

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CIVIL DIVISION

FORTRESS 2020 LANDCO, LLC, a Delaware
limited liability company, as assignee of Regions
Bank, as successor in interest by merger of
AmSouth Bank,

Plaintiff,

vs.

Civil Action No. 2020-CA-004459-AX

HRK HOLDINGS, LLC, a Florida limited liability
company, ARSENAL GROUP, LLC, a Delaware
limited liability company, WILLIAM F. HARLEY
III, FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
ARDAMAN & ASSOCIATES, INC., a Florida
corporation, INTERNATIONAL SALT
COMPANY, LLC, a Delaware limited liability
company, MC WEIGHING SYSTEMS, LLC, a
Florida limited liability company, 9079-8042
QUEBEC, INC., a foreign corporation,
JOHN DOE1, JANE DOE1, JOHN DOE2 and
JANE DOE2,

Defendants.

_____ /

MOTION FOR EMERGENCY HEARING
ON STATE OF FLORIDA'S MOTION FOR APPOINTMENT OF A RECEIVER

Defendant, Florida Department of Environmental Protection (FDEP or Department), by and through its undersigned counsel, in accordance with Circuit Civil Division D – Information and Requirements files this Motion for Emergency Hearing on the Department's Motion For Appointment of a Receiver over the Property of HRK Holdings LLC (HRK), filed in this matter on August 5, 2021 (the Motion for Receiver, copy attached and incorporated as Exhibit A), and as support of **its request for a three hour evidentiary hearing**, states the following:

1. On August 14, 2021, the National Hurricane Center reported that weather disturbance in the Gulf of Mexico has the potential to redevelop into a Tropical Storm and impact Florida . The National Hurricane Center predicts that the Storm has the potential to bring heavy rains to Florida including Manatee County. On August 13, 2021, Governor Ron DeSantis issued Executive Order 21-190, declaring a state of emergency existed in selected north Florida and Gulf coast counties due to the potential impacts of then Tropical Storm Fred.

2. Additionally, the National Hurricane Center reported that another weather disturbance located in the Atlantic Ocean had developed into Tropical Storm Grace. Tropical Storm Grace is forecast to move west through the Caribbean and has the potential to also impact Florida with associated tropical storm force winds and heavy rainfall.

3. HRK owns a parcel of real property that is the subject of this lawsuit located at 13300 Highway 41 North, Palmetto, Florida, in Manatee County (the Property). Located on the Property is a facility which historically operated as a phosphate fertilizer manufacturing complex. The facility consists, in part, of a 466-acre phosphogypsum stack system including among others, two lined reservoir compartments on the New Gypstack (NGS) area at the site – one to the north (NGS-N) and the other to the south (NGS-S) (Piney Point phosphogypsum stack system).

4. As evidenced above, the hurricane and rainy seasons have begun, and HRK's continuing failure in its duty to ensure adequate water management by providing sufficient storage capacity at the Site to prevent flooding, overtopping of lined areas, and uncontrolled or untreated discharges has made the appointment of a Receiver urgent.

5. Currently, the NGS-N and NGS-S contain a mixture of phosphogypsum process water with mixed seawater, and the NGS-S also contains settled dredged materials transferred to

the Facility by the Manatee County Port Authority, and uncontrolled or untreated discharges of the mixtures of phosphogypsum process water from these lined areas could result in impacts to Bishop Harbor, an Outstanding Florida Water.

6. In March and April, 2021, both the Governor and the Department had issued Orders finding that the physical condition of the Piney Point phosphogypsum stack system posed an imminent hazard to public health to safety due to the potential for stack failure and catastrophic discharges (Executive Order 21-82 and Emergency Final Order (EFO)). The condition of the stack system necessitated immediate action at that time (described below), and the current threat of accumulated rainfall would substantially contribute to the risk posed.

7. Following the issuance of the Executive and Emergency Orders, , HRK took actions to alleviate pressures at the toe of the NGS-S reservoir by reducing the volume of water and pressure in NGS-S reservoir liner through the discharge of approximately 215 million gallons of mixed seawater and process water to Port Manatee. That action did temporarily stabilize the system and reduced the potential for a catastrophic failure of the stack system. In addition, a tear was identified in the liner on the east wall of the NGS-S and a steel plate was placed on the area as part of a temporary repair to stabilize the system and prevent the mixed process water and seawater from seeping through the tear.

8. Following the expiration of the Department's Emergency Final Order and Executive Order 21-82 in June of 2021, and throughout the intervening months, HRK has demonstrated its inability to continue to maintain, repair or close the stack system.

9. As a result, on August 5, 2021, the Department filed the Motion for Receiver in this matter and has commenced an independent action against HRK in this Circuit for historical violations and its ongoing failure to meet rule and statutory requirements.

10. The Department's Motion for Receiver seeks the appointment by this Court of a responsive and responsible entity take control of the Piney Point phosphogypsum stack system to abate or reduce the imminent hazard and to protect against environmental and public health and safety concerns.

