BEFORE THE STATE OF FLORIDA

DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT IN THE OFFICE OF THE

OF ENVIRONMENTAL PROTECTION DISTRICT

 OGC FILE NO.

v.

[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.],

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/

CONSENT ORDER

[for use when FDEP has determined Respondent is indigent

after an analysis of Respondent’s financial information]

 This Consent Order (Order) is entered into between the State of Florida Department of Environmental Protection (Department) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Respondent) to reach settlement of certain matters at issue between the Department and Respondent.

 The Department finds and the Respondent admits the following:

(If there is a problem in a particular case with a responsible party admitting the allegations, contact OGC for advice)

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of chapters 376 and 403, Florida Statutes, and chapter 62-780, Florida Administrative Code. The Department has jurisdiction over the matters addressed in this Order.
2. Respondent is a person within the meaning of sections 376.301(27) and (29), and 403.031(5), Florida Statutes.
3. Respondent is the [real property owner or/and a person responsible for site rehabilitation] pursuant to section 376.301, Florida Statutes, of property located at [Insert at least 2 forms of property location information: parcel number from appropriate County Property Appraiser’s website, latitude, longitude, or address or legal description and current or former name of the facility, if applicable. Using only Section, Township, and Range is insufficient. As much as may be possible, describe Respondent's operation and give a brief description of the contaminants likely to be found. For example:

*Respondent's operations include electroplating, microplating, reproduction and photographic laboratory activities. Waste generated from these processes may consist of spent acids, spent alkali, spent plating solution, their rinse waters, waste cutting oils and various organic solvents.]* [If the Respondent is a non-owner operator, modify this paragraph to identify the operator doing business at the described property.] Hereinafter, referred to as the Property.

1. [Describe how and where the contamination enters the environment, if you can. For example:

*The waste streams from Respondent's Facility are discharged to an unlined percolation pond*.]

1. [Describe what, if anything, has been found in the groundwater, surface water, or soils. For example:

During a *preliminary contamination assessment on April 17, 1991*, the Department found, among other things, the following contaminants in the following concentrations at the facility:

a. *benzene* ug/l

b. *toluene* ug/l]

6. [Describe other pertinent facts such as: Start off this paragraph by stating that “The Department finds that the following violations occurred*: . . . . such as Respondent is operating without a permit; the percolation pond discharges directly to Harvey Creek, a Class III state water; there are two abandoned drum disposal sites at the facility, etc.*

a. [Use language indicating that the contamination is from a discharge…pollutant or hazardous substance. See section, 376.30701, Florida Statutes, if you have any questions, please contact the appropriate enforcement attorney for assistance. For example: *The above contamination is a discharge of pollutants or hazardous substances into or upon the surface or ground waters of the state or land in violation of section 376.302, Florida Statutes]*

7. [If any of the assessment and remediation activities required by section 376.305, Florida Statutes. and chapter 62-780, Florida Administrative Code, have been started or completed by the Respondent, describe those activities.]

8. Respondent claims that Respondent is financially unable to comply with the requirements of section 376.305, Florida Statutes, and chapter 62-780, Florida Administrative Code.

9. On DATE, Respondent submitted financial documents to the Department in an attempt to demonstrate Respondent’s inability to correct the above violations. Based on the financial documents provided by Respondent, the Department determined that Respondent currently has available funds of at least $ # to apply towards correcting the environmental violations at the Property. The Department determined that this amount will be insufficient to complete the corrective actions at the Property.

10. As a material condition precedent of this Consent Order, Respondent has represented that the information contained in the financial documents submitted to the Department is true, correct, and completely represents Respondent’s financial resources and status at the time each financial document was prepared. The Department’s agreement to enter into this Consent Order is based upon these representations. If the information in the financial documents is incorrect, the Department may pursue whatever rights it would have had notwithstanding entry of this Consent Order.

Having reached a resolution of the matter Respondent and the Department mutually agree and it is

**ORDERED:**

11. Respondent shall immediately cease all discharges to the ground and/or surface waters of the state that are reasonably expected to cause a violation of the Department’s water quality minimum criteria and standards. [If it is not possible for Respondent to immediately cease all discharges, state a time certain by which all discharges must cease. This statement to “cease all discharges” applies to all discharges, whether permitted or not. If there are permitted discharges, then those should be independently addressed.]

12. If state or federal funding becomes available, then the Department or its contractors(s), are permitted to perform any assessment, remedial, corrective, and closure activities at the Property that the Department, in its sole discretion, deems appropriate. The Department may designate its own contractor(s) to undertake these activities without the approval of the Respondent or any other responsible party.

