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**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Apr 30, 2014

DUMP THE PUMPS, INC. and
BANKS PREVATT,

**Dept. of Environmental Protection
Office of General Counsel**

Petitioner,

v.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,
and LITTLE PALM ISLAND ASSOCIATES, LTD.,

FDEP Permit No. 295404-017-DWC/CM

Respondents.

PETITION FOR FORMAL ADMINISTRATIVE PROCEEDINGS

Petitioners, DUMP THE PUMPS, INC. (“DTP”) and BANKS PREVATT, by and through undersigned counsel, and pursuant to Sections 120.569 and 120.57, Fla. Stat., and Rule 28-106.201, F.A.C., hereby file this Petition for Formal Administrative Proceedings (“Petition”), to challenge the issuance of FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (“FDEP”) permit 295404-017-DWC/CM, which permits “dry line” sewage collection/transmission system construction for Little Palm Island, Monroe County, Florida..

I. PARTIES AND NOTICE

1. Petitioner, Dump the Pumps, Inc.’s mailing address is P.O. Box 1956, Big Pine Key, Monroe County, Florida 33043. Its President is Mr. Banks Prevatt who maintains the telephone number of (305) 872-5264.

2. Petitioner Banks Prevatt owns a residence at Little Torch Key, FL 33042, and is President of Dump the Pumps, Inc..

3. Petitioners' representative is their undersigned counsels, Robert N. Hartsell, P.A., Federal Tower Building, 1600 South Federal Highway, Suite 921, Pompano Beach, Florida 33062 who maintains the telephone number of (954) 778-1052 and Lee Robert Rohe, Esq. P.A., P.O. Box 420259, Summerland Key, FL 33042 who maintains the telephone number of (305) 745-2254.

4. The Agency's name, address and identification number are Respondent, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and the FDEP File Number is 295404-017-DWC/CM. The FDEP is a state agency established under Section 20.255, Fla. Stat. In part, the FDEP is charged with the responsibility of enforcing various state laws, including Chapter 403, Fla. Stats., enacted to protect Florida's environment and with issuing permits for the design, construction and operation of sewage collection/transmission system construction.

5. The address of Respondent, LITTLE PALM ISLAND ASSOCIATES, LTD ("LPIA"), is 600 6th Street South, Kirkland, WA 98033. LPIA maintains the telephone number of (305) 296-2454. The LPIA is a political subdivision of the State of Florida, established by Special Act, Ch. 76-441, as amend, for purposes of supplying fresh water to the Florida Keys and for constructing a centralized sewer system for the Lower Keys.

6. DTP received actual notice of intent to issue Permit No. 295404-017-DWC/CM by a member sending a copy via email to Mr. Banks Prevatt on April 16, 2014.

7. This Petition is being filed within fourteen (14) days of actual notice of the agency action, and is therefore timely.

II. FACTUAL BACKGROUND

8. Monroe County is designated as an area of critical state concern under Section 380.05 and 380.0551, Fla. Stat., and therefore entitled to heightened environmental and development safeguards.

9. LPIA requested to be included in the project known as the Cudjoe Regional Wastewater System (CRWS). An engineering analysis was performed and the report indicated that with increased pipe and pump sizes the island's wastewater could be accommodated by the system.
10. In 2000, Monroe County adopted a "Monroe County Sanitary Wastewater Plan" for the purpose of designing a central wastewater collection system and treatment facility for incorporated and unincorporated areas of Monroe County.
11. On July 15, 2013, Monroe County adopted Ordinance No. 027-2003 (the Wastewater Assessment Ordinance) which provides for imposition and collection of wastewater assessments against properties in Monroe County.
12. On or about October 5, 2005, Monroe County and the Florida Keys Aqueduct Authority (FKAA) entered into a lease agreement, whereas Monroe County, as lessee, leased certain lands for the construction, equipping and operation of a wastewater and sewer system.
13. Pursuant to the Section 2.8(v) of the October 5, 2005 lease agreement, FKAA was required to "establish rates, fees, and System Development Charges for the System which would be sufficient to provide funds adequate to fully fund the Operations and Maintenance Expenses of the System."
14. LPIA applied for a construction only permit to install a dryline sewage collection/transmission system pursuant to Chapter 403 Florida Statutes and Florida Administrative Code Rules 62-4 and 62-604 that would feed a collection/transmission system to be constructed by FKAA.
15. FKAA applied for a construction only permits to install a dryline sewage collection/transmission system pursuant to Chapter 403 Florida Statutes and Florida Administrative Code Rules 62-4 and 62-604 that would accept wastewater from the collection/transmission system of LPIA.
16. A substantial number of members of DTP received notice that they were designated for low pressure sewer ("LPS") systems and would need to designate a portion of their property for grinder

