

**MEDIATION DRAFT 12/13/06
PRIVILEGED AND CONFIDENTIAL**

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**FLORIDA WILDLIFE FEDERATION, INC.,
MANLEY FULLER, JOSEPH GLISSON,
and WAKULLA COUNTY,**

Petitioners,

and

**CHARLIE CRIST, ATTORNEY GENERAL
OF FLORIDA,**

Intervenor,

vs.

**CITY OF TALLAHASSEE AND
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,**

DOAH CASE No. 06-1252

06-1253

06-1254

Respondents.

SETTLEMENT AGREEMENT

1. This document shall constitute a Settlement Agreement between FLORIDA WILDLIFE FEDERATION, INC., MANLEY FULLER, JOSEPH GLISSON, WAKULLA COUNTY, and CHARLIE CRIST, ATTORNEY GENERAL OF FLORIDA (collectively referred to as Petitioners for purposes of this Settlement Agreement),¹ the CITY OF TALLAHASSEE (City), and the FLORIDA

¹ Attorney General Charlie Crist filed a Verified Petition to Intervene on March 28, 2006. For purposes of this Settlement Agreement the Attorney General and the individual petitioners are referred to collectively as "Petitioners."

**MEDIATION DRAFT
PRIVILEGED AND CONFIDENTIAL**

DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) in order to resolve environmental licensing issues associated with Domestic Wastewater Facility Permit No. FLA010139, originally issued by the Department on February 13, 2006. The City and the Department are Respondents in the administrative hearing initiated by the Petitioners, pursuant to Chapter 120, *Florida Statutes*, in March 2006. (DOAH Case Nos. 06-1252, 06-1253, and 06-1254.) All Petitioners and both Respondents concur in and agree to be bound by the terms, conditions, and mutual understandings set forth in this Settlement Agreement. All parties that have signed below concur that this Settlement Agreement constitutes a mutually acceptable resolution and compromise regarding the issues raised in all petitions.

2. The contested permit (No. FLA010139) was issued by the Department on or about February 13, 2006. In March 2006, the Petitioners timely filed petitions invoking Florida's Administrative Procedure Act, contesting whether there were reasonable assurances that the permit contained conditions adequately protective of water quality in Wakulla Springs. Specific issues set forth in the petitions primarily addressed the adequacy of nitrogen reductions from the T.P. Smith Plant, nitrogen levels from the Lake Bradford Road Plant, hydraulic loading rates at the Southeast Farm and the nitrogen concentrations in the water applied there, and development of a nutrient management plan.
3. On August 4, 2006, the City filed a Motion to Relinquish Jurisdiction, requesting an opportunity to file amendments to its application that would include "substantial

MEDIATION DRAFT
PRIVILEGED AND CONFIDENTIAL

improvements to its operations in order to enhance environmental performance." The City's motion stated that it wished to propose:

[a]dditional treatment facilities that will result in substantial reductions in the level of nitrogen in water from the Lake Bradford Road Treatment Plant; additional treatment resulting in substantial reductions in the levels of nitrogen in water from the T.P. Smith Plant; specific time frames for installing the aforementioned treatment facilities; finalization of a Nutrient Management Plan that addresses the reduced nitrogen levels from the T.P. Smith Plant and Lake Bradford Road Plant and is integrated into final permit conditions; and optimization of Southeast Farm reuse water irrigation. Also, the City will request that the Lake Bradford Road permit be integrated into Permit No. FLA010139.

