

FORM 1.997. CIVIL COVER SHEET

The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner with the Clerk of Court for the purpose of reporting uniform data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

I. CASE STYLE

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT,
IN AND FOR MANATEE COUNTY, FLORIDA

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Plaintiff

Case # _____

Judge _____

vs.

HRK HOLDINGS, LLC

Defendant

II. AMOUNT OF CLAIM

Please indicate the estimated amount of the claim, rounded to the nearest dollar. The estimated amount of the claim is requested for data collection and clerical processing purposes only. The amount of the claim shall not be used for any other purpose.

- \$8,000 or less
- \$8,001 - \$30,000
- \$30,001- \$50,000
- \$50,001- \$75,000
- \$75,001 - \$100,000
- over \$100,000.00

III. TYPE OF CASE (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x on both the main category and subcategory lines.

CIRCUIT CIVIL

- Condominium
- Contracts and indebtedness
- Eminent domain
- Auto negligence
- Negligence—other
 - Business governance
 - Business torts
 - Environmental/Toxic tort
 - Third party indemnification
 - Construction defect
 - Mass tort
 - Negligent security
 - Nursing home negligence
 - Premises liability—commercial
 - Premises liability—residential
- Products liability
- Real Property/Mortgage foreclosure
 - Commercial foreclosure
 - Homestead residential foreclosure
 - Non-homestead residential foreclosure
 - Other real property actions
- Professional malpractice
 - Malpractice—business
 - Malpractice—medical
 - Malpractice—other professional
- Other
 - Antitrust/Trade regulation
 - Business transactions
 - Constitutional challenge—statute or ordinance
 - Constitutional challenge—proposed amendment
 - Corporate trusts
 - Discrimination—employment or other
 - Insurance claims
 - Intellectual property
 - Libel/Slander
 - Shareholder derivative action
 - Securities litigation
 - Trade secrets
 - Trust litigation

COUNTY CIVIL

- Small Claims up to \$8,000
- Civil
- Real property/Mortgage foreclosure

- Replevins
- Evictions
 - Residential Evictions
 - Non-residential Evictions
- Other civil (non-monetary)

COMPLEX BUSINESS COURT

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes No

IV. REMEDIES SOUGHT (check all that apply):

- Monetary;
- Nonmonetary declaratory or injunctive relief;
- Punitive

V. NUMBER OF CAUSES OF ACTION: []

(Specify)

3

VI. IS THIS CASE A CLASS ACTION LAWSUIT?

- yes
- no

VII. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- no
- yes If “yes,” list all related cases by name, case number, and court.

VIII. IS JURY TRIAL DEMANDED IN COMPLAINT?

- yes
- no

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature: s/ Kirk S. White
Attorney or party

Fla. Bar # 73113
(Bar # if attorney)

Kirk S. White
(type or print name)

08/05/2021
Date

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CIVIL DIVISION

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiff,

vs.

Civil Action No.

HRK HOLDINGS, LLC, a Florida limited liability
company,

Defendant.

_____ /

PETITIONS FOR ENFORCEMENT AND COMPLAINT

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (the Department),
files this Petitions for Enforcement and Complaint against, HRK HOLDINGS LLC (HRK) and
alleges as follows:

Jurisdiction and Venue

1. This is a civil complaint action for injunctive relief, cost recovery, attorney's fees, damages, civil penalties in excess of \$30,000.00 exclusive of interest for violations of Chapter 403, Florida Statutes (Fla. Stat.), and Title 62, Florida Administrative Code (F.A.C), as well as to enforce the requirements of a Consent Order and Administrative Agreement to which HRK is bound pursuant to section 120.69, Fla. Stat.

2. This Court has jurisdiction over this action pursuant to Article V, Section 5 of the Florida Constitution, and sections 26.012, 120.69(1), 403.121, 403.131, 403.141, and 403.161, Fla. Stat.

