



Florida Department of Environmental Protection

Northeast District
7825 Baymeadows Way, Suite B200
Jacksonville, Florida 32256-7590

Rick Scott
Governor

Jenifer Carroll
Lt. Governor

Mimi A. Drew
Secretary

BEFORE THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF: IN THE OFFICE OF THE
NORTHEAST DISTRICT

Mr. Robert Markwell
President
Beazer East, Inc.
One Oxford Center
Pittsburg, PA 15219
Telephone Number: (412) 208-8812

Administrative Order No.: AO 146 NE
Beazer East, Inc. – Gainesville, Florida
DEP Permit No: FLS711462

DRAFT – Dated - 2/4/2011

ADMINISTRATIVE ORDER ESTABLISHING COMPLIANCE SCHEDULE UNDER SECTIONS 403.088(2) and 403.067(7)F.S.

I. STATUTORY AUTHORITY

The Department of Environmental Protection (Department) issues this administrative order under the authority of Sections 403.088 and 403.067(7), Florida Statutes. The Secretary of the Department has delegated authority to the Director of District Management, who issues this order and makes the following findings of fact.

II. FINDINGS OF FACT

1. Beazer East, Inc. is a person under Section 403.031 of the Florida Statutes.
2. Beazer East, Inc owns and operates the Beazer facility which is located at 200 NW 23rd Avenue, Gainesville, Florida 32609, Alachua County. The site discharges storm water into waters of the state as defined in Section 403.031, Florida Statutes.
3. Beazer has applied for a storm water permit under the National Pollution Discharge Elimination System (NPDES).

4. The Beazer East, Inc. Gainesville site does/may not meet the limit for total recoverable copper, total recoverable arsenic, total recoverable iron, trivalent chromium, total polycyclic aromatic hydrocarbons (PAH) within specific Condition Number I.A.2 of DEP Permit No. FLS711462.

5. Sections 403.088(2), Florida Statutes, authorize the Department to issue a permit for the discharge of storm water into waters of the state, accompanied by an order establishing a schedule for achieving compliance with all permit conditions if the specified criteria are met.

6. The Department finds that

(1) Beazer has initiated implementation of interim storm water controls, as required by a Consent Order between Beazer and the Department (OGC File No. 10-1780) and in accordance with DEP Permit No. FLS711462. Final storm water controls will be designed and implemented as part of the overall site remediation process. The site is regulated under the EPA Superfund program.

(2) Beazer needs permission to discharge storm water into the waters within the state for a period of time necessary to complete research, planning, construction, installation, or operation of an approved and final storm water control system as part of the EPA Superfund remedy;

(3) There is no present, reasonable, alternative means of disposing of the waste other than by discharging it into waters of the state;

(4) The granting of a discharge permit will be in the public interest;

(5) The discharge will not be unreasonably destructive to the quality of the receiving waters.

III. ORDER

Based on the foregoing findings of fact, **IT IS ORDERED**,

| 1. The Permittee, Beazer East, Inc., shall be allowed to discharge to outfall D-001 and shall comply with the requirements of this Order, the Permit, and any subsequent revisions to the Permit. This Order establishes the interim requirements for total recoverable copper, total recoverable arsenic, total recoverable iron, trivalent chromium, total polycyclic aromatic hydrocarbons (PAH), and a schedule for compliance with respect to the monitoring requirements and discharge limitations for these parameters as contained in Parts I.A.2 of the Permit. This is consistent with Section 403.151 and 403.088, F.S., which allows the Department to establish a schedule for compliance with a permit or rules of the Department.

2. During the interim period in which the Permittee is working to bring the Facility into compliance as required by this Order, the following monitoring requirements for total recoverable copper, total recoverable arsenic, total recoverable iron, trivalent chromium, total polycyclic aromatic hydrocarbons (PAH) shall apply:

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- a. During the period beginning upon the issue date of the permit and lasting as indicated in the compliance schedule III.2.(c), the Permittee is authorized to discharge to outfall D-001. Such discharge shall be limited and monitored by the Permittee as specified below and reported in accordance with condition III.3:

Parameter	Units	Max/Min	Storm water Discharge Limitations		Monitoring Requirements			Notes
			Limit	Statistical Basis	Frequency of Analysis	Sample Type	Monitoring Site Number	
Trivalent chromium	µg/L	Max	Report Calculated Value	Single sample max (hardness based)	Quarterly	Composite	STM-1	See note ii
Total Polycyclic Aromatic Hydrocarbons (PAH)	µg/L	Max	Report	Annual Average	Quarterly	Composite	STM-1	
Total Recoverable Iron	µg/L	Max	Report	Single sample max	Quarterly	Composite	STM-1	
Total Recoverable Copper	µg/L	Max	Report Calculated Value	Single sample max (hardness based)	Quarterly	Composite	STM-1	See note i
Total Recoverable Arsenic	µg/L	Max	Report	Single sample max	Quarterly	Composite	STM-1	

- i. The calculated value for "Copper, Total Recoverable" shall be calculated using the following equation(s):

$$Cu \leq e^{(0.8545[\ln H]-1.702)}$$

Total hardness shall be measured at the time of the storm water sample. The "ln H" means the natural logarithm of total hardness expressed as mg/L of CaCO₃. For metals criteria involving equations with hardness, the hardness shall be set at 25 mg/L if actual hardness is <25 mg/L and set at 400 mg/L if actual hardness is >400 mg/L.

