

**Apr 29, 2014**

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

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

DUMP THE PUMPS, INC. and  
BANKS PREVATT,  
GAIL KULIKOWSKY, and  
MARGARET SCHWING,

Petitioners,

v.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION,  
and FLORIDA KEYS AQUEDUCT AUTHORITY,

**FDEP Permit No. 295404-024-DWC/CM**

Respondents.

**PETITION FOR FORMAL ADMINISTRATIVE PROCEEDINGS**

Petitioners, DUMP THE PUMPS, INC. (“DTP”), BANKS PREVATT (“Prevatt”), GAIL KULIKOWSKY (“Kulikowsky”) and MARGARET SCHWING (“Schwing”), 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 295404-024-DWC/CM, which permits “dry line” sewage collection/transmission system construction for the southern portion of Big Pine Key (“Big Pine South”), Monroe County, Florida., and state:

**I. PARTIES AND NOTICE**

1. Petitioner, Dump the Pumps, Inc. (DTP) is a not-for-profit corporation incorporated under the laws of the state of Florida. DTP’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. DTP's 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.

2. Petitioner Prevatt's address is 141 Pirates Road, Little Torch Key, Florida, 33043.
3. Prevatt is a member of Dump the Pumps, Inc.
4. Petitioner Kulikowsky's address is 30788 Pinewood Lane, Big Pine Key, Florida 33043.
5. Kulikowsky is a member of Dump the Pumps, Inc.
6. Petitioner Schwing's address is 29756 Springtime Road, Big Pine Key, Florida 33043.
7. Schwing is a member of Dump the Pumps, Inc.
8. The agency's name, address and agency identification number are Respondent, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and the FDEP File Number is 295404-024-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.
9. The address of Respondent, FLORIDA KEYS AQUEDUCT AUTHORITY ("FKAA"), is 1100 Kennedy Drive, Key West, Florida 33041. FKAA maintains the telephone number of (305) 296-2454. The FKAA is a political subdivision of the State of Florida, established by

Special Act, Ch. 76-441, as amended, for purposes of supplying fresh water to the Florida Keys and for constructing a centralized sewer system for the Lower Keys.

10. DTP received actual notice from FDEP of intent to issue Permit No. 295404-024-DWC/CM by email on April 15, 2014 *via* Mr. Banks Prevatt.

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

## **II. FACTUAL BACKGROUND**

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

13. Big Pine Key is an environmentally sensitive island in the lower Florida Keys that maintains the 9,200-acre National Key Deer Refuge. Its natural communities are critical habitat for hundreds of endemic and migratory species including seventeen (17) federally-listed species such as Key deer, lower Keys marsh rabbit, and silver rice rat.

14. 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.

15. 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.

16. On or about October 5, 2005, Monroe County and FKAA entered into a lease agreement, whereby Monroe County, as lessee, leased to FKAA certain lands on Big Pine Key for the construction, equipping and operation of a wastewater and sewer system.

17. 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.”

18. FKAA has, on several occasions, held public meetings to discuss the use of gravity systems for the operation of a wastewater and sewer system. FKAA promoted the use of gravity sewer on its website and in print advertising.

19. Both gravity and LPS areas were identified collectively as “centralized sewer” which was understood to be conventional gravity sewer collection.

20. On March 14, 2014 FKAA applied for a construction only permit to install a dryline sewage collection/transmission system for Big Pine Key South pursuant to Chapter 403 Florida Statutes and Florida Administrative Code Rules 62-4 and 62-604. The FKAA designated certain properties and subdivision lots and homes with in the Lower Keys for either gravity sewers or for low pressure sewers (“LPS”). The LPS system will require a grinder pump while the gravity system will not.

21. A substantial number of members of DTP, including Kulikowsky and Schwing, received notice that they were designated for LPS systems under the permit at issue and would need to designate a portion of his/her property for grinder pump installation.

22. The grinder pump specified by FKAA to be installed on each designated LPS property is referred to as the “E-One grinder pump.”