4. On August 18, 2006, the Petitioners filed a Joint Response opposing the City's Motion to Relinquish Jurisdiction on grounds that there were inadequate details and procedural safeguards; thereafter argument on the issue was heard during a motion hearing on August 25, 2006.
5. On August 25, 2006, subsequent to the aforementioned motion hearing, the Division of Administrative Hearings (DOAH) issued an Order Canceling Hearing and Placing Case in Abeyance. This Order reflected that DOAH would retain jurisdiction over the case while the City prepared more details concerning its proposed permit amendment; also the Order instructed the parties to participate in mediation. Additionally, the Order also required the parties to file a status report by December 1, 2006.
6. Petitioners and Respondents participated in mediation sessions on September 29, November 1, November 15, and December 12, 2006. Also, a separate mediation

**MEDIATION DRAFT
PRIVILEGED AND CONFIDENTIAL**

meeting, specifically limited in focus to “technical issues,” was conducted on November 9, 2006.

7. Representatives of the Petitioners and the Respondents, having met and having addressed the issues identified in the pleadings, mutually concur in this Settlement Agreement to the following comprehensive resolution of all issues:

I. The City's Amended Permit Application

A. Advanced Wastewater Treatment – The City commits to filing an amended application to the Department to upgrade its entire wastewater treatment system to meet the following annual average treatment standards in the City’s domestic wastewater prior to application at the Southeast Sprayfield (or any other reuse site):

- i. Carbonaceous Biochemical Oxygen Demand (CBOD) - - 5 mg/L
- ii. Total Suspended Solids (TSS) - - 5 mg/L
- iii. Nitrogen - - 3 mg/L
- iv. Phosphorus - - 2.5 mg/L
- v. Bacteriologicals - - high level disinfection²

B. Physical Upgrades – In order to meet the treatment standards described above in paragraph I.A., the City’s amended application shall commit to timely physical upgrades at the Lake Bradford Road plant that include screening technology enhancements, new aeration technology with methanol addition, the installation of a membrane bioreactor-filtration system, and high

² As specified in Rules 62-600.440(5) and 62-610.460, F.A.C.

MEDIATION DRAFT
PRIVILEGED AND CONFIDENTIAL

level disinfection. The amended application shall state that physical upgrades at the T.P. Smith plant will include screening technology enhancements, new aeration technology with methanol addition, primary clarification (settling tank) additions, denitrification filters, and high level disinfection. Moreover, in order to reliably and economically effectuate its commitment to eliminate the land application of biosolids (to be reflected in its amended application), the City's amended application shall commit to the timely installation of new digesters, gravity belt thickeners, screw presses, and additional dryers. All biosolids produced by the City shall be slow release, coated, granular Class AA biosolids.

C. **Reuse/disposal** – The City's amended application will reflect continued utilization of the Southeast Sprayfield and Southwest Sprayfield³ at the currently permitted gallons per day capacity and application rate, and that the City will seek additional public access reuse areas, for application of treated water from the T.P. Smith and Lake Bradford Road plants. The amended application will reflect the City's intention to undertake nutrient removal as a beneficial use of the Southeast Sprayfield and Southwest Sprayfield, subject to the conditions of the amended permit. The City will commit to developing and utilizing only specific types of vegetative cover that would be most effective in reduction of nitrogen through maximizing continued vegetative cover, denitrification and transpiration, and harvesting of vegetation at the

³ The "Southwest Sprayfield" is located at the T.P. Smith plant.

MEDIATION DRAFT
PRIVILEGED AND CONFIDENTIAL

Southeast Sprayfield and Southwest Sprayfield. The City's amended application will prohibit application of fertilizer at the Southeast Sprayfield or Southwest Sprayfield and prohibit cattle (or other animals) there. The City's amended application to the Department also will commit to develop a Best Management Practices Plan specific to the City's operation of the Southeast Sprayfield and Southwest Sprayfield that will manage animal and plant pests with the goal of minimal or non-use of harmful chemicals (pesticides and herbicides). In the amended application, the City will commit to maximizing uniform application at all pivots.

The City's amended application will also commit to develop and utilize other additional public access reuse sites in appropriate areas in order to reduce the hydraulic loading at the Southeast Sprayfield and Southwest Sprayfield and distribute the public access reuse water. The City's amended application shall commit the City to undertake a reuse feasibility study within one year of permit issuance to evaluate reuse water demand; identify potential reuse water users; evaluate the feasibility of providing reuse water to such identified entities; and calculate capital and operating costs. The City shall report its findings to the Department within 15 months of permit issuance.