11. The Receiver would be charged with addressing three overriding concerns: a) the day-to-day maintenance of the phosphogypsum stack system to prevent spills and other discharges; b) the treatment, discharge or disposal of process water to lessen the danger of a catastrophic spill during the rainy season; and c) the repair and closure of the phosphogypsum stack system in accordance with Department rules.

12. Since the beginning of June 2021, the Facility has received 22 inches of rain (equaling approximately 169 million gallons of additional water) which has significantly reduced the storage capacity for process water. Over that same period, HRK has failed to remove an adequate volume of water that would allow the Facility to maintain sufficient storage capacity.

13. The average rainfall for the remainder of the rainy season (end of September) is expected to be an additional 11.5 inches (equaling over 60 million gallons of water) and up to 24.9 inches (equaling an additional 71 million gallons of water) if extreme rainfall conditions occur.

14. The Department estimates that the Facility currently only has sufficient storage capacity to hold only an additional 52 million gallons of water (the equivalent of less than 10 inches of rainfall), based on the current process watershed at the Site.

15. Due to the lack of storage capacity and the high potential for additional heavy rainfall in the immediate future, water levels at the Site need to be immediately lowered

to prevent overtopping, flooding and uncontrolled or untreated discharges from the Site to the surrounding areas and the environment.

16. Accordingly, to protect the public health, safety, or welfare and the environment a Receiver must be appointed to take the actions necessary to avert an impromptu and uncontrolled discharge.

WHEREFORE, the Department respectfully requests this Court schedule an Emergency Hearing on the Department's Motion to Appoint Receiver over the HRK Facility.

Respectfully submitted this 14th day of August 2021.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

/s/ Jonathan Alden

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was filed electronically with the Clerk of the Court by using the ECF system, which will send a notice of electronic filing to all parties on the E-Portal service list including the following on this 14th day of August 2021.

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STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

/s/ Jonathan Alden

JONATHAN H. ALDEN

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EXHIBIT A

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
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company, MC WEIGHING SYSTEMS, LLC, a
Florida limited liability company, 9079-8042
QUEBEC, INC., a foreign corporation,
JOHN DOE1, JANE DOE1, JOHN DOE2 and
JANE DOE2,

Defendants.

_____ /

MOTION FOR APPOINTMENT OF A RECEIVER

Defendant, Florida Department of Environmental Protection, by and through its undersigned counsel, pursuant to Section 403.4154(3), Fla. Stat., and Fla. R. Civ. P. 1.620, Fla. Stat., files a Motion For Appointment of a Receiver over the Property of HRK described below, and as support, states the following:

1. The Department of Environmental Protection (“Department”) is the regulatory agency of the State of Florida, created by § 20.255, Fla. Stat., charged with the power and duty to administer and enforce Chapter 403, Fla. Stat.

2. HRK Holdings, LLC (“HRK”) is a person as defined by Section 403.031(5), Fla. Stat., who owns a parcel of real property that is the subject of this lawsuit located at 13300 Highway 41 North, Palmetto, Florida, in Manatee County (the “Property”). The legal description of the Property is more fully set forth on Exhibit “A” attached hereto.

3. Located on the Property is a facility which historically operated as a phosphate fertilizer manufacturing complex. The facility consists, in part, of a 466-acre phosphogypsum stack system including but not limited to two pond systems- north (NGS-N) and – south (NGS-S) (“Piney Point phosphogypsum stack system”). NGS-N and NGS-S are both lined reservoir compartments that contain phosphogypsum process water and materials as well as dredged materials.

4. On March 29, 2021, the Department issued an Emergency Final Order (“EFO”) finding that the physical condition of the Piney Point phosphogypsum stack system poses an imminent hazard to public health and safety. (See Exhibit B). Specifically, Paragraph 14 of the EFO states, “[t]he Department is entering into this Emergency Final Order to protect human health and safety and to protect the environment from a potential catastrophic failure of the containment system at the Facility. Action is necessary to prevent loss of life, personal injury, or severe property damage.”

5. HRK asserts that it has no ability to provide or secure the necessary funds to perform its legal obligations by abating the imminent hazard and closing the phosphogypsum stack

system. Further, Plaintiff Fortress 2020 Landco, LLC, as foreclosing mortgagee, has indicate that it does not intend and is unwilling to provide any additional funds either to manage the site, abate the imminent hazard and close the stack system, or provide for long term care required of a stack system owner under law.

6. Section 403.4154(3)(a), Fla. Stat., authorizes the Department to take action to abate or substantially reduce any imminent hazard caused by the physical condition, maintenance, operation or closure of a phosphogypsum stack system. Section 403.4154(3)(e), Fla. Stat., provides specific authority for the Department to fund a receiver to take appropriate action to abate or substantially reduce an imminent hazard. Accordingly, the Department seeks to have a Receiver appointed for the purpose of taking control of the Piney Point phosphogypsum stack system to abate or reduce the imminent hazard and to protect against environmental and public health and safety concerns. The Receiver should be charged with addressing three overriding concerns: 1) the day-to-day maintenance of the phosphogypsum stack system to prevent spills and other discharges; 2) the treatment, discharge or disposal of process water to lessen the danger of a catastrophic spill ; and 3) the closure of the phosphogypsum stack system in accordance with Department rules.

