

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)
OF ENVIRONMENTAL PROTECTION)
)
vs.)
)
Insert Respondent(s))
)
)

IN THE OFFICE OF THE
Insert District DISTRICT

OGC FILE NO. Insert OGC #

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:

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

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

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

2. Respondent is a [Describe entity, e.g. individual, corporation, etc.](#) and is a “person” within the meaning of Sections 376.301(28) and 403.031(5), F.S. Respondent is subject to the provisions of Chapters 376 and 403, F.S. and Title 62, F.A.C.

3. Since [DATE](#), Respondent has been the owner of non-residential property located at [Address \(#, Street, City\) or Parcel ID number or Legal Description](#), in [Insert County](#) County, Florida (“Property”). The Department has assigned facility identification number <#> to the Property.

4. The Property contains [# aboveground or underground](#) storage tank systems (“Systems”), each consisting of an [aboveground or underground](#) storage tank and its associated piping and dispenser. Since [DATE](#), Respondent has owned and operated the Systems. Each storage tank at the Property is an enclosed stationary container with a volume in excess of [Choose appropriate size](#): gallons in size that contains or contained [vehicular fuel, waste oil, etc.](#)

>>> **OPTIONAL**<<<On or about [DATE](#), the Systems were permanently closed. >>>END

OPTIONAL<<<

5. The Property and the [aboveground or underground](#) systems constitute a “Facility” within the meaning of Section 376.301(19), F.S.

6. On [DATE](#), [soil/groundwater](#) samples were taken from the Property. The results of laboratory analytical tests on the [soil/groundwater](#) samples revealed petroleum contaminants in the following concentrations, each of which exceeds the associated [soil/groundwater](#) cleanup target level in Chapter 62-777, F.A.C for that contaminant:

- a) [Insert contaminant](#) [# ug/L](#);
- b) [Insert contaminant](#) [# ug/L](#);

7. On or about [DATE](#), Respondent submitted a Discharge Report Form to notify the Department of the discovery of petroleum contamination at the Property. To date, Respondent has not initiated a site assessment or otherwise assessed or remediated the petroleum contamination at the Property as required by Chapter 62-770, F.A.C.

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]: Include this if the tank systems have already been closed *and* revise paragraphs 10 and 11 below accordingly.

Comment [OGC5]: For each contaminant over CTLs, list the contaminant and greatest concentration found.

8. Respondent claims that [he/she/it](#) is financially unable to comply with the requirements of Chapter 62-770, F.A.C.

9. On [DATE](#), Respondent submitted financial documents to the Department in an attempt to demonstrate [his/her/its](#) inability to correct the above violations and to pay civil penalties for these violations. Based on the financial documents provided by Respondent, the Department determined that Respondent currently has available funds of at least \$ <#> to apply towards correcting the environmental violations at the Property and civil penalties for these violations. As a material condition precedent of this Consent Order, Respondent has represented that the information contained in the financial documents submitted to the Department is true, correct, and completely represents his financial resources and status at the time each financial document was prepared. The Department's agreement to enter into this Consent Order is based upon these representations. If the information in the financial documents is incorrect, the Department may pursue whatever rights it would have had notwithstanding entry of this Consent Order.

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

ORDERED:

10. The Department will score and rank the Property for petroleum contamination site priority in accordance with the criteria set forth in Chapter 62-771, F.A.C. If funding becomes available pursuant to section 376.3071(5), F.S. or federal funding requirements, then the Department or its agent(s) are permitted [Choose activities DEP will undertake](#): at the Property that the Department, at its sole discretion, deems appropriate. The Department may designate its own contractor(s) to undertake closure activities and corrective actions at the Property without the approval of the Respondent or any other responsible party.

11. Upon the closure of the Systems and the completion of a tank closure assessment report, the Department will determine whether further assessment and remedial activities are necessary. If no additional assessment and cleanup is required, a closure review letter will be issued by the Department to Respondent. If further assessment or cleanup activities are

necessary, then the Department or its agent(s) will perform any assessment and remedial activities at the Property that the Department, at its sole discretion, deems appropriate to address the petroleum contamination existing at the Property as of [Insert “the effective date of this Order” or another appropriate date](#). As such, the Department, at its sole discretion, may choose to undertake assessment or cleanup activities that are less stringent than the requirements of Chapters 62-770 and 62-777, F.A.C. If the Department decides not to undertake remedial activities sufficient for the issuance of a Site Rehabilitation Completion Order with or without conditions, then the Department shall notify Respondent in writing of this decision. Additionally, the Department explicitly reserves the right to use, and Respondent agrees to carry out and maintain, any institutional controls or combination of institutional and engineering controls allowed by Chapter 62-770, F.A.C. to address the petroleum contamination. Any discharge subsequent to [Insert “the effective date of this Order” or another appropriate date](#) or non-petroleum contamination at the Property is not covered by this Order.

