

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

IN THE OFFICE OF THE
_____ DISTRICT

Petitioner,

v.

OGC File No. _____

JOHN DOE,
[For corporations, insert entire
name as listed in corporate
information records. For
joint owners of the property,
include all owners. For
businesses not listed in
corporate information, contact
OGC for advice on naming the
proper parties.]

Respondent.
_____ /

NOTICE OF VIOLATION,
ORDERS FOR CORRECTIVE ACTION, AND ADMINISTRATIVE PENALTY
ASSESSMENT

To: [Address]

Certified Return Receipt No. _____

Pursuant to the authority of Sections 376.303(1) and 403.121(2), Florida Statutes (“Fla. Stat.”), the State of Florida Department of Environmental Protection (“Department”) gives notice to _____ (“Respondent”) of the following findings of fact and conclusions of law with respect to violations of Chapters 376 and 403, Fla. Stat.

FINDINGS OF FACT
PARAGRAPHS APPLICABLE TO ALL COUNTS

IN THIS SECTION OF THE NOV, INCLUDE WHO THE PARTIES ARE, WHY WE HAVE

JURISDICTION OVER THE TANKS (I.E., THEY ARE GREATER THAN 110 GALLONS IN SIZE, STORE REGULATED SUBSTANCES, ETC.), AND ANY FACTS THAT ARE APPLICABLE TO ALL (OR MOST OF) THE 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 Chapters 376 and 403, Fla. Stat., and the rules promulgated thereunder in Fla. Admin. Code Title 62.

2. Respondent is a [corporation, individual, county government of the state of Florida, etc.] that has owned non-residential property located at [address: #, street, city, county, Florida] ("Property") since [date]. The Department has assigned facility identification number _____ to the Property. Respondent operates a [retail fueling facility, bulk petroleum storage facility, marina, etc.] at the Property.

3. The Property contains [#] [under/above]ground storage tank systems ("Systems"), each consisting of an [under/above]ground storage tank and its associated piping and dispenser. Each storage tank is an enclosed stationary container with a volume in excess of 110 [550 for ASTs] gallons in size that contains or contained [vehicular fuel, waste oil, etc.]. The tanks, which are constructed of [single-walled, double-walled] [cathodically protected steel, fiberglass clad steel, etc.], were installed at the Property on or about [date].

4. Since [date], Respondent has owned and operated the Systems.

5. [IF THE SYSTEMS HAVE BEEN CLOSED, ADD:] On or about [date] May 1, 2000, the [#] Systems were permanently closed by [removing the tanks from the ground, or filling the tanks in-place].

6. [IF YOU ARE INCREASING THE PENALTY FOR A HISTORY OF NON-COMPLIANCE, YOU MUST INCLUDE THE INFORMATION IN § 403.121(7). FOR

EXAMPLE:] On [date], the Department executed a Consent Order OGC Case No. _____ with Respondent, which contained a finding of violation and a civil penalty of more than \$2,000.00.

COUNT I

(EXAMPLE FOR FAILURE TO TIMELY PERFORM ANNUAL OPERABILITY TEST)

EACH COUNT SHOULD CONTAIN A SEPARATE VIOLATION. SINCE THE COUNTS ARE A PART OF THE FINDINGS OF FACT, ALL RELEVANT FACTS NECESSARY TO DESCRIBE THE VIOLATION MUST BE INCLUDED. 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. IF YOU ARE INCLUDING ECONOMIC BENEFIT, YOU MUST INCLUDE IT IN THE SPECIFIC COUNT THAT APPLIES.

7. The Systems' piping is pressurized piping and has mechanical line leak detectors.

8. The operability of the piping line leak detectors was tested on November 11, 1997. The next annual operability test of the line leak detectors was performed on January 15, 2000.

[IF YOU ARE INCLUDING ECONOMIC BENEFIT, YOU MUST INCLUDE IT IN THE SPECIFIC COUNT THAT APPLIES.]

