

**IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT  
IN AND FOR MONROE COUNTY, FLORIDA  
KEY WEST DIVISION**

**DUMP the PUMPS, INC., a NON-PROFIT,  
FLORIDA CORPORATION,**

**Plaintiffs,**

**v.**

**CASE NO: \_\_\_\_\_**

**FLORIDA DEPARTMENT OF ENVIRONMENTAL  
PROTECTION and the FLORIDA KEYS AQUEDUCT AUTHORITY,**

**Defendants.**

**COMPLAINT PURSUANT TO SECTION 403.412 AND CHAPTER 86,  
FLORIDA STATUTES**

COMES NOW, Plaintiff, by and through its undersigned counsel, who hereby files this Complaint seeking to compel the Defendant Florida Department of Environmental Protection (“DEP”) to enforce the laws, rules and regulations for the protection of the waters lying beneath and surrounding the Lower Florida Keys as well as for the protection of other natural resources within the environment of the Lower Florida Keys. Pursuant to Section 403.412 (2), Fla. Stat., Plaintiff seeks an injunction compelling the DEP to enforce its laws, rules and regulations with regard to certain permits issued by the DEP to the Florida Keys Aqueduct Authority (“FKAA”) for the construction of a wastewater collection system within the Lower Keys. In support of its Complaint, Plaintiff avers the following:

### Common Allegations

1. Plaintiff's members consist of homeowners located within the Lower Keys and within the Inner Islands and Outer Islands areas of the Cudjoe Regional Wastewater System (hereinafter "CRWS") project currently under construction. Plaintiff has been organized to protect the best interests of the citizens in local county matters.
2. Defendant Florida DEP is a state agency established under section 20.255, Fla. Stat. Its headquarters are in located in Tallahassee, Florida, with a regional office in Ft. Myers and a field office in Marathon. In part, the DEP is charged with the responsibility of enforcing various state laws, including Chapter 403, Florida Statutes, enacted to protect the environment and with issuing permits for the design, construction and operation of the CRWS.
3. The FKAA is a political subdivision of the State of Florida, established by Special Act, Ch. 76-441, as amended, for the purpose of supplying fresh water to the Florida Keys and for constructing a centralized sewer system for the Lower Keys.
4. Jurisdiction and venue lie within the Sixteenth Judicial Circuit, Circuit Court, Monroe County, Key West Division. All conditions precedent for the filing of this action have been satisfied.
5. The Plaintiff's members own homes and properties within the Inner Islands and Outer Islands of the CRWS, to wit: Upper and Lower Sugarloaf Keys, Cudjoe Key, Summerland Key, Ramrod Key, Little Torch Key, and Big Pine Key. The properties owned by Plaintiff's 75 members are either undergoing sewer

connection installation or scheduled for sewer connection installation under existing contracts. To date, a DEP permit has not been issued to the Defendant FKAA for the island of Big Pine Key. See aerial map of project's islands,

**EXHIBIT A.**

6. Pursuant to its construction plans, the FKAA has designated certain properties and subdivision lots and homes within the Lower Keys for either gravity sewers or for low pressure sewers (hereinafter "LPS"). The LPS system will require a grinder pump while the gravity system will not. For Plaintiff's members who own homes within the LPS, Defendant FKAA sends an informational letter and proposed easement agreement requesting that the homeowner designate a portion of his/her property for grinder pump installation. See typical letter (redacted) sent to some property owners within the CRWS, **EXHIBIT B.**
7. The grinder pump specified by Defendant FKAA to be installed on each designated LPS property is referred to as the "E/One" grinder pump (hereinafter the "E/One" or simply "grinder pump"). The E/One's discharge capability is rated at 11 gpm (gallons per minute) under favorable conditions which results in a 2.8 feet per second flow velocity when connected to the specified 1 ¼ inch nominal diameter discharge pipe. However, as the effluent from the 1 ¼ inch pipe enters the two-inch diameter force main pipe at the street, the flow velocity drops to 1.2 feet per second. See attached E/One product information and installation instructions, **EXHIBIT C**, consisting of 13 pages.
8. The original CRWS sewer contracts tasked FKAA's contractors with installing approximately 2,800 grinder pumps within the above-described CRWS project.

Since those contracts were let, some LPS services were converted to gravity service, and additional conversions have been funded. In LPS areas, E/One grinder pump installations <sup>are</sup> to be located within the front yards of homes owned by Plaintiff's members.