23. On April 15, 2014, the FDEP issued Permit number 295404-024-DWC/CM, which permits the “construction of 47,689 Linear feet (LF) of 8” PVC (SDR 26) gravity sanitary

sewer, 168 sanitary manholes, 10 Neighborhood Grinder Pump Stations, 118 Commercial Low Pressure lateral connections, 6,300 LF 2" Force Main (HDPE SDR11), 3,573 LF of 3" Force Main (HDPE SDR11), 6,916 LF of 4" Force Main (HDPE SDR11), 2,860 LF of 6" Force Main (HDPE SDR11), 66,103 LF of 2" Low Pressure Force Main (HDPE SDR11), 16,839 LF of 3" Low Pressure Force Main (HDPE SDR11), and 7,404 LF of 4" Low Pressure Force Main (HDPE SDR11), per application materials received March 14, 2014, with the last additional information received April 15, 2014."

24. A true and correct copy of Permit number 295404-024-DWC/CM is attached as Exhibit A.

25. FDEP did not issue a permit for "wet" connection to any treatment plant or originator of waste.

### **III. DISPUTED ISSUES OF MATERIAL FACT**

26. Petitioners dispute that the proposed design meets the minimum requirements of design as set forth in the Florida Administrative Code, and is therefore eligible for a permit.

27. Petitioners dispute that the design adequately protects groundwater and offshore surface water, the environment or even improves upon the existing on-site treatment systems.

28. Petitioners dispute that FKAA has provided reasonable assurance that the design will meet FDEP criteria.

### **IV. FACTS THAT WARRANT REVERSAL OF THE FDEP PERMIT ISSUANCE**

29. FKAA's Big Pine Key design ("design") violates FDEP minimum design requirements.

30. Operation of the system as designed will result in loss of sewer service, raw sewage spills into residential yards, streets, harm to the environment and/or backups into homes.

31. Critical aspects of the design were manipulated to accommodate the use of the slow-pumping E-One grinder pump and to make the transmission force main design appear more robust than it is. The design and construction plans pose substantial risk of groundwater and surface water contamination and harm to public health and safety.

32. The design has inadequate scouring velocity on every 2-inch force main beginning on a dead end or cul-de-sac street. A single simplex E-one grinder pump station pumps too slowly to achieve the minimum 2.0 feet per second (“fps”) required in the 2-inch collector main in the street. See "Recommended Standards for Wastewater Facilities" (1997), also known as the "Ten States Standards" incorporated by reference by Rule 62-604.300(g), F.A.C. The E-one also pumps too slowly to achieve the recommended 3.5-5 fps re-suspension velocity in the 1-1/4-inch service lateral, and far from the required velocity in the 2-inch force main in the street. See "Recommended Standards for Wastewater Facilities" (1997), also known as the "Ten States Standards" incorporated by reference by Rule 62-604.300(g), F.A.C. There is no way to address this issue with the E-one grinder pumps. Currently, the City of Marathon is experiencing this same problem with its 1-1/4-inch E-One grinder pump laterals, and has significant maintenance issues. Jacksonville Electric Authority (“JEA”) reports similar troublesome blockages in the E-One grinder pumps they maintain in the greater Jacksonville area.

33. Inadequate scouring velocity exists on some neighborhood lift station force mains, even at submitted peak flows. See "Recommended Standards for Wastewater Facilities" (1997), also known as the "Ten States Standards" incorporated by reference by Rule 62-604.300(g), F.A.C. The lift station details submitted on the Permit Application Package (“PAP”) demonstrate velocities declared at less than 2.0 fps.

34. Inadequate scouring velocity exists at some trunk line manifold force mains. See "Recommended Standards for Wastewater Facilities" (1997), also known as the "Ten States Standards" incorporated by reference by Rule 62-604.300(g), F.A.C. As illustrated by the Flow and Velocity table of SewerCAD results in Appendix A of the PAP, several force mains do not achieve the minimum required 2.0 fps velocity even under peak flow conditions. Specifically note FM-373 through FM-383 with velocities as low as 1.1 fps. The neighborhood lift stations are designed using multiple slow-pumping E-One grinder pumps that operate in stages, as needed, to keep up with incoming wastewater. During periods of low flow, the pumps would alternate, one running at a time. One pump running alone cannot achieve the required scouring velocity in any connected force main located on any street. In the off season, there may be weeks or months when 2.0 fps is not achieved. Additionally, because the flow experiences starts and stops, there is a need of re-suspension velocities of 3.5-5 fps also. The design cannot achieve that velocity.

35. The permitted E-One grinder pumps specified are not approved or rated for use in a pump or lift station; violate FDEP Rules, 10 States Standards, the National Electric Code and National Fire Protection Association standards. Rule 62-604.300(g), F.A.C.

