

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA CIVIL ACTION

STATE OF FLORIDA, *et al.*,

Petitioners,

v.

Case No. 14-CA-001204

THE CITY OF CAPE CORAL,
FLORIDA,

Respondent.

_____ /

RESPONDENT'S MOTION FOR FINAL SUMMARY JUDGMENT

Respondent, the City of Cape Coral, Florida (“the City”), moves this Court for an Order granting final summary judgment in favor of the City and against Petitioners. Additionally, the City requests that the Court vacate all scheduled proceedings contained in the parties’ Case Management Plan and proceedings otherwise pending before this Court, with the possible exception of proceedings necessary for this Motion.

On September 23, 2016, the City received, via electronic mail addressed to the City’s undersigned counsel, a letter from the Florida Department of Environmental Protection (“DEP”). The letter states, “A file review conducted by [DEP] staff confirmed that the corrective actions required by Consent Order 06-2345 have been completed and no further actions are needed at this time.” See attached Exhibit A. The same day as undersigned counsel received this letter he forwarded it to opposing counsel by electronic mail and requested a response. See attached Exhibit B. As of the filing of this Motion, opposing counsel has not yet responded.

The DEP letter is clear and concise on Petitioners’ only claim in this case: that the City has not complied with the Consent Order identified above. Petitioners purported to file this action “in the name of the State of Florida on the relation of the petitioner,” pursuant to § 120.69 Fla.

Stat., attempting to enforce the terms of the Consent Order. Now, DEP has determined, “This letter will serve as closure of the enforcement action associated with the above referenced OGC File Number.”

There now being no jurisdictional or other legal basis for Petitioners’ continued prosecution of this case, the City is entitled to final summary judgment in its favor as a matter of law. The City also requests that the Court vacate docket sounding, scheduled for September 29, 2016, and the trial, scheduled for the five-week period beginning October 5, 2016. Undersigned counsel will provide notice to the Case Manager once a ruling from this Court is issued.

WHEREFORE, the City moves this Court for Final Summary Judgment and for vacation of all proceedings currently scheduled before this Court.

Respectfully submitted:

DOLORES D. MENENDEZ
City Attorney
City of Cape Coral, Florida
Florida Bar No. 296554
Electronic Mail: dmenendez@capecoral.net

By: /s/ Steven D. Griffin
Steven D. Griffin
Assistant City Attorney
City of Cape Coral, Florida
Florida Bar No. 140589
Electronic Mail: sgriffin@capecoral.net

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing has been furnished to the following counsel of record by electronic mail this 26th day of September, 2016:

Ralf Brookes, Esq.
1217 E. Cape Coral Parkway # 107
Cape Coral, FL 33904
Ralf@ralfbrookesattorney.com
RalfBrookes@gmail.com

/s/ Steven D. Griffin
Steven D. Griffin

Office of the City Attorney
City of Cape Coral, FL
P.O. Box 150027
Cape Coral, FL 33915-0027
Telephone: (239) 574-0408
Facsimile: (239) 574-0404
Primary Electronic Mail: sgriffin@capecoral.net
Secondary Electronic Mail: cyoung@capecoral.net

Steven Griffin

From: Dick, Regina <Regina.Dick@dep.state.fl.us> on behalf of Mills, Megan <Megan.Mills@dep.state.fl.us>
Sent: Friday, September 23, 2016 1:45 PM
To: Steven Griffin
Cc: White, Kirk; Crandall, Lea; Mills, Megan; SD_CAP_WPR (Shared Mailbox); Gerhart, Jeannie; Blair, Lucy
Subject: City of Cape Coral, OGC No. 06-2345, Case Closure Letter (ERP_295854)
Attachments: 23 Sept CaseClosureLetter_CityOfCapeCoral_OGC-06-2345_ERP_295854.pdf

Please find attached the Department's correspondence regarding the above subject.