pump installation. The properties along Long Beach Road on Big Pine Key where the LPIA collection/transmission system connects are designated LPS properties.

17. The grinder pump specified for the designated LPS properties is referred to as the “E-One grinder pump.”

18. On April 16, 2014, the FDEP issued Permit number 295404-017, which permits the “construction of 305 LF of 2" HDPE forcemain, 25 LF of 3" HDPE forcemain, 25 LF of 6" PVC gravity line, 2 lift stations, and converting existing 2" HDPE water main to sewer force main"

19. A true and correct copy of Permit number 295404-017 DWC/CM is attached as Exhibit A.

20. FDEP did not issue a permit for “wet” connection to any treatment plant or originator of waste.

III. DISPUTED ISSUES OF MATERIAL FACT

21. The Petitioner disputes that the proposed design meets the minimum requirements of design as set forth in the Florida Administrative Code, and is therefore ineligible for permit.

22. The Petitioner disputes that the design adequately protects the environment or even improves upon the existing on-site treatment system.

23. The Petitioner disputes that the engineers reports, technical memorandum, letters, or application representations provide reasonable assurance that the design will meet FDEP criteria.

IV. FACTS THAT WARRANT REVERSAL OF THE FDEP PERMIT ISSUANCE

24. LPIA’s design (“design”) does not conform to FDEP minimum design requirements.

25. The design will result in raw sewage spills into the protected waters of the Florida Keys National Marine Sanctuary, the Coupon Bight Aquatic Preserve and several small islands owned by the State of Florida. Also affected are extensive mangrove wetlands owned by the Florida Keys National Wildlife Refuges which harbors 17 species protected by the Endangered Species Act.

26. As indicated in the design, high head pressures are required to transport an engineer-estimated average of over 20,000 gallons per day of untreated wastewater through an old abandoned 2" watermain. The design and construction plans place the environment and health of the public at grave risk.
27. An existing abandoned water main of approximately 3 miles in length that is proposed to be converted to a sewer forcemain lays upon the surface of a saltwater wetland where it is highly vulnerable to damage.
28. The existing abandoned water main is approximately 3 miles in length and is proposed to be converted to a sewer forcemain. It lays upon the seabed surface of a shallow saltwater flat where it has reportedly been hit and cut open on numerous occasions by the propellers of flats boats that traverse the area at high speed.
29. The existing abandoned water main has no air release provisions, yet it dives underwater before emerging on the saltwater marsh of Big Pine Key. The black HDPE forcemain is exposed to the sun and may be expected to absorb heat during the day, exacerbating gas production. Air locking and subsequent higher pressures upstream would both interrupt sewer service and facilitate pipe failure with raw sewage release into Outstanding Florida Waters.
30. The wastewater collection/transmission system on Big Pine Key to which the LPIA forcemain would connect appears to be inadequate for the high season flows of Big Pine Key even before adding in the flow of the LPIA forcemain. Sufficient capacity does not exist.
31. The head pressure of the LPIA system was not considered in calculating the connection back pressure of simplex E-One grinder pumps manifolded in along Long Beach Road because it was unknown at the time of design.
32. The proposed converted sewer forcemain crosses on the surface of the seabed of waters in very close proximity to a significant FKNMS patch reef on the South side of Little Palm Island. A break in

this abandoned and repurposed pipe threatens the protected sanctuary and the snorkelers and DTP members who enjoy it.