36. A pump wet well handling primarily residential sewage is a Classified Hazardous Area "Class 1, Division 2, Group D" by NFPA 820. NEC Article 501.125(B) states "In Class 1, Division 2 locations, motors, generators, and other rotating machinery in which are employed sliding contacts, centrifugal or other types of switching mechanism (including motor overcurrent, overloading, and over temperature devices), or integral resistance devices, either while starting or running, shall be identified for Class 1 Division 1 locations....", or in other words fully explosion proof. The E-One grinder pump employs an integral over-temperature switch with

automatic reset in the motor, as well as level switches in the motor, and therefore it is not allowed in a Class 1 Division 2 location. E-One specifically warns in its Installation Guide for the specified E-One Extreme Upgrade grinder pump on page 4 in bold print “This pump is not to be installed in a location classified as hazardous in accordance with National Electric ANSI/NFPA 70.” The E-One pump pit's 2-inch passive vent intended for air displacement and entry during pump cycles does not qualify as “mechanical ventilation” and therefore does not declassify the environment as hazardous. The Recommended Standards for Wastewater Facilities (Ten States Standards), incorporated by reference in Rule 62-604.300(g) specifically states in Chapter 42.35 that motors in raw wastewater wetwells “shall comply with National Electric Code requirements for Class 1 Group D Division 1 locations.” In other words, they shall be listed for explosion-proof, duty and the E-1 pump motor is not.

37. In unique locations such as Big Pine Key, where homes are vacant for weeks or months at a time, there is a distinct risk of not just gasses being generated in the pit, but of gasses generated in the force mains being forced under significant pressure past the simplex station check valves and thence into the pit where they will accumulate. Hydrogen sulfide, being heavier than air, will not likely rise through the vent until the pit is full to the top with the explosive gas. Use of the specified E-One grinder pump is a violation of national public safety codes and poses a serious and potentially deadly explosion hazard.

38. In light of the vulnerability of the Florida Keys to hurricanes, rogue power outages and storm surge, there is no realistic plan for maintaining service during an extended power outage. FDEP Rules are very clear that uninterrupted sewer service must be maintained, even in the event of power interruption. See Rule 62-604.500(2), Rule 62-604.400(2)(a)(1), F.A.C., "Design



and Specification Guidelines for Low Pressure Sewer Systems" incorporated by reference by Rule 62-604.300(j), F.A.C., "Recommended Standards for Wastewater Facilities" (1997), also known as the "Ten States Standards" incorporated by reference by Rule 62-604.300(g), F.A.C. There is no possibility of uninterrupted service in a widespread power outage. A system relying upon grinder pump based LPS violates FDEP requirements.

39. The pump station design does not incorporate a quick-connect pump-out connection as required by FDEP rules. Rule 62-604.400(2)(a)(3), F.A.C. The covers of the pump stations are secured with several tamper-proof screws which require a special tool for removal. This design will delay physical pump-outs when powering the pump is not a viable means of emptying the pit. This inability to quickly pump out sewage poses a risk to water quality and public health and safety.

40. The design also has inadequate provisions for air release. See "Design and Specification Guidelines for Low Pressure Sewer Systems" incorporated by reference by Rule 62-604.300(j), F.A.C. Thousands of feet of force main are designed with dives, including but not limited to those under water mains, without air releases to release trapped gasses generated by decomposing waste. This inability to release air poses an explosion risk and endangers public health and safety.

41. The design also fails to provide an allowance in the flow calculations for the significant variance between high seasonal and low off-season part time occupancy in the Keys. In Big Pine, the 2010 U.S. Census reports a seasonal occupancy rate of over 33%, resulting in a high season flow of 20% above average annual flow. This variation was not considered in sizing lift stations, force mains or in calculating head loss.

42. The design fails to ensure adequate treatment for periods where the Florida Keys are inundated with tourists during special events. Many visitors descend on residences as well as lodging and campgrounds during certain long weekends such as Fantasy Fest and Lobster Mini-season. Brown and Caldwell Engineering conducted a study for the basis of design for the receiving wastewater treatment plant (WWTP) in Cudjoe Key. The study examined actual inflows to existing treatment plants and concluded that a tourism peaking factor of 2.5 times the average flow is necessary to calculate the peak flow day and that a peaking factor of 4.5 is necessary for the peak hour. There is no reserve capacity in an LPS system. The lift stations and force mains are designed using a 4.0 peaking factor above average annual gallons per minute, which is the criteria of the Ten States Standards.