12. In no event shall paragraphs 10 or 11, including but not limited to the failure to adhere to any of the requirements or time frames of Chapters 62-770, F.A.C. give rise to a cause of action against the Department nor shall the Department be liable to Respondent or any other person or entity based on paragraphs 10 or 11.

13. Within 30 days of when the Department issues a closure review letter or Site Rehabilitation Completion Order, or within 30 days of a Department request, Respondent shall submit the following updated financial documents to the Department: (a) a completed Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments; (b) a completed Financial Affidavit, as is in use by the Department’s Office of General Counsel at the time of the order or request; and (c) Respondent’s federal income tax returns for the three years previous to the Order or request.

14. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$ [Insert Total Payment Amount Due](#), as referenced in paragraph 8 above, which shall be applied towards the reimbursement of the costs incurred by the Department in performing

the activities addressed in this Order. Payment shall be made by cashier's check or money order. The instrument shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Inland Protection Trust Fund." The Department shall retain all monies paid pursuant to this paragraph, even if this amount exceeds the total expenses incurred pursuant to paragraphs 9, 11, and 19. Any such excess shall be deemed a civil penalty.

15. 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](#).

16. In the event of a sale or conveyance of the Facility, 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, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser of the Facility and (c) provide a copy of this Order with all attachments to the purchaser of the Facility. The sale or conveyance of the Facility does not relieve Respondent of the obligations imposed in this Order.

17. The Department shall receive all proceeds from Respondent's sale of the Property. "All proceeds" is defined to mean the Property's sale price minus (a) any closing costs paid by Respondent and (b) any liens recorded against the Property which are satisfied at the time of the sale closing. Payment shall be made by cashier's check or money order. The instrument shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Inland Protection Trust Fund." If the total amount received by the Department in this matter exceeds the Department expenses incurred pursuant to paragraphs 10, 11 and 19 then the Department shall return to Respondent this excess, minus any civil penalty assessed pursuant to paragraph 12. The provisions of this paragraph shall remain in effect for four years from the date of the Department's last payment of any expenses incurred pursuant to paragraphs 10, 11, or 30. However the provisions of this paragraph will terminate early, if the Department has completed the closure, assessment, and remedial activities at the Property pursuant to

paragraphs 9 and 11, and if all Department expenses have already been reimbursed to the Department by the time of the sale.

18. 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.

19. Respondent shall use all reasonable efforts to obtain any necessary access for work to be performed in the implementation of this Order. If necessary access cannot be obtained, or if obtained, is revoked by owners or entities controlling access to the properties to which access is necessary, Respondent shall notify the Department within five business days of such refusal or revocation. The Department may at any time seek to obtain access as is necessary to implement the terms of this Order. Respondent shall reimburse the Department for any damages, costs, or expenses, including expert and attorneys fees, that the Department is ordered to pay, or that the Department incurs in connection with its efforts to obtain access as is necessary to implement the terms of this Order.

20. 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.

21. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or the rules administered by the Department that are not specifically resolved by this Order. Nothing herein shall be construed to limit the Department's authority to take any action against Respondent in response to or to recover the costs of responding to conditions at or from the Property that require Department action to abate an imminent hazard to the public health, welfare, or the environment. The Department also explicitly reserves its right, pursuant to Section 376.3071(7)(b), F.S., to seek recovery of all sums expended from the Department's trust funds pursuant to this Order.

22. The provisions of this Order are only binding upon the Department and Respondent and should not be construed to affect any rights the Department may have against any other responsible parties for the violations or contamination addressed herein.

23. 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.

24. 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.

25. 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 shall be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

26. This document constitutes the entire agreement and understanding of the parties to this Order concerning settlement of the matters addressed herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this Order.

27. 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 shall constitute a violation of Section 403.161(1)(b), F.S. Respondent's failure to comply with the terms of this Order shall constitute a violation of Sections 376.302(1)(b) and 403.161(1)(b), F.S.

28. 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.

29. 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 Order will not be effective until further order of the Department.

30. >>>**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 [OGC6]: 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. |

31. 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"](#)

Comment [OGC8]: 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](#).

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

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

[Insert Name](#)
District Director
[Insert District](#)

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk,
receipt of which is hereby acknowledged.

Clerk [Date](#)

Comment [OGC9]: DONE/ORDERED, Director's Signature, and CLERK signature must be on the same page.

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35