BEFORE THE STATE OF FLORIDA

DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT IN THE OFFICE OF THE

OF ENVIRONMENTAL PROTECTION, {*WHATEVER}* DISTRICT

 Petitioner,

v. OGC File No. {*98-7654}*

{*JOHN DOE, INC*}.

 Respondent.

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

NOTICE OF VIOLATION,

ORDERS FOR CORRECTIVE ACTION AND

ADMINISTRATIVE PENALTY ASSESSMENT

To: {*John Doe, Inc.*

 *c/o Billy Bob*

 *100 East West Road*

 *Somewhere, Florida 34567*}

Pursuant to the authority of Section 403.121(2), Florida Statutes (“Fla. Stat.”), the State of Florida Department of Environmental Protection (“Department”) gives notice to *ZZZZ* (“Respondent”) of the following findings of fact and conclusions of law with respect to violations of Chapter 403 *{and others if applicable}*, Fla. Stat.

FINDINGS OF FACT

## PARAGRAPHS APPLICABLE TO ALL COUNTS

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 Chapter 403*{and others if applicable}*, Fla. Stat., and the rules promulgated thereunder in Florida Administrative Code (Fla. Admin. Code) Title 62.
2. Respondent {describe ownership and facts identifying the nature of the violation, as applicable*. Note Facility Number or Permit Number if one is assigned*}.
3. Each {*whatever*} is {*describe the whatever, including when constructed if known*}. {This paragraph should be used if equipment or a structure is involved in the violation}
4. Since {*list date*}, Respondent has owned and operated {*the whatever*}. {this paragraph should be used if equipment or a structure is involved in the violation}
5. A Department inspector verbally notified you on {*xx/yy/zz*} that possible violation(s) existed at your facility. At that time, you were encouraged to resolve the problem within {*x*} days such that enforcement would not be necessary. The identified possible violations included {*describe possible violations which were identified, citing applicable authority*}
6. A follow-up visit was conducted on {*aa/bb/cc*}, and a complete resolution of the above identified possible violations was not apparent. Specifically, the Department observed {*describe remaining violations citing applicable authority*}
7. On {*11/22/33*} a written Compliance Assistance Offer was issued to you as part of an agency investigation preliminary to agency action within the meaning of Section 120.57(5), F.S. You {*failed to respond to the Compliance Assistance Offer within 15 days or*} responded as follows: {*describe owner/operator response*}
8. A {*site visit or review of something 44/55/66*} reveals that violations may yet exist: {*describe remaining violations citing applicable authority*}
9. On {*33/44/55*} a Warning Letter was issued to you requesting that you contact {*Assistant District Office Director*} at ***(123) 456-7890*** within 15 days of receipt of the Warning Letter to arrange a meeting to discuss this matter. Since that time {*describe what happened*}.

{EACH COUNT SHOULD CONTAIN A SEPARATE VIOLATION. THE COUNTS SHOULD DESCRIBE FACTS WHICH RELATE TO THE VIOLATIONS. IF YOU ARE ASSESSING MULTI-DAY PENALTIES, YOU MUST SPECIFICALLY RECITE THE NUMBER OF DAYS OF VIOLATION. IF YOU ARE INCLUDING ECONOMIC BENEFIT, YOU MUST INCLUDE IT IN THE SPECIFIC COUNT THAT APPLIES.

**DO NOT USE LACK OF GOOD FAITH TO ADJUST PENALTY AMOUNT UPWARD WHEN CALCULATING PENALTIES FOR A NOV**.}

COUNT I

*{FAILURE TO DO X}*

*{Describe}*

COUNT II

*{FAILURE TO DO X}*

*{Describe}*

COUNT III

1. The Department has incurred expenses to date while investigating this matter in the amount of not less than $*XYZ.00.*

CONCLUSIONS OF LAW

The Department has evaluated the Findings of Fact with regard to the requirements of Chapter*(s) YYY* and 403, Fla. Stat., and Fla. Admin. Code Title 62. Based on the foregoing facts the Department has made the following conclusions of law:

