

THIS ELRA NOV IS INTENDED TO BE USED IN WASTE CLEAN-UP CASES WHERE THE CONTAMINATED SITE IS THE RESULT OF A DEPARTMENT PERMITTED SOILD WASTE FACILITY. ADDITIONALLY, THIS NOV SHOULD NORMALLY BE USED ONLY AFTER THE DEPARTMENT HAS SENT A LETTER TO THE RESPONSIBLE PARTY PUTTING IT ON NOTICE OF THE 62-780 REQUIREMENTS THAT ARE THE SUBJECT OF THE NOV.

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. _____

ABC INC.,

[The Respondent will be the entity or person that the Department has permitted to operate the solid waste facility responsible for the contaminated site. 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.]

Respondent.

_____/

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

To: [Name]
[Address]

Certified 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

_____ (“Respondent”) of the following findings of fact and conclusions of law with respect to violations of Chapters 376 and 403, Fla. Stat., and Fla. Admin. Code Chapter 62-780.

FINDINGS OF FACT

PARAGRAPHS APPLICABLE TO ALL COUNTS

1. The Department is the administrative agency of the state of Florida having the power and duty to protect Florida’s air and water resources and to administer and enforce the provisions of Chapters 376 and 403, Fla. Stat., and the rules promulgated thereunder in Florida Administrative Code Title 62.

[IN THE FOLLOWING PARAGRAPHS DESCRIBE THE RESPONDENT(S) ASSOCIATION TO OPERATIONS , WHERE THE SOLID WASTE FACILITY IS LOCATED, EXISTING PERMIT AND IDENTIFIED ENVIRONMENTAL IMPACTS.]
FOR EXAMPLE:

2. Respondent is the [owner or operator] of a [Describe the solid waste facility or operation] ("Facility"). The Facility is located at [Insert latitude, longitude, or address or legal description and the name of the Facility, if applicable. Using Section, Township, Range alone is not sufficient]("Facility"). .

3. Respondent operates (operated) the Facility under Department permit No.(enter number) which expires (expired) _____("Permit").] Providing specific detail as to the provision(s) within the referenced Department permit that obligates corrective action for impacts beyond Facility’s permitted zone of discharge.

4. The concentrations of arsenic, chromium and lead exist in the soils at

levels that will continue to leach into the groundwater at concentrations that exceed the groundwater quality standards for arsenic, chromium and lead. During the inspection the Department found the following contaminants in the following concentrations in the groundwater at the Facility:

- a. arsenic _____
- b. chromium _____
- c. lead _____

The Department notified the Respondent of the results of its inspection on _____ and the Facility Permit's obligation to implement actions mandated by Fla. Admin. Code Chapter 62-780 to address these identified environmental impacts.

5. The purpose of Fla. Admin. Code Chapter 62-780 is to prevent adverse effects on human health, public safety, and the environment that may be caused by contaminants that have been released or discharged into the environment. It has been more than 60 days from receipt of notice by the Department of the contamination at the Facility, and Respondent has failed to commence the assessment required by Fla. Admin. Code Chapter 62-780.

6. *[DESCRIBE THE REQUIREMENTS OF 62-780 THAT HAVE BEEN MET, IF ANY, AND THE REQUIREMENTS OF 62-780 THAT HAVE NOT BEEN MET]. FOR EXAMPLE:* The Respondent submitted an Interim Source Removal Proposal to the Department on June 15, 2005 in accordance with Fla. Admin. Code R. 62-780.500(5)(d). The Department approved the Interim Source Removal Proposal on July 11, 2005. The Respondent initiated the Interim Source Removal Proposal on July 18, 2005. The

Respondent has not commenced the Site Assessment for the Property in accordance with Fla. Admin. Code R. 62-780.600.

7. *[IF THIS RESPONDENT HAS A SEPARATE, PRIOR CONSENT ORDER WITH 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 AND A PENALTY OF \$2,000 OR MORE, PURSUANT TO SECTION 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.*

EXCEPT FOR THE COST COUNT, EACH COUNT SHOULD CONTAIN A SEPARATE VIOLATION. INCLUDE ALL COUNTS SUPPORTED BY THE EVIDENCE IN THE CASE. 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.

COUNT I

8. Respondent has failed to comply with the terms of its Department issued permit for the Facility, requiring the implementation of corrective actions at the Facility in accordance with [cite specific Permit condition] .

COUNT II

9. Respondent has failed to commence a Site Assessment within 60 days of notice of a discharge at the Facility as required by Fla. Admin. Code R. 62-780.600.

Respondent has

failed to do so from May 23, 2005 until December 6, 2005, the date of this Notice of Violation.

COUNT III

10. [ALWAYS INCLUDE THIS COUNT] The Department has incurred expenses to date while investigating this matter in the amount of ____ [IDENTIFY THE SPECIFIC AMOUNT OF COSTS INCURRED]

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 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:

11. Respondent is a "person" as defined in Sections 376.301(27), 403.031(5), and 403.703(22), Fla. Stat.

12. 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 FACTS.

13. The facts in Count I constitute a violation of Section 403.161(1)(b), Fla. Stat., which makes it a violation to fail to comply with any Department issued permit.

14. The violation in Count I requires the assessment of administrative penalties under Section 403.121(5), Fla. Stat., of \$500.00 for failure to comply with any Department regulatory statute requirement.

15. The facts in Count II constitute a violation of Section 403.161(1)(b), Fla. Stat., which makes it a violation to fail to comply with any Department rule.

16. The violation in Count II requires the requires the assessment of administrative penalties under Section 403.121(4)(f), Fla. Stat., of \$500.00 for failure to prepare, submit, maintain, or use required reports or other required documentation.

17. Pursuant to Section 403.121(6), Fla. Stat., the Department is assessing the penalty for 19 of the days and counting that the Respondent has failed to commence a Site Assessment, for a total of \$9,500.00 in administrative penalties. *[IF USING A HISTORY OF NONCOMPLIANCE MULTIPLIER, THEN ADD UP TO A TOTAL OF NO MORE THAN \$10,000:* 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 \$_____.]

18. The costs and expenses related in Count II 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 petition 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:

19. Respondent shall comply with all of the requirements of Fla. Admin. Code Chapter 62-780. Respondent shall correct and redress all violations in the time periods required below.

IN THE FOLLOWING 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.

20. **Within ____ days of the effective date of this Order**, Respondent shall commence a Site Assessment at the Property and shall complete the Site Assessment by _____.

21. **Within ____ days of the effective date of this Order**, Respondent shall pay a total of \$10,____.00 to the Department, this includes \$10,000.00 for the administrative penalties imposed above and \$____.00 for costs and expenses 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, [*insert address*].

NOTICE OF RIGHTS

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

Right to Negotiate

22. 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

23. 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 other qualified representative, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of fact and orders, and to file exceptions to any order or administrative law judge’s recommended order.

24. 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 other 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.

25. If Respondent desires a formal hearing or an informal proceeding, Respondent must file a written responsive pleading entitled “Petition for Administrative Proceeding” within 20 days of receipt of this Notice. The petition must be in the form required by Fla. Admin. Code R. 28-106.2015.

- (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 petition must so indicate.

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.

Right to Mediation

26. If Respondent timely files a petition 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 reach a resolution of some or all of the issues. The mediator is chosen from a list of mediators provided by the Florida Conflict Resolution Consortium (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.

27. 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 Florida Conflict Resolution Consortium, 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

28. 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.

29. 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

30. Respondent will waive the right to a formal hearing or an informal

proceeding if:

- a. a petition 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

31. 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 petition 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.

32. 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.

33. 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

Director of District Management
_____ District

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