D. Implementation schedule – The City's application will propose the following schedule of implementation for the physical upgrades identified in paragraph I.B.:

**MEDIATION DRAFT
PRIVILEGED AND CONFIDENTIAL**

- i. Lake Bradford Road Upgrades - - Installed and operational within 2.5 years of permit issuance.
- ii. T.P. Smith Upgrades - - The first treatment train will be upgraded within 3.5 years of permit issuance, with the remaining treatment trains to be upgraded in successive one year increments subsequent to completion.
- iii. Biosolids Improvements - - To be completed within three years after permit issuance.
- iv. Nitrogen Reduction - - Based upon the Advanced Wastewater Treatment standards of Paragraph I.A., the Physical Upgrades described in Paragraph I.B., and the Implementation Schedule of Paragraph I.D.i-ii above, the City agrees to the following Nitrogen reduction schedule for its wastewater effluent reaching the Southeast Sprayfield and Southwest Sprayfield subsequent to the issuance of the permit:

| <u>Yr. into Permit</u> | <u>N mg/liter</u> |
|------------------------|-------------------|
| 0.5 | 12.0 |
| 3.0 | 9.0 |
| 5.0 | 6.5 |
| 6.0 | 3.0 |

II. Permit Processing

- A. Permit Submittal, Monitoring, and Other Data - The City commits to filing its amended application, in accordance with paragraph I.A., by no later than January 15, 2007. The City also commits to responding as expeditiously

**MEDIATION DRAFT
PRIVILEGED AND CONFIDENTIAL**

as practicable to any requests for additional information it receives from the Department in response to the amended application. The City commits to submitting a copy of all permit application submittals, Requests For Additional Information, monitoring data, and status reports sent to and received from the Department to the Wakulla County Administrator (including an electronic copy of the cover letter for all such materials).

B. **Permit Conditions** – Subject to the Department's review under applicable regulations, the parties' mutual intention is that the Department will issue a final permit in response to the City's amended application requiring compliance with the treatment levels described in paragraph I.A., based on the improvements described in paragraph I.B., in accordance with the reuse/disposal conditions as described in paragraph I.C., and requiring adherence to the implementation schedule set forth in paragraph I.D. The parties mutually understand and agree that the final permit issued by the Department shall prohibit the City from land applying biosolids within the Wakulla Springs basin, shall prohibit the application of supplemental fertilizer at the Southeast Sprayfield and Southwest Sprayfield, and shall require adherence to Best Management Practices applicable to the application of pesticides and herbicides at the Southeast Sprayfield, as described in paragraph I.C. of this Agreement. Notwithstanding the biosolids land application prohibition, the final permit shall not prohibit the marketing and use of slow release, coated, granular Class AA biosolids as fertilizer in the

MEDIATION DRAFT
PRIVILEGED AND CONFIDENTIAL

Wakulla Springs basin. The parties also mutually understand and agree that the final permit shall contain monitoring conditions as set forth currently in the proposed permit previously contested by the Petitioners. Moreover, the final permit shall contain additional effluent monitoring conditions in order to verify compliance with the treatment levels proposed in Part I.A and the Nitrogen reduction schedule in Part I.D.iv of this Settlement Agreement.

Finally, the Parties mutually understand and agree to the establishment of a Wakulla Springs Watershed Protection Committee, to include petitioners and other stakeholders, to annually review and provide comment regarding environmental issues pertinent to Wakulla Springs, particularly including the status of all permitted wastewater treatment facilities; groundwater quality in the Wakulla Springs Contributory Area; cooperative, regional solutions to adverse anthropogenic impacts on Wakulla Springs; and opportunities for state and federal funding to improve the environmental quality of Wakulla Springs.

