

**Clarcona Resort Condominium Association Inc.**

**NOTICE**

**EMERGENCY BOARD OF DIRECTORS MEETING**

**DATE: THURSDAY, March 05, 2015**

**TIME: 11:00 AM**

**PLACE: RECREATION HALL (3000 Clarcona Rd, Apopka FL)**

**AGENDA:**

**I. CALL TO ORDER:**

**II. ESTABLISH QUORUM:**

**III. NEW BUSINESS**

**A. Approve the Revised Waste Water Treatment Facility draft Consent Order:**

DEP enforcement requires a timely answer to their draft Waste Water Treatment Facility Consent Order.

**IV. ADJOURNMENT:**

POSTED, MARCH \_\_\_\_\_, 2015 At \_\_\_\_\_ AM BY \_\_\_\_\_

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT )	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION )	CENTRAL DISTRICT
)	
v. )	OGC FILE NO. 15-0036
)	
CLARCONA RESORT CONDOMINIUM )	
ASSOCIATION INC. )	
_____ )	

CONSENT ORDER

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department") and Clarcona Resort Condominium Association Inc. ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

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 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 Clarcona Resort Condominium WWTF, a 0.080 MGD contact stabilization domestic wastewater treatment facility with reuse effluent and rapid infiltration basin system ("Facility"). The Facility is operated under Wastewater Permit No. FLA010851 ("Permit"), which was issued on February 12, 2014 and will expire on February 11, 2019. The Facility is located at 3000 Clarcona Rd Tract A, Apopka, FL 32703-8740, in Orange County, Florida ("Property"). Respondent owns the Property on which the Facility is located.
4. The Department finds that the following violation(s) occurred:

a) According to the Department discharge monitoring report (DMR) records, the maximum annual average permit limit (10.0 mg/L) for Total Nitrogen was exceeded from January 2013 through December 2014 as: 12.801 mg/L, 15.468 mg/L, 17.384 mg/L, 17.968 mg/L, 18.85 mg/L, 18.65 mg/L, 18.243 mg/L, 18.159 mg/L, 17.39 mg/L, 16.843 mg/L, 16.53 mg/L, 14.701 mg/L, 16.025 mg/L, 14.1 mg/L, 14.9 mg/L, 14.9 mg/L, 16.1 mg/L, 16.85 mg/L, 17.1 mg/L, 17.5 mg/L, 17.5 mg/L, 17.5 mg/L, 17.8 mg/L, and 18.8 mg/L respectively, which are violations of Section 403.161(1)(b), F.S., Rule 62-600.550 and Rule 62-600.740(1)(b)2.b.

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) By May 1, 2015, Respondent shall submit a complete application for a Department wastewater permit to construct the modifications necessary to resolve the violations. Identified in paragraph 4, above.

b) In the event the Department requires additional information to process the permit application described in subparagraph (a) of this paragraph, Respondent shall provide a written response containing the information requested by the Department within 30 days of the date of the request. Respondent shall provide all required information for the application to be deemed complete within 60 days of submission.

c) Within 365 days of the date a permit is issued, or within 455 days of submission of the permit application described in subparagraph (a) of this paragraph (whichever date is later), Respondent shall complete construction of the modification(s) and submit a Certification of Completion, prepared and sealed by a professional engineer registered in the State of Florida, stating that modifications to the Facility, effluent disposal system, and collection system have been constructed in accordance with the provisions of the Permit.

**Commented [JB1]:** In accordance with the attached revised schedule dated 2/26/15, it will take 15 months (455 days) to complete construction from the date of submitting the permit application to the Department. Please note that assuming 90 days elapsed time for the Department to issue the permit following receipt of the application, this 455-day time frame (from date of application submission) is equivalent to the 365-day time frame (from date of permit issuance) provided in the original text.

d) Every calendar quarter after the effective date of this Order, 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 a projection of the work to be performed pursuant to this 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 quarter.

6. The effluent discharged from the Facility shall comply with the annual average TN interim limit of 22.0 mg/L ("Interim Limit"). All of the other parameter limits in the Permit remain the same and shall be complied with by Respondent. The Interim Limits shall become effective upon the first day of the month following the effective date of this Order. The Interim Limit shall remain in effect until September 30, 2017. The analysis and reporting of the Interim Limits shall be in accordance with the Permit. The Interim Limit shall be reported on the DMR attached to the Permit, as modified in Exhibit A hereto. These reports shall either (1) be mailed to the Compliance Assurance Program, Department of Environmental Protection Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767 once each month and must be received by the Department no later than the 28th day following the end of the reporting period (e.g., the August report would be due no later than September 28th) or (2) submitted via the electronic discharge monitoring report system ("EZDMR"). The Interim Limits does not act as State of Florida Department of Environmental Protection Wastewater Permit effluent limitations or modified Permit limitations, nor does it authorize or otherwise justify violation of the Florida Air and Water Pollution Control Act, Part I, Chapter 403, F.S., during the pendency of this Order.

7. Within 60 days of the effective date of this Order, Respondent shall submit a written estimate of the total cost of the corrective actions required by this Order to the

**Commented [JB2]:** In accordance with the attached revised schedule dated 2/26/15, bid results for the WWTF modifications will not be available until 184 days following submission of the permit application to the Department. The bid results would provide the most accurate information regarding the total cost of the corrective actions.

Department. The written estimate shall identify the information the Respondent relied upon to provide the estimate.

8. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$3,000.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$2,000.00 for civil penalties and \$1,000.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order. The civil penalty in this case includes 1 violation that warrants a penalty of \$2,000.00 or more.

9. Respondent agrees to pay the Department stipulated penalties in the amount of \$500.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph(s) 5, 6, and 7 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 10, 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 8 of this Order.

10. 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 "Ecosystem Management and Restoration 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 is final and effective filed with the Clerk of the Department before ability to make online payment is available.

11. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Dr. Phil Kane, Environmental Specialist, CAP, Department of

**Commented [JB3]:** Please clarify how the \$500.00 daily fine would apply to the interim annual average TN limit stipulated in paragraph 6. For example, if the interim annual average TN limit is exceeded during a calendar month, and a daily fine of \$500.00 is assessed, the corresponding monthly fine would be approximately \$15,000. Such a fine would severely undermine the Respondent's ability to pay for the WWTF modifications, or pay for the regional connection. Therefore, if the preceding example is an accurate description of how the \$500.00 daily fine would be assessed for an exceedance of the interim annual average TN limit, the Respondent respectfully requests that the Department establish a less punitive fine structure for violations of the interim limit.

Environmental Protection, Central District 3319 Maguire BLVD. Suite 232 Orlando, Florida 32803-3767.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

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 FDEP Central District 3319 Maguire BLVD. Suite 232 Orlando, Florida 32803-3767. 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 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.

23. Rules referenced in this Order are available at <http://www.dep.state.fl.us/legal/Rules/rulelist.htm>

FOR THE RESPONDENT:

\_\_\_\_\_  
Vincent Bufalini  
President

\_\_\_\_\_  
Date

DONE AND ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2015, in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

\_\_\_\_\_  
Jeff Prather  
District Director  
Central

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