3. Venue in this action lies in the Twelfth Circuit because the subject matter of this action is located in Manatee County, Florida, and because the events giving rise to this action took place in Manatee County, Florida.

Parties

4. The Department is the regulatory agency of the State of Florida, created by section 20.255, Fla. Stat., charged with the power and duty to administer and enforce Chapters, 376 and 403, Fla. Stat., and the regulations promulgated thereunder in Chapter 62, F.A.C.

5. HRK is a Florida Limited Liability Company and a person as defined by section 403.031(5), Fla. Stat.

Factual Background

6. HRK owns a parcel of real property located at 13300 Highway 41 North, Palmetto, Florida in Manatee County (Property).

7. HRK purchased the Property in 2006 from the trustee in a bankruptcy proceeding from its former owner, Piney Point Phosphates, Inc.

8. Located on the Property is a facility which historically operated as a phosphate fertilizer manufacturing complex (Facility).

9. The Facility consists, in part, of a 466-acre phosphogypsum stack system (System) including, among others, two lined reservoir compartments on the New Gypstack (NGS) area at the site – one to the north (NGS-N) and the other to the south (NGS-S). Two additional lined reservoir compartments are constructed atop the Old Gypstack (OGS) area – one to the north (OGS-N) and the other to the south (OGS-S).

10. Currently, the NGS-N and NGS-S contain a mixture of phosphogypsum process water with mixed seawater, and the NGS-S also contains settled dredged materials transferred to the Facility by the Manatee County Port Authority.

11. In April 2007, soon after HRK purchased the Property, HRK entered an agreement with the Manatee County Port Authority to receive, via a pipeline, approximately 1,500,000 cubic yards of materials dredged from Port Manatee. HRK agreed and planned to store dredged materials in a combination of the OGS-S and OGS-N lined reservoir compartments, with additional materials to be settled during clarification in the NGS-S lined compartment. The OGS-S, OGS-N, and the NGS-S lined reservoir compartments were not utilized for process water storage at the time of the dredge project. The plan was for HRK to pipe the decanted waters from the NGS-S lined compartment back to the Manatee County Port Authority's water management system for returning clarified seawater to Port Manatee. However, on May 11, 2011, less than one month after HRK started receiving the dredged material, the NGS-S compartment developed a leak that compromised the integrity of the wall of the System, creating an imminent risk of a catastrophic release of phosphogypsum process water, dredged sea water, and embankment materials into the surrounding area and environment. In an effort to keep the released water onsite, HRK placed the released sea water in other lined containment areas, including the lined NGS-N compartment that held process water at that time, thereby mixing the two. HRK managed to ultimately avoid a catastrophic discharge, HRK still ended up discharging millions of gallons of primarily sea water into Tampa Bay.

12. Just over a year later, in June 2012, HRK filed for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court in response to HRK's increasing debt and liabilities, including lawsuits resulting from the 2011 NGS-S compartment failure and discharges (HRK bankruptcy).

13. The HRK bankruptcy lasted from June of 2012 until August 16, 2016, when HRK renegotiated the debts of its creditors and the court confirmed a plan of reorganization, and issuance of a March 20, 2017, Final Decree (see jointly administered Case No. 8:12-bk-9868, U.S.

Bankruptcy Court, Middle District of Florida, Tampa Division), where HRK conditionally emerged from its Chapter 11 Bankruptcy case. HRK's schedules at the time revealed virtually no assets beyond the Property/Facility itself. The Reorganization plan anticipated the development of over a hundred acres at the Property.

