



Jeb Bush Governor

# Department of Environmental Protection

Southwest District  
3804 Coconut Palm Drive  
Tampa, Florida 336 19  
June 4, 2003

Mr. John M. Lane, Director  
City of Venice Utilities  
Department 401 West Venice  
Avenue Venice, FL 34285-2098

Re: Draft Consent Order OGC File No. 03-0779  
Venice Eastside WWTF Facility ID No.  
FL0041441 Sarasota County

Dear Mr. Lane:

Enclosed is a **draft Consent Order** for review, intended to resolve the issues at the aboverefereced facility. Execution of a Consent Order between the Department and the City of Venice would resolve the items cited in the Department's September 11, 2002 Warning Letter. None of the rights or substantial interests of the City are determined by this Consent Order until it is signed and filed with the Department.

The draft includes a civil penalty, which has been approved by the Department's Office of General Counsel. A civil penalty will be required to resolve this matter through a Consent Order.

Please review this draft document carefully. Comments may be provided in a written format or discussed in person, if you wish. Should you have any questions concerning this draft or want to schedule a meeting, please contact Michele Duggan at (813) 744-6100, extension 335

Sincerely yours,

A handwritten signature in black ink, appearing to read "Deborah A. Getzoff". The signature is written in a cursive style with a large initial "D".

Deborah A. Getzoff District Director Southwest District

DAG/mdd

Enclosure

BEFORE THE STATE OF FLORIDA

DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT )	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION, )	SOUTHWEST DISTRICT
)	
Complainant, )	OGC File No. 03-0779
)	
vs. )	
)	
CITY OF VENICE, )	
)	
Respondent )	

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department") and the City of Venice ("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 thereunder, Title 62, Florida Administrative Code ("F.A.C."). The Department has jurisdiction over the matters addressed in this Consent Order.

**2.** Respondent is a political subdivision of the State of Florida and 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 City of Venice Eastside Wastewater Treatment Facility, a 6.00 million gallons per day (MGD) wastewater treatment facility with reclaimed water sent to the Venice Master Reuse System, which includes the general area of the City of Venice, and dechlorinated effluent discharged to Curry Creek, a Class III fresh water of the State, then into Roberts Bay ("Facility"). The Facility is located at 3510 East Laurel Road, Venice, Florida, 34275. Respondent operates the Facility under Wastewater Permit No. FL0041441, which

expires April 25, 2005 ("Permit"). The Permit constitutes authorization to discharge to waters of the State under the National Pollution Discharge Elimination System.

4. Roberts Bay is classified as a Class III water body in Rule 62-302, F.A.C. Section 403.086(1), F.S., governs discharges of domestic wastewater to Roberts Bay. Curry Creek is a tributary of Roberts Bay.

5. Respondent was notified of alleged violations of Chapter 403, F.S., Chapters 62 4, 62-302, 62-600, 62-620 and 62-699, F.A.C., in Department Warning Letter No. WL02 0011DW58SWD, dated September 11, 2002. The Department finds that:

- a) A review of the information on file with both the Department and Respondent indicated that during Tropical Storm Gabrielle on September 14, 2001, Respondent failed to report overflows from the collection/transmission system of the Facility and overflows at the Facility. Specifically, City documents indicated that at least 10,000 gallons of raw sewage were pumped from the collection system at Lift Station No. 8 to a storm water conveyance at Groveland and US Highway 41, which discharged to an unnamed tributary of the intracoastal waterway. The Department was not notified of this event.
- b) On September 14, 2001, at least 10,000 gallons of raw sewage were pumped from the collection system at Lift Station No. 8 to a storm water conveyance at Groveland and US Highway 41, which discharged to an unnamed tributary of the Intracoastal Waterway. This was in contravention of Respondent's Contingency Plan, which stipulates that collection/transmission system overflows be trucked to the Venice Island Beach WWTF.
- c) Advanced waste-treated effluent was discharged to Curry Creek September 17 to 30, 2001, in contravention of Specific Condition No. I.A. 1 of the Permit and Federal guidelines. Respondent contends that the discharges to Curry Creek were necessary due to excessive rainwater surcharging the system during Tropical Storm Gabrielle. However, the discharge to Curry Creek was initiated three days after the storm and continued for the next two weeks.
- d) During the processing and issuance of Warning Letter No. WL02-0011DW58SWD, advanced waste-treated effluent was again discharged into Curry Creek, from