9. An operability test of the [#] line leak detectors costs \$_____.

COUNT II

(EXAMPLE FOR FAILURE TO MAINTAIN REQUIRED RELEASE DETECTION)

10. Groundwater monitoring wells were located at the Property and were used as the sole method of release detection for the tanks until on or about [date] May 1, 1999, when an automatic tank gauging system ("ATG") was installed and became operational.

11. A site suitability determination was never performed on the monitoring wells to verify that the monitoring wells could effectively detect a new discharge, and the monitoring wells were not located in the tank excavation.

COUNT III

(EXAMPLE FOR FAILURE TO REPORT AND INVESTIGATE A SUSPECTED RELEASE)

12. From some time in [date] until on or about [date], the ATG was indicating that the regular unleaded tank was leaking at a rate in excess of 0.2 gallons per hour.

13. Respondent never submitted an incident notification form or discharge reporting form to the local county tanks program.

14. Respondent never undertook an investigation into this suspected release, or submitted to the local county tanks program a written confirmation that the incident was not a discharge.

COUNT IV
(EXAMPLE FOR FAILURE TO UPGRADE OR CLOSE A TANK SYSTEM)

15. The Systems' piping was constructed of single-walled bare steel and was in contact with the soil.

16. The Systems' piping has an internal diameter of less than three inches.

17. Respondent never upgraded the piping with secondary containment and the piping was not protected from corrosion.

18. On or about [date] May 1, 2000, the [#] Systems were permanently closed by [removing the tanks from the ground, or filling the tanks in-place]. [NOTE: This paragraph is not necessary if it has already been included in the "Facts Applicable to All Counts" section.]

COUNT V
(EXAMPLE FOR FAILURE TO SUBMIT A CLOSURE ASSESSMENT REPORT)

19. On or about [date] May 1, 2000, the [#] Systems were permanently closed by [removing the tanks from the ground, or filling the tanks in-place]. [NOTE: This paragraph is not necessary if it has already been included in the "Facts Applicable to All Counts" section.]

20. To date, Respondent has not filed a tank closure assessment report with the local county tanks program or the Department.

COUNT VI

(EXAMPLE FOR FAILURE TO INITIATE A SITE ASSESSMENT)

21. On [date], [#] [soil/groundwater] samples were taken from the Property.

22. The results of laboratory analytical tests on the soil samples revealed contaminants in the following concentrations: [for each contaminant whose concentration is over the cleanup target level, list the contaminant and the sample's concentration]

a. Benzene _____ ug/kg

b. TRPH _____ ug/kg

23. The results of laboratory analytical tests on the groundwater samples revealed contaminants in the following concentrations: [for each contaminant whose concentration is over the cleanup target level, list the contaminant and the sample's concentration]

a. Benzene _____ ug/l

b. MTBE _____ ug/l

24. To date, Respondent has not initiated a site assessment or otherwise assessed or remediated the petroleum contamination at the Property.

25. Respondent has not submitted to the Department or the local county program a site assessment report.

COUNT VII

(EXAMPLE FOR FAILURE TO MAINTAIN FINANCIAL RESPONSIBILITY)

26. From the time the Respondent obtained ownership of the Property until the Systems were closed, Respondent did not maintain storage tank pollution insurance or otherwise demonstrate to the Department the ability to pay for corrective actions and third-party liability resulting from a discharge at the Property in the amount of \$_____ per occurrence and \$_____ annual aggregate.

COUNT VIII
(EXAMPLE FOR FAILURE TO PAY REGISTRATION FEES)

27. For the [year] 2000 - 2001 fiscal year (i.e. July 1, 2000 to June 30, 2001), no storage tank registration or late fees were paid to the Department for the Systems.

COUNT IX

28. [ALWAYS INCLUDE THIS COUNT] The Department has incurred expenses to date while investigating this matter in the amount of not less than \$_____.