14. During the HRK bankruptcy, HRK sought to raise money for operations from the sales of parcels of land at the Property. In November 2012, HRK requested approval from their first mortgage holder, Regions Bank, to sell a portion of the Property. The Department acquiesced to the proposed sale only after both HRK and Regions agreed to dedicate \$2.5 million of the proceeds to completing a Facility repair plan. In March of 2014, HRK sought authority to sell another portion of the Property, and the Department compelled HRK (with Regions' agreement) to dedicate another \$2.5 million from property sale proceeds to long-term care and water management at the Facility. Prior to HRK exiting bankruptcy in 2017, the Department intervened through the bankruptcy court consistent with agreements among HRK, Regions, and the Department, to require \$1.8 million in settlement funds from a separate HRK lawsuit be deposited to a Long Term Care Escrow account established at the Florida Department of Financial Services, to provide post confirmation financial assurance of the ability of the debtors to meet regulatory obligations.

15. When HRK exited the bankruptcy proceeding in March 2017, pursuant to the August of 2016 confirmed reorganization plan, it had the intent and apparent ability to meet its daily regulatory obligations and pay its secured debts of approximately \$10 million. At the time, HRK maintained a \$1.65 Million letter of credit payable to the escrow, to partially meet its financial responsibility obligations to the Department associated with the Facility. However, by March 2017, HRK had less than \$100,000 in its bank accounts.

16. In addition to participating in the bankruptcy proceedings, the Department pursued an enforcement action against HRK for multiple violations including its continued (1) failure to submit and implement a water management plan to remove the remaining sea water and process water from the Facility and (2) failure to ensure the availability of financial resources to carry out its responsibilities for the long-term care of the phosphogypsum stack. The enforcement action resulted in a Consent Order (CO) that was executed in March 2014 and that is the subject of the Petition to Enforce Consent Order below.

17. Among other things, the CO required HRK to develop a water management plan, to remove the process water from the System no later than February 2019 and establish a schedule for HRK to post adequate financial assurance for the long-term care of the site. As specified below, HRK has continually failed to fulfill these obligations.

18. As specified below, HRK's acts and omissions have supplemented, contributed to, dispersed, and exacerbated existing contamination and wrongful discharges at the Facility. Moreover, HRK has not satisfactorily performed its obligations of care of the Facility including but not limited to its financial assurance obligations. The Department has satisfied all conditions precedent to filing this Complaint and Petitions for Enforcement including providing written notification to HRK counsel of the failures to perform alleged herein.

19. On March 24, 2020, after pursuing multiple enforcement actions related to the Facility, participating in the 4-year bankruptcy proceeding, and regularly warning HRK of its financial assurance and water management obligations, the Department called HRK's \$1.65 million letter of credit referenced in paragraph 15 above which was subsequently deposited to the HRK escrow account. While this amount is far less than the amount HRK is required to post and is inadequate to achieve HRK's environmental responsibilities, a portion of the money has been

used by HRK, under the regulatory authorities of the Department, to address the critical operation and maintenance needs at the Site.

20. HRK never complied with the CO, as it did not provide resources to implement additional process water removal from the System. On March 25, 2021, HRK reported increased flow and specific conductance (conductivity) measurements in the buried seepage interceptor drains that surround the System, which indicated the presence of a leak from the NGS-S lined compartment.

21. Given the likelihood of an imminent threat of a potential loss of containment and a catastrophic release of large amounts of seawater, mixed process water, and embankment materials from the System, the Department issued an Emergency Final Order on March 29, 2021, directing HRK to take immediate action to prevent a containment failure of the phosphogypsum stack and catastrophic release of process wastewater and embankment materials. On April 3, 2021, Governor Ron DeSantis issued an Executive Order declaring a state of emergency in Hillsborough, Manatee and Pinellas Counties due to the potential stack failure and catastrophic discharges.

22. As indicated by the allegations of this Complaint, HRK is incapable of operating the Facility in compliance with Florida's environmental laws and the standards, permits, orders, and agreements related to the management of the Property and Facility. If HRK is allowed to continue operating the Facility and Property, irreparable harm is likely to occur.