43. The plans and calculations submitted and approved by the FDEP are unreliable for the system intended to be built because more than half the homes in the original design have been converted to gravity instead of grinder pumps. The Board of County Commissioners voted to provide gravity sewer service, instead of LPS, to more than 1,100+ properties located in Cudjoe Key, Lower Sugarloaf and Big Pine. The conversion of 899 properties on Big Pine Key out of the original 1682 to gravity service represents the elimination of 53% of the LPS properties in Big Pine. That voids most of the flow and head loss calculations submitted in the Permit Application Package.

44. The calculations for flow and head loss in the PAP are erroneously based on a "Probability Chart" purported to predict the maximum number of grinder pump stations that will run simultaneously. After a power outage of only a couple of hours, it is reasonable to assume that 100% of pumps at occupied homes and 100% of all neighborhood lift stations will attempt to

pump at once. The force mains are not sized for such an occurrence. They are sized not for 100%, but for 3% of the grinder pumps and 67% of the lift stations simultaneously pumping. In the 100% scenario, the head pressure will be excessive and the pumps will run to their maximum pressures to try to overcome the resistance before cutting out on thermal overload or destroying the rubber stator sleeve surrounding the rotor.

45. The E-One grinder pump specifications indicate that the pump is capable of generating 120 psi (pounds per square inch) for up to 5 minutes. The force main pipes on this project are pressure tested to between 75 and 150 psi. The E-One grinder pump is capable of exceeding the static test pressure of the newly installed force main pipe. Notwithstanding, this is a static test pressure and that surge pressures as would occur from sudden loss or application of power can easily exceed double the normal operating pressure. The specified force main pipe is only rated for a working pressure of 160 psi. The E-One grinder pump has no pressure relief valve, thus there is a significant risk of bursting pipes or breaking connections. With the geological conditions in the Lower Keys and the pea rock bedding around these pipes, a burst pipe could allow the injection of raw sewage into the tidal water table for many years without detection. The situation is somewhat different in Big Pine than on many of the other islands in that Big Pine has a subterranean freshwater lens floating on the saltwater. This freshwater lens is a drinking water source for residents and is critical to the survival of several endangered species and the natural systems that support those species. Accordingly, it is particularly important to prevent water quality degradation such as contamination with raw sewage. Installation of the collection system through excavation of deep trenches and through use of de-watering wells will alter the

underlying hydrogeology, thereby lowering water levels of the shallow freshwater aquifer so that freshwater will be less available to flora and fauna.

46. The project was designed based upon erroneous data that predicts a lesser number of people to a residence than indicated in the last two Census Bureau reports. The design calculations used only 1.29 persons per residence instead of 2.17 persons. Flow can be expected to be 168% of design as a result.

47. The design plans show 6-foot minimum horizontal separation, in violation of Rule 62-604.400(2)(g), F.A.C., which requires 10-foot horizontal separation.

48. The plan is based upon 12-inch vertical separation at crossings where a force main pipe dives under a water main in violation of Rule 62-604.400(2)(a)(3)(i), F.A.C., which requires 18 inches of vertical separation.

49. The pump stations were sized for an inadequate flow and will be connecting to higher than expected head.

50. The E-One grinder pump and the floats used in neighborhood lift stations are not explosion proof and are in violation of "Recommended Standards for Wastewater Facilities" (1997), also known as the "Ten States Standards" incorporated by reference by Rule 62-604.300(g), F.A.C., as well as NEC 501.125.

51. The peak flow used in calculations is inadequate according to actual flow studies previously approved by FDEP. Since the E-One pumps are so slow pumping and are used in multiples with staged pumping, low flows will result in only one pump running and velocity will be extremely low in some cases and inadequate in all cases.

52. There is no provision for detecting shaft seal leakage on the E-One grinder pump as required. See "Recommended Standards for Wastewater Facilities" (1997), also known as the "Ten States Standards" incorporated by reference by Rule 62-604.300(g), F.A.C.

53. Although the control box is outside of the wet well, the thermal overload switch is built into the pump, leading to the susceptibility of explosion.

54. The minimum force main size is required to be 4". Force main pipes are designed as small as 2-inch, but minimum velocity will not be achieved in some even at peak flow. See "Recommended Standards for Wastewater Facilities" (1997), also known as the "Ten States Standards" incorporated by reference by Rule 62-604.300(g), F.A.C.