13. Should the Department exercise its option in paragraph 12, it will only address\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ contamination existing at the Property as of Insert “the effective date of this Order” *or another appropriate date*. As such, the Department, at its sole discretion, may choose to undertake assessment or cleanup activities that are less stringent than the requirements of chapters 62-780 and 62-777, Florida Administrative Code. The Department may also, at its discretion, abate or contain the contamination within the Property boundaries or apparent Property boundaries. The Department may, at its discretion, construct any barriers, fences, slurry walls, or other structures it deems necessary, in its sole discretion to contain or control the contamination. The Department may excavate any soils, subsurface structures, trees, shrubs, concrete or asphalt paving, or other surface and subsurface deemed by the Department, in its sole discretion, to be impediments to assessment or remediation of the contamination. In addition, the Department may abandon in place any piping, septic tanks, or other subsurface structures as deemed necessary by the Department, in its sole discretion, to address the contamination. If the Department decides not to undertake remedial activities sufficient for the issuance of a Site Rehabilitation Completion Order with or without conditions, then the Department shall notify Respondent in writing of this decision. Additionally, the Department explicitly reserves the right to use, and Respondent agrees to carry out and maintain, any institutional controls or combination of institutional and engineering controls allowed by chapter 62-780, Florida Administrative Code, to address the contamination. Any discharge subsequent to Insert “the effective date of this Order” *or another appropriate date* or contamination not described in paragraph 5 at the Property is not covered by this Order.

14. In no event shall paragraphs 12 or 13, including but not limited to the failure to adhere to any of the requirements or time frames of chapter 62-780, Florida Administrative Code, give rise to a cause of action against the Department nor shall the Department be liable to Respondent or any other person or entity based on paragraphs 12 or 13.

15. Within 30 days of the Department informing Respondent in writing that the Department either will not conduct any activities pursuant to paragraphs 12 and 13 or has ceased conducting activities pursuant to paragraph 12 and 13; or issues a Site Rehabilitation Completion Order; or within 30 days of a Department request, Respondent shall submit the following updated financial documents to the Department: (a) a completed Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments; (b) a completed Financial Affidavit, as is in use by the Department’s Office of General Counsel at the time of the order or request; and (c) Respondent’s federal income tax returns for the three years previous to the Order or request.

16. If the Department has not been fully reimbursed pursuant to paragraph 19, within 30 days of the effective date of this Order, Respondent shall pay the Department $ Insert Total Payment Amount Due, as referenced in paragraph 9 above, which shall be applied towards the reimbursement of the costs incurred by the Department in performing the activities addressed in this Order. Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier’s check or money order shall be made payable to the “Department of Environmental Protection” and shall include both the OGC number assigned to this Order and the notation “Water Quality Assurance Trust Fund.” Online payments by e-check can be made by going to the DEP Business Portal at: <http://www.fldepportal.com/go/pay/>. It will take a few days after this order becomes final and effective filed with the Clerk of the Department before ability to make online payment is available.

17. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Insert DEP Contact Person and Title/Section**,** Department of Environmental Protection, Insert District Office and Address**.**

18. In the event of a sale or conveyance of any part of the Property as defined in paragraph 3, if all of the requirements of this Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Property, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser of the Property and (c) provide a copy of this Order with all attachments to the purchaser of the Property.  The sale or conveyance of the Property does not relieve Respondent of any outstanding obligations imposed in this Order. Upon the sale or conveyance of the property the Department may discontinue any work it may have started when Respondent owned the Property and this agreement does not obligate, in any way, the Department to continue working on the Property after it has been conveyed.

19. The Respondent agrees to grant to the Department a lien on the Property to secure recovery of the Department’s costs incurred in investigating, remediating, restoring and or monitoring the Property, including but not limited to those described in paragraphs 12, 13, and 21 hereof (collectively all expenses are referred to as the “Department Costs”), from any sale proceeds or revenue from the lease thereof, and to execute whatever instruments are necessary to perfect that lien [and to seek a subordination of any and all pre-existing superior liens on the property].  Respondent shall, if requested, grant the Department an irrevocable, assignable option and/or right of first refusal to buy the Property in addition to or in lieu of a mortgage.

A. Proceeds from Sale – Respondent assigns to the Department the Net Proceeds from the sale of the Property.  “Net proceeds” means the sale price minus (a) any reasonable and customary closing costs actually paid by Respondent and (b) the actual amount paid to satisfy prior and superior valid liens recorded against the Property at closing.

B. Proceeds from Lease of Property - Respondent assigns to the Department any revenue from the sale or lease of the Property.