23. Because no remedy at law would be or is presumed adequate in the event of a phosphogypsum stack system failure or abandonment, the Legislature has specifically empowered the Department to request injunctive relief for the violations enumerated herein pursuant to section 403.131, Fla. Stat. Further pursuant to section 403.4154, Fla. Stat., the Legislature has specifically determined that failure of an owner or operator of a phosphogypsum stack system to comply with Department rules requiring demonstration of closure financial responsibility may be considered

by the Department as evidence that a phosphogypsum stack poses an imminent hazard. As such, the Department has or will soon move for the appointment of a receiver to manage the Facility and oversee its complete closure, including removing the process water, sealing the System and preventing further discharges.

24. The Department's requested injunction is in the public interest as necessary for the protection of public health, safety, and welfare. Moreover, the Florida Legislature has specifically declared in section 403.021(5), Fla. Stat., that actions brought by the Department for injunctive relief to prevent further harm to the environment are in the public interest.

25. The Department's right to injunctive relief arises from HRK's continuing failure to comply with applicable standards, orders, including as set forth in the terms and conditions of the CO, Administrative Agreements, Chapter 403, Fla. Stat., and the attendant F.A.C. provisions. Section 403.131, Fla. Stat., gives the Department the express authority to seek an injunction to remedy these violations.

26. In maintaining this action, the Department has incurred and will continue to incur costs and expenses, including attorney's fees, which are recoverable pursuant to sections 403.141(1) and 120.69(7), Fla. Stat.

COUNT I - ENFORCEMENT OF CONSENT ORDER

27. Paragraphs 1 through 26 are realleged herein.

28. On March 17, 2014, the CO which the Department and HRK entered into became final and effective. The CO constitutes a "final order" as defined by section 120.52(7), Fla. Stat., and an "agency action" as defined by section 120.52(2), Fla. Stat. A copy of the executed CO is attached hereto as Exhibit 1.

29. In paragraph O of the CO, the Department and HRK agreed that the terms and conditions set forth in the CO may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, Fla. Stat.

30. In paragraph L of the CO, the Department and HRK agreed that a violation of the terms of the Consent Order may subject HRK to judicial imposition of damages and civil penalties up to \$50,000.00 per day per violation.

31. The acts or omissions of HRK as described in paragraphs 33 through 77 have supplemented, contributed to, dispersed, or exacerbated existing contamination at the Facility.

32. Paragraph B of the CO required HRK to remove the process water contained in the NGS-N and NGS-S compartments no later than February 15, 2019.

33. HRK has violated section 403.161(1)(b), Fla. Stat., by failing to comply with paragraph B of the CO and remove the process water in NGS-N and NGS-S no later than February 15, 2019. HRK's failure to remove the process water has resulted in discharges that do not comply with applicable standards, permits, and orders.

34. HRK is liable to the Department for civil penalties in an amount of up to \$50,000 per day for each day HRK has not complied with paragraph B of the CO by failing to remove the process water in NGS-N and NGS-S, beginning after February 15, 2019.

35. On or about March 25, 2021, a leak in the NGS-S lined compartment was detected by the Department and HRK (hereinafter, "Leak").

36. Process water which should have been removed from NGS-S by HRK on or before February 15, 2019, was released into the surrounding environment, including Tampa Bay, due to the Leak.

37. As a result of HRK's failure to comply with paragraph B of the CO and remove the process water, the Leak, which would have otherwise been inconsequential, constituted an

immediate danger to the public health, safety, or welfare and caused the discharge of approximately 215 million gallons of process water and seawater from the NGS-S compartment (hereinafter, HRK's Discharge) between March 30 and April 9, 2021.

38. HRK's failure to comply with paragraph B of the CO and resulting discharge of process water caused damage to the waters, property, including animal, plant, and aquatic life, of the state which are recoverable damages pursuant to section 403.141(1), Fla. Stat. The discharge did not comply with applicable standards, permit, and orders.