The measured value shall be recorded on the DMR in the parameter row for "Copper, Total Recoverable (storm water)." The calculated limit shall be recorded on the DMR in the parameter row for "Copper, Total Recoverable (calculated limit)" as "report only" for the duration of the AO. Compliance with the limitation (for the final permit limit) is determined by calculating the difference between the measured storm water value and the calculated. The compliance value shall be recorded on the DMR in the parameter row for "Copper, Total Recoverable (storm water minus calculated limit)." [62-302.530(23)]

- ii. The calculated value for "Chromium, trivalent" shall be calculated using the following equation(s):

$$Cr \leq e^{(0.819[\ln H] + 0.6848)}$$

The sample is measured as total recoverable Chromium. Total hardness shall be measured at the time of the storm water sample. The "ln H" means the natural logarithm of total hardness expressed as mg/L of CaCO₃. For metals criteria involving equations with hardness, the hardness shall be set at 25 mg/L if actual hardness is <25 mg/L and set at 400 mg/L if actual hardness is >400 mg/L.

The measured value shall be recorded on the DMR in the parameter row for "Chromium, Trivalent (storm water)." The calculated limit shall be recorded on the DMR in the parameter row for "Chromium, Trivalent (calculated limit)" as "report only" for the duration of the AO. Compliance with the limitation (for the final permit limit) is determined by calculating the difference between the measured storm water value and the calculated. The compliance value shall be recorded on the DMR in the parameter row for "Chromium, Trivalent (storm water minus calculated limit)." [62-302.530(19)(a)][62-302.500(2)(d)]

- b. Storm water samples shall be taken at the monitoring site locations listed above and as described below:

Monitoring Location Site Number	Description of Monitoring Location
STM-1	Sample point located at overflow weir (D-001) at outfall located at the northeast corner of the property.

- c. Compliance schedule for the storm water limits :

	ACTION ITEM	DUE DATE
1.	This system shall be in compliance with all limits specified in the permit except for total recoverable copper, total recoverable arsenic, total recoverable iron, trivalent chromium, total polycyclic aromatic hydrocarbons (PAH). Complete construction of the interim storm water controls.	Permit Issuance Date
2.	Submit an Improvement Plan and Status Report, for DEP approval, detailing and proposing ways to reduce and bring the concentrations of total recoverable copper, total recoverable arsenic, total recoverable iron, trivalent chromium, total polycyclic aromatic hydrocarbons (PAH) into compliance with the final limits. Dependant on the EPA final remediation plan, and qualifying storm water discharge events, propose improvement of interim storm water discharge quality limits. Detail progress on implementing steps to reduce and bring the concentrations of total recoverable copper, total recoverable arsenic, total recoverable iron, trivalent chromium, total polycyclic aromatic hydrocarbons (PAH) into compliance with the final limits. If final limits are met, no improvement plan is necessary.	6 months following permit issuance and then every 6 months for the duration of the permit.
3.	Compliance with all DEP permit limits for total recoverable copper, total recoverable arsenic, total recoverable iron, trivalent chromium, total polycyclic aromatic hydrocarbons (PAH). Provide status report as related to and dependent upon the EPA final remediation plan.	No later than 6 years from the issuance date of permit FLS711462, unless the final remedial actions have not been implemented under the EPA Superfund process, in which case it shall be immediately after such final remedial actions have been implemented.

- d. The monitoring requirements and interim limits (in III.2.a, above) for total recoverable copper, total recoverable arsenic, total recoverable iron, trivalent chromium, total polycyclic aromatic hydrocarbons (PAH) shall become effective on

the issuance date of the Permit. Once final remedial actions (including installation of surface covers and final storm water controls) have been taken under the EPA Superfund process, Beazer shall comply with the final DEP permit limits for total recoverable copper, total recoverable arsenic, total recoverable iron, trivalent chromium, and total polycyclic aromatic hydrocarbons (PAH) listed in permit Condition I.B.2, but no later than 6 years from the issuance date of permit FLS711462, unless the final remedial actions have not been implemented under the EPA Superfund process, in which case it shall be immediately after such final remedial actions have been implemented. The concentrations of total recoverable copper, total recoverable arsenic, total recoverable iron, trivalent chromium, and total polycyclic aromatic hydrocarbons (PAH) sampled at D-001 shall not exceeded Class III water quality standards for fresh water (Rule 62-302 FAC).

e. The Permittee shall, within six months of the execution of this agreement, and at six (6) months intervals thereafter until fulfillment of all the requirements of this Order, submit to DEP concise progress reports on the Permittee's actions and efforts to comply with the requirements of this Order.