7. The State of Florida through the Department will fund expenses of the Receiver for these activities as and to the extent consistent with legislative appropriations, the cost of which could exceed tens of millions of dollars. Public funds must be expended efficiently and effectively, and the Department will work with the Receiver to allow him to address the imminent and long term environmental risk posed by the condition of the Property. The Receiver must be given the

broad power to take action as required at the Property to bring the phosphogypsum stack system into compliance and effectuate statutorily required closure.

8. In addition to specific legislative authority under Section 403.4154(3)(a), Fla. Stat., this Court has inherent equity power to appoint a receiver. Armour Fertilizer Works v. First Nat. Bank, 100 So. 362 (Fla. 1924). Receivers are appointed as an ancillary remedy to enforce a specific right of the moving party. Akers v. Corbett, 190 So. 28 (Fla. 1939). While most receivers are appointed for the benefit of creditors, they can also be appointed to remedy violations and enforce state laws to protect human health or the environment. City of Kissimmee v. Dep't of Env'tl. Regulation, 753 So. 2d 770 (Fla. 5th DCA 2000).

WHEREFORE, the Department respectfully requests this Court appoint a receiver over the phosphogypsum stack system for the following purposes and under such terms as the Court deems appropriate:

- A. To take custody of the Property and secure the same against entry or damage by trespassers or otherwise.
- B. To retain such persons or entities as necessary to conduct the day-to-day maintenance of the phosphogypsum stack system to prevent spills and other discharges.
- C. To contract with such entities as appropriate to treat, discharge or otherwise dispose of process water to lessen the danger of a catastrophic spill during the rainy season.
- D. To contract with such entities as appropriate to design, construct and close the phosphogypsum stack system in accordance with the Department's rules.

E. To retain such persons and professionals as necessary to account for funds expended, obtain such legal authorizations as necessary and oversee the closure of the facility.

F. To use whatever resources are available to the Receiver on the phosphogypsum stack system to effectuate the requirements of Paragraphs A, B, C and D.

Respectfully submitted this 5th day of August 2021.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

/s/ Jonathan Alden

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Senior Assistant General Counsel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was filed electronically with the Clerk of the Court by using the ECF system, which will send a notice of electronic filing to all parties on the E-Portal service list including the following on this 5th day of August 2021.

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STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

s/s Jonathan Alden

JONATHAN H. ALDEN

Senior Assistant General Counsel

EXHIBIT "A"

PARCEL 1 (FEE SIMPLE):

IN TOWNSHIP 33 SOUTH, RANGE 18 EAST, MANATEE COUNTY, FLORIDA:

SECTION 5: THE SW 1/4 OF SE 1/4, AND THE S 1/2 OF SW 1/4.

SECTION 6: ALL THAT PART OF SECTION 6 LYING SOUTH AND EAST OF U.S. HIGHWAY 41 LESS A TRIANGULAR PARCEL QUIT-CLAIMED BY R. B. WHISENANT, AND WIFE, AND THE BORDEN COMPANY TO HARRY E. HENDERSON, AND WIFE, UNDER DEED DATED FEBRUARY 18, 1966, FILED APRIL 8, 1966, IN OFFICIAL RECORDS BOOK 279, PAGE 270, DESCRIBED AS: BEGIN ON THE SOUTH BOUNDARY OF THE SE 1/4 OF SAID SECTION 6 AT THE NORTHWEST CORNER OF LOT 1 OF JOHN PIPLACK'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 145, MANATEE COUNTY, FLORIDA, AND RUN SOUTH 89°14'54" EAST ALONG SAID SOUTH BOUNDARY 1334.54 FEET, THENCE NORTH 1°52'15" WEST 33 FEET, THENCE SOUTH 89°20'35" WEST 1333.43 FEET TO THE POINT OF BEGINNING.

SECTION 7:

(A) THE NE 1/4 OF NE 1/4.

(B) PART OF THEN 1/2 OF LOT 1 OF JOHN PIPLACK'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 145, MANATEE COUNTY, FLORIDA, DESCRIBED AS: FROM THE NORTHWEST CORNER OF SAID LOT 1 RUN THENCE SOUTH 89°14'54" EAST ALONG THE NORTH BOUNDARY OF SAID LOT 1 A DISTANCE OF 1334.54 FEET TO THE POINT OF BEGINNING, FROM THE POINT OF BEGINNING CONTINUE SOUTH 89°14'54" EAST 8.59 FEET TO THE NORTHEAST CORNER OF SAID LOT 1, THENCE SOUTH 0°14'14" EAST ALONG THE EAST BOUNDARY OF SAID LOT 1 A DISTANCE OF 301.09 FEET TO A POINT 33 FEET NORTH OF THE SOUTHEAST CORNER OF SAID N 1/2 OF LOT 1, THENCE NORTH 1°52'15" WEST 301.17 FEET TO THE POINT OF BEGINNING.

