



Florida Department of Environmental Protection

Northeast District Office
7825 Baymeadows Way, Suite 200B
Jacksonville, Florida 32256-7590

cc: Solid Waste CS-07-53
County Attorney
Clerk's Office - original
Charlie Crist
Governor
Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

April 3, 2007

The Honorable Jim B. Higginbotham
Board of County Commissioner
Post Office Box 1010
Fernandina Beach, Florida 32035-1010

**re: Final Agency Action (Consent Order) in Case of
DEP vs. Board of County Commissioners, Nassau County
OGC Consent Order No. 06-1103
Nassau County – Solid Waste Program**

07 APR -5 PM 1:22
COMMUNICATIONS
OFFICE

Dear Chairman Higginbotham:

Enclosed for your implementation is the fully executed and filed Consent Order in the above-referenced case. Please familiarize yourself with the compliance dates and terms of the Consent Order so that the complete and timely performance of those obligations are accomplished.

Should you have any questions concerning the Consent Order, please contact Brian Durden at the letterhead address or at 904.807.3367.

Sincerely,

for Michael J. Fitzsimmons, Administrator
Waste Management

MJF:bd/ddb

Enclosure

cc: Alik Moncrief, OGC - MS #35
Lea Crandell, OGC - MS #35
NED Data Entry

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

IN THE OFFICE OF THE
NORtheast DISTRICT

Complainant,

OGC FILE NO. 06-1103

vs.

BOARD OF COUNTY COMMISSIONERS,
NASSAU COUNTY, FL

Respondent.

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department") and Nassau Board of County Commissioners ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and the Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to administer and enforce the provisions of Chapter 403, Florida Statutes ("Fla. Stat."), and the rules promulgated thereunder, Title 62, Florida Administrative Code ("Fla. Admin. Code"). The Department has jurisdiction over the matters addressed in this Consent Order.
2. Respondent is a person within the meaning of Section 403.031(5), Fla. Stat.
3. Respondent is the owner and operator of a solid waste disposal facility as defined in Fla. Admin. Code R. 62-701.200(115), used for the disposal of Class I waste as defined in Fla. Admin. Code R. 62-701.200(13) ("Facility"). The Facility is located at 46026 Landfill Road, Callahan, Nassau County, Florida, and further identified by Nassau County Property Appraisers Office, parcel identification number 08-2N-0000-0002-0002 ("Property"). Respondent operates the Facility under Department permit Numbers 0002870-002-SC (active disposal area) which expires on July 18, 2005, administratively

extended for the duration of the current permit renewal process and 0126326-002-SF (inactive disposal area) expired February 20, 2006, and administratively extended for the duration of the current permit renewal process.

4. The Department finds that the following violations occurred:
 - a. Based on the permit renewal application, supporting documentation and other correspondence received as part of the current permit renewal process, Department discovered that numerous landfill pumps were reported to be inoperable. Specifically, two of the three French drain pumps were not operational for a period of time. One pump was reported to be non-operational from June 24, 2005, to June 29, 2005, (5 days) and a second pump was reported to be non operational from June 24, 2005, to July 22, 2005, (28 days) due to a kinked line. Permit specific condition 1.a., requires that "The West Nassau Class I Closed (Old) Landfill is to be monitored and maintained in accordance with all applicable requirements of Chapters 62-4, 62-25, 62-522, 62-550, 62-701, and 62-730 Florida Administrative Code (F.A.C.), all applicable requirements of Department rules and all the documents submitted in support of Department File Number 0126326-002 as follows and as modified by this permit." Fla. Admin. Code R. 62-4.030 requires that "A permitted installation may only be operated, maintained, constructed, expanded or modified in a manner that is consistent with the terms of the permit."
 - b. Several of the seven leachate collection pumps were identified as being inoperable during a July 11, 2005, meeting between Respondent and Department staff and in an August 19, 2005, correspondence. In an August 30, 2005, correspondence Respondent indicated that the pumps had been returned to operation "as of about August 1, 2005," (22 days). Permit specific condition 1.a., requires that "The West Nassau Class I Closed (Old) Landfill is to be monitored and maintained in