9. Thus far, the Defendant DEP has issued the following "dry line" wastewater collection system permits to the FCAA for installation of the gravity and LPS sewers within the above-described project:

- (a) DEP Permit No. 295404-006-DWC/CM Upper Sugarloaf Key;
- (b) DEP Permit No. 295404-007-DWC/CM Summerland Key;
- (c) DEP Permit No. 295404-008-DWC/CM Cudjoe Key;
- (d) DEP Permit No. 295404-010-DWC/CM Sugarloaf Key;
- (e) DEP Permit No. 295404-012-DWC/CM Ramrod Key;
- (f) DEP Permit No. 295404-013-DWC/CM Lower Sugarloaf Key;
- (g) DEP Permit No. 295404-014-DWC/CM Little Torch Key.

See Permits attached hereto as **COMPOSITE EXHIBIT D.**

10. The above-listed DEP Permits require that FCAA's design and construction of the CRWS collection and transmission system conform to the provisions of Rules 62-604.300 (1) and 62-604.300(5) (b) and (c), Fla. Admin. Code ("F.A.C."). The requirements of *various Manuals* referenced in the aforesaid Rules are also incorporated by reference into DEP's Permits. **COMPOSITE EXHIBIT D.**

11. The E/One pump stations cease to function without power. The FCAA's stated response plan to maintain service as required by DEP rules in the event of a

power outage in the CRWS provides for only two generator trucks with crews for the LPS areas. Given the vast number grinder pumps within the CRWS, two emergency response trucks will not be adequate to meet the sudden widespread demand for reactivation.

12. Pursuant to Section 403.412 (2) (f), Fla. Stat., an action may be maintained against the Defendants DEP and FKAA if the FKAA is not in compliance with the DEP's aforesaid issued permits.

### **Specific Allegations**

#### **Defendant FKAA's Lack of Compliance with DEP Permits**

13. The FKAA is **not** in compliance with the aforesaid permits as follows:

#### **Scouring Velocity Required by DEP's Rules Unmet**

- (a) The E/One Grinder Pump to be installed in the LPS areas designated by Defendant FKAA is incapable of maintaining a minimum 2.0 feet per second flow velocity in the 2" and larger force mains, as described in paragraph 7 above. A velocity of 2.0 feet per second is the minimum velocity required by the Manuals incorporated by reference in Rule 62-604.300 (g), F.A.C. See *Recommended Standards for Wastewater Facilities*, ("RSWF"), Sections 42.38 and 48.1 also known as "*The Ten States Standards*." See also, Chapter 1 Part 4 of *Design and Specification Guideline for Low Pressure Sewer Systems (1981)*, where it requires 2.5 feet per second velocity. **EXHIBIT E.**

### **Required Emergency Response Plan Inadequate**

- (b) DEP Rules require that a system be installed for grinder pump emergencies such as electrical power outages. Without electricity, the grinder pumps will cease operation. Raw sewage will overflow into the environment or back-up into homes unless an adequate contingency response plan for such an emergency is capable of efficient implementation. FKAA's response plan as discussed in paragraph 11 above is inadequate. See Rule 62-604.400 (2) (a) 1, 2, and 3, F.A.C.
- (c) Rule 62-604.400 (2) (a) requires a rapid connection for portable generators and pumps for all pump stations. This requirement is not included within the CRWS design.
- (d) Section 47 of the RSWF requires adequate emergency pumping capability. Two service trucks with portable pumps and generators cannot possibly pump out all of the flooded or backed up grinder pits in time to avoid raw sewage overflows and/or back-ups into homes, resulting in serious health and environmental hazards. See Rule 62-604.400 (2) (a) 2 and 3, F.A.C., and Rule 62-604.500 (2), F.A.C.

(e) **The E/One Grinder Pump Is Not Explosion-Proof As Is Required**

The National Electric Code, (NEC), as referenced in the RSWF, Section 42.35, requires certain safety precautions for operating non-explosion proof electrical equipment such as grinder pumps where explosive gases accumulate. The CRWS region has a high percentage of seasonal homes. Raw sewage, having an unusually long retention time will generate even

higher than usual gas concentrations in the pipes. Should explosive gases seep into a grinder pump station, electrical operation of the grinder pump can ignite a dangerous explosion. Other explosive hazards, for example, might also result from leaked propane being drawn into the grinder pump or the introduction of flammable cleaning solvents into the grinder pump through a household drain. The grinder pump specified by Defendant FKAA does not meet the National Electric Code (“NEC”) requirements for electrical equipment located where fire or explosion hazards may exist due to a potentially flammable atmosphere. See Article 501, et seq., NEC, attached hereto as **EXHIBIT F**. See also **EXHIBIT E**, RSWF, Section 42.35. See **EXHIBIT C, page 4** from the E/One manufacturer affirming that the specified pump is not approved for use in a hazardous environment as defined by NEC and NFPA.

