

**Instructions for using this model (delete these from the final document):**

1. Click on blue/underlined fields to insert appropriate information or to access a drop-down menu, hyperlinked document, or website that offers additional options.
2. Optional language is flagged with the markers ">>>OPTIONAL<<<" and ">>>END OPTIONAL<<<." If you include the optional language in the final document, be sure to remove these flags. All other language is REQUIRED. Consult with OGC before removing required language.
3. This document uses comment "balloons" to provide additional information and guidance. Either print the document without markups, or delete all comment balloons prior to printing or converting to a .pdf.
4. If you have multiple respondents, be sure to do a search/find for all instances of "Respondent"/"Respondent's" and replace with "Respondents"/ "Respondents'."
5. This document does not use auto-numbering – before printing, be sure that all paragraphs are numbered correctly.
6. Be sure to include page numbers in the upper left-hand corner of every page.

For additional tips, see the [Enforcement Style Guide](#).

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT )	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION )	<a href="#">Insert District</a> DISTRICT
)	
vs. )	OGC FILE NO. <a href="#">Insert OGC #</a>
)	
<a href="#">Insert Respondent(s)</a> )	
_____ )	

**Comment [OGC1]: NAMING THE RIGHT RESPONDENT IS CRITICAL.**  
 For businesses, insert entire name as listed in corporate information records, which is available at [SUNBIZ](#). For businesses not listed there, contact OGC for advice on naming the proper parties.

If there are multiple property owners listed on the property appraiser's website, be sure to include them all.

**CONSENT ORDER**

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department") and [Insert Respondent's Name](#) ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and Respondent [admits](#) the following:

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, Florida Statutes ("F.S."), and the rules promulgated and authorized

**Comment [OGC2]:** Contact OGC if Respondent seeks to change this.

in Title 62, Florida Administrative Code (“F.A.C.”). The Department has jurisdiction over the matters addressed in this Order.

2. Respondent is a person within the meaning of Section 403.031(5), F.S.

3. Respondent is the owner and is responsible for the operation of [Facility Name](#), a [Describe industrial waste facility, focusing on the wastewater sources](#) (“Facility”). The Facility is located at [Address \(#, Street, City\) or Parcel ID number or Legal Description](#), in [Insert County](#) County, Florida (“Property”). [Respondent owns the Property on which the Facility is located.](#)

4. As of the effective date of this Order, Respondent has not obtained a wastewater permit from the Department to operate the Facility.

5. The Department finds that the following violation(s) occurred:

a) Respondent operated the Facility without a valid wastewater permit from the Department from [Insert time period](#), in violation of Rule 62-[Rule #](#), F.A.C.

b) [Briefly describe other violations, citing the rule and/or statute violated.](#)

Having reached a resolution of the matter Respondent and the Department mutually agree and it is

**ORDERED:**

6. A wastewater permit to operate the Facility is required by Sections 403.087 and 403.088, F.S., and Chapters 62-4 and 62-620, F.A.C. This Order is not intended to directly or indirectly authorize the temporary or permanent operation of the Facility.

7. Respondent shall comply with the following [corrective actions](#) within the stated time periods:

a) [Describe the required corrective actions.](#)

b) >>>**OPTIONAL**<<< The following discharge limitations, and other requirements shall be met until such time as a wastewater permit is effective or the Facility has ceased discharge:

Discharge Monitoring and Reporting Requirements

<u>Parameter</u>	<u>Annual Average</u>	<u>Daily Max.</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
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IW\_CO (operating w/o permit)

**Comment [OGC3]:** Please be sure to include the correct property information and contact OGC if you need assistance.

[Section/Township/Range is not sufficient.](#)

The [Property Appraiser's website](#) provides good preliminary information but NOT PROOF OF OWNERSHIP.

However, to confirm ownership, you may have to consult the official records – both a [consolidated search](#) (enables you to search in multiple counties) and [list of links](#) to individual county official records websites are available online.

**Comment [OGC4]:** In most cases, the respondent is the property owner. If that is not the case, you may need to name the property owner as a separate respondent (in a separate paragraph).

**Comment [OGC5]:** Limit these paragraphs to statements of facts that are necessary to describe the violations, and [cite the specific rules and/or statutes violated.](#)

Do not characterize the facts or the intentions of Respondent without OGC review.