39. HRK's failure to comply with paragraph B of the CO resulted in HRK's Discharge and has caused the Department to incur reasonable costs and expenses in tracing pollution and damage to the state's waters and property, in controlling and abating HRK's Discharge and the pollutants caused therefrom, and in restoring the waters and property, including animal, plant, and aquatic life, of the state to their former condition, all of which are recoverable pursuant to section 403.141(1), Fla. Stat.

40. HRKs demonstrated lack of funds and demonstrated inability to manage the Facility make it likely that – absent the relief sought herein - the violations alleged herein are likely to recur, including through further discharges that do not comply with applicable standards, permits, and orders.

PRAYER FOR RELIEF – COUNT I

WHEREFORE, the Department respectfully prays that this Court enter Judgment and Order the following relief:

A. Issuing a mandatory injunction requiring HRK to immediately comply with all provisions of the CO pursuant to sections 120.69(2) and 403.131, Fla. Stat.;

B. Assessing civil penalties against HRK and in favor of the Department in the amount of at least \$50,000 for each day it failed to comply with the CO pursuant to sections 120.69(2) and 403.727(3)(a), Fla. Stat., and paragraph L of the CO.;

C. Awarding the Department damages for harm caused to the waters, property, including animal, plant, and aquatic life, by HRK's failures pursuant to sections 120.69(2) and 403.141(1), Fla. Stat.;

D. Awarding the Department all costs and expenses, including attorney's fees, in maintaining this action, which are recoverable pursuant to sections 120.69(2) and 403.141, Fla. Stat.;

E. Granting all other relief as the Court deems just and proper.

COUNT II- ENFORCEMENT OF ADMINISTRATIVE AGREEMENT

41. Paragraphs 1 through 40 are realleged herein.

42. On January 28, 2011, the Administrative Agreement (copy of Administrative Agreement attached hereto as Exhibit 2) between the Department and HRK became final and effective. This Administrative Agreement constitutes a "final order" as defined by section 120.52(7), Fla. Stat., and an "agency action" as defined by section 120.52(2), Fla. Stat.

43. The Administrative Agreement was in part entered for the purpose of specifying the applicable surface water discharge limitations, environmental monitoring, operational, and long-term care requirements for the phosphogypsum stack system including the NGS-S lined compartment including ensuring that discharges comply with all applicable standards, permits, and orders.

44. The acts or omissions of HRK as described in paragraphs 42 through 77 have supplemented, contributed to, dispersed, or exacerbated existing contamination at the Facility including unpermitted discharges.

45. HRK has failed to satisfactorily perform its obligations under the Administrative Agreement including, but not limited to, long-term care and financial assurance.

46. From January 28, 2011 to date, pursuant to Paragraph 2 of the Administrative Agreement, the Administrative Agreement continues in-force and effect as the Department has not taken final agency action on re-issuance of the NPDES Wastewater Permit No. FL0000124.

47. Pursuant to paragraph 11.i. of the Administrative Agreement, HRK and the Department agreed that the terms and conditions of the Administrative Agreement could be enforced in circuit court pursuant to sections 120.69 and 403.121, Fla. Stat.

48. Pursuant to paragraph 11.i. of the Administrative Agreement, HRK and the Department agreed that any failure to comply with the terms and conditions of the Administrative Agreement would constitute a violation of section 403.161(1)(b), Fla. Stat.

Financial Assurance Violations

49. HRK failed to provide annual proof of financial assurance to the Department as required by and in violation of Paragraph 8.a. of the Agreement, in accordance with Rule 62-673.640(1), F.A.C., and section 403.161(1)(b), Fla. Stat.

50. Due to the failure to provide financial assurance for costs of terminal closure, including closing, long-term care, and water management, for the phosphogypsum stack system, including the NGS-S and NGS-N lined compartments, HRK has caused damage to the waters, property, including animal, plant, and aquatic life, of the state which are recoverable damages pursuant to section 403.141(1), Fla. Stat.