CONCLUSIONS OF LAW

IN THIS SECTION OF THE NOV, SPECIFIC CONCLUSIONS OF LAW MUST BE MADE TO AFFIRM 1) THE DEPARTMENT'S JURISDICTION OVER EACH RESPONDENT AND THE TANK SYSTEMS, AND 2) EACH VIOLATION. EACH CONCLUSION OF LAW MUST BE SUPPORTED BY SUFFICIENT FINDINGS OF FACT IN THE PREVIOUS SECTION.

The Department has evaluated the Findings of Fact with regard to the requirements of Chapters 376 and 403, Fla. Stat., and Fla. Admin. Code Title 62. Based on the foregoing facts the Department has made the following conclusions of law:

29. [FOR FINANCIAL RESPONSIBILITY VIOLATIONS] Vehicular fuel and waste oil each constitute a 'petroleum product' as defined in Fla. Admin. Code R. 62-761.200(45).

30. [FOR UST CASES] Vehicular fuel and waste oil each constitute a 'regulated substance' as defined in Fla. Admin. Code R. 62-761.200(53).

31. [FOR AST CASES] Vehicular fuel and waste oil each constitute a 'pollutant' as defined in Fla. Admin. Code R. 62-761.200(48).

32. Each of the four tanks constitutes a 'tank' as defined in Fla. Admin. Code R. 62-761.200(65).

33. The Property together with the Systems constitute a 'facility' as defined in Fla.

Admin. Code R. 62-761.200(20).

34. Respondent is a 'person' as defined in Sections 403.031(5) and 376.301(28), Fla. Stat.

35. Respondent is an 'owner' as defined in Fla. Admin. Code R. 62-761.200(42).

36. Respondent is an 'operator' as defined in Fla. Admin. Code R. 62-761.200(39).

37. [FOR UPGRADE VIOLATIONS] The Systems are classified as a 'UST Category-A system' as defined in Fla. Admin. Code R. 62-761.200(68).

38. [FOR PETROLEUM CONTAMINATION VIOLATIONS] Respondent is a 'responsible party' as defined in Fla. Admin. Code R. 62-770.200(50).

39. [FOR PETROLEUM CONTAMINATION VIOLATIONS] The Property is 'contaminated' as defined in Fla. Admin. Code R. 62-770.200(9).

40. [FOR PETROLEUM CONTAMINATION VIOLATIONS] On [date] there was a 'discovery' of contamination at the Property as defined in Fla. Admin. Code R. 62-770.200(16).

41. [FOR INCIDENTS] The alarming of the ATG was an 'incident' as defined in Fla. Admin. Code R. 62-761.200(29).

42. [FOR INCIDENTS] The alarming of the ATG and the ATG printouts both constitute a 'discovery' as defined in Fla. Admin. Code R. 62-761.200(13).

43. [FOR FINANCIAL RESPONSIBILITY VIOLATIONS] Pursuant to Fla. Admin. Code R. 62-761.400(3)(b), the minimum financial responsibility requirements for the Systems at the Property are \$500,000.00 per occurrence and \$1,000,000.00 annual aggregate coverage for both corrective action and third party liability.

44. [FOR REGISTRATION FEE VIOLATIONS] Respondent owes the Department \$_____ in storage tank registration and late fees.

45. The Department is imposing an administrative penalty of less than or equal to \$10,000.00 in this Notice of Violation as calculated in accordance with Section 403.121, Fla. Stat.

[IN THE FOLLOWING PARAGRAPHS YOU MUST RECITE THE RULES AND STATUTES THAT RELATE TO THE SPECIFIC COUNTS AND ASSOCIATED VIOLATIONS. THE PENALTY ASSESSMENT FOR EACH COUNT SHOULD BE IN A SEPARATE PARAGRAPH. EACH COUNT MUST HAVE AT LEAST ONE CORRESPONDING CONCLUSION OF LAW. EACH CONCLUSION OF LAW MUST BE SUPPORTED BY SUFFICIENT FINDINGS OF FACT.]