- (f) Since the FKAA’s grinder pump stations lack mechanical ventilation to prevent explosive gases from accumulating and since the E/One do not meet the NEC requirements for electrical equipment in such an environment, there exists the very real potential of fire or explosion in the front yards of residences with the prospect of loss of life, bodily injury and/or property damage. The force of an explosion may also rupture force main pipes resulting in raw sewage release into the environment. Because the same E/One non-explosion proof pumps are specified by Defendant FKAA for use in area lift stations of the CRWS gravity sewer system, the same serious risk of explosion exists throughout CRWS.

### **Infrequent Usage of Grinder Pumps and Subsequent Breakdowns**

(g) The grinder pumps are designed to be run daily. Pumps at seasonal homes which sit idle for weeks or months will experience failures thus jeopardizing homes, the environment and certain sections of the CRWS. Attached hereto as **EXHIBIT C, page 11**, is a set of instructions for E/One Grinder Pump. In pertinent part, said instructions acknowledge that periods of disuse of the E/One Pump for longer than "a couple of weeks" will require a special purge operation due to the disuse. Seasonal occupancy in the CRWS neighborhoods typically ranges from 25 to 50%. Pump failures at so many homes of arriving "snowbirds" will result in extended lack of service and raw sewage releases.

### **Horizontal Separation of Water Lines from Sewer Lines not in Compliance**

(h) FKAA's contract drawings for the same areas of the CRWS show no more than 6 or 8 feet of horizontal separation between new sewer force mains and existing water mains. See **EXHIBIT H**. A 10-foot horizontal separation between new sewer mains and existing water mains is required as a condition of the permit and as stated in Rule 62-604.400 (2) (g), F.A.C.

### **Misleading, False or Inaccurate Statements**

(i) Rule 62-604.130 (7) prohibits the submission by the owner, manager, or operator of a collection/transmission system, or agent or employee thereof, of misleading, false, or inaccurate information to the Department, either knowingly or through neglect.



- (j) Rule 62-604.600 (9), F.A.C., requires that, after review of application Form 62-604.300 (8)(a), if the DEP determines that the applicant has not provided reasonable assurance that the construction will be in accordance with applicable laws or rules, the DEP shall deny the permit.
- (k) Rule 62-4.100(3) provides that the DEP may revoke any permit issued by it if it finds that the permit holder or his agent "Submitted false or inaccurate information in his application..." or if he has "violated law...rules or permit conditions."
- (l) Attached hereto is **EXHIBIT G**, a copy of Form 62-604.300 (8) (a) as submitted by Chen & Associates to Defendant DEP on June 5, 2013 on behalf of Defendant FKAA. The form is designed to elicit information from the applicant about compliance with permitting requirements including "reasonable assurances." The applicant's engineer is directed by the instructions at the bottom of page 2 to initial those statements of requirements with which the design complies. If any of the requirements do not apply to the project or if the project is not designed to comply with a particular requirement, the engineer must mark an "X" and provide an explanation.
- (m) At page 3 of **EXHIBIT G**, paragraph 6 is initialed indicating the separation requirements for water and sewer lines has been met. Plaintiff has alleged that the separation requirement has not been met as per paragraph **13 (h)** herein. Therefore, Plaintiff alleges that Defendant FKAA has submitted a false statement to the DEP.

- (n) At page 6 of **EXHIBIT G**, paragraph 46 is initialed indicating compliance with the explosion-proof requirements for the grinder pumps. Plaintiff has alleged that the fire and explosion-proof requirement has not been met as per paragraph **13 (e)** herein. Therefore, Plaintiff alleges that Defendant FKAA has submitted a false statement to the DEP.
- (o) At page 6 of **EXHIBIT G**, paragraph 48 is initialed indicating compliance with the minimum velocity requirement of 2 feet per second. Plaintiff has alleged that the minimum velocity will not be maintained at the required 2 feet per second as per paragraph **13 (a)** herein. Therefore, Plaintiff alleges that Defendant FKAA has submitted a false statement to the DEP.
- (p) At page 8 of **EXHIBIT G**, paragraph 71 is marked within an "X." Paragraph 71 cites to RSWF 45 requiring telemetering of pump station alarms or at least an audio-visual alarm with self-contained power supply. Neither of these requirements was included in the designs of the CRWS for all pump stations. The Defendant's engineer has explained his "X" for paragraph 71 on a separate attached page, with the subheading "Explanation for requirements or standard marked "X" in II (5) A," by the following: "Neighborhood pump stations will be provided with an audio-visual alarm system with generator receptacle. **The alarm system was not designed with a telemetry system at the direction of the FKAA.** FKAA is responsible for emergency operations during normal and off-duty hours." Further, a self-contained power supply was not addressed. Note also that the explanation only addressed