September 2 to 23, 2002. This continuous discharge was also in contravention of Specific Condition No. I.A.1 of the Permit and Federal guidelines.

- e) A review of the Discharge Monitoring Reports, submitted to the Department, indicated that secondarily treated effluent was discharged to surface waters from outfalls D002 through DOI 1 routinely and were not necessarily in response to rainfall events. This indicated that the discharges were effluent and not stormwater. Discharging effluent through stormwater structures is in contravention to Specific Condition No. I.A.2 of the Permit, Section 403.086, F.S., and Chapter 62-302, F.A.C.
- f) Certified operator attendance requirements were not met. From April 25, 2000, the issuance date of Permit No. FL0041441, a Florida-certified operator, Class C or better, was required to be on-site at the Facility seven days per week for 24 hours per day. The lead operator was required to be a Class A certified operator. From the date of Permit issuance until November 1, 2002, the lead operator had possessed only a Class B certification. Therefore, the minimum requirement for a Class A lead certified operator was not met.

6. Respondent submitted Permit Revision Application No. FL0041441-005-DW1P/RM ("Application") on August 23, 2002. As part of the Application, Respondent requested additional reuse sites, the addition of an interconnection between the Venice Master Reuse System and the Venice Water Treatment Plant Concentrate Disposal Outfall Line, the addition of an interconnection between the Venice Master Reuse System and the Sarasota County South Master Reuse System.

7. On September 19, 2002, October 21, 2002 and January 15, 2003, Department personnel and representatives for Respondent met to discuss the technical aspects of expanding the surface water discharge to Curry Creek, certified operator staffing, and operation and reporting improvements.

8. The Department findings in Paragraph 5 constitute violations of Chapter 403, F.S., and Rules 62-4.130, 62-620.610(20), 62-302.500(1)(a), 62-600.740(2)(e), 62-600.410(5), 62-600.410(6) and 62-699.310, F.A.C. Having reached a resolution of the matter, the Department and Respondent mutually agree and it is

ORDERED:

**9.** Within 30 days of a request from the Department for additional information to complete the review of the Application, Respondent shall submit to the Department the information needed to complete the Application. Within 120 days from issuance of the wastewater permit revision, Respondent shall complete any construction authorized by the wastewater permit revision.

**10.** Should the corrective action in paragraph 9 not be sufficient to eliminate unauthorized discharges described in paragraphs 5.c), 5.d) and 5.e), above, then within 360 days of the effective date of this Consent Order, Respondent shall submit to the Department a wastewater permit application, along with the appropriate permit fee, to modify the Facility's effluent disposal system in such a way as to eliminate the unpermitted discharges from outfalls DOO1 through DO11. The modification may require an expansion of the effluent disposal system. The application shall be prepared and sealed by a professional engineer registered in the State of Florida. In the event the application is incomplete, within 30 days of receipt of a request for additional information to complete the application, Respondent shall ensure that the information is submitted. Within 120 days from issuance of the permit, Respondent shall complete any construction as authorized by the permit. Within 30 days of completion of construction as authorized by the permit, Respondent shall submit the appropriate Certification of Completion of Construction signed and sealed by the project engineer. If the Respondent is unable or unwilling to construct a modification of the Facility's effluent disposal system, as provided in this paragraph, the Department reserves the right to seek other relief to require the Respondent to comply with its rules and permits.

