

[THIS NOTICE IS TO BE USED WHEN A PERSON RESPONSIBLE FOR SITE REHABILITATION (“PRSR”) AND/OR THE CONSULTANT FOR PRSR AND THE DEPARTMENT HAVE BEEN UNSUCCESSFUL IN ATTEMPTING TO GAIN ACCESS TO A PROPERTY FOR ASSESSMENT OR REMEDIATION ACTIVITIES. DO NOT ATTACH CORRESPONDENCE OR SITE ACCESS AGREEMENTS FROM THE RESPONSIBLE PARTY. PLEASE NOTE THAT “ACCESS PROPERTY” REFERS TO THE PROPERTY TO WHICH ACCESS IS NEEDED, AND “PRSR’S PROPERTY” REFERS TO THE PROPERTY CURRENTLY OR FORMERLY OWNED AND/OR OPERATED BY THE PRSR.]

**BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN RE: *[Insert name of PRSR’s Property]*

IN THE OFFICE OF THE
[DISTRICT]

OGC FILE NO. *[X]*

NOTICE OF INTENT TO ISSUE ORDER REQUIRING ACCESS TO PROPERTY

TO: *[insert name(s) and address(es) of Access Property owners or name and address of registered agent if corporation]*

CERTIFIED MAIL NO. *[X]*

Pursuant to the authority of Sections 403.061(8) and 376.303(4), Florida Statutes, the Florida Department of Environmental Protection (“Department”) hereby gives notice to *[insert name(s) of Access Property owner(s)]*, of the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Department is the administrative agency of the State of Florida which has the power and duty to protect Florida’s air and water resources, and the public health, welfare, and the environment. The Department has the authority to administer

and enforce the provisions of Chapters 403 and 376, Florida Statutes (“Fla. Stat.”), and the rules promulgated thereunder in Title 62, Florida Administrative Code (“Fla. Admin. Code”).¹

2. *[Insert name(s) of Access Property owner(s)]* is the real property owner of the property located at *[insert Access Property address(es)]*, as further identified by *[insert county]* County Property Appraiser Parcel ID No. *[insert parcel identification number(s)]*, (the “*[insert name of Access Property Owner(s)]’s Property*”).

3. Hazardous substances, including *[insert hazardous substance(s)]*, have been discharged on the property located at *[insert PRSR’s Property address(es)]*, further identified by *[insert county]* County Property Appraiser Parcel ID No. *[insert parcel identification number(s)]*, (the “*[insert PRSR name]’s Property*”), which is *[insert description of PRSR’s Property relative to the Access Property (e.g., adjacent to, west of)]* the *[insert name of Access Property Owner(s)]’s Property*.

4. To address these discharges, *[Insert PRSR name]* is currently conducting “site rehabilitation” in accordance with the provisions of Chapter 62-780, Fla. Admin. Code *[and/or insert consent order, consent final judgment, final order, etc., if PRSR is conducting site rehabilitation pursuant to an order or judgment instead of or in addition to Chapter 62-780, Fla. Admin. Code]*. Pursuant to the rehabilitation process prescribed therein, it is necessary for *[Insert PRSR name]* to access the *[insert name of Access Property Owner(s)] Property* to conduct the following *[insert assessment or remedial]* activities:

¹ Department rules may be examined or obtained by request at any Department office or online at: <http://www.dep.state.fl.us/legal/Rules/rulelistnum.htm>.

- a. *[[list activities that need to be conducted on the Access Property, including a description of location(s) (as specific as possible) and whether access to buildings will be needed.. For example: Sample all existing monitoring wells as shown on the figure attached and incorporated herein as Exhibit A; and Collect soil and sediment samples (as applicable) within the areas designated as Areas A, B, C, and E on the figure attached and incorporated herein as Exhibit B.]*

CONCLUSIONS OF LAW

5. Section 376.303(4), Fla. Stat., expressly authorizes the Department to require a property owner to provide site access for activities associated with contamination assessment.

6. Section 403.061(8), Fla. Stat., authorizes the Department to issue orders as are necessary to control air and water pollution and to protect public health, welfare, and the environment, and to enforce the same in administrative and judicial proceedings.

7. The activities described in Paragraph 4 above are associated with site assessment or remediation and necessary to control water pollution or protect public health, welfare, and the environment.

PROPOSED ORDERS FOR ACCESS

8. Unless a timely petition for an administrative hearing is filed in accordance with Sections 120.569 and 120.57, Fla. Stat. (for details, see the Notice of

Rights Section below), the Department will issue a final order requiring site access containing the following provisions:

- a) Within ten days of the date of this Order, *[insert name(s) of Access Property owner(s)]* shall provide access to the real property located at *[insert Access Property address(es)]*, as further identified by *[insert county]* County Property Appraiser Parcel ID No. *[insert parcel identification number(s)]*, so that the Department and *[insert PRSR name]* and others authorized by *[insert PRSR name]* can *[insert activities listed in paragraph 4.a.]*.
- b) Access shall be provided during normal business hours, unless another time is mutually agreed to by *[insert name(s) of Access Property owner(s)]*, the Department, and *[insert PRSR name]*. *[Insert PRSR name]* will notify *[insert name(s) of Access Property owner(s)]* in writing at least 48 hours in advance of conducting any activity on the *[insert name of Access Property Owner(s)]*'s Property.
- c) This Order does not authorize access to any buildings on the *[insert name of Access Property Owner(s)]*'s Property. *[If access to buildings is needed, delete the previous sentence and be sure to include a description of the reasons for and the locations of the access needed in the preceding paragraph.]*
- d) *[Insert PRSR name]* will be responsible for restoring the *[insert name of Access Property Owner(s)]*'s Property as nearly as practicable to its

present condition upon the termination of contamination assessment and/or remedial activities.

- e) This Order does not determine liability or responsibility for any contamination that may be found to exist. The Department hereby expressly reserves the right to initiate appropriate legal action to prohibit or remedy any violations of applicable statutes or rules.

NOTICE OF RIGHTS

9. A person whose substantial interests are affected by the Department's proposed agency action may petition for an administrative proceeding ("hearing") under Sections 120.569 and 120.57, Fla. Stat. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

10. A petition must be filed within 21 days of receipt of this notice of proposed agency action. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request a hearing under Sections 120.569 and 120.57, Fla. Stat., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, Fla. Admin. Code.

11. A petition that disputes the material facts on which the Department's action is based must contain the following information:

- a) The name and address of each agency affected and each agency's file or identification number, if known;
- b) The name, address, and telephone number of the 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; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- c) A statement of when and how the petitioner received notice of the agency decision;
- d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

A petition is filed when it is received by the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000.

12. A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, Fla. Admin. Code.

13. Mediation is not available in this case under the provisions of Section 120.573, Fla. Stat., however, this does not prevent any interested parties from agreeing to other forms of alternate dispute resolution.

DATED this ____ day of _____, 20__.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

*[insert District Director's signature block
and District Address]*

FILING AND ACKNOWLEDGMENT

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

Clerk

Date

cc: [Insert name], Deputy General Counsel (Enforcement Section)
[Insert name of PRSR primary contact]
[Insert name of consulting firm contact if applicable]