3. The Permittee shall collect samples and analyzes for total recoverable copper, total recoverable arsenic, total recoverable iron, trivalent chromium, total polycyclic aromatic hydrocarbons (PAH). The results shall be reported in the Discharge Monitoring Report and shall be received by the Department by the 28th day of each following month.

4. The Permittee shall submit either a report of progress or, in the case of specific actions being required by an identified date, a written notice of compliance or non-compliance within 14 calendar days following a date identified in the above schedule of compliance, unless otherwise specified in this Order. In the latter case, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

5. Except as otherwise provided in this Order, Beazer East, Inc. shall maintain and operate its facilities (the site) in compliance with all other conditions of DEP Permit No. FLS711462.

6. This Order may be modified as set forth in chapter 62-4 and 62-620 of the Florida Administrative Code.

7. DMRs shall be submitted for each required monitoring period including months of no discharge. The Permittee shall make copies of the attached Interim DMR form(s) and shall submit the completed DMR form(s) to the Department by the twenty-eighth (28th) of the month following the month of operation at the address specified below:

Florida Department of Environmental Protection
Wastewater Compliance Evaluation Section
Mail Station 3551 Bob Martinez Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Other reports or information required by this order shall be sent to:

Khalid AlNahdy, P.E.
Wastewater Manager
Northeast District Office
7825 Baymeadows Way, Suite B200
Jacksonville, Florida 32256

Electronic submittals of DMR forms, status/progress reports, and/or other information will be acceptable in if agreed to beforehand by the Department and Beazer.

8. This Order does not operate as a permit under section 403.088 of the Florida Statutes. This order shall be incorporated by reference into DEP Permit No. FLS711462 which shall require compliance by the Permittee with the requirements of this order.

9. Failure to comply with the requirements of this order shall constitute a violation of this order and DEP Permit No. FLS711462, and may subject the Permittee to penalties as provided in section 403.161 of the Florida Statutes.

10. This Order is final when filed with the clerk of the Department, and Beazer East, Inc. then shall implement this order unless a petition for an administrative

proceeding (hearing) is filed in accordance with the notice set forth in the following section.

IV. NOTICE OF RIGHTS

A person whose substantial interests are affected by the Department's proposed permitting decision may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Petitions by the applicant or any of the parties listed below must be filed within fourteen days of receipt of this written notice. Petitions filed by any persons other than those entitled to written notice under Section 120.60(3) of the Florida Statutes must be filed within fourteen days of publication of the public notice or receipt of the written notice, whichever occurs first.

Under Section 120.60(3) of the Florida Statutes, however, any person who has asked the Department for notice of agency action may file a petition within fourteen days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition or request for mediation within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57 of the Florida Statutes, or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205 of the Florida Administrative Code.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

(a) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any; each the Department case or identification number and the county in which the subject matter or activity is located;

(b) A statement of when and how each petitioner received notice of the Department action;

(c) A statement of how each petitioner's substantial interests are affected by the Department action;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A statement of facts that the petitioner contends warrant reversal or modification of the Department action;

(f) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and

(g) Demand for relief (sought by the petitioner, stating precisely the action that the petitioner wants the Department to take).

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise contain the same information as set forth above, as required by Rule 28-106.301.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any such final decision of the Department have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

In addition to requesting an administrative hearing, any petitioner may elect to pursue mediation. The election may be accomplished by filing with the Department a mediation agreement with all parties to the proceeding (i.e., the applicant, the Department, and any person who has filed a timely and sufficient petition for a hearing). The agreement must contain all the information required by Rule 28-106.404. The agreement must be

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received by the clerk in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within ten days after the deadline for filing a petition, as set forth above. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement.

As provided in Section 120.573 of the Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57 for holding an administrative hearing and issuing a final order. 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 seeking to protect their substantial interests that would be affected by such a modified final decision must file their petitions within fourteen days of receipt of this notice, or they shall be deemed to have waived their right to a proceeding under Sections 120.569 and 120.57.

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 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.

DONE AND ORDERED on

in Jacksonville, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

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Melissa M. Long, P.E.
Water Facilities Administrator

Copies furnished by email to:

Rick Hutton, P.E., GRU
Virginia Buff, EPA-Region IV
Scott Miller, EPA-Region IV

Beazer East, Inc - Gainesville

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