**11.** Within 90 days of the effective date of this Consent Order Respondent shall retain the services of a Florida professional engineer for the purpose of:

- a) Evaluating the Facility's sewage collection/transmission system ("System") to discover the cause or causes of any noncompliance.
- b) Designing modifications of the System to ensure the Facility and effluent disposal system will function in full and consistent compliance with all applicable rules of the Department.

- c) Completing an application for a Department wastewater permit to construct the modifications listed in subparagraph b, above, if such a permit is required.
- d) Overseeing the construction of any modifications to the System.
- e) Submitting to the Department an engineer's certification of completion stating that the construction of modifications to the System have been constructed in accordance with the provisions of the wastewater permit referenced in subparagraph c, above, if applicable.

**12.** Effective immediately, Respondent shall ensure that the Department is timely notified of any noncompliance, which may endanger health or the environment, as required by Rule 62-620.610(20), F.A.C. Upon the effective date of this Consent Order, Respondent shall report to the Department all unpermitted wastewater and effluent discharges from the System and the Facility as soon as possible, but within 24 hours from the time Respondent becomes aware, as required by F.A.C. Rules 62-604.550 and 62-620.610(20), respectively. Moreover, upon the effective date of this Consent Order, Respondent shall respond to unpermitted wastewater and effluent discharges and institute water quality sampling in the- affected areas of any unpermitted discharges.

**13.** On or before June 1 and December 1, of each year this Consent Order is in effect, Respondent shall submit to the Department a written report containing information concerning the status and progress of projects being completed under this Consent Order, information as to compliance or noncompliance with the applicable requirements of this Consent Order, including construction requirements, and any reasons for noncompliance. Such reports shall also include a projection of the work to be performed pursuant to this Consent Order during the subsequent six-month period.

**14.** 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 Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the property or Facility, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, or operator, or person in control of the Facility, and (c) provide a copy of this Consent Order with all attachments to the new owner. The

sale or conveyance of the Facility, or the property upon which the Facility is located shall not relieve the Respondent of the obligations imposed in this Consent Order.

**15.** In any event, by March 31, 2005, the Facility, its collection/transmission system and its effluent disposal system shall be in compliance with Department Rules.

**16.** Within 30 days of the effective date of this Consent Order, Respondent shall pay to the Department \$87,000.00 in settlement of the matters addressed in this Consent Order, excluding any penalties incurred under paragraph 17 of this Consent Order. This amount includes \$5,000.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order and \$82,000.00 in civil penalties. The civil penalties are apportioned as follows: \$12,000.00 for violation of Rules 62-4.130, 62620.610(20) and 62-600.740(2)(e), F.A.C.; \$21,000.00 for violation of Rules 62-600.410(5) and 62-699.310, F.A.C.; and \$49,000.00 for violation of Section 403.161(1)(b), F.S. and Rules 62302.500(1)(a) and 62-600.410(6), F.A.C. Payment shall be made by City check, cashier's check or money order. The instrument shall be made payable to the "Department of Environmental Protection" and shall include thereon the OGC File Number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the Department of Environmental Protection, 3804 Coconut Palm Drive, Tampa, Florida, 33619-1352.

**17.** In lieu of making full cash payment of the civil penalties set forth in paragraph 16, Respondent may implement one or more in-kind penalty projects for up to \$61,500.00 of the settlement amount. An in-kind penalty project must be an environmental enhancement, environmental education, environmental restoration or a capital facility improvement project. The Department may also consider the donation of environmentally sensitive land. The total value of the in-kind penalty project shall be at least one and a half times the amount of the civil penalty, which in this case, is the equivalent of at least \$92,250.00. In the event Respondent elects this option, it must so notify the Department in writing within 30 days of the effective date of this Consent Order. Additionally, Respondent shall remit the \$25,500.00 not subject to offset by an in-kind penalty project within 30 days of the effective date of this Consent Order. If Respondent elects to

implement an in-kind penalty project, Respondent shall comply with the following time frames:

