

USE FOR NON-ELRA NOVs

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.:

[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 AND
ORDERS FOR CORRECTIVE ACTION

TO:

Certified Mail Number

Pursuant to the authority of Section 403.121(2), Florida Statutes ("F.S.") 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 Chapter 403 [INCLUDE ALL APPROPRIATE CHAPTERS: 376, 373, 253, 161, or 258], F.S.

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 Chapter 403 [INCLUDE ALL APPROPRIATE CHAPTERS: 376, 373, 253, 161, or 258], F.S., and the rules promulgated thereunder in F.A.C. Title 62.

2. [DESCRIBE THE RESPONDENT AND WHAT IT DOES, WHERE IT IS LOCATED. FOR EXAMPLE: Respondent is a corporation that owns and operates a sewage treatment plant located at 5555 Industrial Lane, Tampa, Hillsborough County, Florida. Section, Township, Range alone is not sufficient.]

3. [DESCRIBE THE INSPECTION OF THE FACILITY OR PROPERTY THAT LED TO THE DISCOVERY OF THE VIOLATIONS. ONLY INCLUDE THOSE EXHIBITS THAT ARE NECESSARY FOR THE CAUSE OF ACTION, SUCH AS A PERMIT. DO NOT INCLUDE WARNING LETTERS OR INSPECTION REPORTS. FOR EXAMPLE: On _____, the Department inspected the Respondent's facility. You must state enough specific facts so that someone would be able to understand who, what, how, when and where the violations occurred. This fact recitation must be more detailed than that needed for a consent order.]

COUNT I

[EACH COUNT SHOULD CONTAIN A SEPARATE VIOLATION OR GROUP OF RELATED VIOLATIONS. THE COUNTS SHOULD DESCRIBE FACTS THAT RELATE TO THE VIOLATIONS. FOR EXAMPLE:

4. As of May 1, 2003, Respondent failed to notify the Department of discharges from the Plant's percolation pond on January 1 and 2, February 5, and March 13, 2003.

COUNT II

5. On August 4, 2002 and February 14, 2003, the Department inspected the Plant and found that residual chlorine in the chlorine contact chamber was less than 0.2 milligrams per liter.]

COUNT III

6. [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

The Department has evaluated the Findings of Fact with regard to the requirements of Chapter 403 [INCLUDE ALL APPROPRIATE CHAPTERS], F.S. and F.A.C. Title 62. Based on the foregoing facts the Department has made the following conclusions of law:

7. Respondent is a "person" within the meaning of Sections 403.031 [CHOOSE APPROPRIATE SECTION, SUCH AS: 403.703, or 403.852, or 376.301], F.S.

8. Respondent's operation is a [Describe what the facility is, if this is important to the cause of action. For example: hazardous waste facility as defined in Section 403.703(22), F.S., F.A.C. Rule 62-730.020, and 40 C.F.R. 260.10.]

9. [IN THESE PARAGRAPHS YOU MUST RECITE THE RULES AND STATUTES THAT RELATE TO THE SPECIFIC COUNTS. EACH COUNT MUST HAVE AT LEAST ONE CORRESPONDING CONCLUSION OF LAW. FOR EXAMPLE:] The facts related in Count I constitute a violation of F.A.C. Rule 62-600.750, which requires that the Department must be notified within 24 hours whenever the plant is unable to comply with the conditions of its permit. The facts also constitute a

violation of Section 403.161, F.S., which makes it a violation to fail to comply with Department rules.

10. The facts related in Count II

11. The costs and expenses related in Count III are reasonable costs and expenses incurred by the State while investigating this matter, which are recoverable pursuant to Section 403.141(1) F.S.

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 files a timely petition for a formal hearing or informal proceeding, pursuant to Section 403.121, F.S. (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, F.S.

Pursuant to the authority of Sections 403.061(8) and 403.121, F.S., the Department proposes to adopt in its Final Order in this case the following specific corrective actions that will redress the alleged violations:

11. Respondent shall forthwith comply with all Department rules regarding [Describe program area, such as "domestic waste treatment and disposal."] Respondent shall correct and redress all violations in the time periods required below and shall comply with all applicable rules in F.A.C. Chapter 62- [List appropriate rules].

12. [IN THIS SECTION YOU MUST INCLUDE SPECIFIC CORRECTIVE ACTIONS THAT RELATE TO EACH OF THE COUNTS. FOR EXAMPLE:

Commencing immediately and henceforth, Respondent shall notify the Department of any discharges from the percolation ponds within the time periods in F.A.C. Rule 62-600.750.]

13. Within 30 days of the effective date of this Order, Respondent shall make payment to the Department for costs and expenses 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 OGC Case number assigned to this case and the notation "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to [Insert Address].

NOTICE OF RIGHTS

Respondent's rights to negotiate or litigate this action are described below. Please read them carefully.

Right to Negotiate

1. This matter may be resolved if the Department and Respondents 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

2. Respondent has the right to a formal administrative hearing pursuant to Sections 120.569 and 120.57(1), F.S., if Respondent disputes issues of material fact raised by this Notice of Violation and Orders for Corrective Action ("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, and to conduct cross-examination and submit rebuttal evidence.

3. Respondent has the right to an informal administrative proceeding pursuant to Sections 120.569 and 120.57(2), F.S., 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.

5. 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 F.A.C. Rule 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 petitioner;
- (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 petitioner 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 Request Mediation

6. Respondent may request mediation after filing a petition for hearing. Requesting mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The mediation will be held if the parties enter a written

agreement, which is described below, within 30 days after receipt of the NOV. The mediation must be completed within 60 days of the agreement unless the parties otherwise agree.

The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement; and
- (g) The signatures of all parties or their authorized representatives.

As provided in section 120.573 of the Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by sections 120.569 and 120.57 for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify the Respondent in writing that the

administrative hearing processes under sections 120.569 and 120.57 remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

Waivers

7. Respondent will waive the right to a formal hearing or an informal proceeding if a petition 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

8. The allegations 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, F.S. A Final Order will constitute a full and final adjudication of the matters alleged in this Notice.

9. If Respondent fails to comply with the Final Order, the Department is authorized to file suit in circuit court seeking a mandatory injunction to compel compliance with the Order, pursuant to Sections 120.69, 403.121 and 403.131, F.S. [You should include a citation to 403.727 for hazardous waste cases, and 403.860, for potable water cases.] 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 [\$50,000 for hazardous waste cases and \$5,000 for potable water cases] per day for each day that Respondent has failed to comply with the Final Order.

10. This matter may be resolved if the Department and Respondent enter into a Consent Order, in accordance with Section 120.57(4), F.S., upon such terms and conditions as may be mutually agreeable.

11. The Department is not barred by the issuance of this Notice from maintaining an independent action in circuit court with respect to the alleged violations.

If such action is warranted, the Department may seek injunctive relief, damages, civil penalties of not more than \$10,000 [\$50,000 for hazardous waste cases and \$5,000 for potable water cases] per day, and all costs of litigation.

12. Copies of Department rules referenced in this Notice may be examined at any Department Office or may be obtained by written request to the person listed on the last page of this Notice.

DATED this _____ day of _____, 20__.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Director of District Mgmt.

Copies furnished to:

Jack Chisolm, OGC Enforcement Section
Mail Station 35