C. Agreement Not to Challenge the Final Permit

- i. Petitioners** – Petitioners agree not to legally challenge, appeal, or assist in any challenge or appeal by others; or in any other way impede or interfere with the Department’s issuance of a final permit in response to the City’s amended application in accordance with this Settlement Agreement, provided that the final permit contains conditions that reflect the treatment levels, physical upgrades, timetables for improvements, permit conditions,

**MEDIATION DRAFT
PRIVILEGED AND CONFIDENTIAL**

and other provisions of paragraphs I.A., I.B., I.C., I.D., and II.B. of this Settlement Agreement.

- ii. **The City** – The City agrees not to legally challenge, appeal, or in any other way impede or interfere with the Department's issuance of a final permit in response to the City's amended application in accordance with this Settlement Agreement, provided that the final permit contains conditions that reflect the treatment levels, physical upgrades, timetables for improvements, permit conditions, and other provisions of paragraphs I.A., I.B., I.C., I.D., and II.B. of this Settlement Agreement.

D. Administrative Abeyance Period

- i. **Filing of this Settlement Agreement with DOAH** – Within one week of the effective date of this Settlement Agreement, the Parties shall, through their counsel of record, file a copy of this Settlement Agreement along with a JOINT MOTION FOR ABEYANCE with DOAH. This motion shall request that the permit challenges be held in abeyance so that this Settlement Agreement can be fulfilled. The parties agree to request that a status report shall be filed once per quarter during the abeyance period.

- ii. **Administrative Abeyance Period** – Upon the issuance of an Order by DOAH, the permit challenges shall be held in abeyance and there shall be a qualified remand to the Department until the Department issues a final permit with conditions consistent with paragraphs I.A., I.B., I.C., I.D., II.A., and II. B. above, at which time the permit challenges will become

**MEDIATION DRAFT
PRIVILEGED AND CONFIDENTIAL**

moot and shall be dismissed with prejudice. The parties agree that no discovery shall be undertaken during the administrative abeyance period.

E. General Provisions

- i. **Effective Date** – This Settlement Agreement shall become effective upon the date of latest signature below. All Petitioners and Respondents must sign in order for this Settlement Agreement to be effective.
- ii. **Dispute Resolution** – The Parties shall endeavor to settle any disagreements arising under this Settlement Agreement, including any disputes as to whether a final permit issued by the Department meets the requirements of this Settlement Agreement, through good faith negotiation. Any party seeking relief from or enforcement of any provision of this Settlement Agreement or alleging noncompliance with this Settlement Agreement based on such a dispute shall first notify the other Parties in writing. Representatives of the Parties shall mediate within fourteen days after the notice. If the mediation fails to resolve the matter(s) or the parties are unable to agree on a mediator, the Party who initiated Dispute Resolution shall be entitled to seek appropriate relief through Chapter 120 processes or a court of competent jurisdiction. No Party shall be entitled to seek legal redress concerning this Settlement Agreement unless and until the Dispute Resolution Procedures in this paragraph have been tried and exhausted.

**MEDIATION DRAFT
PRIVILEGED AND CONFIDENTIAL**

- iii. **Amendments and Modifications** – No amendments or modifications of this Settlement Agreement shall be valid unless set forth in writing and signed by the duly authorized representatives of all parties.
- iv. **Joint Preparation** – All parties have jointly participated in the review and preparation of this Settlement Agreement, and this Settlement Agreement shall not be construed more severely against any one of the parties than against any other party.
- v. **Authority to Sign** – Each person signing this Settlement Agreement warrants and represents that the person or entity on whose behalf he or she is signing has given him or her full, complete and proper authority to execute the instrument.
- vi. **Disclaimer of Duress** – The parties hereby all disclaim any duress in entering this Settlement Agreement. All parties hereby certify that they have entered into this Settlement Agreement of their own free will, solely for the benefit of the mutual covenants and promises contained herein, and not under any duress or pressure from anyone to do so.