1. “*Whatever activity*” is regulated under Fla. Admin. Code Rule 62-*zzz*.
2. Respondent is a “person” within the meaning of {Choose appropriate Sections, such as 403.031, 403.703, 403.852, or 376.301, Fla. Stat.}
3. Respondent is “*whatever (owner, operator, responsible person, etc.)*” as defined in {Choose appropriate rule or statutory cite}.
4. The Department is imposing an administrative penalty of less than or equal to $50,000 in this Notice of Violation as calculated in accordance with Section 403.121, Fla. Stat.
5. The facts in Count I constitute a violation of Fla. Admin. Code Rule 62-*ZZZ*, which requires {*whatever*}. The facts also constitute a violation of Section 403.161, Fla. Stat., which makes it a violation to fail to comply with Department rules.
6. The violation in Count I requires the assessment of an administrative penalty under Section 403.121(3), Fla. Stat., of $*X,000.00* for failure to {*whatever*}, and an additional assessment of $*Y,000.00* under Section 403.121(6), Fla. Stat., against Respondents for {*number*}additional days at $\_\_\_\_\_\_\_\_\_\_\_ per day during which the violation occurred.
7. The facts in Count II constitute a violation of Fla. Admin. Code Rule 62-*XXX*, which requires {*whatever*}. The facts also constitute a violation of Section 403.161, Fla. Stat., which makes it a violation to fail to comply with Department rules.
8. The violation in Count II requires the assessment of an administrative penalty under Section 403.121(3), Fla. Stat., of $*X,000.00* for failure to {*whatever*}, and an additional assessment of $*Y,000.00* under Section 403.121(6), Fla. Stat., against Respondents for {*number*}additional days at $1,000.00 per day during which the violation occurred.
9. The administrative penalties assessed for Counts I and II total $*ZZ,000.00*.
10. The costs and expenses related in Count III are reasonable costs and expenses incurred by the Department while investigating this matter, which are recoverable pursuant to Section 403.141(1) Fla. Stat.

ORDERS FOR CORRECTIVE ACTION

The Department has alleged that the activities related in the Findings of Fact constitute violations of Florida law. The Orders for Corrective Action state what you, Respondent, must do in order to correct and redress the violations alleged in this Notice.

The Department will adopt the Orders for Corrective Action as part of its Final Order in this case unless Respondent either files a timely request for a formal hearing or informal proceeding, pursuant to Section 403.121(2)(c), Fla. Stat., or files written notice with the Department opting out of this administrative process, pursuant to 403.121(2)(c), Fla. Stat. (See Notice of Rights). If Respondent fails to comply with the corrective actions ordered by the Final Order, the Department is authorized to file suit seeking judicial enforcement of the Department's Order pursuant to Sections 120.69, 403.121, and 403.131, Fla. Stat.

Pursuant to the authority of Sections 403.061(8) and 403.121, Fla. Stat., the Department proposes to adopt in its Final Order in this case the following specific corrective actions that will redress the alleged violations:

1. Respondent shall forthwith comply with all Department rules regarding {*whatever*}. Respondent shall correct and redress all violations in the time periods required below and shall comply with all applicable rules in Fla. Admin. Code Chapters 62-*XXX* and 62-*YYY*.
2. Within *ZZ* days of the effective date of this Order, Respondent shall properly {*do something*} in accordance with all the requirements of Fla. Admin. Code Rules 62-*xxx*. .
3. Within *XX* days of {*completing above*}, Respondent shall submit to the Department {*something or some things demonstrating that it has been completed*}.
4. Within 30 days of the effective date of this Order, Respondent shall pay $*000.00* to the Department for the administrative penalties imposed above. Payment shall be made by cashier’s check, money order or on-line payment. Cashier’s check or money order shall be made payable to the “State of Florida Department of Environmental Protection” and shall include thereon the notations “OGC Case No.\_\_\_\_\_\_\_” and “Water Quality Assurance Trust Fund.” The payment shall be sent to the State of Florida Department of Environmental Protection, {*address}.* 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 number of days after this order becomes final, effective and filed with the Clerk of the Department before ability to make online payment is available.
5. In addition to the administrative penalties, within 30 days of the effective date of this Order, Respondent shall pay $000.00 to the Department for costs and expenses. Payment shall be made by cashier’s check or money order. Cashier’s check or money order shall be made payable to the “State of Florida Department of Environmental Protection” and shall include thereon the notations “OGC Case No.\_\_\_\_\_\_\_” and “Water Quality Assurance Trust Fund.” The payment shall be sent to the State of Florida Department of Environmental Protection, {*address*}. 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 number of days after this order becomes final, effective and filed with the Clerk of the Department before ability to make online payment is available.

NOTICE OF RIGHTS

Respondent’s rights to negotiate, litigate or transfer this action are set forth below.

# Right to Negotiate

1. This matter may be resolved if the Department and Respondent enter into a Consent Order, in accordance with Section 120.57(4), Fla. Stat., upon such terms and conditions as may be mutually agreeable.

