



Department of Environmental Protection

040768

Jeb Bush
Governor

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

Colleen M. Castille
Secretary

April 27, 2004

Mr. Stewart Pearson
City of Gainesville-Stormwater Engineer
Post Office Box 490
Gainesville, Florida 32602-0490

Dear Mr. Pearson:

Sweetwater Branch Landfill
Alachua County – Solid Waste

The Department of Environmental Protection (DEP) has reviewed the Design Report for bank stabilization along Sweetwater Branch, submitted by Golder Associates, Inc., on February 17, 2004. DEP feels the corrective actions proposed in the Design Report are sufficient and may be implemented. Please note that the City of Gainesville shall complete all such construction and implementation activities proposed in the Design Report by June 27, 2005.

If you have questions concerning this matter, please contact me at the letterhead address or telephone number 904/807-3384.

Sincerely,

Chet McGhee
Environmental Specialist

NN
CM:ml

cc: Wendy D. Karably, Golder Associates, Inc.
Benny Susi, Golder Associates, Inc.

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BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

IN THE OFFICE OF THE
NORTHEAST DISTRICT

Complainant,
vs.

OGC FILE NO. 02-0974

CITY OF GAINESVILLE,

Respondent.
_____ /

CONSENT AGREEMENT

This Consent Agreement is entered into between the State of Florida Department of Environmental Protection ("Department") and City of Gainesville ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and Respondent, without admitting any legal liability, acknowledges the following:

1. The Department is the administrative agency of the State of Florida having the power and duty 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 Agreement. For work requiring an Environmental Resource Permit, this agreement is issued under the authority of Part IV of Chapters 373 and 403, F.S., and Title 62, F.A.C., and shall constitute any authorization required under Part IV of Chapter 373, F.S. Pursuant to the operating agreement executed by the Department and the St. Johns River Water Management District, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing and taking final agency action on this activity.

2. Respondent is a "person" within the meaning of Section 403.031(5), F.S. Respondent is a municipality incorporated under the Laws of Florida, and has the authority to enter into this Agreement. ✓

4. Respondent operated a landfill on this property from approximately 1930 until approximately 1960, located next to a stream named Sweetwater Branch, within the city limits. The landfill was used primarily for household solid waste and was covered at the time of closure with a cap of soil mixed with construction debris, varying in thickness from 3 to 10 feet. The stream has eroded away a narrow portion of the side cap of the landfill, which forms the western bank of the stream at that point, and the erosion has exposed some of the solid waste deposited in the landfill, creating a potential nuisance from the risk that some of the waste may fall onto the stream bed.

5. Sampling and analysis performed by Respondent has shown that the exposed solid waste is not leaching any contaminants to either the surface water or the sediments of Sweetwater Branch in excess of applicable regulatory criteria.

6. Water & Air Research, Inc., an environmental consulting firm retained by Respondent, completed a Preliminary Contamination Assessment Report (PCAR) for Respondent in January 2002, and concluded that appropriate stabilization and capping of the exposed layer of waste along the stream bank was the only corrective action required to respond to the risk described above.

7. Respondent desires to implement the conceptual corrective action recommended by the PCAR and the Department concurs with this conceptual approach, but Respondent must first secure Department approval of the final design and implementation of the remedy.

8. Both Respondent and the Department desire to foster the expedition of the above - mentioned corrective actions by authorizing its implementation through this agreement, in lieu of the permitting requirements that otherwise would apply to such activities.

9. Respondent does not admit, by signature of this Agreement or otherwise, that it has violated any Department statute or rules promulgated thereunder. Neither this Consent Agreement nor actions taken hereunder shall constitute an admission by Respondent of liability for any wrongdoing regarding any of the events leading up to the signing of this Consent Agreement, nor shall this Consent Agreement or actions taken pursuant to its provisions be admissible as evidence in any administrative or judicial proceedings except for proceedings initiated pursuant to the terms of this Consent Agreement

contractors, subcontractors, or other representatives, in connection with the design, construction, or other implementation of the conceptual remedy that is the subject of this Agreement. Neither party waives its right to sovereign immunity under section 768.28 Florida Statutes.

16. If Respondent fails to comply with the provisions of this Agreement, the Department shall notify Respondent, in writing, of any breach. Respondent shall have 14 days from receipt of the letter from the Department to return to compliance or to negotiate a modification of this Agreement for good cause shown. The 14-day grace period does not apply if an imminent hazard exists at the site. If an imminent hazard exists, Respondent shall act immediately to abate the hazard. Failure of the Department to notify Respondent of any breach of this Consent Agreement does not relieve Respondent of the need to comply with the terms of the Consent Agreement and shall not constitute a waiver of the Department's rights to enforce the Consent Agreement. The Consent Agreement itself does not constitute an admission of liability, however, and it shall have no evidentiary value in any subsequent action initiated by an entity that is not a party to this Consent Agreement.

17. 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 Agreement, 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, neither 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

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.

Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.

19. Entry of this Consent Agreement does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances, but it does provide the complete authority required by the Department to implement the corrective actions specified by this Consent Agreement.

20. Respondent shall allow all authorized representatives of the Department access to the property and facility at reasonable times for the purpose of determining compliance with the terms of this Consent Agreement and the rules and statutes of the Department.

21. All submittals required by this Consent Agreement shall be sent to:

As to the City:

Wayne Bowers
City Manager
P. O. Box 490, Station 6
Gainesville, Florida 32602-0490
Telephone: (352) 334-5010

As to the Department:

Michael J. Fitzsimmons
Waste Program Administrator
7825 Baymeadows Way, Suite B-200
Jacksonville, Florida 32256-7590
Telephone: (904) 807-3300

22. 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 corrective actions authorized by this Consent Agreement.

23. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Agreement, hereby waives its right to

Respondent shall pay these sums to the Department or arrange a payment schedule with the Department within 30 days of written demand by the Department.

29. This Consent Agreement 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 Agreement will not be effective until further order of the Department.

30. Upon Respondent's notification to the Department that Respondent has completed its obligations under this Consent Agreement as contained herein, the Department shall determine such completion of Respondent's obligations and confirm same by return letter.

FOR RESPONDENT

DATE

Wayne Bower
City Manager

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Mario L. Taylor
District Director

DONE AND ORDERED this _____ day of _____, 2003, in Jacksonville,
Florida.

Copies furnished to: Larry Morgan, Office of General Counsel