accordance with all applicable requirements of Chapters 62-4, 62-25, 62-522, 62-550, 62-701, and 62-730 Florida Administrative Code (F.A.C.), all applicable requirements of Department rules and all the documents submitted in support of Department File Number 0126326-002 as follows and as modified by this permit.” Rule 62-4.030, F.A.C., requires that “A permitted installation may only be operated, maintained, constructed, expanded or modified in a manner that is consistent with the terms of the permit.”

- c. The inward gradient, required by Permit Specific Condition (PSC) 21.a. of the Permit, was not maintained. Respondent submitted groundwater levels data as part of a July 19, 2005, email, which indicate that Respondent failed to maintain an inward gradient during the following periods: June 24, to July 9, 2005, (15 days), July 18 to July 24, 2005, (6 days), August 8, to August 15, 2005, (7 days), August 22, to August 29, 2005, (7 days), and September 19 to September 26, 2005, (7 days). Forty-two (42) days total that the inward gradient was not maintained. Fla. Admin. Code R. 62-4.030 requires that “A permitted installation may only be operated, maintained, constructed, expanded or modified in a manner that is consistent with the terms of the permit.”
- d. One or more of the leachate level transducers, which are needed to measure leachate levels in accordance with PSC 34.h. of the Permit, may not have been operating properly for a period of time from approximately August 1, 2005, to October 19, 2005. Fla. Admin. Code R. 62-4.030 requires that “A permitted installation may only be operated, maintained, constructed, expanded or modified in a manner that is consistent with the terms of the permit.”

- e. Respondent did not inspect the interior of the leachate tanks from September 1999, until October 13, 2005, in violation of Fla. Admin. Code R. 62-701.400(6)(c)(9), and Permit Specific Condition 34.f. of the Permit.
- f. The permit renewal application and supporting documentation indicated that a small central portion of the western side slope near the top of the landfill was steeper than (3) feet horizontal to one (1) foot vertical in violation of Fla. Admin. Code R. 62-701.500(7)(c).

In response to the issues noted in paragraphs a through f above, the Department issued warning letter number WL05-0734SW45NED dated July 20, 2005, incorporated herein as Exhibit A.

- g. Large areas of exposed solid waste was observed along the southwestern side slope and southeastern landfill area during the Department's September 14, 2005, January 20, 2006, and December 11, 2006, inspections. Fla. Admin. Code R. 62-701.500(7)(e) requires that "Initial cover shall be applied and maintained at landfills in order to minimize any adverse environmental, safety, or health effects such as those resulting from birds, unauthorized wastes, blowing litter, odors, disease vectors or fires. The minimum frequency for applying cover is: 1. For Class I and II landfills, at the end of each working day."
- h. Two leachate seeps were observed along the lower central portion of the southern Facility side slope area. One seep was actively emitting gas bubbles, and both emitted an unpleasant smelling liquid.
- i. Leachate was observed accumulating on the southeastern corner of the landfill and exposed waste was observed in and around the leachate. Fla. Admin. Code R. 62-701.500(7)(j), requires that "Erosion control measures shall be employed to correct any erosion which exposes waste or causes malfunction of the storm water

management system. Such measures shall be implemented within three days of occurrence. If the erosion cannot be corrected within seven days of occurrence the landfill operator shall notify the Department and propose a correction schedule.”