46. The facts in Count I constitute a violation of Fla. Admin. Code R. 62-761.640(4)2 and 62-761.700(1)(c)3, which requires that an annual operability test be performed on line leak detectors. The facts also constitute a violation of Sections 376.302 and 403.161, Fla. Stat., which makes it a violation to fail to comply with Department rules.

47. The violation in Count I requires the assessment of an administrative penalty under Section 403.121(3)(g), Fla. Stat., of \$1,000.00 for failure to properly operate and maintain the System.

48. The facts in Count II constitute a violation of Fla. Admin. Code R. 62-761.600(1), which requires that a valid method of release detection must be in place to detect a leak from any portion of the tank system. The facts also constitute a violation of Sections 376.302 and 403.161, Fla. Stat., which makes it a violation to fail to comply with Department rules.

49. The violation in Count II requires the assessment of an administrative penalty under Section 403.121(3)(g), Fla. Stat., of \$2,000.00 for failure to maintain required release detection.

50. The facts in Count III constitute a violation of Fla. Admin. Code R. 62-761.820(1), which requires that an investigation into a suspected release be promptly initiated and completed within two weeks of discovery of the suspected release. The facts also constitute

a violation of Sections 376.302 and 403.161, Fla. Stat., which makes it a violation to fail to comply with Department rules.

51. The violation in Count III requires the assessment of an administrative penalty under Section 403.121(3)(g), Fla. Stat., of \$2,000.00 for failure to investigate a suspected release.

52. The facts in Count IV constitute a violation of Fla. Admin. Code R. 62-761.510(5), which requires that by December 31, 1998, tank systems with an installation date of _____ must have double-walled, corrosion protected piping, or the tank system must be closed. The facts also constitute a violation of Sections 376.302 and 403.161, Fla. Stat., which makes it a violation to fail to comply with Department rules.

53. The violation in Count IV requires the assessment of an administrative penalty under Section 403.121(3)(g), Fla. Stat., of \$3,000.00 for failure to timely upgrade or close a storage tank system.

54. The facts in Count V constitute a violation of Fla. Admin. Code R 62-761.800(3)(d), which requires that a tank closure assessment report be submitted to the local county tanks program within 60 days of closing a storage tank system. The facts also constitute a violation of Sections 376.302 and 403.161, Fla. Stat., which makes it a violation to fail to comply with Department rules.

55. The violation in Count V requires the assessment of an administrative penalty under Section 403.121(4)(f), Fla. Stat., of \$500.00 for failure to submit a required report.

56. The facts in Count VI constitute a violation of Fla. Admin. Code R. 62-770.600(1), which requires that a site assessment be initiated within 30 days of discovering contamination at the Property. The facts also constitute a violation of Sections 376.302 and

403.161, Fla. Stat., which makes it a violation to fail to comply with Department rules.

57. The violation in Count VI requires the assessment of an administrative penalty under Section 403.121(3)(g), Fla. Stat., of \$2,000.00 for failure to timely assess or remediate petroleum contamination.

58. The facts in Count VII constitute a violation of Fla. Admin. Code R. 62-761.400(3), which requires that Respondent maintain and demonstrate to the Department the ability to pay for corrective action and third-party liability resulting from a discharge at the Property. The facts also constitute a violation of Sections 376.302 and 403.161, Fla. Stat., which makes it a violation to fail to comply with Department rules.

59. The violation in Count VII requires the assessment of an administrative penalty under Section 403.121(4)(a), Fla. Stat., of \$5,000.00 for failure to satisfy financial responsibility requirements.

60. The facts in Count VIII constitute a violation of Fla. Admin. Code R. 62-761.400(2), which requires the annual payment of storage tank registration fees and the payment of an additional late fee for any renewal not received by July 31 of the applicable year. The facts also constitute a violation of Sections 376.302 and 403.161, Fla. Stat., which makes it a violation to fail to comply with Department rules.