In the future, you may access the entire file in our oculus database if you follow the directions below:

1. Click on the hyperlink:

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[https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=hitlist&\[freeText=\]&\[folderName=\]&\[profile=Administrative%2BConstruction%2BOperation+Mgmt%2BDiscovery%2BCompliance%2BEnforcement%2BLegal%2BFiscal%2BPermitting%2BAuthorization%2BPlans+and+Specifications%2BSampling\]&\[creator=\]&\[entityType=any\]&\[createdDateTo=\]&\[catalog=23\]&\[searchBy=profile\]&\[sortBy=Document+Date\]&\[createdDate=\]&{District= EQ SD}&{County= EQ LEE}&{Facility-Site+ID= EQ ERP_295854}](https://depedms.dep.state.fl.us:443/Oculus/servlet/shell?command=hitlist&[freeText=]&[folderName=]&[profile=Administrative%2BConstruction%2BOperation+Mgmt%2BDiscovery%2BCompliance%2BEnforcement%2BLegal%2BFiscal%2BPermitting%2BAuthorization%2BPlans+and+Specifications%2BSampling]&[creator=]&[entityType=any]&[createdDateTo=]&[catalog=23]&[searchBy=profile]&[sortBy=Document+Date]&[createdDate=]&{District= EQ SD}&{County= EQ LEE}&{Facility-Site+ID= EQ ERP_295854}) >

2. Click the button labeled **PUBLIC OCULUS LOGIN**
3. Click the rectangular button labeled **SELECT** (to the right of **VIEW**)
4. At the prompt, click either **Open** or **Save**

If you have any problems with Oculus or opening the link, you may contact me.

Thanks!

Regina Dick - Admin Asst I

Regina.Dick@dep.state.fl.us

FDEP South District – Mon thru Fri 8:00 AM to 5:00 PM

General E-mail – SouthDistrict@dep.state.fl.us

Direct (239) 344-5632 – **Fax** (850) 412-0590

Need a file ID number? Go to:

<http://webapps.dep.state.fl.us/DepNexus/public/search-portal>

To use file ID number to search for records in Oculus, go to

<http://depedms.dep.state.fl.us/Oculus/servlet/login> and click **PUBLIC OCULUS LOGIN**.





Florida Department of Environmental Protection

South District
Post Office Box 2549
Fort Myers, Florida 33902-2549
SouthDistrict@dep.state.fl.us

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Jonathan P. Steverson
Secretary

September 23, 2016

VIA ELECTRONIC MAIL

City of Cape Coral
c/o Steven Griffin
Sgriffin@capecoral.net

RE: Case Closure Letter
City of Cape Coral
Cape Coral, Lee County
OGC Case No. 06-2345-DF

Dear Mr. Griffin:

A file review conducted by Department staff confirmed that the corrective actions required by Consent Order 06-2345 have been completed and no further actions are needed at this time.

This letter will serve as closure of the enforcement action associated with the above referenced OGC File Number.

If there are any further questions, please contact Ms. Megan Mills at 239-344-5670.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Iglehart", with a long horizontal line extending to the right.

Jon Iglehart
Director
South District Office
Florida Department of Environmental Protection

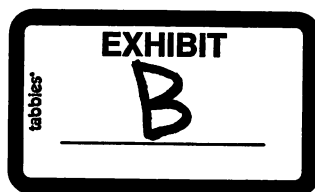
cc: Kirk White, OGC (via email: kirk.white@dep.state.fl.us)
Lea Crandall, OGC (via email: lea.crandall@dep.state.fl.us)

Steven Griffin

From: Steven Griffin
Sent: Friday, September 23, 2016 5:53 PM
To: ralf@ralfbrookesattorney.com
Cc: 'ralfbrookes@gmail.com'
Subject: DEP letter
Attachments: 23 Sept CaseClosureLetter_CityOfCapeCoral_OGC-06-2345_ERP_295854.pdf

The attached letter came to my attention today. In view of DEP's closure of the Consent Order that your clients are attempting to enforce against the City, I am prepared to send this to the Court on Monday and seek dismissal of your clients' case. Alternatively, your clients could decide to voluntarily dismiss their action. Please advise as to their intentions to continue litigating this case.

Steve G





Florida Department of Environmental Protection

South District
Post Office Box 2549
Fort Myers, Florida 33902-2549
SouthDistrict@dep.state.fl.us

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Jon Iglehart
Director
South District Office
Florida Department of Environmental Protection

cc: Kirk White, OGC (via email: kirk.white@dep.state.fl.us)
Lea Crandall, OGC (via email: lea.crandall@dep.state.fl.us)