- j. A portion of the leachate described in paragraph h., had escaped from the landfill area into a nearby stormwater management system. A strong unpleasant odor was also detected in the area where the leachate had entered the stormwater management system. Fla. Admin. Code R. 62-701.400(4) requires that “Landfills shall have a leachate collection and removal system that is designed, constructed, maintained, and operated to collect leachate and convey it to collection points for removal.”
- k. In the active working face two unauthorized solids waste items (one battery and one whole tire) were observed in the waste stream as it was being pushed into the final disposal area. Section 7.7 Incoming Wastes, of the operation plan states “No prohibited wastes will be disposed at the West Nassau Landfill.” Fla. Admin. Code R. 62-701.500(2) requires that “Each landfill owner or operator shall have an operational plan that provides written detailed instructions for the daily operation of the landfill. The operation plan shall be substantially complied with at all times.” Fla. Admin. Code Rules 62-701.300(8)(a) and (e) prohibit disposing of lead-acid batteries or whole waste tires, except as provided in Chapter 62-711, in any landfill. In response to these issues the Department issued warning letter number WL050-0745SW45NED dated October 6, 2005, incorporated herein as Exhibit B.
- l. Department received a complaint on October 17, 2005, alleging Respondent was not covering the landfill disposal area at night and that a strong odor was coming from the Facility onto the surrounding property. The Department conducted an early morning investigation of the Facility and found that the waste was covered; however, Respondent appeared to be operating a large working face in violation of Rule 62-

701.500(7)(d). A strong unpleasant odor was detected at the southeastern Facility boundary and on the adjacent property located southeast of the landfill. Results of the complaint investigation were noted on the Department's October 19, 2005, Complaint investigation/inspection checklist, and a copy given to Respondent with comments requesting the odor issues be corrected and a written response indicating what corrective actions had been taken be submitted the Department. A copy of the Department's October 19, 2005, Complaint investigation/inspection checklist is incorporated herein as Exhibit C. Respondent failed to implement an odor control plan in violation of Fla. Admin. Code R. 62-701.530(3)(b).

Respondent submitted correspondence to the Department on October 20 and 27, 2005, representing that many of the issues addressed herein had been corrected. Copies of Respondent's October correspondence are incorporated herein as Exhibit D. The Department conducted a follow-up compliance evaluation inspection of the Facility on November 30, 2005, confirming that many of the non compliance issues identified herein (inoperable pumps, failure to maintain inward gradient, disposal of unauthorized waste, overly steep side slopes, leachate seeps, and leachate entering the stormwater management system) had been addressed to the satisfaction of the Department. A copy of the follow-up inspection checklist is incorporated herein as Exhibit E.

The Respondent still has several outstanding issues to be addressed as part of this Consent Order including reestablishment of vegetative cover along the west side slope (Respondent represents that this issue is to be addressed as part of the construction of the partial closure of this area), final resolution of the odor issue (Respondent represents that this issue is to be addressed as part of the expansion of the Landfill Gas system), assessment of any impacts resulting from the leachate leaving the landfill into the storm water management system (Respondent submitted a Preliminary Contamination Assessment Plan to the Department on December 5, 2005, and a Preliminary Contamination Assessment Report on May 1, 2006) and correction of the ongoing initial cover/erosion issue resulting in exposed waste over portions

of the southern and southeastern landfill area. In response to the leachate entering the storm water management system issue, Respondent submitted a Preliminary Contamination Assessment Plan to the Department on December 5, 2005, and a Preliminary Contamination Assessment Report on May 1, 2006.

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

ORDERED:

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

a. Respondent's April 2006, Preliminary Contamination Assessment Report prepared by Golder Associates, Inc. (Golder) indicates the presence of contaminants in the surface water in violation of the Department's water quality standards and/or minimum criteria. Respondent shall implement the Risk Based Corrective Actions in the manner and within the time frames set forth in Fla. Admin. Code Chapter 62-780. The department recognizes May 1, 2006, (the Preliminary Contamination Assessment Report date) as the date of discharge discovery.

b. By March 27, 2007, Respondent shall submit to the Department a Site Assessment Report in accordance with Fla. Admin. Code R. 62-780. Upon submittal of the Site Assessment Report to the Department, the Respondent shall commence and complete all further tasks required by Fla. Admin. Code Chapter 62-780, in accordance with the requirements and time schedules identified in Fla. Admin. Code Chapter 62-780.