51. Due to HRKs' failure to provide financial assurance for costs of terminal closure, including closing, long-term care, and water management, for the phosphogypsum stack system, including the NGS-S and NGS-N compartments, the Department has and will continue to incur reasonable costs and expenses in tracing the source of the discharge and in controlling and abating

the source of the discharge and the pollutants caused therefrom, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state to their former condition all of which are recoverable pursuant to section 403.141(1), Fla. Stat.

Ground and Surface Water Quality Violations

52. Pursuant to section 7.b.(15) of the Agreement, all ground water quality criteria specified in 62-520, F.A.C. shall be met at the edge of the “zone of discharge.”

53. Section 7.b.(14) of the Agreement further establishes that the Facility’s zone of discharge extends horizontally to the Facility’s property boundary and vertically to the base of the surficial aquifer.

54. The monitoring wells designated as MWC-02, MWC-5R, MWC-6A, MWC-08, MWC-09, MWC-18, MWC-19, MWC-22, MWC-23 are located at the edge of the Facility’s zone of discharge, and are designated by Section 7.b.(2) of the Agreement as “compliance wells.”

55. The terms “compliance wells” and “zone of discharge” are used interchangeably throughout this Petition.

56. Section 7.b.(3) of the Agreement prohibits the Facility’s compliance wells from exceeding the following limits: Total Recoverable Sodium (160 mg/l); Gross Particle Activity Alpha (15 pCi/l); Total Radium 226 plus Radium 228 (5 pCi/l).

57. Pursuant to Rule 62-550.310(1)(a), F.A.C., the “Maximum Contaminant Level” (“MCL”) for Sodium is 160 mg/l, for Gross Particle Alpha is 15 pCi/l and Total Radium 226 plus Radium 228 is 5 pCi/l. The MCL for Sodium, Gross Particle Alpha and Total Radium 226 plus Radium 28 are “Primary Drinking Water Standards.”

58. Pursuant to Rule 62-520.420(1) F.A.C. in pertinent part, waters classified as Class G-I or G-II ground water shall meet the primary drinking water quality standards... which are listed in Rules 62-555.10 and 62-550.320, F.A.C.

59. The ground waters at the boundary of the Facility's zone of discharge are Class G-II.

60. Section 7.b.(15) of the Agreement states that HRK's "discharge to ground water shall not cause a violation of water quality standards for ground waters at the boundary of the zone of discharge in accordance with Rules 62-520.400 and 62-520.420, F.A.C."

61. HRK failed to meet compliance well limits for the first, second, third and fourth quarter of 2017, for Sodium, Gross Alpha, and Radium 226 + Radium 228 in violation of the Agreement, Rule 62-620.300(5), Rule 62-520.420, and Rule 62-550.310, F.A.C.

62. HRK failed to meet compliance well limits for the first, second, third quarter of 2018, for Sodium, Gross Alpha, and Radium 226 + Radium 228 in violation of the Agreement, Rule 62-620.300(5), Rule 62-520.420, and Rule 62-550.310, F.A.C.

63. HRK failed to meet compliance well limits for the first, second, quarter of 2019, for Sodium, in violation of the Agreement, Rule 62-620.300(5), Rule 62-520.420, and Rule 62-550.310, F.A.C.

64. HRK failed to meet compliance well limits for the first, second, third and fourth quarter of 2019 and the first quarter of 2020 for Radium 226 + Radium 228, Total in violation of the Agreement, Rule 62-620.300(5), Rule 62-520.420, and Rule 62-550.310, F.A.C.

65. HRK failed to meet compliance well limits for the fourth quarter of 2019 and the first and second quarter of 2020 for Gross Alpha in violation of the Agreement, Rule 62-620.300(5), Rule 62-520.420, and Rule 62-550.310, F.A.C.

66. HRK failed to meet compliance well limits for the first and second quarter of 2020 for Sodium in violation of the Agreement, Rule 62-620.300(5), Rule 62-520.420, and Rule 62-550.310, F.A.C.