(C) PART OF THEN 1/2 OF LOT 1 OF JOHN PIPLACK'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 145, MANATEE COUNTY, FLORIDA, DESCRIBED AS: BEGIN AT THE SOUTHWEST CORNER OF SAID N 1/2 OF LOT 1 (WHICH BEGINNING POINT IS 334.24 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 1), RUN THENCE EASTERLY 1343.11 FEET TO THE SOUTHEAST CORNER OF SAID N 1/2 OF LOT 1, THENCE NORTHERLY ALONG THE EAST LINE OF SAID LOT 1 A DISTANCE OF 33 FEET, THENCE WESTERLY 1343.53 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

(D) THE S 1/2 OF LOT 1 OF JOHN PIPLACK'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 145, MANATEE COUNTY, FLORIDA.

(E) LOTS 6, 7, 8, 12 AND 13 OF JOHN PIPLACK'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 145, MANATEE COUNTY, FLORIDA.

(F) THE N 1/2 OF LOT 1 OF JOHN PIPLACK'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 145, MANATEE COUNTY, FLORIDA, TOGETHER WITH A TRIANGULAR PARCEL OF LAND LYING IN SECTION 6, TOWNSHIP 33 SOUTH, RANGE 18 EAST, MANATEE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: BEGIN AT THE NORTHWEST CORNER OF LOT 1 OF JOHN PIPLACK'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGE 145, MANATEE COUNTY, FLORIDA, AND RUN THENCE SOUTH 89°14'54" EAST ALONG SAID SOUTH LINE OF SECTION 6, SAID SOUTH LINE ALSO BEING THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 1334.54 FEET, THENCE NORTH 1°52'15" WEST 33 FEET, THENCE SOUTH 89°20'35" WEST 1333.43 FEET TO THE POINT OF BEGINNING, LESS A TRIANGULAR PARCEL OF LAND LYING IN THE SAID N 1/2 OF LOT 1 DESCRIBED AS FOLLOWS: BEGIN AT THE SOUTHWEST CORNER OF SAID N 1/2 OF LOT 1 (WHICH BEGINNING POINT IS 334.24 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 1), RUN THENCE EASTERLY 1343.11 FEET TO THE SOUTHEAST CORNER OF SAID N 1/2 OF LOT 1, THENCE NORTHERLY ALONG THE EAST LINE OF SAID LOT 1 A DISTANCE OF 33 FEET, THENCE WESTERLY 1343.53 FEET TO THE POINT OF BEGINNING, AND LESS A TRIANGULAR PARCEL OF LAND DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SAID LOT 1, JOHN PIPLACK'S SUBDIVISION AS RECORDED IN PLAT BOOK 2, PAGE 145, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA; RUN THENCE SOUTH 89°14'54" EAST ALONG THE NORTH BOUNDARY OF SAID LOT 1 A DISTANCE OF 1334.54 FEET TO THE POINT OF BEGINNING, FROM THE POINT OF BEGINNING CONTINUE SOUTH 89°14'54" EAST 8.59 FEET TO THE NORTHEAST CORNER OF SAID LOT 1, THENCE SOUTH 0°14'14" EAST ALONG THE EAST BOUNDARY OF SAID LOT 1 A DISTANCE OF 301.09 FEET TO A POINT 33 FEET NORTH OF THE SOUTHEAST CORNER OF SAID N 1/2 OF LOT 1, THENCE NORTH 1°52'15" WEST 301.17 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THOSE PORTIONS OF (C), (D), (E) AND (F) CONVEYED TO STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION DESCRIBED IN DEEDS RECORDED IN OFFICIAL RECORDS BOOK 285, PAGE 96, OFFICIAL RECORDS BOOK 286, PAGE 370, OFFICIAL RECORDS BOOK 286, PAGE 372 AND OFFICIAL RECORDS BOOK 288, PAGE 251, PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.

SECTION 8: THEW 1/2 OF NE 1/4, AND THE NW 1/4.

LESS AND EXCEPT THAT PORTION OF PARCEL 1 CONVEYED TO AIR PRODUCTS & CHEMICALS INC. BY THE SPECIAL WARRANTY DEED RECORDED IN OFFICIAL RECORDS BOOK 2444, PAGE 7399, OF THE PUBLIC RECORDS OF MANATEE COUNTY

ALSO LESS AND EXCEPT THAT PORTION OF PARCEL 1 CONVEYED TO THATCHER CHEMICAL OF FLORIDA, INC. BY THE FEE SIMPLE DEED RECORDED IN OFFICIAL RECORDS BOOK 2504, PAGE 2840, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.