c. Respondent shall provide a temporary source of potable water within seven (7) days and a permanent safe drinking water supply within 180 days after discovery of contamination to replace any potable water well that is shown by chemical and hydrogeologic analysis to be contaminated by the Facility. This water shall meet all drinking water standards set forth in Fla. Admin. Code Chapter 62-550, and shall be provided at Respondent's expense.

d. Respondent shall continue implementing the odor monitoring program in accordance with Fla. Admin. Code R. 62-701.530(3)(b)1. Respondent shall also continue implementing the Department's approved odor remediation plan, incorporated herein as Exhibit F, and as required by Fla. Admin. Code R. 62-701.530(3)(b)2 within time frames specified therein.

e. By November 30, 2007, Respondent shall cover the landfill's western and southwestern side slopes with a final cover system, including vegetation, in accordance with specific condition 45.a., of the Permit as follows: "The Permittee shall cover approximately 9.2 acres of the landfill's western and southwestern side slopes with a final cover system, including adequate vegetation, by November 30, 2007, or by a later date if extended, in writing, by the Department, and shall conduct the construction in accordance with the permit application, plans, and as modified by this permit. The final cover system shall consist of from bottom to top: 12 inches of liner bedding soil between the waste and liner, a 40-mil textured, linear low density polyethylene (LLDPE) geomembrane, a composite drainage net consisting of a geonet sandwiched in between two geotextiles, an 18-inch protective soil layer, and a 6-inch vegetative layer consisting of topsoil and bahia sod. The geomembrane liner shall have a maximum water vapor transmission rate of $2.4 \text{ g}/(\text{m}^2 \times \text{day})$."

f. Respondent shall implement all of the recommendations noted on page three and four (3-4) of the Tank Industry Consultants, Inc., October 18, 2005, report entitled "Evaluation of Three 20,000 Gallon Leachate Tanks Nassau County Solid Waste Management, Callahan, Florida TIC 05.190.F1074.01, .02, .03," and incorporated herein as Exhibit G within the time frames specified therein.

7. Within thirty (30) days after the effective date of this Consent Order, Respondent shall pay the Department \$110,795 in settlement of the matters addressed in this Consent Order. This amount includes \$2,000 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order.

a. The civil penalties are apportioned as follows: \$3,900 for violation of Fla. Admin. Code R. 62-701.500(7)(j), failure to implement erosion control measures to correct any erosion which exposes waste or causes malfunction of the storm water management system plus 25% for history of non compliance for a total of \$4,875; \$3,900 for violation of Fla. Admin. Code R. 62-701.500(7)(e), inadequate cover resulting in exposed waste plus 25% for history of non compliance for a total of \$4,875.00; \$3900 for violation of Fla. Admin. Code R. 62-701.500(7)(c), failure to maintain proper slope; \$5300 for violation of Fla. Admin. Code R. 62-701.500(2), failure to substantially comply with the operation plan resulting in unauthorized waste disposal, plus 25% for history of non compliance for a total of \$6,625; \$7000 for violation of Fla. Admin. Code R. 62-701.400(4), leachate runoff into the stormwater management system; \$400 for violation of Fla. Admin. Code R. 62-701.530(3)(6), off site odor; \$3,900 for violation of Fla. Admin. Code R. 62-4.030, Failure to operate the leachate collection pumps in a manner that is consistent with the terms of the permit, plus \$16,380 for twenty-one (21) additional days of noncompliance for a total of \$20,280; \$3,900 for violation of Fla. Admin. Code R. 62-4.030, Failure to operate the French drain pumps in a manner that is consistent with the terms of the permit, plus \$21,060 for twenty-seven (27) additional days of noncompliance for a total of \$24,960; and \$3,900 for violation of Fla. Admin. Code R. 62-4.030, Failure to maintain an inward gradient in a manner that is consistent with the terms of the permit, plus \$31,980 for forty-one (41) additional days of noncompliance for a total of \$35,880. 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 thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund."