If the CO covers 3 or more violations, consider separating them into subparagraphs for clarity, as provided in the example here.

**Comment [OGC6]:** Additional [model corrective actions](#) ([hyperlink forthcoming](#)) are provided in a separate document.

**Comment [OGC7]:** Use this paragraph only when the discharge will continue and interim limits or other requirements are needed.

i) There shall be no discharge of floating solids or visible foam in other than trace amounts.

ii) The discharge shall not cause a visible sheen on the receiving waters.

iii) Tests conducted pursuant to this monitoring program shall conform to 62-[Rule #](#), F.A.C.

iv) These monitoring requirements do not act as State of Florida Department of Environmental Protection Wastewater Permit effluent limitations, nor do they authorize or otherwise justify violation of the Florida Air and Water Pollution Control Act ("Act"), Part I, Chapter 403, F.S., while this Order is effective.

c) Analyses shall be reported monthly on a Discharge Monitoring Report ("DMR"), DEP Form No. [Form #](#). Respondent shall mail or hand-deliver the DMRs to the Department of Environmental Protection, once each month. The DMRs must be received by the Department no later than the 28th day following the end of the reporting period (e.g., an August report would be due no later than September 28th). >>>END OPTIONAL<<<

6. [Choose frequency](#) after the effective date of this Consent Order, and continuing until all corrective actions have been completed, Respondent shall submit in writing to the Department a report containing information concerning the status and progress of projects being completed under this Order, information as to compliance or noncompliance with the applicable requirements of this Order including construction requirements and effluent limitations, and any reasons for noncompliance. These reports shall also include a projection of the work to be performed pursuant to this Order during the 12-month period which will follow the report. Respondent shall submit the reports to the Department within 30 days of the end of each quarter.

7. >>>OPTIONAL<<< Within <#> days of the effective date of this Order, Respondent shall, pursuant to Sections 403.087 and 403.088, F.S., and Chapters 62-620 and 62-4, F.A.C.,

Comment [OGC8]: Include subparagraphs (7)(b)(ii) and (iii) only if discharge is to surface waters.

Comment [OGC9]: Use only when discharge to surface waters will continue.

submit a permit application, along with the appropriate fee, to the Department. The purpose of the application and fee shall be to obtain a wastewater permit. The application shall meet all requirements of Chapter 62-620, F.A.C., which include but are not limited to being prepared and sealed by a professional engineer registered in the State of Florida. In the event the application is deemed to be incomplete by the Department, the Respondent shall, within 30 days of written request by the Department, submit to the Department all information requested. Upon issuance of the wastewater permit, Respondent shall comply with the terms contained in the permit and any corresponding administrative order. **The permit, if issued, shall supersede paragraphs ### this Order.**

**Comment [OGC10]:** Use with caution and contact OGC if you have any questions.

Once a permit is obtained, permit conditions may replace some of the requirements of this Order.

8. In the event that Respondent fails to submit an application for a wastewater permit within # days of the effective date of this Order, as required by paragraph (7) (*change if necessary*), Respondent shall immediately cease all discharges from its Facility to the ground and/or surface waters of the state.

9. If, within # days of the effective date of this Order, Respondent has not obtained a wastewater permit to authorize operation of the Facility by the Department, the Respondent shall immediately cease all discharges from its Facility to the ground and/or surface waters of the state. >>>END OPTIONAL<<<

**Comment [OGC11]:** You MUST distinguish between the penalty amount and costs/expenses in the CO.

**Comment [OGC12]:** You may replace this sentence with the following:

The civil penalties are apportioned as follows: \$ # for violation of Rule [Rule #](#), F.A.C.; \$ # for violation of Rule [Rule #](#), F.A.C.

**Comment [OGC13]:** Use this paragraph if you want to impose stipulated penalties.

**Comment [OGC14]:** Please consider whether or not a per day penalty is the most appropriate. For example, if any of the corrective actions are for quarterly monitoring, a \$100 a per day penalty would only result in a \$100 penalty. In such instances, consider adding the following, which would have a single penalty for each monitoring event:

Respondent agrees to pay the Department stipulated penalties in the amount of \$ # for each and every missed monitoring event required by paragraph(s) # of this Order.

**Comment [OGC15]:** Do NOT list the penalty paragraph here – do not collect stipulated penalties for failure to meet the penalty payment deadline.