ALSO LESS AND EXCEPT THAT PORTION OF PARCEL 1 CONVEYED TO ALLIED NEW TECHNOLOGIES 2, INC. BY THE SPECIAL WARRANTY DEED RECORDED IN OFFICIAL RECORDS BOOK 2514, PAGE 7689, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.

ALSO LESS AND EXCEPT THAT PORTION OF PARCEL 1 CONVEYED TO MANATEE BULK STORAGE, LLC, BY THE SPECIAL WARRANTY DEED RECORDED IN OFFICIAL RECORDS BOOK 2514, PAGE 7821, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.

ALSO LESS AND EXCEPT THAT PORTION OF PARCEL 1 CONVEYED TO MANATEE BULK STORAGE, LLC BY SPECIAL WARRANTY DEED RECORDED IN OFFICIAL RECORDS BOOK 2514, PAGE 7815, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.

ALSO LESS AND EXCEPT THAT PORTION OF PARCEL 1 CONVEYED TO AIR PRODUCTS AND CHEMICALS, INC. BY THE WARRANTY DEED RECORDED IN OFFICIAL RECORDS BOOK 2697, PAGE 7547, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.

PARCEL 2 (EASEMENT):

THE EASEMENT CREATED BY EASEMENT INSTRUMENT DATED AND FILED DECEMBER 22, 1967, RECORDED IN OFFICIAL RECORDS BOOK 346, PAGE 142, MANATEE COUNTY, FLORIDA, FROM SKYWAY GROVES, INC., TO THE BORDEN COMPANY, WITH RESPECT TO THE LAND DESCRIBED BELOW:

IN TOWNSHIP 33 SOUTH, RANGE 18 EAST, MANATEE COUNTY, FLORIDA: SECTION 8: THE SE 1/4, AND THEE 1/2 OF SW 1/4.

**STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION**

IN RE:

**HRK Holdings, L.L.C.'s (HRK)
a.k.a. Eastport Terminal**

OGC File No. 21-0323

EMERGENCY FINAL ORDER

Under Section 120.569(2)(n) of the Florida Statutes, and upon the following findings of fact, the State of Florida Department of Environmental Protection (Department) enters this Emergency Final Order (Order), including Findings of Fact and Conclusions of Law, in response to the imminent or immediate danger to the public health, safety, and welfare of the citizens of the State of Florida resulting from a potential breach in the liner at the Eastport Terminal facility.

FINDINGS OF FACT

1. HRK Holdings, L.L.C.'s (HRK) is responsible for operation of the closed phosphogypsum stacks at the former Piney Point facility, now operated as the Eastport Terminal facility (Facility or Site), located in Manatee County, Florida. HRK is authorized to manage operations at the Facility under the Department's Administrative Agreement FL0000124-003-AA (hereinafter "HRK AA"), as well as Administrative Agreement, OGC No. 06-1685, as amended, hereafter known as the Site Comprehensive Administrative Agreement (SCAA) and NPDES Permit No. FL0000124-003-AA. The HRK AA addresses the management of wastewater and stormwater at the Facility, via authorized outfall structures 001, 002 & 003, along with closure related operation and maintenance requirements. The SCAA addresses, among other provisions, HRK's long-term care obligations at the site, and prior approvals for use of three of the lined reservoir

compartments on top of the closed phosphogypsum stack for management and disposal of Port Manatee dredge material and clarification of transport seawater.

2. The 466 acre phosphogypsum stack system (hereinafter "System"), which includes the phosphogypsum stack with HDPE lined reservoir compartments discussed below, plus the south cooling pond system, north cooling pond system and associated lined stormwater ponds, was closed in 2010 based on the requirements for closing Systems under Chapter 62-673, Florida Administrative Code (F.A.C.). The top of the closed stack was constructed with various top gradient stormwater areas and four 80-mil HDPE lined reservoir compartments. Process water continues to be managed separately in the new gypsum stack north (NGS-N) lined reservoir compartment. The remaining three lined compartments only contained rainwater run-off prior to commencement of dredge operations and are designated as the: new gypsum stack south (NGS-S), old gypsum stack north (OGS-N), and old gypsum stack south (OGS-S) compartments. The OGS-S, OGS-N, & NGS-S compartments were subsequently used as an alternate disposal area for the management of dredge materials and for clarification of dredge decant water as authorized by Port Manatee Permit Modification No. 0129291-016-EM.

