**This ELRA NOV can be used for any program where THE DEPARTMENT has sufficient evidence to establish LIaBILITY, AND THE RESPONSIBLE PARTY HAS FAILED TO COMPLY WITH CORRECTIVE actions and/or PAY PENALTIES**

**\*\* THE “FOR EXAMPLE” parts of this NOv template (highlighted in red) are for illustration only. Please delete upon issuance (unless they actually fit your case)**

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. {*xxxxx}*

NAME

 Respondent(s).

[The Respondent(s) will be the entity and/or person(s)

that the Department alleges to be liable for

programmatic violations. For corporations,

insert the entire name as listed in corporate information

records. For businesses not listed in corporate

information, or if you are unsure who to list,

contact OGC for advice on naming the proper parties.]

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

NOTICE OF VIOLATION,

ORDERS FOR CORRECTIVE ACTION AND

ADMINISTRATIVE PENALTY ASSESSMENT

To: *NAME, Inc.*

 *c/o*

 *Registered Agent for NAME Inc.*

 *Street Adress*

 *Somewhere, Florida xxxxx*

USPS Certified Mail Return Receipt No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 NAME, Inc. (Respondent) of the following findings of fact and conclusions of law with respect to violations of Chapter 403 *{and others if applicable e.g. 376, 373}*, Fla. Stat.

FINDINGS OF FACT

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. [*USE THIS PARAGRAPH* *TO DESCRIBE THE RESPONDENT –* ***MAKE A SEPARATE PARAGRPAH******FOR EACH RESPONDENT******YOU HAVE NAMED ABOVE****]* ***FOR EXAMPLE***: NAME, Inc. is an active corporation registered to conduct business in the state of Florida.
3. [*USE THIS* *PARAGRAPH, AND OTHERS LIKE IT, IF THERE ARE MULTIPLE RESPONDENTS OR THEIR STATUS REQUIRES MORE TO BE ALLEGED, SUCH AS HAVING A PERMIT ETC..., TO DESCRIBE IN DETAIL EACH RESPONDENT’S STATUS AND ASSOCIATION TO THE CONTAMINATED SITE, FACILITY OR REAL PROPERTY AS NECESSARY FOR YOUR PROGRAM]* ***FOR EXAMPLE****:* From January 2010 to present day, Respondent has owned the real property located at 11 Blue Lane, Miami, Dade County, Florida, 333157 (Property).
4. NAME Creek runs across the Property and discharges to NAME Bay.

**OR FOR EXAMPLE**

1. Respondent, at all times material to this NOV, has owned and operated a [Describe facility type] **FOR EXAMPLE**: cattle slaughtering and meet packing facility (Facility) at the Property.
2. The Department issued a permit to Respondent. (Permit, attached and incorporated hereto as Exhibit 1) to [Describe what activity the permit authorized] **FOR EXAMPLE**: treat and ultimately dispose of wastewater generated at the Facility via land application to a 10.5- acre spray irrigation field (hereinafter spray field).
3. [Describe which sections of the permit are relevant to the enforcement case] **FOR EXAMPLE**: Section I.C.2 of the Permit established the following relevant discharge limitations for effluent generated by NAME, Inc. to the spray field:
4. [Describe additional details about the permit here] **FOR EXAMPLE**: Total Nitrogen – 22 lbs./day and 64 mg/l, daily maximum
5. [Describe additional information from the permit basis] **FOR EXAMPLE**: Section I.C.3 of the Permit requires Respondent to submit to the Department

monthly “Discharge Monitoring Reports,” which provide the results of Respondent’s monitoring of the parameter listed in paragraph 7.a. above.

1. [*FOLLOW UP THE PRECEEDING PARAGRAPHS WITH THIS*

*PARAGRAPH, AND OTHERS LIKE IT - IF THERE ARE MULTIPLE RESPONDENTS OR MORE PARAGRAPHS ARE NECESSARY TO* *DESCRIBE THE SPECIFIC FACTS - THAT SUPPORT A FINDING THAT THERE IS A VIOLATION(S) AT THE PROPERTY, OR FACILITY ETC...]* ***FOR EXAMPLE***: On March 17, 2025, the Department inspected the Property, accompanied by a representative of Respondent and determined that Respondent had placed 25 cubic yards of soil into Battle Creek. The Department did not issue a permit to Respondent for the placement of this fill into Battle Creek.