55. For this project the friction coefficient used in calculations of head loss was 140 for collection force mains and 150 for the HDPE portion of transmission mains (different engineers used different criteria). The FDEP requires a friction coefficient of 120. See "Recommended Standards for Wastewater Facilities" (1997), also known as the "Ten States Standards" incorporated by reference by Rule 62-604.300(g), F.A.C. This means that head loss may be underestimated in practice and has certainly been underestimated for permitting approval purposes. The pipes using 140 instead of 120 have head loss underestimated by approximately 33% and the pipes using 150 have head loss underestimated by approximately 51%. Considering that 110,075 feet of force main piping is required on Big Pine South alone, a substantial head loss will occur. The permit states that HDPE pipe of SDR11 is to be used, but thinner wall SDR 13.5 was specified and was what was used in the SewerCAD model run. The combination of using 140 instead of 120 for the C-factor and the use of smaller inside diameter SDR11 pipe will

result in head losses of 166% of what the model shows. Head loss will actually be much higher than that because design flows are too low, as discussed above and below.

56. The wastewater generation quantity is not based on the EDU value homes and businesses were assessed, but upon a more “convenient” and erroneous assumed value that is significantly lower, and validated by making assumptions about irrigation percentages based on satellite imagery. However, many, if not most, Big Pine homeowners do not irrigate at all, and those that do typically irrigate only very sparingly. Flows may therefore be expected to be significantly higher than designed. See "Recommended Standards for Wastewater Facilities" (1997), also known as the "Ten States Standards" incorporated by reference by Rule 62-604.300(g), F.A.C.

57. The calculation of wastewater flow per residential EDU was not based on Census information from 2000 or 2010. The head-counts per home in 2000 and 2010 are higher than the head-count used in the calculations of the Permit Application. Based on the 2010 Census, flow per residential EDU should be 68% higher. The system is not designed to accommodate that 68% required to meet the minimum Ten States Standards. See "Recommended Standards for Wastewater Facilities" (1997), also known as the "Ten States Standards" incorporated by reference by Rule 62-604.300(g), F.A.C.

58. The transmission wastewater force main pipe from Big Pine Key to the receiving wastewater treatment plant (WWTP) in Cudjoe Key violates FDEP Rules. Furthermore, the force main is not designed to carry the anticipated peak day's flow, as determined by the Technical Memorandums of the consulting engineers involved in permitting of the receiving WWTP, and therefore is woefully inadequate to transport the actual volume of waste. The peak hour flow anticipated is expected to be 4.5 times the annual average yet 3.77 was used in head loss

calculations, which equates to a flow 119% of anticipated. Added is the loss of using a C factor of 140 where 120 is required for plastic pipe per FDEP rules. The result is a grand total of 159% of anticipated maximum head loss.

**V. PETITIONERS SUBSTANTIAL INTERESTS WILL BE AFFECTED**

59. DTP is a not-for-profit organization incorporated under the laws of Florida. DTP's corporate purpose is to "dump the pumps" in the Lower the Keys by eliminating the grinder pump systems and their concomitant negative impacts to the water quality and public health and welfare. In its corporate capacity, DTP's substantial interests will be adversely affected by the issuance of the Permit. DTP has approximately 36 members, a substantial number of which interests' will be substantially and adversely affected by the issuance of the permit. DTP brings files this Petition on behalf of itself and on behalf of its approximately 36 members.

60. DTP members, Prevatt, Kulikowsky, and Schwing will be served by the Cudjoe Regional Wastewater System (CRWS), of which Big Pine Key South is a part. DTP's substantial interests, the substantial interests of its members and Prevatt, Kulikowsky, and Schwing's substantial interests 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.

61. The system as designed and proposed to be permitted will not function as intended and will result in raw sewage releases into a the yards of DTP members, Kulikowsky, and Schwing, and will have adverse impacts upon Endangered Species Habitat and Outstanding Florida Waters of a National Marine Sanctuary creating significant health hazard and diminishing the very qualities that make the area a desirable place to reside and visit.

62. The design parameters are much too conservative, especially for the atypical conditions of the region and Big Pine Key South. If all the wastewater cannot flow through the pipes at the specified velocities, the wastewater will be discharged to the ground, the groundwater and to the surrounding surface waters, creating hazardous unsanitary conditions for a substantial number of members of DTP.

63. The construction and operation of this wastewater collection system will seriously and adversely affect the unique “fresh water lens” that supplies the essential drinking water to residents, customers, DTP, its members, Prevatt, Kulikowsky, and Schwing, and is critical to preservation of endangered species and their habitat.