# Right to Request a Hearing

1. Respondent has the right to a formal administrative hearing pursuant to Sections 120.569, 120.57(1), and 403.121(2), Fla. Stat., if Respondent disputes issues of material fact raised by this Notice of Violation, Orders for Corrective Action, and Administrative Penalty Assessment ("Notice"). At a formal hearing, Respondent will have the opportunity to be represented by counsel or qualified representative, to present evidence and argument on all issues involved, and to conduct cross-examination and submit rebuttal evidence.
2. Respondent has the right to an informal administrative proceeding pursuant to Sections 120.569 and 120.57(2), Fla. Stat., if Respondent does not dispute issues of material fact raised by this Notice. If an informal proceeding is held, Respondent will have the opportunity to be represented by counsel or qualified representative, to present to the agency written or oral evidence in opposition to the Department's proposed action, or to present a written statement challenging the grounds upon which the Department is justifying its proposed action.
3. If Respondent desires a formal hearing or an informal proceeding, Respondent must file a written responsive pleading entitled "Request for Administrative Proceeding" within 20 days of receipt of this Notice. The request must be in the form required by Fla. Admin. Code Rule 28-106.2015 and include the following:
	1. The name, address, and telephone number, and facsimile number (if any) of each respondent if the respondent is not represented by an attorney or qualified representative;
	2. The name, address, telephone number, and facsimile number of the attorney or qualified representative of respondent, if any, upon whom service of pleadings and other papers shall be made;
	3. A statement of when respondent received the Notice;
	4. A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the request for hearing must so indicate; and
	5. The notation “OGC Case No. \_\_\_\_\_\_\_ shall be included in the request.

A request for hearing is filed when it is received by 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.

Right to Mediation

1. If Respondent timely files a request challenging the Notice in accordance with Section 403.121(2)(e) Florida Statute, the Respondent has the right to mediate the issues raised in the Notice. If requested, a mediator will be appointed to assist the Department and Respondent to reach a resolution of some or all of the issues. The mediator is chosen from a list of mediators provided by the FCRC Consensus Center (“FCRC”). The FCRC will provide up to 8 hours of free mediation services to the Respondent. A mediator cannot require the parties to settle the case. If mediation is unsuccessful, both parties retain their full rights to litigate the issues before an administrative law judge. The Respondent must select the mediator and notify the FCRC within 15 days of receipt of the list of mediators. The mediation process does not interrupt the time frames of the administrative proceedings and the mediation must be completed at least 15 days before the date of the final hearing.
2. The written request to appoint a mediator must be made within 10 days after receipt of the Initial Order from the administrative law judge appointed to hear the case. The request must be received by the FCRC Consensus Center, Attn. Chris Pedersen, 296 Champions Way, UCC6140, Tallahassee, Florida, 32306-2641, cpedersen@fsu.edu. Once the request is timely received, the FCRC will provide the parties with a list of mediators and the necessary information as required by Section 403.121(2)(e) Florida Statutes.

# Right to Opt Out of the Administrative Proceeding

1. If Respondent does not wish to contest the issues before an administrative law judge, Respondent may file a notice with the Department opting out of the administrative process. Respondent must file its written opt out notice within 20 days after service of the Notice. The written notice to opt out is filed when it is received by 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.
2. Once the Respondent opts out of the administrative process, the Department may sue the Respondent for injunctive relief, damages, costs and expenses and civil penalties. If the Respondent opts out of the administrative process, the Department may ask the judge to assess civil penalties in excess of the amounts in this Notice up to $15,000.00 per day per violation. The election to opt out of the administrative process is permanent and once the election is made the administrative process cannot be restarted.

# Waivers

1. Respondent will waive the right to a formal hearing or an informal proceeding if either

a. a request for a formal hearing or informal proceeding is not filed with the Department within 20 days of receipt of this Notice, or

b. a notice opting out of the administrative proceeding is not filed with the Department within 20 days of receipt of this Notice.

These time limits may be varied only by written consent of the Department.

# General Provisions

1. The findings of fact and conclusions of law of this Notice together with the Orders for Corrective Action will be adopted by the Department in a Final Order if Respondent fails to timely file a request for a formal hearing or informal proceeding, pursuant to Section 403.121, Fla. Stat. A Final Order will constitute a full and final adjudication of the matters alleged in this Notice.
2. If Respondent fails to comply with the Final Order, the Department is authorized to file suit in circuit court seeking a mandatory injunction to compel compliance with the Order, pursuant to Sections 120.69, 403.121, and 403.131, Fla. Stat. The Department may also seek to recover damages, all costs of litigation including reasonable attorney's fees and expert witness fees, and civil penalties of not more than $15,000.00 per day for each day that Respondent has failed to comply with the Final Order.
3. Copies of Department rules referenced in this Notice may be examined at any Department Office or may be obtained by written request to the District Office.

 DATED this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

 STATE OF FLORIDA DEPARTMENT

 OF ENVIRONMENTAL PROTECTION

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

 {Name}

 Director, {*Whatever*} District

Copies furnished to:

Kirk White, OGC Litigation Section