- a) Within 90 days of the effective date of this Consent Order, Respondent shall submit to the Department one or more proposals for consideration as in-kind projects. The proposal(s) shall include a summary of benefits, proposed schedule for implementation and documentation of the expected costs to be incurred to complete the project. These costs shall not include those costs incurred in developing the proposal or obtaining approval from the Department. The project(s) must be approved by the Department to qualify as an in-kind project.
- b) If the Department does not approve the in-kind project(s), Respondent may correct/redress the deficiencies or may submit an alternative project proposal within 30 days of notification that the project is not approved. If the in-kind project is not approved within 150 days of the effective date of this Consent Order, Respondent shall make payment of the remaining civil penalties as set forth in paragraph 16 of this Consent Order within 30 days of written notice from the Department.
- c) Respondent shall complete the in-kind project(s) within 365 days of Department approval.
- d) Respondent shall provide the Department with a status report every six months after the project(s) are approved documenting the progress being made on the implementation of the projects.
- e) Respondent shall place appropriate sign(s) during the implementation of the projects indicating that Respondent's involvement with the projects is the result of Department enforcement actions. Respondent may remove the sign(s) after the project has been completed. However, after the project has been completed Respondent shall not post any sign(s) at the site indicating that the reason for the project was anything other than a Department enforcement action. If a specific project does not involve a physical site, then other similar type of public notification shall be required.
- f) Respondent shall forfeit the right to avail itself of the in-kind penalty option, excluding any money spent on any completed project(s), if Respondent fails to

timely submit any requested information or documentation, fails to complete implementation of the in-kind project(s) or otherwise fails to comply with any provision of this paragraph. The unpaid balance of the remaining penalty, excluding the prorated amount for any completed in-kind project, as set forth in paragraph 16 of this Consent Order shall be due from Respondent to the Department within 30 days of notice.

- g) Respondent shall notify the Department within 30 days of completing the project(s), of the project completion and request a verification letter from the Department. Respondent shall submit supporting information verifying that the project was completed in accordance with the approved proposal and documentation showing the actual costs incurred to complete the project. If upon review of the notification of completion, the Department determines that the project(s) cannot be accepted due to incompleteness or substantial deviation from the approved project(s), Respondent shall be notified in writing and given an opportunity to correct any deficiencies. If the actual costs incurred in completing the project are less than the approved amount of the in-kind project, Respondent shall remit cash payment of the prorated difference to the Department within 30 days of the project completion. Otherwise, the Department shall provide a letter to Respondent acknowledging completion of the project.

**18.** 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 paragraphs 9 through 13, 15 and 22 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, 3804 Coconut Palm Drive, Tampa, Florida, 33619-1352. 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 16 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.

19. Upon the effective date of this Consent Order, Respondent shall pay the Department stipulated penalties for any discharges of wastewater from the System to State waters, which do not qualify as excusable discharges. Respondent shall pay stipulated penalties as follows:

<b><u>Amount per day per discharge</u></b>	<b><u>Discharge Volume</u></b>
\$500	up to 5,000 gallons
\$1,000	5,001 to 10,000 gallons
\$2,500	10,001 to 25,000 gallons
\$5,000	25,001 to 100,000 gallons
\$10,000	in excess of 100,000 gallons

with a maximum cumulative penalty of \$30,000 per day. Each payment shall be received within 30 days of written demand from the Department. Payment shall be made by cashier's check, money order, or City check. 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". The payment shall be sent to the Department of Environmental Protection, Southwest District Office, 3804 Coconut Palm Drive, Tampa, Florida 33619-1352. 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 of the terms of this Consent Order. Any penalties assessed under this paragraph shall be

in addition to the settlement sum agreed to in paragraph 16 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.