3. HRK and Port Manatee executed an April 19, 2007, Dredged Materials Containment Agreement to address their operating, maintenance and related responsibilities for the management of dredge materials, focusing initially on Port Manatee's then planned Berth 12 construction dredging project. The Berth 12 dredging project began on April 22, 2011, with HRK performing operational and monitoring requirements for dredge disposal operations at the Site. On May 11, 2011, HRK reported increased flows, conductivity, and chloride concentrations in the buried drains based on monitoring that was required specifically for the approved dredge disposal operations at the Site. Ultimately, the Department issued an Emergency Final Order (EFO No. 11-0813) that required HRK to take actions to protect the integrity of the stack system and its impoundments, and authorized controlled emergency discharges as needed to protect the integrity of the System, including its impoundments, and to protect public health and safety, and waters of the state from a potential catastrophic release. The site conducted emergency discharges of 169 MGal consisting primarily of dredged seawater with detectable process water constituents, and prevented an uncontrolled failure of the stack

system and its impoundments. HRK completed grouting and repair operations to the stack system and its impoundments by July 2011 so that the Port Manatee Berth 12 construction dredging project was then completed, and later completed repairs and cleanup operations for onsite areas and offsite drainage ditches that contained solids from the emergency discharge and turbidity from the dredged seawater.

4. The site currently has options for discharges from the site to both freshwater locations, and an additional discharge option to marine surface waters of the state. The freshwater discharge locations include outfalls 001 and 003, which are NPDES permitted discharge locations to freshwater drainage ditches and then to Bishop Harbor, a Class III Outstanding Florida Waterbody (OFW) in Tampa Bay; and 002 which discharges to Piney Creek which subsequently flows to Tampa Bay. The existing dredge related decant structures provide an additional discharge location that is used to transport seawater from prior dredging operations and subsequent rainfall for discharge into Class III marine surface waters at Berth 12 in Manatee Harbor.

5. On March 25, 2021, HRK reported increased flow and specific conductance (conductivity) measurements in the buried seepage interceptor drains that surround the System and flow to the Structure No. 1 pump station (Structure 1) at the Site. Based on HRK's information and a Department site visit conducted on the evening of March 25, 2021, it appears that increased flows and conductivity measurements may indicate the presence of a leak from the Site's NGS-S lined compartment. The NGS-S compartment contains about 480 million gallons (MGal) as a mixture of seawater and remnant process water from the historical fertilizer manufacturing operations at the site. HRK's reported information identifies the potential for a leak that may be developing likely in the NGS-S lined compartment, or elsewhere in the System. HRK and their third-party engineer are reviewing conditions at the site, to identify any response actions and repairs that may be necessary.

6. Since the March 25, 2021, report HRK has continued increased monitoring of the drain flow rates and conductivity, pH, and other parameters to characterize the drain flow at Structure 1 and at selected cleanout locations within the Site's drain system. The drain conductivity, pH, and other characteristics indicate that the drain flows contain elevated conductivity consistent with the introduction of seawater remaining in the NGS-S compartment from the 2011 dredge operation. The NGS-S also contains initial transfer of

72 to 107 MGal of process water that was transferred by HRK initially beginning in August 2012 from the NGS-N compartment to the NGS-S, followed by subsequent smaller transfers conducted as needed to ensure that the NGS-N had safe-storage capacities in the event of a hurricane or other seasonally expected extreme rainfall events.

7. Department inspections show that the quality of the mixture of seawater and process water in the NGS-S (Mixed Seawater) has moderated over time, now supporting fish, other aquatic organisms, and waterfowl that frequent the NGS-S compartment during at least the past five years. Department water quality results from the NGS-S compartment in 2019 and since indicate the presence of total dissolved solids, chlorides, and conductivity on the order of 14,000 mg/L, 5,900 mg/L, and 21,738 umhos/cm, respectively, indicative of the seawater from the 2001 Berth 12 construction project. The NGS-S also contains remnant fertilizer constituents including approximately 160 mg/L of total phosphorus and 230 mg/L of total nitrogen. The most recent pH results from the last seven days indicates that pH ranges from 4.7 to 5.3 s.u. in the NGS-S, which is below the applicable lower pH standard of 6.5 for marine waters. Total ammonia nitrogen (TAN) is above the marine Class III water quality standard assuming a pH less than 6.5 s.u., and expected water temperatures. The water quality for other trace constituents that were detected in the NGS-S Mixed Seawater were all below or within Class III marine water quality standards in Chapter 62-302, F.A.C. The process water in the NGS-N compartment also exhibits moderated characteristics consistent with aged process water including fertilizer constituents, with approximately 350 mg/L of total phosphorus and 310 mg/L of total nitrogen, and pH on the order of 4.8 s.u. However, the process water in the NGS-N compartment exhibits significantly less seawater influences from the 2011 dredge operations at the Site with total dissolved solids, chlorides, and conductivity on the order of 6,850 mg/L, 850 mg/L, and 9,273 umhos/cm, respectively.

8. HRK has explored options for removing process water from the NGS-N compartment, and for additional options for removing the Mixed Seawater from the NGS-S compartment at the Site, and currently operates a spray evaporation system to remove process water located in the NGS-N compartment. HRK is in the process of commencing a permitted discharge to the Manatee County Publicly Owned Treatment System (POTW), and that discharge is expected to recommence March 30, 2021, following replacement of a

faulty flow meter. Near-term but likely rate limited options for managing or removing water from the Site include seeking an increased POTW discharge once the performance of the currently permitted discharge is established and a determination is confirmed by Manatee County of the ability of its POTW to safely accommodate an increased discharge.