8. In lieu of making cash payment of \$108,795 in civil penalties, as set forth in paragraph 7, above, Respondent may elect to offset this amount by implementing an in-kind penalty project that meets all of the requirements of Exhibit H. The in-kind project must be worth at least one and a half times the civil penalty amount, which in this case is the equivalent of at least \$163,192.50. If Respondent

chooses to implement an in-kind project, Respondent shall notify the Department in writing of its election within 15 days of the effective date of this Consent Order. Notwithstanding the election to implement an in-kind project, payment of the Department's costs of \$2000.00 must be paid within thirty (30) days after the effective date of this Consent Order.

9. Respondent agrees to pay the Department stipulated penalties in the amount of \$500 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph[s] six (6), seven (7), nine (9), eleven (11), and twelve (12) of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Consent Order. Within thirty (30) days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to "The Department of Environmental Protection" by cashier's check or money order and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund." Payment shall be sent to the Department of Environmental Protection, Northeast District, 7825 Baymeadows Way, Suite 200B, Jacksonville, Florida 32256-7590. The Department may make demands for payment at any time after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Consent Order. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph seven (7) of this Consent Order. If the Department is required to file a lawsuit to recover stipulated penalties under this paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this paragraph.

10. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered

circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, material man or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause 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 orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and 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 for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Consent Order.

11. Respondent shall publish the following notice in a newspaper of daily circulation in Nassau County, Florida. The notice shall be published one time only within thirty (30) days after the effective date of the Consent Order.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF CONSENT ORDER

The Department of Environmental Protection gives notice of agency action of entering into a Consent Order with Nassau Board of County Commissioners pursuant to Section 120.57(4), Florida Statutes. The Consent Order addresses the operational issues found at the West Nassau Landfill located at 46026 Landfill Road, Callahan, Nassau County, Florida, and operated in accordance with Department of Environmental Protection permit numbers 0002870-002-SC and 0126326-002-SF. 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, Northeast District, 7825 Baymeadows Way, Suite 200B, Jacksonville, Florida 32256-7590.

Persons whose substantial interests are affected by this Consent Order have a right to petition for an administrative hearing on the Consent Order. The Petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within twenty-one (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 named above at the address indicated. Failure to file a petition within the twenty-one (21) days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information: (a) The name, address, and telephone number of each petitioner; the Department's identification number for the Consent Order and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of the Consent Order; (c) A statement of how each petitioner's substantial interests are affected by the Consent Order; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Consent Order; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order; (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within twenty-one (21) days of

receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under Section 120.573, Florida Statutes, 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.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. 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) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement, clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference.

(h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty (60) 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 twenty-one (21) days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, 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.

12. Within ten (10) days from publication of the notice in paragraph 11, Respondent shall provide proof of such publication to the Department.

13. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.

14. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Florida Statutes. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.161(1)(b), Florida Statutes.

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

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

17. All submittals and payments required by this Consent Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, Northeast District, 7825 Baymeadows Way, Suite 200B, Jacksonville, Florida 32256-7590.

18. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the terms of this Consent Order, including but not limited to undisclosed releases, contamination or polluting conditions.

19. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Order, hereby waives its right to seek judicial imposition of damages or civil penalties for alleged violations outlined in this Consent Order; provided, however, should the Department conclude that clean up of the contaminated area to site rehabilitation levels is not feasible; or should the Respondent not completely implement the remedial or corrective action plan (however denominated) as approved by the Department; the Department expressly reserves its right to seek restitution from Respondent for environmental damages. Within twenty (20) days of

receipt of the Department's written notification of its intent to seek said restitution, Respondent may pay the amount of the damages or may, if it so chooses, initiate negotiations with the Department regarding the monetary terms of restitution to the State. Respondent is aware that should a negotiated sum or other compensation or environmental damages not be agreed to by the Department and Respondent within twenty (20) days of receipt of Department written notification of its intent to seek restitution, the Department may institute appropriate action, either administrative through a Notice of Violation, or judicial, in a court of competent jurisdiction through a civil complaint, to recover Department assessed environmental damages as provided by law.

20. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes, and waives that right upon signing this Consent Order.

21. With regard to any agency action taken by the Department concerning Respondent's proposals submitted by the Respondent to the Department as required by Fla. Admin. Code Chapter 62-780, the Respondent may file a Petition for Formal or Informal Administrative Hearing. If Respondent objects to the Department's agency action pursuant to Sections 120.569 and 120.57, Fla. Stat., Respondent shall have the burden to establish that the Department's agency action was not reasonable. The petition must contain the information set forth below in paragraph _ and 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 the Department's agency action the Respondent intends to challenge and must conform with the requirements of Fla. Admin. Code Rule 28-106.201 or 28-106.301. Failure to file a petition within this time period shall constitute a waiver by Respondent of its right to request an administrative proceeding under Sections 120.569 and 120.57, Fla. Stat. The Department's determination, upon expiration of the 21 day time period if no petition is filed, or the Department's Final Order as a result of the filing of a petition, shall be incorporated by reference into this

Consent Order and made a part of it. All other aspects of this Consent Order shall remain in full force and effect at all times. If both parties agree, the Department and Respondent may mediate the dispute as provided in Section 120.572, Fla. Stat. If the parties agree to mediation, the time for filing a petition pursuant to this paragraph is tolled until such time as the mediation is unsuccessful. Upon notice from the Department that the mediation is unsuccessful, the Respondent shall have 21 days to file its petition as provided herein. If Respondent seeks an administrative proceeding pursuant to this paragraph, the Department may file suit against Respondent in lieu of or in addition to holding the administrative proceeding to obtain judicial resolution of all the issues unresolved at the time of the request for administrative proceeding.

22. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both Respondent and the Department.

23. 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 Consent Order have not been fully satisfied, Respondent shall, at least thirty (30) days prior to the sale or conveyance of the Property or Facility, (1) notify the Department of such sale or conveyance, (2) provide the name and address of the purchaser, or operator, or person(s) in control of the Facility, and (3) provide a copy of this Consent Order with all attachments to the new owner. The sale or conveyance of the Facility, or the property upon which the Facility is located shall not relieve the Respondent of the obligations imposed in this Consent Order.

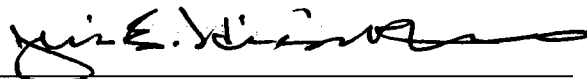
24. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities, which may arise under Florida law, nor is it a settlement of any violation, which may be prosecuted criminally or civilly under federal law.

25. Respondent shall use all reasonable efforts to obtain any necessary access for work to be performed in the implementation of this Consent 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 (5) 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 Consent Order. The 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 Consent Order. Respondent shall pay these sums to the Department or arrange a payment schedule with the Department within thirty (30) days of written demand by the Department.

26. This Consent Order is a final order of the Department pursuant to Section 120.52(7), Florida Statutes, 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, Florida Statutes. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

FOR THE RESPONDENT



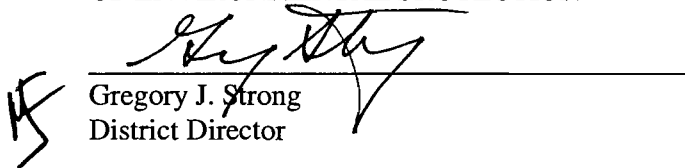
The Honorable ~~Tom Branan, Chairman~~ **Jim B. Higginbotham**
Board of County Commissioners **Chairman**
Nassau County

3-14-07
DATE

DONE AND ORDERED this 3RD day of APRIL, 2007,

Jacksonville, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Gregory J. Strong
District Director

FILING AND ACKNOWLEDGEMENT FILED, on this date, pursuant to §120.52 Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Donna Benefield
Clerk

4/2/07
Date

Copies furnished to: Lea Crandall, Agency Clerk, Mail Station 35