10. Within # days of the effective date of this Order, Respondent shall pay the Department \$ [Insert Total Payment Amount Due](#) in settlement of the regulatory matters addressed in this Order. **This amount includes \$ [Insert Penalty Amount](#) for civil penalties and \$ [Insert Amount of Costs/Expenses](#) for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order. **The civil penalty in this case includes # violations that each warrant a penalty of \$2,000.00 or more.****

11. >>>OPTIONAL<<< Respondent agrees to pay the Department stipulated penalties in the amount of \$ # per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph(s) ### of this Order. The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment,

and shall do so as further described in paragraph #, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph # of this Order. >>>END OPTIONAL<<<

12. Respondent shall make all payments required by this Order by cashier's check or money order. Payment instruments shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Ecosystem Management and Restoration Trust Fund."

13. Except as otherwise provided, all submittals and payments required by this Order shall be sent to [Insert DEP Contact Person and Title/Section](#), Department of Environmental Protection, [Insert District Office and Address](#).

14. Respondent shall allow all authorized representatives of the Department access to the Facility and the Property at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

15. >>>OPTIONAL<<<In the event of a sale or conveyance of the Facility or of the Property upon which the Facility is located, if all of the requirements of this Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Facility or Property, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility, and (c) provide a copy of this Order with all attachments to the purchaser, operator, or person(s) in control of the Facility. The sale or conveyance of the Facility or the Property does not relieve Respondent of the obligations imposed in this Order. >>>END OPTIONAL<<<

Comment [OGC16]: Use this paragraph if you want to require notice of sale to the Department.

16. >>>OPTIONAL<<<If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman, or

Comment [OGC17]: Excusable delay clause.

other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond the control of Respondent (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department by the next working day and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances. >>>END OPTIONAL<<<

17. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

18. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

19. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Order.

20. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties up to \$10,000.00 per day per violation, and criminal penalties.

21. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this Order. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to section 120.68, F.S.

22. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

23. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), F.S.

24. This Consent Order is a final order of the Department pursuant to section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

25. >>>OPTIONAL<<<Respondent shall publish the following notice in a newspaper of daily circulation in [Insert County Name](#) County, Florida. The notice shall be published one time only within # days of the effective date of the Order. Respondent shall provide a certified copy of the published notice to the Department within 10 days of publication.

Comment [OGC18]: Use the optional language only if you want to require newspaper publication.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

### NOTICE OF CONSENT ORDER

The Department of Environmental Protection (“Department”) gives notice of agency action of entering into a Consent Order with [Insert Respondent’s Name](#) pursuant to section 120.57(4), Florida Statutes. The Consent Order addresses the [Describe nature of activities](#) at [Insert location of Facility or Property](#). The Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, [Insert District Office and Address](#). >>>END

#### **OPTIONAL<<<**

Persons who are not parties to this Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department’s final action may be different from the position it has taken in the Consent Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Consent Order;
- b) The name, address, and telephone number of each 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;
- c) An explanation of how the petitioner’s substantial interests will be affected by the Consent Order;
- d) A statement of when and how the petitioner received notice of the Consent Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Order; and

h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at [Insert District Office and Address](#). Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

26. [Rules](#) referenced in this Order are available at <http://www.dep.state.fl.us/legal/Rules/rulelistnum.htm>.

FOR THE RESPONDENT:

\_\_\_\_\_  
[Insert name or blank line followed by "Print Name"](#) [Date](#)  
[Insert title or blank line followed by "Print Title"](#)

DONE AND ORDERED this # day of [Month, Year](#), in [County](#), Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

**Comment [OGC19]:** All of this language must be included in all COs, regardless of whether publication is required.  
  
DO NOT BREAK THIS LANGUAGE INTO MULTIPLE PARAGRAPHS.

**Comment [OGC20]:** For your convenience, links to rules relevant to domestic wastewater are provided here:  
[62-4, Permits](#)  
[62-620, Wastewater Facility & Activities Permitting](#)  
[62-621, Generic Permits](#)  
[62-660, Industrial Wastewater Facilities](#)

**Comment [OGC21]:** For businesses/corporations only.  
  
Make sure that the person signing for the corporation is an OFFICER of that corporation.  
  
A REGISTERED AGENT may not sign the CO on behalf of the corporation.  
  
For additional information, see the [samples of proper signature blocks and certifications](#).