For purposes of this Consent Order, an excusable discharge is a discharge that resulted from a temporary, exceptional incident that was beyond the reasonable control of Respondent. Incidents beyond the reasonable control of Respondent would include:

- a) Exceptional acts of nature, including a 10 year 24 hour storm event.
- b) Third party actions that could not be reasonably prevented, including vandalism.
- c) Blockages that could not be avoided by reasonable measures.
- d) Unforeseeable sudden structural, mechanical, or electrical failure that could not be avoided by reasonable measures.

20. Upon the effective date of this Consent Order, Respondent shall pay the Department stipulated penalties for any unauthorized discharges of treated effluent from the Facility to State waters, which do not qualify as excusable discharges. Respondent shall pay stipulated penalties as follows:

<b><u>Amount per day per discharge</u></b>	<b><u>Discharge Volume</u></b>
\$500	up to 5,000 gallons
\$1,000	5,001 to 10,000 gallons
\$2,500	10,001 to 25,000 gallons
\$5,000	25,001 to 100,000 gallons
\$10,000	in excess of 100,000 gallons

with a maximum cumulative penalty of \$30,000 per day. Each payment shall be received within 30 days of written demand from the Department. Payment shall be made by cashier's check, money order, or City check. 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". The payment shall be sent to the Department of Environmental Protection, Southwest District Office, 3804 Coconut Palm Drive, Tampa, Florida 33619-1352. 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 of the terms of this Consent Order. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 16 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.

**21.** 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 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. 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.

22. Respondent shall publish the following notice in a newspaper of daily circulation in Sarasota County, Florida. The notice shall be published one time only within 15 days after the effective date of the Consent Order. Respondent shall provide a copy of the notice to the Department within 10 days of publication.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
NOTICE OF CONSENT ORDER

The Department of Environmental Protection gives notice of agency action of entering into a Consent Order with the City of Venice pursuant to Section 120.57(4), F.S. The Consent Order addresses alleged effluent disposal violations from the City of Venice Eastside Wastewater Treatment Facility located at 3510 Laurel Road, Venice, Florida, 34285. 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, Southwest District, 3804 Coconut Palm Drive, Tampa, Florida, 33619-1352.

Persons whose substantial interests are affected by this Consent Order have a right to petition for an administrative hearing on the Consent Order. The Petition must contain the information set forth below and must be filed (received) in 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, F.S.

The petition shall contain the following information:

(a) The name, address, and telephone number of each petitioner; the Department's identification number for the Consent Order 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; and

(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, F.S., 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, F.A.C..

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, F.S., or may choose to pursue mediation as an alternative remedy under Section 120.573, F.S., 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;
- (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; and
- (h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, F.S., the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, F.S., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within 60 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, F.S., 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.

**23.** Respondent shall allow all authorized representatives of the Department access to the property and Facility at reasonable times for determining compliance with the terms of this Consent Order and the rules and statutes of the Department.

**24.** 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, Domestic Wastewater Section, attention: Thomas Gucciardo, 3804 Coconut Palm Drive, Tampa, Florida, 33619-1352.

**25.** 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.

**26.** 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.

**27.** 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, F.S. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.161(1)(b), F.S.

**28.** The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Order, hereby waives its right to seek judicial imposition of damages or civil penalties for alleged violations through the date of the filing of this Consent Order as addressed in this Consent Order.

**29.** 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.

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

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

**32.** 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 Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, F.S., and waives that right upon signing this Consent Order.

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33. 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

FOR RESPONDENT

\_\_\_\_\_  
Date

\_\_\_\_\_  
George Hunt, City Manager  
City of Venice

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dean Calamaras, Mayor  
City of Venice

\_\_\_\_\_  
Attested to by the City Clerk  
City of Venice

\_\_\_\_\_  
Approved as to Form by  
Robert Anderson, City Attorney

DONE AND ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2003, in Tampa, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

\_\_\_\_\_  
Deborah A. Getzoff  
District Director  
Southwest District

FILING AND ACKNOWLEDGEMENT

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clerk