61. The violation in Count VIII requires the assessment of an administrative penalty under Section 403.121(5), Fla. Stat., of \$500.00 for failure to comply with a Department rule.

62. The administrative penalties assessed for Counts I - VIII total \$_____. [IF USING A HISTORY OF NONCOMPLIANCE MULTIPLIER, THEN ADD:] The Consent Order OGC Case No. _____ constitutes a history of noncompliance pursuant to Section 403.121(7), Fla. Stat. Therefore the penalty is increased by 25% or \$_____, making the total

administrative penalty \$_____.

63. [FOR ECONOMIC BENEFIT] The facts related in Count I establish Respondent gained a direct economic benefit of \$_____ by failing to perform the required annual operability tests of the line leak detectors for a two year period. Therefore, the administrative penalty is increased by an additional \$_____ pursuant to Section 403.121(8), Fla. Stat., making the total administrative penalty \$_____.

64. The costs and expenses related in Count IX 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, 376.303, 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:

65. Respondent shall forthwith comply with all Department rules regarding storage tank systems and petroleum contamination cleanup. 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 62-761 and 62-770.

[IN THE FOLLWOING PARAGRAPHS YOU MUST INCLUDE SPECIFIC CORRECTIVE ACTIONS WHICH RELATE TO EACH OF THE COUNTS. BE SURE TO SPECIFICALLY STATE ALL CORRECTIVE ACTIONS NEEDED TO CORRECT EACH VIOLATION. ANY CORRECTIVE ACTIONS NOT STATED MAY BE WAIVED.]

66. [OPTIONAL - PETROLEUM CLEANUP - USED IF A SITE ASSESSMENT HAS NOT BEEN YET BEEN INITIATED] Respondent shall assess and cleanup all petroleum contamination at the Property in accordance with Fla. Admin. Code Chapter 62-770 and the timeframes therein. Respondent shall initiate a site assessment at the Property in accordance with Fla. Admin. Code R. 62-770.600 within 30 days of the effective date of this Order, and submit to the Department a site assessment report prepared in accordance with Fla. Admin. Code R. 62-770.600(7) within 270 days of the effective date of this Order. Within ten days of commencing the site assessment, Respondent shall submit to the Department written verification of initiating the site assessment. Respondent is required to timely perform all necessary assessment and cleanup until the Department issues a No Further Action Order or a Site Rehabilitation Completion Order.

67. [OPTIONAL - PETROLEUM CLEANUP - USED IF A SITE ASSESSMENT HAS ALREADY BEEN INITIATED] Respondent shall assess and cleanup all petroleum contamination at the Property in accordance with Fla. Admin. Code Chapter 62-770 and the timeframes therein. Respondent is required to timely perform all necessary assessment and cleanup until the Department issues a No Further Action Order or a Site Rehabilitation Completion Order.

68. [PETROLEUM CLEANUP -- USE IN ADDITION TO ABOVE PARAGRAPHS] Any non-petroleum contamination discovered during activities undertaken in paragraph ____ above shall be addressed in accordance with Chapters 376 and 403, Fla. Stat., and all applicable Department rules promulgated thereunder.

69. [TANK CLOSURE] Within 60 days of the effective date of this Order, Respondent shall close all the Systems and compliance monitoring wells at the Property in accordance with all the requirements of Fla. Admin. Code R. 62-761.800(2) and (3). At least ten days before the closure of the Systems, Respondent shall notify the [local county tanks program] (“_____ County inspector”) of the pending System closure as required by Fla. Admin. Code R. 62-761.450(1)(a)2. At least 48 hours before the closure of the Systems, Respondent shall confirm with the _____ County inspector the time and date of the pending System closure as required by Fla. Admin. Code R. 62-761.450(1)(a)3.a. If the Systems are to be closed by removing the tanks or piping from the Property, a Pollutant Storage System Contractor, certified by the Department of Business and Professional Regulation in accordance with Chapter 489, Fla. Stat., shall be used for the removal of the Systems as required by Fla. Admin. Code R. 62-761.800(2)(c)2. Within 30 days of closing the Systems, Respondent shall submit to the Department a Storage Tank Facility Registration Form (Form 62-761.900(2)), indicating the date and method of closure of the Systems. [IF A TCAR IS NOT REQUIRED] Within 60 days of closing the Systems, Respondents shall submit to the _____ County inspector a completed Limited Closure Summary Report on Form 62-761.900(8).