64. Kulikowsky and Schwing are residents of and property owners on Big Pine Key and will be required to be serviced by an E-One grinder pump located on their property. Kulikowsky and Schwing will suffer from the aforementioned substantial adverse impacts associated with the installation of a grinder pump system including but not limited to overflow during power outages, explosion risk, odor, loss of property rights, undetectable sewage raw sewage leaks, health and personal safety risks.

65. Prevatt and the members of Dump the Pumps, Inc. recreate in the nearshore waters of Big Pine Key. Raw sewage leaks caused by the system failure will adversely affect members of DTP who recreate in the nearshore waters of Big Pine Key.

66. The wastewater collection system, as designed and proposed to be permitted, incorporates a very large number of E-One grinder pump stations that are intended by FKAA to be installed on private property including the property of a substantial number of DTP members, including Kulikowsky and Schwing. The grinder pump stations occupy a portion of the yard and



present a risk of explosion, odor, release of pollutants and unsanitary conditions. The easement allows strangers to legally enter the property at will, while exposing the homeowner to liability if they are injured by, for instance, an explosion release of pollutants and asphyxiation.

67. Mr. Prevatt fishes on a regular basis in the nearshore waters of Big Pine Key. A raw sewage discharge will adversely affect his ability to consume the fish he catches.

#### **VI. ULTIMATE FACTS AND LAW**

68. 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; poses an established risk of explosion; 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 62-604.100, 62-604.130, 62-604.300, 62-604.400, 62-604.500, 62-604.600, F.A.C.

**WHEREFORE** Petitioners respectfully demand:

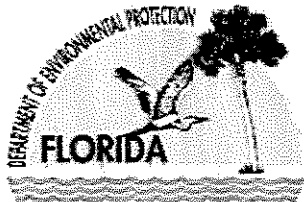
- A) The Petition be forwarded to the Division of Administrative Hearings for appointment of an administrative law judge;
- B) That this Petition be consolidated with OGC Case 114-0228 and 14-0243.
- C) An Order be issued denying the subject permit.

Respectfully Submitted on this 29th day of April, 2014,

BY:   
Robert N. Hartsell, Esq.  
Florida Bar No. 636207

Sarah M. Hayter, Esq.  
Florida Bar No. 83823  
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# Exhibit A



**FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**  
South District Office  
Post Office Box 2549  
Fort Myers, Florida 33902-2549

RICK SCOTT  
GOVERNOR

CARLOS LOPEZ-CANTERA  
LT. GOVERNOR

HERSCHEL T. VINYARD JR.  
SECRETARY

**VIA ELECTRONIC MAIL**

In the Matter of an  
Application for Permit by:

**Permittee:**

Florida Keys Aqueduct Authority  
Thomas G. Walker, P.E., Manager of Engineering  
1100 Kennedy Drive  
Key West, Florida 33041  
[twalker@fkaa.com](mailto:twalker@fkaa.com)

**Permit Number:** 295404-024-DWC/CM

**Issued:** April 15, 2014

**Expires:** April 14, 2019

**Project:** Cudjoe Wastewater Collection System - Big Pine  
Key South (Dryline)

**Connected to:** Cudjoe Key WWTP

**County:** Monroe

**NOTICE OF PERMIT ISSUANCE**

Enclosed is Permit Number 295404-024-DWC/CM to construct a **dryline** sewage collection/transmission system pursuant to Chapter 403, Florida Statutes (FS) and Florida Administrative Code (F.A.C.) Rules 62-4 and 62-604. Although the Department intends to issue a construction permit for the project, the Department has the authority to require it to be a **dryline** until the serving domestic wastewater treatment plant is constructed and certified complete. The wastewater facility serving this project must provide reasonable assurance that adequate treatment and disposal is available.

The Department's proposed agency action shall become final unless a timely petition for an administrative hearing is filed under Sections 120.569 and 120.57, Florida Statutes, within 14 days of receipt of notice. The procedures for petitioning for a hearing are set forth below.

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, 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 persons listed below must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than those entitled to written notice under Section 120.60(3), Florida Statutes, must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first. Under Section 120.60(3), Florida Statutes, however, any person who has asked the Department for notice of agency action may file a petition within 14 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 within 14 days of receipt of notice shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, Florida Statutes. 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, 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; the Department permit identification number and the county in which the subject matter or activity is located;
- (b) A statement of how and when each petitioner received notice of the Department action;
- (c) A statement of how each petitioner's substantial interests is 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) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take.