9. Other options identified by HRK and others for removing process water, including the Mixed Seawater from the NGS-S compartment were identified and summarized in the Department's updated October 1, 2020, summary memo on HRK Holdings LLC and Piney Point Long-term Care & Water Management. The identified options included a variety of treatment and surface water discharge technologies, treatment and underground injection control well disposal, as well as options for the resumption of the POTW discharge, and expanded spray evaporation systems, all of which would take time for implementation ranging from several months for some limited spray evaporation increases to those options requiring environmental permitting and onsite construction that could take from 6 to 24 months to implement.

10. Contingency measures at the site include the ability to transfer a limited portion of the 480 MGal of Mixed Seawater from the NGS-S to other lined areas at the Site. A Department review of the available contingency areas shows that there is relatively limited storage capacity, particularly when compared to the full quantity of Mixed Seawater in the NGS-S. The suitable existing lined contingency storage areas are those where control structures may be operated or installed to retain water. These contingency areas have initially estimated storage capacities of approximately 21, 28, 6, and 7 MGal, respectively in the following lined areas: Basin 2 stormwater pond, OGS-N compartment, NGS-N Relief Ditch, and the SCP Cap area. For these lined areas, the total volume of potential contingency storage capacity would be less than 65 MGal; however, their activation would increase the contaminated process watershed by 80 acres, or an increase in the process watershed catchment of approximately 70%. There may be other options for transfer of water from the NGS-S, or other System compartments if needed, where a similar industrial facility may be able to receive, store, and properly dispose of the mixture of seawater and process water; however, it is likely that even with expedited development of emergency or contingency options, that implementation of the necessary logistics for transfers to a suitable offsite location would take three weeks or more before the transfers could begin.

11. As of March 28, 2021, the drain flow rates and conductivity measurements at Structure 1 have remained elevated and the source of these changed conditions has not been identified. Given the uncertainty in the source of the increased drain flow rates and increased conductivity measurements at Structure 1, there are potential risks associated with each of the lined compartments currently storing process water or a mixture of seawater and process water, specifically including the process water in the NGS-N compartment and the Mixed Seawater in the NGS-S compartment. At the present time, the observations noted above are suspected to be from the Mixed Seawater in the NGS-S that appears to be at risk of pressurizing the buried drain system at the Site, and potentially causing System instability including uncontrolled boils in the lined stormwater ditches, south or west of the OGS-S or south and east of the NGS-S, or failure of the gypsum dikes or the earthen dikes that may result in an uncontrolled failure and discharge offsite, particularly along the exterior walls of OGS-S and NGS-S compartments.

12. HRK has taken and continues to take measures, which include increased monitoring and pumping from Structure 1 at the Site, monitoring water levels in System compartments, including the NGS-S compartment, and relieving head pressures from the System drains below the lined stormwater ditches, particularly adjacent to the south wall of OGS-S and NGS-S compartments.

13. The Department has determined that the condition described in paragraph 11 above, creates an imminent threat of a potential loss of containment and a catastrophic release of large amounts of seawater, mixed process water, and embankment materials, if immediate actions cannot be accomplished to reduce the volume of Mixed Seawater in or suspected to be leaking from the NGS-S, or loss of containment from other System compartments if occurring; and to prevent the accumulation of pressure within the drains and associated System components in the affected areas. A catastrophic release of Mixed Seawater, process water, and embankment materials from the System could result in personal injury or severe property and environmental damage.

14. The Department is entering this Emergency Final Order to protect human health and safety and to protect the environment from a potential catastrophic failure of the containment system at the Facility. Action is necessary to prevent loss of life, personal injury, or severe property damage.

CONCLUSIONS OF LAW

15. The Department is empowered to administer and enforce Chapters 373 and 403 of the Florida Statutes and the rules promulgated and adopted thereunder.

16. Based on the findings recited above, it is hereby concluded that the emergency caused by the potential breach in the liner system and the resulting conditions associated with Mixed Seawater in the NGS-S compartment, or process water primarily in the NGS-N compartment and elsewhere in the System, pose an immediate danger to the public health, safety, or welfare and requires an immediate order of the Department.

17. Under Sections 120.569(2)(n) of the Florida Statutes, the Secretary of the Department, or designee, is authorized to issue this Emergency Final Order.

ORDER

THEREFORE, IT IS ORDERED THAT:

18. HRK shall continue to take immediate emergency actions as necessary to ensure the stability of all System dikes, berms, and ditches to prevent a containment failure and catastrophic release of Mixed Seawater, process water and embankment materials. At a minimum, the HRK shall continue pumping and water management operations as needed to reduce or mitigate the potential development of pressures within the OGS-S and NGS-S wall and associated drain system; to eliminate or reduce potential impacts to the stability of the OGS-S and NGS-S stack walls and the OGS-S and NGS-S ditch embankments; to continue exploratory operations to locate, isolate, and repair as needed any potential liner breaches contributing to the conditions described in paragraph 11 herein, and to continue all feasible efforts to implement options for safely removing process water from the System, including any expedited efforts that may be needed to remove the Mixed Seawater from the NGS-S compartment and utilize the associated NGS-S decant water management system as needed to prevent a containment failure at the Site.

