031(5), Florida Statutes. The main office of Palm Beach County Road and Bridge Division is located at 3700 Belvedere Road, Building C, West Palm Beach, Florida 33406.
3. Respondent is a division of Palm Beach County government responsible for operating the following bridges and associated bridge tender houses over the Intracoastal

Waterway in Palm Beach County, Florida including the following:

- (a) Linton Boulevard bridge;
- (b) George Bush Boulevard bridge;
- (c) Donald Ross Road bridge;
- (d) Ocean Avenue bridge;
- (e) Southeast 15<sup>th</sup> Avenue bridge; and
- (f) Palmetto Park Road bridge.

4. The Department finds and the Respondent neither admits nor denies that domestic waste was routinely discharged from toilets and sinks in the referenced bridge tender houses into the Intracoastal Waterway without the degree of treatment required by the Department and in violation of Florida Statutes Section 403.021(2) and Florida Administrative Code Section 62-604.130(1) prior to June 7, 2006.

5. Having reached a resolution of the matter the Department and the Respondent mutually agree and it is

**ORDERED:**

6. Within 30 days of the effective date of this Consent Order, the Respondent shall submit to the Department a schedule for completing corrective actions to bring the bridge tender houses into compliance at the following bridges: Linton Boulevard bridge, Donald Ross Road bridge, and the Southeast 15<sup>th</sup> Avenue bridge. Bridge tender houses at the Ocean Avenue bridge, George Bush Boulevard bridge, and Palmetto Park Road bridge are currently connected to sanitary sewer and are in compliance. Upon Respondent's receipt of the Department's written approval, the schedule shall become an enforceable part of this Consent Order. Failure to reach an agreement with the Department on the schedule for corrective actions within 60 days of the effective date of this Consent Order will constitute a violation of this Consent Order. The

schedule shall have a completion date no later than 120 days of the effective date of this Consent Order.

7. Within 60 days of the effective date of this Consent Order, Respondent shall pay the Department \$500.00 in settlement of the matters addressed in this Consent Order. This amount includes \$500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. Payment shall be made by either cashier's check or money order. The instrument shall be made payable to the "Department of Environmental Protection" and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund".

8. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to timely comply with any of the requirements of Paragraphs 6 and 7 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Consent Order. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to "The Department of Environmental Protection" by cashier's check or money order and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund." Payment shall be sent to the Department of Environmental Protection, Water Facilities Program, 400 North Congress Avenue, Suite 200, West Palm Beach Florida 33401. 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 terms of this Consent Order. Any penalties assessed under this Paragraph shall be in addition to the settlement sum agreed to in Paragraph 7 of this Consent 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 Consent Order in an amount greater than the stipulated penalties due under this Paragraph.

9. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall 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 be a cause 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 orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and 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 for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Consent Order.

10. Persons who are not parties to this Consent Order, but whose substantial interests are affected by this Consent Order, have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and 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 named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:

(a) The name, address, and telephone number of each petitioner; the Department's Consent Order identification number and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of the Consent Order; (c) A statement of how each petitioner's substantial interests are affected by the Consent Order; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Consent Order; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order; (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under Section 120.573, Florida Statutes, before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS #35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement; and

(g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference.

(h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

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

12. All submittals and payments required by this Consent Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, Water Facilities Program, 400 North Congress Avenue, Suite 200, West Palm Beach, Florida 33401.

13. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This 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.

14. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the terms of this Consent Order, including but not limited to undisclosed releases, contamination or polluting conditions.

15. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Florida Statutes. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.161(1)(b), Florida Statutes.

16. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties up to \$10,000.00 per day per violation, and criminal penalties.

17. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.

18. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both Respondent and the Department.

19. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes, and waives that right upon signing this Consent Order.

20. This Consent Order is a final order of the Department pursuant to Section 120.52(7), Florida Statutes, 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, Florida Statutes. Upon the timely filing of a petition this Consent Order will not be effective until further order of the Department.

FOR THE RESPONDENT:

\_\_\_\_\_  
Tony Luffman  
Assistant Director  
Palm Beach County Road & Bridge Division

\_\_\_\_\_  
Date

DONE AND ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2006, in West Palm Beach, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

\_\_\_\_\_  
Kevin R. Neal  
District Director  
Southeast District

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

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date

Copies furnished to:

Lea Crandall, Agency Clerk, Mail Station 35  
Larry Morgan, OGC/TLH  
Shannan Bogdanov, Wastewater Compliance Enforcement/TLH  
David O'Brien, Wastewater Compliance Enforcement/TLH