neighborhood lift stations and not front yard pump stations in danger of raw sewage overflow due to pump or power failure.

- (q) Plaintiff alleges that the explanation quoted above does not provide a legally valid reason for non-compliance. Accordingly, the Defendant FKAA has willfully violated said Permit requirements and DEP Rules as well as providing misleading information.

**COUNT I – ACTION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF  
PURSUANT TO SECTION 403.412, FLORIDA STATUTES**

14. Plaintiffs hereby incorporate paragraphs 1 through 13 by reference as if fully set forth herein.
15. This is a suit for declaratory judgment and injunctive relief against the DEP pursuant to Section 403.412 (2), and Ch. 86, Fla. Stats.
16. More than thirty days have elapsed since Plaintiff has filed a Verified Complaint with the DEP and FKAA, pursuant to Section 403.412 (2) (c), Fla. Stat. To date, the DEP has not instituted any enforcement action against the Defendant FKAA for non-compliance with DEP's permits and the Rules relating thereto.
17. The non-compliance of FKAA's collection system with DEP permits will result in the discharge of raw, untreated sewage into the environment and surrounding waters of the Lower Keys resulting in harm to human health, degradation of the environment and waters of the Lower Keys. Further, the said discharges of raw sewage will unreasonably interfere with the enjoyment of life, property, the local environment, water quality and outdoor recreation. Plaintiff's members will thereby be adversely affected.

18. Plaintiff's members have a clear legal right to a declaratory judgment and injunctive relief against DEP and the FKAA, in that injunctive relief will serve both the public interest and interest of the environment. Plaintiff's members have no adequate remedy at law to prohibit the acts or omissions of Defendants regarding non-compliant permitting of the collection system. Harm to human health and the environment will be irreparable upon the spillage of raw sewage due to Defendant FKKA's non-compliance with its permits and the Defendant DEP's failure to enforce compliance with the rules and regulations regarding said permits. Moreover, the Defendant FKAA's submission of misleading, false or inaccurate application statements to the DEP render the present permits void ab initio.
19. Plaintiff has retained the Law Office of Lee Robert Rohe, Esquire, to prosecute this action and have agreed to pay a reasonable attorney's fee for legal services rendered.

**WHEREFORE, Plaintiff** requests this Honorable Court to: (1) Render a declaratory judgment regarding Plaintiff's allegations herein; (2) Enter an Order compelling the Defendant DEP to enforce compliance of the rules and regulations regarding said permits issued to Defendant FKAA; or, in the alternative, compel DEP to revoke said permits; (3) Fashion such other relief as the Court deems proper; and (4) Award Plaintiff its reasonable costs and attorney's fees for legal services rendered.

Respectfully submitted,



**LEE ROBERT ROHE, ESQ. P.A.**

**Attorney for Plaintiff**

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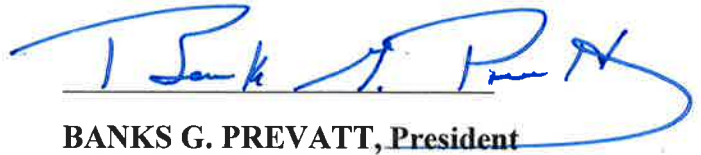
**Florida Bar No. 271365**

**Email: lrllaw@bellsouth.net**

**Dated: 1-14-14**

**STATE OF FLORIDA  
COUNTY OF MONROE**

Under penalties of perjury, I declare that I have read the foregoing Section 403.412 Florida Statutes Complaint and that the facts stated in it are true.



**BANKS G. PREVATT, President  
Dump the Pumps, Inc.**

1/13/2014

Before me, the undersigned authority, personally appeared **BANKS G. PREVATT**, as President of Dump the Pumps, Inc., who was sworn and says the foregoing Section 403.412 Florida Statutes Complaint is true.



**SUSAN L. ROHE  
Notary Public**

1/13/2014

Personally Known  OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