PERMITTEE: Florida Keys Aqueduct Authority

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Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's 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.

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

This permit action is final and effective on the date filed with the clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this permit will not be effective until further order of the Department.

Any party to the permit has the right to seek judicial review of the permit action under Section 120.68, Florida Statutes, by the filing of a notice of appeal under Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when this permit action is filed with the clerk of the Department.

Executed in Fort Myers, Florida

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



Jon M. Iglehart  
Director of  
District Management

#### CERTIFICATE OF SERVICE

The undersigned duly designated deputy agency clerk hereby certifies that this NOTICE OF PERMIT ISSUANCE and all copies were mailed before the close of business on **April 15, 2014**, to the listed persons.

#### FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.



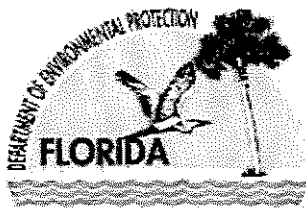
Clerk

April 15, 2014  
Date

JMI/OJO/MAC/se

Copies furnished to:

Oscar R. Bello, P.E. [obello@chenmoore.com](mailto:obello@chenmoore.com)  
Mr. Banks Prevatt, DTP President, [Bprevatt@aol.com](mailto:Bprevatt@aol.com)  
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**FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**  
South District Office  
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RICK SCOTT  
GOVERNOR

CARLOS LOPEZ-CANTERA  
LT. GOVERNOR

HERSCHEL T. VINYARD JR.  
SECRETARY

**VIA ELECTRONIC MAIL**

In the Matter of an  
Application for Permit by:

**Permittee:**

Florida Keys Aqueduct Authority  
Thomas G. Walker, P.E., Manager of Engineering  
1100 Kennedy Drive  
Key West, Florida 33041  
[twalker@fkaa.com](mailto:twalker@fkaa.com)

**Permit Number:** 295404-024-DWC/CM

**Issued:** April 15, 2014

**Expires:** April 14, 2019

**Project:** Cudjoe Wastewater Collection System - Big Pine  
Key South (Dryline)

**Connected to:** Cudjoe Key WWTP

**County:** Monroe

This permit is issued under the provisions of Chapter 403, Florida Statutes (F.S.), and Chapters 62-4 and 62-604, Florida Administrative Code (F.A.C.).

The above named permittee is hereby authorized to construct the facilities shown on the application and other documents on file with the Department and made a part hereof and specifically described as follows:

**DESCRIPTION OF PROJECT:** The construction of 47,689 Linear feet (LF) of 8" PVC (SDR 26) gravity sanitary sewer, 168 sanitary manholes, 10 Neighborhood Grinder Pump Stations, 527 Residential E/One Low Pressure Simplex Grinder Stations, 118 Commercial Low Pressure lateral connections, 6,380 LF 2" Force Main (HDPE SDR11), 3,573 LF of 3" Force Main (HDPE SDR11), 6,916 LF of 4" Force Main (HDPE SDR11), 2,860 LF of 6" Force Main (HDPE SDR11), 66,103 LF of 2" Low Pressure Force Main (HDPE SDR11), 16,839 LF of 3" Low Pressure Force Main (HDPE SDR11), and 7,404 LF of 4" Low Pressure Force Main (HDPE SDR11), per application materials received March 14, 2014, with the last additional information received April 15, 2014. See permit condition number 6.