**OR FOR EXAMPLE**

1. Respondent’s Discharge Monitoring Report submitted to the Department

 revealed that it exceeded the discharge limitation for Total Nitrogen for the January 2024 and February 2024 reporting period.

 **OR FOR EXAMPLE**

1. During the Department’s March 2024 inspection of the Facility, Department

personnel observed two fifty-five-gallon drums labeled “Used Oil” were tipped over and the soil surrounding the drums was stained with oil. The Department sampling of this area confirmed the soil was contaminated with used oil. More specifically, concentrations of the following constituents were found in the soil and the groundwater at the Facility:

1. xxx
2. xxxx
3. As of the date of this NOV Respondent has not commenced the assessment

required by Rule 62-780.600 Fla. Admin. Code for the discharges described in paragraphs xxxx above.

1. The Department notified the Respondent of the results of its inspection on \_\_\_\_\_\_\_\_\_\_.
2. *USE THIS PARAGRAPH IF YOU HAVE A RESPONDENT WITH A SEPARATE, PRIOR CONSENT ORDER CONTAINING A FINDING OF VIOLATION, A FINAL ORDER, OR JUDGMENT(S) THAT HAS AN EFFECTIVE DATE AFTER JUNE 15, 2001, THE PENALTY CAN BE INCREASED FOR A HISTORY OF NON-COMPLIANCE IF THAT ORDER OR JUDGMENT CONTAINED A PENALTY OF $3,000.00 OR MORE, PURSUANT TO SECTION 403.121(7).*]***FOR EXAMPLE*:** On DATE, the Department executed a Consent Order OGC Case No. \_\_\_\_\_\_\_ with NAME, Inc., which contained a finding of violation and a civil penalty of more than $3,000.00 (a copy of the Consent Order is attached and incorporated hereto as Exhibit 2).

*EXCEPT FOR THE COST COUNT, EACH COUNT SHOULD CONTAIN A SEPARATE VIOLATION. INCLUDE ALL COUNTS SUPPORTED BY EVIDENCE IN THE CASE. SINCE THE COUNTS ARE A PART OF CERTAIN FINDINGS OF FACT ABOVE, ALL RELEVANT FACTS NECESSARY TO DESCRIBE THE VIOLATION MUST BE INCLUDED – IF THE FINDINGS OF FACT THAT SUPPORT A PARTICULAR COUNT HAVE ALREADY BEEN LISTED IN THE PARAGRAPHS ABOVE, INSERT THE FOLLOWING SENTENCE IN THAT PARTICULAR COUNT: “****The facts stated in paragraphs xx-xxx are re-alleged herein.*** *TO THE EXTENT THE COUNT REQUIRES ADDITIONAL FACTS NOT CITED ABOVE, PLEASE PLACE THAT IN THE COUNT ITSELF. THEREFORE, A COUNT MAY INCLUDE MULTIPLE PARAGRAPHS, WHICH EXPLAIN THE VIOLATION. IF YOU ARE ASSESSING MULTI-DAY PENALTIES, YOU MUST SPECIFICALLY RECITE THE NUMBER OF DAYS OF VIOLATION.* **DO NOT USE LACK OF GOOD FAITH TO ADJUST PENALTY AMOUNT UPWARD WHEN CALCULATING PENALTIES FOR A NOV**.

COUNT I

*{FAILURE TO DO X} (For example, Failure to comply with permit requirements)*

1. The facts stated in paragraphs 1-. xxxx are re-alleged herein

*{Describe}*

COUNT II

*{FAILURE TO DO X} (For example, Strict Liability for Cleanup and Failure to Implement Same)*

1. The facts stated in paragraphs 1-xxxx are re-alleged herein.

*{Describe}*

COUNT III

*{FAILURE TO DO X}-For* ***example****, Failure to obtain permit prior to filling surface waters*

1. The facts stated in paragraphs 1-xxxx are re-alleged herein.

*{Describe}*

COUNT IV

1. The Department has incurred expenses to date while investigating this matter in the amount of not less than $X,0*00.00.*

CONCLUSIONS OF LAW

IN THIS SECTION OF THE NOV, SPECIFIC CONCLUSIONS OF LAW MUST BE MADE TO AFFIRM EACH VIOLATION. EACH CONCLUSION OF LAW MUST BE SUPPORTED BY SUFFICIENT FINDINGS OF FACTS IN THE PREVIOUS SECTION.

