

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:

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

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

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.

3. Since [DATE](#), Respondent has owned non-residential property containing an [aboveground or underground](#) storage tank system (“Property”). The Property is located at [Address \(#, Street, City\) or Parcel ID number or Legal Description](#), in [Insert County](#) County, Florida.

The Department has assigned Facility Identification Number <#> to the Property.

4. >>>[OPTIONAL](#)<<<Respondent is the [owner or operator](#) of an [aboveground or underground](#) storage tank system located at the Property. >>>END OPTIONAL<<<

5. 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.](#). The tanks, which are constructed of [single-walled or double-walled cathodically protected steel, fiberglass clad steel, etc.](#), were installed at the Property on or about [DATE, or state that date is unknown](#).

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

7. >>>[OPTIONAL](#)<<<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](#);

8. [If there is ground water contamination, describe how and where the contamination enters the environment.](#)>>>END OPTIONAL<<<

Comment [OGC3]: Describe Respondent’s operation and, if necessary, differentiate those tanks that are addressed by this CO and those which are not.

Comment [OGC4]: 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 [OGC5]: In most tanks model COs, the respondent is the owner of the Facility; however, include use this paragraph if you are also naming the owner or operator of the tank system.

Comment [OGC6]: Describe Respondent’s operation and, if necessary, differentiate those tanks that are addressed by this CO and those which are not.

Comment [OGC7]: Use these paragraphs (numbered 6 and 7 here) if there is contamination.

Comment [OGC8]: For each contaminant over CTLs, list the contaminant and greatest concentration found.

9. The Department finds that the following violation(s) occurred:
- a) [Briefly describe the violation, citing the rule and/or statute violated.](#)
 - b) [Briefly describe the violation, citing the rule and/or statute violated.](#)

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

ORDERED:

10. >>>**OPTIONAL**<<<Respondent shall immediately cease all discharges from its Facility to the ground and/or surface waters of the State that are reasonably expected to cause a violation of the Department’s water quality minimum criteria and standards. >>>**END**

OPTIONAL<<<

11. Respondent shall comply with the following corrective actions within the stated time periods:

- a) [Describe required corrective actions.](#)
- b) [Describe required corrective actions.](#)

12. >>>**OPTIONAL**<<< Respondent shall assess and cleanup all petroleum contamination at the Facility as set forth in Chapter 62-770, F.A.C. Respondent shall initiate a site assessment at the Facility in accordance with Rule 62-770.600, F.A.C. within # days of the effective date of this Order, and submit to the Department a site assessment report prepared in accordance with Rule 62-770.600(8), F.A.C. within # days of the effective date of this Order. Within ten days of commencing the site assessment, Respondent shall submit to the Department written verification of initiating the site assessment. Respondent is required to timely perform all necessary assessment and cleanup until the Department issues a No Further Action Order or a Site Rehabilitation Completion Order. >>>**END OPTIONAL<<<**

13. >>>**OPTIONAL**<<<Within # days of the effective date of this Order, Respondent shall provide, at its expense, a permanent safe drinking water supply meeting all drinking water standards set forth in Chapter 62-550, F.A.C. to replace any potable water well shown by chemical and hydrogeologic analyses to be contaminated by Respondent’s operations. >>>**END**

OPTIONAL<<<

Comment [OGC9]: 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 [OGC10]: Use this paragraph if Respondent is using a system that is presently leaking.

Comment [OGC11]: Use this paragraphs if there is contamination.

Comment [OGC12]: Use this if there are potable wells contaminated by Respondent’s operations.

14. 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.

Comment [OGC13]: You MUST distinguish between the penalty amount and costs/expenses in the CO.

15. >>>**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**<<<

Comment [OGC14]: 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 [OGC15]: Use this paragraph if you want to impose stipulated penalties.

Comment [OGC16]: 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 [OGC17]: Do NOT list the penalty paragraph here – do not collect stipulated penalties for failure to meet the penalty payment deadline.

16. 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."

17. 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](#).

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. >>>**OPTIONAL**<<<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

Comment [OGC18]: Use this paragraph if you want to require notice of sale to the Department.

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. >>>END OPTIONAL<<<

20. >>>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 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<<<

Comment [OGC19]: Excusable delay clause.

21. >>>INSERT ONE OF THE FOLLOWING PARAGRAPHS<<<The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations

Comment [OGC20]: Every Consent Order must include one of these paragraphs.

agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for alleged violations 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.>>>OR<<< The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for violations outlined in this Order. This waiver is conditioned upon (a) Respondent's complete compliance with all of the terms of this Order, and (b) the remediation of contaminated areas to the applicable site rehabilitation levels. The Department's cause of action for damages accrues when the Department concludes that remediation of contaminated areas to the applicable site rehabilitation levels is not feasible or that the Respondent failed to completely implement the Department-approved remedial or corrective action plan (however designated). If the Department and Respondent fail to reach agreement on the payment of the damages, the Department may initiate appropriate legal action to recover the damages as provided by law.

Comment [OGC21]: Use the second paragraph if soil or groundwater remediation is required and delete the previous paragraph.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

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 constitutes a violation of section 403.161(1)(b), F.S.

28. 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.

29. >>>**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 [OGC22]: 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

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Clerk

[Date](#)

Comment [OGC25]: DONE/ORDERED, Director's Signature, and CLERK signature must be on the same page.

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35

TK_CO (REV. 06/09)

TK_CO