

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT )	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION )	NORTHEAST DISTRICT
)	
vs. )	OGC FILE NO. 10-1780
)	
BEAZER EAST, INC. )	
_____ )	

CONSENT ORDER

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

The Department finds and Respondent neither admits nor denies 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 current owner of the property, which was previously operated as a wood treating plant that used pentachlorophenol, chromated copper arsenate, and creosote in its process. The Facility was located at 200 NW 23<sup>rd</sup> Avenue, Gainesville, Alachua County, Florida ("Property"). Respondent owns the Property on which the Facility was located.

4. Respondent understands that on May 4, 2010, the Facility's former owner and operator terminated coverage under its NPDES Multi-Sector Generic Permit for Stormwater Discharges Associated with Industrial Activities (MSGP). On March 29, 2010, Respondent submitted a Notice of Intent to operate under its own MSGP and an accompanying Stormwater Pollution Prevention Plan ("SWPPP"). On May 25, 2010, the Department denied Respondent coverage under the MSGP and indicated that an individual Industrial NPDES

8. Within 5 days of the effective date of this Order, Respondent shall commence compliance with the interim stormwater controls identified in Figure 3 of the Preliminary Design Report dated July 21, 2010, attached hereto and incorporated herein. Upon the commencement of each listed stormwater control, Respondent shall notify the Department within 24 hours of commencement.

9. Within 15 days of any Requests for Additional Information, Respondent shall submit requested information to the Department.

10. Within 15 days of receiving the Notice of Draft Permit and Request for Public Comment, Respondent shall publish the notice in a newspaper of daily circulation in Alachua County, Florida.

11. The following discharge limitations and other requirements shall be met at outfall D-001 until such time as a wastewater permit is effective:

**Discharge Monitoring and Reporting Requirements**

<u>Parameter</u>	<u>Daily Max.</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
Flow	Report	Quarterly	Calculated
Dissolved Oxygen	Report	Quarterly	Grab
pH	Report	Quarterly	Grab
Turbidity	Report	Quarterly	Grab
Hardness	Report	Quarterly	Grab
Total Suspended Solids	Report	Quarterly	Grab
Total Recoverable Copper	Report	Quarterly	Grab
Total Recoverable Arsenic	Report	Quarterly	Grab
Trivalent Chromium	Report	Quarterly	Grab
Hexavalent Chromium	Report	Quarterly	Grab
Semi-Volatile Organic Compounds	Report	Quarterly	Grab
Dioxin/Furans	Report	Quarterly	Grab
Pentachlorophenol (PCP)	Report	Quarterly	Grab

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.

14. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order.

15. Respondent agrees to pay the Department stipulated penalties as follows:

a. \$100.00 per day for each and every day Respondent fails to timely comply with the requirements of paragraphs 7 through 10 and 11.b. through 11.d.;

b. \$70.00 per sample for each and every sample Respondent fails to conduct in accordance with paragraph 11.a.;

c. \$25.00 per day for each and every day Respondent fails to timely submit the reports required by paragraphs 12 and 13.

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 paragraphs 16 and 17, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order.

16. Respondent shall make all payments required by this Order by cashier's check or money order. Payment instruments 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."

17. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Wastewater Section, Department of Environmental Protection, Northeast District, 7825 Baymeadows Way, Suite B-200, Jacksonville, Florida 32256-7590.

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.

21. 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 effective date of this Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

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 Department of Environmental Protection, Northeast District, 7825 Baymeadows way, Suite B200, Jacksonville, FL 32256-7590. 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