BEFORE THE STATE OF FLORIDA

DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT IN THE OFFICE OF THE

OF ENVIRONMENTAL PROTECTION DISTRICT

Complainant, OGC FILE NO.

vs.

[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") pursuant to Section 120.57(4), Florida Statutes, 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 Modification to Consent Order pursuant to Section 120.68, Florida Statutes, and waives that right upon signing this Modification to Consent Order.

9. 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.

10. **[USE THIS NOTICE IF YOU DO NOT 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 or received via electronic correspondence at [Agency\_Clerk@floridadep.gov](mailto:Agency_Clerk@floridadep.gov), 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:

1. The name and address of each agency affected and each agency’s file or identification number, if known;
2. The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; 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; and an explanation of how the petitioner’s substantial interests will be affected by the agency determination;
3. A statement of when and how the petitioner received notice of the agency decision;
4. A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
5. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency’s proposed action;
6. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency’s proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
7. A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency’s proposed action.

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) within21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. 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.

Within 10- days after filing a petition, a person whose substantial interests are affected by this Modification to Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person’s right to an administrative hearing if mediation does not result in a settlement. Additional information about the mediation process and procedure is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

**[OPTIONAL-USE THIS NOTICE IF YOU REQUIRE PUBLICATION.]**

Respondent shall publish the following notice in a newspaper of daily circulation in Insert County Name County, Florida. The notice shall be published one time only within # days of the effective date of the Order. Respondent shall provide a certified copy of the published notice to the Department within 10 days of publication.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

# NOTICE OF CONSENT ORDER

The Department of Environmental Protection (“Department”) gives notice of agency action of entering into a Modification of Consent Order with Insert Respondent’s Name pursuant to section 120.57(4), Florida Statutes. The Modification to Consent Order addresses the Describe nature of activities at Insert location of Facility or Property. The Modification of 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, Insert District Office and Address.

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 or received via electronic correspondence at [Agency\_Clerk@floridadep.gov](mailto:Agency_Clerk@floridadep.gov), 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:

1. The name and address of each agency affected and each agency’s file or identification number, if known;
2. The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; 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; and an explanation of how the petitioner’s substantial interests will be affected by the agency determination;
3. A statement of when and how the petitioner received notice of the agency decision;
4. A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
5. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency’s proposed action;
6. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency’s proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
7. A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency’s proposed action.

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) within21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. 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. Within 10- days after filing a petition, a person whose substantial interests are affected by this Modification to Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person’s right to an administrative hearing if mediation does not result in a settlement. Additional information about the mediation process and procedure is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

11. 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.

12. Rules referenced in this Order are available at <https://floridadep.gov/ogc/ogc/content/rules>.

FOR THE RESPONDENT:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Insert name or blank line followed by “Print Name” Date

Insert title or blank line followed by “Print Title”

DONE AND ORDERED this # day of Month, Year, in County, Florida.

STATE OF FLORIDA DEPARTMENT

OF ENVIRONMENTAL PROTECTION

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Insert Name

District Director

Insert District

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