**LOCATION OF PROJECT:** Sections 1-34 Township 66-67, Range 29 in Unincorporated City in Monroe County, Florida.

**IN ACCORDANCE WITH:** The limitations, requirements and other conditions set forth in this permit.

**PERMIT CONDITIONS:**

1. This permit is subject to the general conditions of Rule 62-4.160, F.A.C., as applicable. This rule is available at the Department's Internet site at: <http://www.dep.state.fl.us/water/wastewater/rules.htm#domestic> [62-4.160, 5-1-03].
2. Upon completion of construction of the collection/transmission system project, and before placing the facilities into operation for any purpose other than testing for leaks or testing equipment operation, the permittee shall submit to the Department's South District Office at P.O. Box 2549, Fort Myers, FL 33902-2549 (by mail) or 2295 Victoria Avenue, Suite 364, Fort Myers, FL 33901 (by other delivery service) Form 62-604.300(8)(b), Request for Approval to Place a Domestic Wastewater Collection/Transmission System into Operation. This form is available at the Department's Internet site at: <http://www.dep.state.fl.us/water/wastewater/forms.htm> [62-604.700(2), 11-6-03].
3. The new or modified collection/transmission facilities shall not be placed into service until the Department clears the project for use [62-604.700(3), 11-6-03].
4. Permit revisions shall only be made in accordance with Rule 62-4.050(4)(s), F.A.C. Request for revisions shall be made to the Department in writing and shall include the appropriate fee. Revisions not covered under Rule 62-4.050(4)(s), F.A.C., shall require a new permit [62-604.600(8), 11-6-03].
5. Abnormal events shall be reported to the Department's South District Office in accordance with Rule 62-604.550, F.A.C. For unauthorized spills of wastewater in excess of 1000 gallons per incident, or where information indicates that public health or the environment may be endangered, oral reports shall be provided to the STATE WARNING POINT TOLL FREE NUMBER (800) 320-0519 as soon as practical, but no later than 24 hours from the time the permittee or other designee becomes aware of the

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circumstances. Unauthorized releases or spills less than 1000 gallons per incident are to be reported orally to the Department's South District Office at phone number (239)344-5600 within 24 hours from the time the permittee, or other designee becomes aware of the circumstances [62-604.550, 11-6-03].

6. The design and construction of the wastewater collection/transmission system shall be in accordance with provisions of Florida Administrative Code (F.A.C.) Rule 62-604.300 with particular attention to the applicable requirements of the manuals regarding alternative wastewater collection systems incorporated by reference by F.A.C. Rules 62-604.300(1) and 62-604.300(5)(b), (c) and (j).
7. This permit is for CONSTRUCTION ONLY of the collection/transmission system project. This permit does not authorize the connection of this collection/transmission system project to the designated wastewater treatment plant. This permit shall not be construed to infer that the clearance necessary for connection shall be granted. Any such clearance shall be granted only when reasonable assurance is given that adequate treatment and disposal is available.
8. The design and construction of the wastewater collection/transmission system shall be in accordance with provisions of F.A.C. Rule 62-604.400.
9. The low pressure system is to be designed with an alarm system which activates in cases of malfunction. The alarm will be telemetered to a facility that is manned 24 hours a day. If such a facility is not available, the alarm is designed to be telemetered to utility offices during normal working hours and to the home of the responsible person(s) in charge of the low pressure system during off-duty hours. If an alternate alarm system is used, documentation showing it will provide an equivalent level of reliability and public health protection will be furnished to this office.

#### SPECIFIC PERMIT CONDITIONS

1. All new wastewater collection/transmission systems and modifications of existing systems shall be located at least 100 feet from a public drinking water supply well.
2. Except as provided in Section 62-604.400(3), F.A.C., sewer pipes/force mains should cross under water mains.
3. For sewer crossings, all crossings shall be arranged so that the sewer pipe joints are equidistant as far as possible from the water main joints. At crossings, all vacuum sewer joints must maintain a minimum distance of 3 feet from water main joints. All gravity or pressure type sanitary sewers and wastewater force main joints shall maintain a minimum distance of 6 feet from water main joints.
4. Except as provided under 62-604.400(3), F.A.C., all sewers and force mains shall be laid at least 10 feet horizontally (outside to outside) from a water main and 3 feet minimum (outside to outside) from a reclaimed water pipe permitted under Part III of Chapter 62-610, F.A.C.
5. A vertical separation of at least 18 inches must be maintained when a sewer pipe crosses a water main, except as provided under Section 62-604.400(3), F.A.C.
6. When any existing asbestos cement (AC) pipes are replaced under this permit, the permittee shall do so in accordance with the applicable rules of Federal Asbestos Regulation and Florida DEP requirements. For specific requirements applicable to AC pipes, the permittee should contact the Air and Waste Management section managers prior to commencing any such activities at (239) 344-5600. Please be aware that a notification is required to be submitted to the Department for a regulated project.
7. The Operation and maintenance of the collection system shall be in accordance with the requirements of section 62-604.500 F.A.C.
8. The inspection, operation and maintenance of the low pressure system after the system is approved for operation shall be the responsibility of the central entity in accordance with the requirements of section 62-604.300(5)(j).F.A.C.

Executed in Fort Myers, Florida

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



Jon M. Iglehart  
Director of District Management

Date Signed: April 15, 2014

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