19. If HRK determines, based on recommendation of a third party registered professional engineer, that (1) the immediate emergency actions -described in Paragraph 18 above, along with other emergency actions to prevent destabilization of containment

structures within the System, are not adequate to contain Mixed Seawater within the NGS-S or process water in the NGS-N without a risk of a catastrophic release and (2) there is no feasible alternative, then HRK is hereby approved to first begin temporarily discharging the Mixed Seawater through the NGS-S decant structure to Class-III marine waters of the state at Port Manatee as a bypass pursuant to NPDES Permit No. FL0000124003-AA-. Such a bypass would potentially avoid an emergency discharge to Bishop Harbor, an Outstanding Florida Water. If the bypass does not alleviate the risk of catastrophic release, then as a last option, HRK is hereby may discharge via Outfall 003, or otherwise to any portion of the unnamed ditch along Buckeye Road or downstream of Outfall 003 that leads to Bishop Harbor so as to avoid or reduce the amount of an uncontrolled release that may otherwise result from a loss of containment and unpermitted discharge to surface waters of the state. The bypasses/discharges specified herein are hereinafter referred to as “Emergency Temporary Discharge.” The Emergency Temporary Discharge shall be made solely to preserve the integrity of the System and shall be subject to the conditions further specified herein. Notwithstanding an Emergency Temporary Discharge hereunder, all feasible efforts to locate and repair as needed any liner breaches, or other sources of leakage within System containment areas shall be continued.

20. Prior to commencing an Emergency Temporary Discharge, HRK shall inspect all downstream conveyances to ensure no impedances exist that may cause adverse flooding or harm to public safety, health, welfare, or the property of others based on the expected range of emergency discharge flow rates. HRK shall notify the Department of the result of such an inspection of the downstream conveyances to Bishop Harbor, including any impedances that may cause adverse flooding impacts as noted above, prior to discharging to these conveyances. The Emergency Temporary Discharge shall be operated to reduce or not cause adverse flooding or harm to public safety, health, welfare, or the property of others. This discharge shall not cause adverse scouring to and excessive sedimentation of either Manatee Harbor or Bishop Harbor.

21. HRK shall provide a status report, at least once every 24 hours, during the effective period of this Emergency Final Order that shall include, at a minimum, the following information: 1) Number, location, capacity, and types of pumps operating for emergency purposes within the System; 2) Condition of the System containment including the south

walls of the OGS-S and NGS-S compartments, the earthen ditch embankments, and the System stormwater ditches and drains; 3) Location, condition and number of boils detected, if any; 4) Any other adverse condition within the System; 5) Response actions taken since the last status report; 6) Planned response actions for the upcoming or subsequent periods; 7) Estimated flow rates or ranges for any Emergency Temporary Discharge; and 8) Representative water quality data including turbidity, pH, and specific conductance, as measured for the Emergency Temporary Discharge.

22. HRK shall submit information required herein to the Department's Phosphate Management Program by electronic mail, or as otherwise directed, to the Tallahassee and Tampa area offices.

23. After any Emergency Temporary Discharge has ceased, HRK shall inspect the System, and any downstream conveyances to ensure no adverse impacts have occurred, or to propose any necessary corrective measures in the event of adverse impacts to public safety, health, welfare, or the property of others. If corrective measures are needed for any adverse impacts, HRK shall submit a detailed plan to correct these impacts to the Department within 30 days of cessation of the Emergency Temporary Discharge and shall implement such plan, as approved, within 15 days of Department approval. The System shall also be inspected by HRK's third party engineer to evaluate damage to its component portions, assess integrity of its containment dams and propose recommendations for corrective actions.

24. This Emergency Final Order shall take effect immediately upon execution by the Secretary of the Department or an authorized designee, and shall expire on April 30, 2021, unless modified, extended, or cancelled by further Order.

25. This Emergency Final Order does not preclude the Department from enforcing any criminal or civil liabilities which may arise under Florida law as related to matters herein, nor does it relieve HRK of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

NOTICE OF RIGHTS

Pursuant to Section 120.569(2)(n) of the Florida Statutes, any party adversely affected by this Order has the right to seek an injunction of this Order in circuit

court or judicial review of it under Section 120.68 of the Florida Statutes. Judicial review must be sought by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this Order is filed with the Clerk of the Department.

DONE AND ORDERED on this 29th day of March, 2021, in Tallahassee, Florida.

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION



John J. Truitt
Deputy Secretary, Regulatory Programs
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

FILED on this date, pursuant to §120.52 Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.



CLERK

DATE: March 29, 2021