

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

IN THE OFFICE OF THE
_____DISTRICT

Complainant,
vs.

OGC FILE NO.

[For corporations, insert entire name as listed in corporate information records. For joint owners of the property, include all owners. For businesses not listed in corporate information, contact OGC for advice on naming the proper parties.],

Respondent.

_____ /

MODIFICATION TO CONSENT ORDER

This Modification to Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department") and _____ ("Respondent") to modify certain terms and conditions of the Consent Order previously entered into between the parties.

The Department and the Respondent agree:

1. The Department and Respondent previously entered into a Consent Order to resolve certain disputes between the parties. The Consent Order, with the same caption and OGC as is set forth above, was filed with the Clerk of the Department on _____.
2. On April 17, 2005, Chapter 62-780, Florida Administrative Code, and amendments to Chapter 62-777, Florida Administrative Code, became effective. These rule changes do not apply to cleanup of the site addressed by the Consent Order unless Respondent

elects for them to apply. Respondent desires to modify the Consent Order to apply these rule changes to the assessment and cleanup of the site.

IT IS THEREFORE ORDERED:

3. Respondent shall initiate and complete site rehabilitation of the property described in the Consent Order, and any property onto which contamination has migrated from that property, in accordance with the provisions of Chapter 62-780, F.A.C., and 62-777, F.A.C.

4. For the purpose of establishing timeframes for completing work required by 62-780, F.A.C., the date of discovery of a discharge shall be _____.

5. The Department acknowledges that Respondent has completed a portion of the work required by Chapter 62-780. The parties therefore agree that Respondent's next task shall be

_____ [Describe the next point in the RBCA process with which Respondent must comply, e.g., Emergency Response, pursuant to §62-780.500, F.A.C., Site Assessment, pursuant to §62-780.600, etc.].

6. Paragraph(s) _____ [list paragraphs in the Consent Order that refer to performing a PCAP or CAP/RAP] are hereby stricken in their entirety. Any references in the Consent Order to these stricken paragraphs shall be deemed to refer to paragraph 3 of this Modification.

7. Any references in the Consent Order to "Preliminary Contamination Assessment Actions" or "Corrective Actions for Contamination Site Cases" shall be deemed to refer to Chapter 62-780, F.A.C. Any references in the Consent Order to the Consent Order shall be deemed to refer to the Consent Order as modified herein.

8. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, on the terms of this Modification to Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes, and waives that right upon signing this Consent Order.

9. [OPTIONAL-USE THIS NOTICE IF YOU DON'T WANT TO REQUIRE PUBLICATION. THE MODIFICATION TO CONSENT ORDER MUST EITHER CONTAIN THE NOTICE IN THIS PARAGRAPH OR THE PARAGRAPH REQUIRING PUBLIC NOTICE.]

Persons who are not parties to this Modification to Consent Order but whose substantial interests are affected by this Modification to Consent Order have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Section 120.57, Florida Statutes.

The petition shall contain the following information:

- (a) The Department's Consent Order identification number and the county in which the subject matter or activity is located;
- (b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;

- (c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- (d) A statement of when and how the petitioner received notice of the Consent Order;
- (e) A statement of all material facts disputed by petitioner, if any;
- (f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- (g) A statement of which rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- (h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, 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 decision of the Department with regard to the subject Modification to Consent Order have the right to petition to become a 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, Florida Statutes, 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, Florida Administrative Code.

A person whose substantial interests are affected by the Modification to Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under Section

120.573. Florida Statutes, before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Modification to Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement; and

(g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference.

(h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

9 (alternative). [OPTIONAL-USE THIS NOTICE IF YOU WANT TO REQUIRE PUBLICATION.] Respondent shall publish the following notice in a newspaper of daily circulation in _____ County, Florida. The notice shall be published one time only within ___ days after the effective date of the Modification to Consent Order by the Department.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF MODIFICATION TO CONSENT ORDER

The Department of Environmental Protection gives notice of agency action of entering into a Modification to Consent Order with _____ pursuant to Section 120.57(4), Florida Statutes. The Modification to Consent Order requires that Respondent conduct site rehabilitation at [describe location of the facility or property] in compliance with Chapters 62-780 and 62-777, Florida Administrative Code, in lieu of other requirements specified in the original Consent Order. The Modification to Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, [Enter address of District Office].

Persons whose substantial interests are affected by this Modification to Consent Order have a right to petition for an administrative hearing on the Modification to Consent Order. The Petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:

(a) The Department's Consent Order identification number and the county in which the subject matter or activity is located; (b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; (c) An explanation of how

the petitioner's substantial interests will be affected by the Consent Order; (d) A statement of when and how the petitioner received notice of the Consent Order; (e) A statement of all material facts disputed by petitioner, if any; (f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order; (g) A statement of which rules or statutes the petitioner contends require reversal or modification of the Consent Order; and (h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, 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 decision of the Department with regard to the subject Modification to Consent Order have the right to petition to become a 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, Florida Statutes, 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, Florida Administrative Code.

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adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

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The agreement to mediate must include the following:

(a) The names, addresses, and telephone numbers of any persons who may attend the mediation;

(b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;

(c) The agreed allocation of the costs and fees associated with the mediation;

(d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;

(e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;

(f) The name of each party's representative who shall have authority to settle or recommend settlement; and

(g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly

identifying the petition for hearing that each party has already filed, and incorporating it by reference.

(h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

10. Except as expressly provided in this Modification to Consent Order, all terms of the original Consent Order described in paragraph 1 of this Modification to Consent Order shall remain in full force and effect.

11. This Modification to Consent Order is a final order of the Department pursuant to Section 120.52(7), Florida Statutes, 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, Florida Statutes. Upon the timely filing of a petition this Consent Order will not be effective until further order of the Department.

FOR THE RESPONDENT:

DATE

NAME
Title

DONE AND ORDERED this _____ day of _____, 20____,
in _____, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Director of District Management

Filed, on this date, pursuant to Section 120.52, F.S., with the designated
Department Clerk, receipt of which is hereby acknowledged.

Clerk

Date

Copies furnished to:
Lea Crandall, Agency Clerk
Mail Station 35