The Department has evaluated the Findings of Fact regarding 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. Respondent is a “person” within the meaning of {Choose appropriate Sections, such as 403.031, 403.703, 403.852, or 376.301, Fla. Stat.}
2. Respondent is “*whatever (owner, operator, responsible person, etc.)*” as defined in {Choose appropriate rule or statutory cite}.

**FOR EXAMPLE**

1. Battle Creek is a surface water as defined in chapter 373 Fla. Stat. and 62-330 Fla. Admin Code.
2. Biscayne Bay is also a surface water as defined in chapter 373 Fla. Stat. and 62-330 Fla. Admin Code.
3. Biscayne Bay is a Class III Marine Waters of the state as defined in 62-302.400 and an established aquatic preserve under Section 258.397 Fla. Stat.
4. The filling of Battle Creek constitutes a “Project” within the meaning of Rule 62-

330.020(20) as the term “Project” is defined as the “deposition by any means of materials in surface waters”. See Environmental Resource Permit Applicants Handbook, Volume 1, Section 2.0 paragraphs 76., 108., and Section 373.403(14) Fla. Stat..

1. Chapter 62-330, Fla. Admin. Code implements provisions in Section 373.4131, Fla. Stat. See Fla. Admin. Code Rule 62-330.010(1).
2. Used Oil is a pollutant as defined in xxxx
3. The spilling of used oil at the Facility constitutes a prohibited discharge within the meaning of 376.308 Fla. Sta.
4. The Facility is a wastewater facility as defined by xxxx.
5. The Facility is a facility as defined by 376.308 (18) Fla. Stat.
6. Respondent is an owner as defined by 376.301(28) Fla. Stat.
7. Respondent is a Person responsible for site rehabilitation as defined by 376.301(31) and Rule 62-780xxx.
8. The Department is imposing an administrative penalty of less than or equal to $50,000.00 in this Notice of Violation as calculated in accordance with Section 403.121, Fla. Stat.
9. The facts in Count I constitute a violation of Fla. Admin. Code Rule 62-*ZZZ*, which requires {*whatever***}. For example:** The facts in Count I constitute a violation by Respondent of the terms of its permit as well as Rule 62-620.300(5) which states that a permitted wastewater facility shall not be operated, maintained, …. in a manner that is inconsistent with the terms of its permit. The facts also constitute a violation of Section 403.161, Fla. Stat., which makes it a violation to fail to comply with Department rules.
10. 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.
11. **For example**: The facts in Count II constitute a violation of Section 376.308(1)(a) which states that any person who owns or operates a facility at the time of a prohibited discharge of is liable to the Department.
12. 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 $\_\_\_\_\_\_\_\_\_\_\_ per day during which the violation occurred.

1. The facts in Count III constitute a violation of Fla. Admin. Code Rule 62-*XXX*,

which requires {*whatever*}. **For example**: The facts in Count III constitute a violation by Respondent of Rule 62-330.020(2)(a) Fla. Admin. Code which requires a permit from the Department prior to construction of any project in, on or over any surface waters.

1. The facts in Count III also constitute a violation of Section 403.161, Fla. Stat., which makes it a violation to fail to comply with Department rules.
2. The violation in Count III 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.
3. The administrative penalties assessed for Counts I and II total $*ZZ,000.00*.
4. The costs and expenses related in Count IV 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, the Respondent, must do 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 $X,0*00.00* 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 several days after this order becomes final, effective and filed with the Clerk of the Department before the 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 $X,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 several days after this order becomes final, effective and filed with the Clerk of the Department before the 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 a Respondent timely files a request challenging the Notice in accordance with Section 403.121(2)(e), Fla. Stat., 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 the issues. The mediator is chosen from a list of mediators provided by the FCRC Consensus Center (FCRC). If mediation is requested, up to 8 hours of free mediation services will be provided 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 Department 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 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. Once received the Department will provide the parties with a list of mediators and the necessary information as required by Section 403.121(2)(e) Fla. Stat.

# 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