C.  In no event shall the Department be entitled to any amounts in excess of the Department’s Costs, plus any interest accrued thereon or penalties.  In the event that the Department receives payments in excess of the Department’s Costs, interest and penalties, the Department shall remit the balance to Respondent, its assignee or designee or interplead such amount to any court of competent jurisdiction to determine entitlement thereto.

D. Payments to Department.  In the event of a sale, Payment of the Net Proceeds shall be directly to the Department by the closing agent.  Payments of lease revenue shall be made directly to the Department by electronic transfer, cashier’s check or money order as any installment thereof becomes due and payable.  Any instrument shall be made payable to the “Department of Environmental Protection” and shall include both the OGC number assigned to this Order and the notation “Water Quality Assurance Trust Fund.”

E. Termination of Rights – Respondent’s assignment and pledge of revenues and proceeds shall terminate on the earlier of the date the Department Costs, interest and penalties are paid in full, or the execution by the Department of a voluntary release of rights under the provisions of this agreement.

F. The Department shall executed a release of lien if appropriate upon the Termination of Rights.

20. With the execution of this Agreement, Respondent allows all authorized representatives of the Department and, if applicable, its Contractors access to the Property at reasonable times for the purpose of implementing, if applicable, the provisions of paragraphs 12 and 13, as well as determining compliance with the terms of this Order and the rules and statutes administered by the Department. This Order provides all the necessary authorization and permission for the Department and its Contractors need to access the Property.

21. Respondent shall use all reasonable efforts to obtain any necessary access from tenants on the Property for work to be performed in the implementation of this Order. If necessary access cannot be obtained, or if obtained, is revoked by entities controlling access to the properties to which access is necessary, Respondent shall notify the Department within five business days of such refusal or revocation. The Department may at any time seek to obtain access as is necessary to implement the terms of this Order. Respondent shall reimburse the Department for any damages, costs, or expenses, including expert and attorney’s fees, that the Department is ordered to pay, or that the Department incurs in connection with its efforts to obtain access as is necessary to implement the terms of this Order.

22. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Order. This waiver is conditioned upon Respondent’s complete compliance with all of the terms of this Order.

23. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or the rules administered by the Department that are not specifically resolved by this Order. Nothing herein shall be construed to limit the Department’s authority to take any action against Respondent in response to or to recover the costs of responding to conditions at or from the Property that require Department action to abate an imminent hazard to the public health, welfare, or the environment. The Department also explicitly reserves its right, pursuant to sections 376.303(1) or 376.3071(8)(b), Florida Statutes, as applicable, to seek recovery of all sums expended from the Department’s trust funds pursuant to this Order.

24. The provisions of this Order are only binding upon the Department and Respondent and should not be construed to affect any rights the Department may have against any other responsible parties for the violations or contamination addressed herein.

25. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties up to $10,000.00 per day per violation, and criminal penalties.

26. 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 Order. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to section 120.68, Florida Statutes.

27. Electronic signatures or other versions of the parties’ signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals.No modifications of the terms of this Order shall be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

28. This document constitutes the entire agreement and understanding of the parties to this Order concerning settlement of the matters addressed herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this Order.

29. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, Florida Statutes. Failure to comply with the terms of this Order shall constitute a violation of section 403.161(1)(b), Florida Statutes. Respondent’s failure to comply with the terms of this Order shall constitute a violation of sections 376.302(1)(b) and 403.161(1)(b), Florida Statutes.

30. This Order is a settlement of the Department’s civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances. This settlement agreement affects the authority of the U.S. Environmental Protection Agency to take an enforcement action related to this site only as provided by Section 128(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U..S.C. § 9628(b).

31. This 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 Order will not be effective until further order of the Department.

32. **>>>OPTIONAL<<<**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 Consent Order with Insert Respondent’s Name pursuant to section 120.57(4), Florida Statutes. The Consent Order addresses the Describe nature of activities at Insert location of Facility or Property. The 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**. >>>END OPTIONAL<<<**

Persons who are not parties to this Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department’s final action may be different from the position it has taken in the Consent Order.

The petition for administrative hearing must contain all of the following information:

1. The OGC Number assigned to this Consent Order;
2. 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;
3. An explanation of how the petitioner’s substantial interests will be affected by the Consent Order;
4. A statement of when and how the petitioner received notice of the Consent Order;
5. Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
6. A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
7. A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
8. 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.

 The petition 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 at Insert District Office and Address. Failure to file a petition within the 21-day period constitutes a person’s waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this 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 request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

33. Rules referenced in this Order are available at

<http://www.dep.state.fl.us/legal/Rules/rulelist.htm>.

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 [for RCRA- Division of Waste Management 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

Jennifer Farrell, Environmental Administrator, FDEP Waste Cleanup Section, Jennifer.A.Farrell@dep.state.fl.us