

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Complainant

vs.

Respondent.

[insert property owner(s)]

ORDER FOR ACCESS FOR CONTAMINATION

ASSESSMENT OR REMEDIAL ACTION

TO:**[insert property owner(s)]**

BY CERTIFIED MAIL

Pursuant to the authority of Sections 403.061(8), 403.121(2) and 376.303(4), Florida Statutes, the Florida Department of Environmental Protection (Department) hereby gives notice to **[insert property owner(s)]**, hereafter the "Respondent", as owner (or as lessee) that the Department issues an Order requiring Respondent to provide access to its property, described below, for activities associated with contamination assessment or remedial action.

FINDINGS OF FACT

1. The Department is the administrative agency of the State of Florida which has the authority to administer and enforce the provisions of Chapters 403 and 376, Florida Statutes, and the rules promulgated thereunder.
2. Respondent is a **[insert property owner's status (e.g., private citizen or corporation)]** that owns the property located at **[insert site address]** and described as follows **[insert or attach as Exhibit "A" the legal property description.]**:
3. The Department has determined that there may be or has been a release of pollutants **[insert description of the suspected contaminants]** at **[insert description of the**

suspected contamination source]. In enforcing the provisions of Chapters 403 and 376, Florida Statutes, **[insert description of site activities]** is necessary.

4. Respondent's property is **[insert the geographic relationship of the property to the site]**.
5. Access to Respondent's property is required to perform the following activities: **[insert detailed description of site activities, duration, physical alterations to the property, and the affect or the lack thereof on the current use of the property]**.
6. The Department wrote to Respondent in **[insert month, day]**, 199**[insert year]**, and requested access for the **[insert description of site activities]**. **[insert explanation of the particular facts of case regarding contact with the Respondent.]** The Respondent denied or did not respond to the Department's request.

CONCLUSIONS OF LAW

7. **[insert contaminant(s)]** is a "Hazardous Substance" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and therefore is a hazardous substance as defined in Section 376.301, Florida Statutes.
8. Chapter 376, Florida Statutes, authorizes the Department to restore contaminated water supplies; to expend sums for the removal of prohibited discharges; to arrange for the removal of pollutants; to investigate, assess, clean up, restore, maintain and monitor any site contaminated with petroleum products or hazardous substances. Section 376.303(4), Florida Statutes, expressly authorizes the Department to require a property owner to provide site access to perform contamination investigations and remedial activities.
9. Chapter 403, Florida Statutes, declares that pollution of the waters of the state constitutes a menace to the public health, safety, and welfare and that it is a policy of the state to protect, maintain and improve their quality. Section 403.061, Florida Statutes, grants the Department the power to control and prohibit pollution. Section 403.061(8), Florida Statutes, authorizes the Department to issue orders as are necessary to control air and water pollution and to enforce the same in administrative and judicial proceedings. Section 403.121, Florida Statutes, authorizes the Department to institute administrative proceedings to order the prevention, abatement, or control of violations of Chapter 403, Florida Statutes, and to order appropriate corrective actions.

In consideration of the foregoing Findings of Fact and Conclusions of Law, it is therefore ORDERED:

1. Within 30 days of the date of this Order, Respondent shall provide access to the property described in Paragraph 2 so that the Department, and others required and authorized by the Department can **[insert description of site activities]**.

2. Access shall be provided during normal business hours. The Department shall notify Respondent in writing at least 48 hours in advance of planned activity on the property. All investigation derived waste will be removed and properly managed in accordance with applicable laws and regulations. This order does not authorize access to any buildings on the property or that Respondent provide the Department exclusive access and control over the property. The property will be restored as nearly as practicable to its condition prior to the issue of this Order upon the termination of contamination assessment and/or remedial activities.
3. 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 the rules promulgated thereunder.
4. This Order is final unless Respondent files a timely petition for a formal hearing or an informal proceeding pursuant to Florida Administrative Code Rule 28-106.201 or Rule 28-106.301 (see Notice of Rights). If Respondent fails to comply with the actions required by this Order, the Department is authorized to file suit seeking judicial enforcement of the Department's Order pursuant to Sections 120.69 and 403.131, Florida Statutes.

NOTICE OF RIGHTS

1. Respondent has the right to a formal administrative hearing pursuant to Section 120.57(1), Florida Statutes, if Respondent disputes issues of material fact raised by this Order. At a formal hearing, Respondent will have the opportunity to be represented by counsel, 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 hearing officer's recommended order.
2. Respondent has the right to an informal administrative proceeding pursuant to Section 120.57(2), Florida Statutes, 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, 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.
3. If Respondent desires a formal hearing or an informal proceeding, Respondent must file a written responsive pleading entitled "Petition for Administrative Proceeding" within 21 days of receipt of this Order. The petition must be in the form required by Florida Administrative Code Rule 28-106.201 or rule 28-106.301. A petition is filed when it is received by the Department's Office of General Counsel, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000.

4. Respondent may request mediation under section 120.573 before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below. If the Department agrees that mediation in this matter is appropriate, Respondent must pursue mediation by reaching a mediation agreement with the Department before the deadline for filing a petition. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

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 signature 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.

5. Respondent will waive the right to a formal hearing or an informal proceeding if a petition is not filed with the Department within 21 days of receipt of this Order. If Respondent seeks an administrative proceeding pursuant to this paragraph, the Department may file a lawsuit against the Respondent in lieu of holding the administrative proceeding to obtain judicial resolution of all issues unresolved at the time of the request for administrative proceeding.

6. This Order is final unless Respondent timely files a petition for a formal hearing or informal proceeding, pursuant to Florida Administrative Code Rule 28-106.201 or Rule 28-106.301. This Order will constitute a full and final adjudication of the matters alleged in this Notice.
7. If Respondent fails to comply with this Order, the Department is authorized to file a lawsuit in circuit court seeking a mandatory injunction to compel compliance with the Order, pursuant to Sections 120.69, 403.131, and 403.727, Florida Statutes. 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 this Order.
8. Copies of Department rules referenced in this Order may be examined at any Department office or may be obtained by written request to the person listed on the last page of this Order.

DATED this _____ day of _____, 199__.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

[insert name of Director]
Director of District Management
[Insert Address]
[Insert Telephone]