33. The proposed converted sewer forcemain lies in waters adjacent to the recreational beach area known as Picnic Island that is frequented by DTP members, visiting boaters, and others. This is a designated anchoring zone where travelers are expected to rest and be in the water. These waters are not sampled for E. Coli like many other public beaches. A break in the LPIA forcemain may contaminate these waters with human waste pathogens for a long time before detection, with serious health risks,

34. The proposed converted sewer forcemain runs adjacent and close to the new water pipes to Little Palm with no earth or air between to discourage cross connection contamination. The same boat propeller that cuts one will likely cut the other. This is a violation of FDEP separation requirements. See Rule 62-604.400(2)(g), F.A.C..

35. The proposed converted sewer forcemain lies on top of the ground in a salt marsh along the shoreline opposite the shoreline of Bahia Honda State Park's beaches. A break in the forcemain may contaminate this world class beach which a substantial number of DTP members use and enjoy.

36. The pressures expected on the proposed converted sewer forcemain will run at double the water main pressure that it carried when originally installed. The increased pressure on an antiquated pipe that has been exposed to ultraviolet sun rays, abrasion and embrittlement for a number of years increases the likelihood of failure and contamination of the environment.

37. The proposed converted sewer forcemain has been subject to previous repairs from physical damage. These repairs were subject to lower pressures than expected of the pipe if used as a sewer forcemain. Repairs are a common location of failures, and the increased pressure increases the risk here.

38. Considering the comparative risk to the environment and public health, one cannot be reasonably assured that the LPI permit will be not harm the environment.

39. The applicant has not provided reasonable assurance that the construction, modification, expansion, or operation of the installation will be in accordance with applicable laws or rules, including rules of delegated local programs, the Department must deny the permit or notify the applicant that the general permit cannot be used, as appropriate. Rule 62-604.600(9), F.A.C..

V. PETITIONERS SUBSTANTIAL INTERESTS WILL BE AFFECTED

40. Petitioner DTP's substantial interests, and the interests of its members, will be adversely affected by the issuance of the Permit.

41. DTP is a non-profit, grassroots organization whose members will be served by the Cudjoe Regional Wastewater System (CRWS), to which Little Palm Island has been included. Its interests and the interests of its members will be adversely affected and harmed when permits are issued with only cursory review of designs, designs which fail to utilize the minimum standards required by FDEP Rules and Ten States Standards in an area where every precaution should be taken.

42. DTP believes that the system as designed and proposed to be permitted will not function as intended and will result in raw sewage releases into waters bordering a substantial number of members' properties as well as Endangered Species Habitat and Outstanding Florida Waters of a National Marine Sanctuary creating significant health hazards and diminishing the very qualities that make the area a desirable place to reside and visit.

43. Mr. Prevatt and a substantial number of members of DTP regularly fish in the near shore waters of Big Pine Key and Little Palm Island and will be adversely affected if raw sewage were to be released into these waters.

VI. ULTIMATE FACTS AND LAW

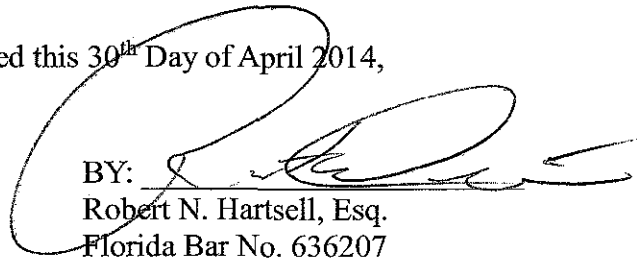
44. The wastewater collection system currently designed and approved for permit is inappropriate for the geographic area; is inadequately designed to function as intended; poses a serious risk of raw

sewage release; fails to provide reasonable assurance that the project will not degrade the environment; fails to provide reasonable assurance that the project will not harm the public; and is not designed in accordance with minimum FDEP standards. Relief is authorized by and sought under Chapter 120, Sections 403.87, 403.412, Fla. Stat., Rules 62-4.160 and 62-4.100 F.A.C., and others. The Permit violates FDEP Rules 62-604.130, 62-604.300, 62-604.400, 62-604.500, 62-604.600 F.A.C.

WHEREFORE DTP respectfully demands:

- A) The Petition be forwarded to the Division of Administrative Hearings for appointment of an administrative law judge; and
- B) An Order be issued denying the subject permit.

Respectfully Submitted this 30th Day of April 2014,



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