70. [IF A TCAR IS REQUIRED] At the time the Systems are closed, Respondent shall undertake a closure assessment as required by Fla. Admin. Code R. 62-761.800(3). Within 60 days of closing the Systems, Respondent shall submit to the _____ County inspector a

completed closure assessment report as required by Fla. Admin. Code R. 62-761.800(3)(d). If the closure assessment reveals the presence of contamination at the Property, Respondents shall immediately undertake corrective actions at the Property in accordance with Fla. Admin. Code R. 62-761.820(2) and Fla. Admin. Code Chapter 62-770 and the timeframes therein.

71. [OPTIONAL - FINANCIAL RESPONSIBILITY] By the effective date of this Order, Respondent shall obtain storage tank pollution insurance for corrective actions and third party liability resulting from a discharge at the Property as required by Fla. Admin. Code R. 62-761.400(3). Within 10 days of the effective date of this Order, Respondent shall submit to the Department a completed Certification of Financial Responsibility (Form 62-761.900(3)).

72. [OPTIONAL - REGISTRATION FEES] Within 30 days of the effective date of this Order, Respondent shall pay storage tank registration and late fees, and any collection fees which may be associated with the overdue registration fees, to the Department in the amount of \$_____. Payment shall be made by cashier's check or money order payable to the "State of Florida Department of Environmental Protection" and shall include thereon the notation "Facility No. _____" and Inland Protection Trust Fund. The payment shall be sent to the State of Florida Department of Environmental Protection, Storage Tanks Registration, 2600 Blair Stone Road, Tallahassee, FL 32399-2400.

73. Within 10 days of the effective date of this Order, Respondent shall pay \$_____ to the Department for the administrative penalties imposed above. Payment shall be made by cashier's check or money order payable to the "State of Florida Department of Environmental Protection" and shall include thereon the notations "OGC Case No. _____" and "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the State of Florida Department of Environmental Protection, _____ District, [address].

74. In addition to the administrative penalties, within 10 days of the effective date of this Order, Respondent shall pay \$_____ to the Department for costs and expenses. Payment shall be made by cashier's check or money order payable to the "State of Florida Department of Environmental Protection" and shall include thereon the notations "OGC Case No. _____" and "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the State of Florida Department of Environmental Protection, _____ District, [address].

NOTICE OF RIGHTS

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

Right to Negotiate

75. 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

76. 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.

77. 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.

78. 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 R. 28-106.2015 and include the following:

- (a) The Department's Notice identification number and the county in which the subject matter or activity is located;
- (b) The name, address, and telephone number, and facsimile number (if any) of each respondent;
- (c) 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;
- (d) A statement of when respondent received the Notice; and
- (e) 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.

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.

Right to Mediation

79. If Respondent timely files a request challenging the Notice, 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.

80. 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, 2035 East Paul Dirac Drive, Room 236, Tallahassee, Florida, 32310, (850) 644-6320, cpedersen@fsu.edu. Once the request is timely received, the FCRC will provide the parties with a list of mediators and the necessary information.

Right to Opt Out of the Administrative Proceeding

81. 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.

82. 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 \$10,000.00 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

83. 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

84. 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.

85. 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, 376.303, 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 \$10,000 per day for each day that Respondent has failed to comply with the Final Order.

86. 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

District Director
_____ District

Copies furnished to:
Jack Chisolm, OGC Enforcement Section
Mail Station 35