67. Pursuant to section 403.161(1)(b), Fla. Stat., it is a violation for any person to fail to comply with any rule, regulation, order, permit, or certification adopted or issued by the Department pursuant to its lawful authority.

68. By failing to comply with the compliance well limits set forth in the Agreement and with primary drinking water standards at the boundary of the Facility's zone of discharge, HRK violated the Agreement, Rule 62-620.300(5), F.A.C., Rule 62-520.420, F.A.C., Rule 62-550.410, F.A.C., Rule 62-550.420, F.A.C. and section 403.161(1)(b), Fla. Stat.

69. Department sampling of HRKs discharge to the ground of the Facility at the NW Corner and Decant Discharge and at several locations on multiple days in the Lower Tampa Bay as the downstream receiving waterbody, which did not occur in a mixing zone, revealed exceedances of 0.10 mg/L for Total Phosphorous reference period concentration and this reference period was used to establish the Total Phosphorus load criteria established in Rule 62-302.532, F.A.C., as well as exceedances of the Total Nitrogen reference period concentration of 0.74 mg/l which was used to establish the Total Nitrogen load criteria established in Rule 62-302.532 F.A.C., which is a violation of section 403.161(1)(b), Fla. Stat.

70. Department sampling of HRKs discharge to Tampa Bay revealed exceedances of ≤ 8.3 $\mu\text{g/L}$ of Nickel for Class III predominately marine waters as established in 62-302.530 F.A.C. which is a violation of section 403.161(1)(b), Fla. Stat.

71. Pursuant to paragraph 4h(i) of the Agreement, HRK was required to not exceed 0.9 tons/year of total nitrogen loading from all outfalls at the Facility, but samples taken on April 5, 2021, demonstrate that HRK caused approximately 197 tons of nitrogen to be discharged from the Facility to Tampa Bay in violation of paragraph 4h(i) of the Agreement and section 403.161, Fla. Stat.

72. Sampling of discharge from NGS-S on April 5, 2021, reveal that the annual numeric criteria for Phosphorus of 0.14 tons/million cubic meters of water for Lower Tampa Bay contained in Rule 62-302.532(1)(b)4., Fla. Admin. Code has been exceeded by HRK which is a violation of section 403.161(1)(b), Fla. Stat.

Contamination Assessment and Remediation Violations

73. HRK has legal responsibility within the meaning of Rule 62-780.150, F.A.C. for the violations enumerated in paragraphs 52 through 72 and is a person subject to the requirements of Rule 62-780, F.A.C.

74. The discharges described in paragraphs 52 through 72 have supplemented, contributed to, dispersed or exacerbated the previously existing contamination at the Facility.

75. Exceedances in paragraphs 52 through 72 constitute “discharges” within the meaning of Rules 62-780.200(16) and 62-780.600, F.A.C.

76. HRK’s failure to commence the assessment required by Rule 62-780.600, F.A.C. for the discharges described in paragraphs 52 through 72 constitutes a violation of section 403.161(b), Fla. Stat.

77. In addition to the specific unpermitted discharges identified in paragraphs, the Department by this Petition seeks to prevent all future unpermitted discharges through the emptying of the System and complete closure of the Facility.

PRAYER FOR RELIEF – COUNT II

WHEREFORE, the Department respectfully prays that this Court enter Judgment and Order the following relief:

A. Issuing a mandatory injunction requiring HRK to immediately comply with all provisions of the Administrative Agreement as well as completion of a 62-780 F.A.C. assessment

and remediation of the Facility's contamination pursuant to sections 120.69(2) and 403.131, Fla. Stat.;

B. Assessing civil penalties against HRK and in favor of the Department in the amount of \$15,000 for each day it failed to comply with any provision of the Administrative Agreement pursuant to sections 120.69(2), 403.141 and 403.161, Fla. Stat.;

C. Awarding the Department damages caused to the waters, property, including animal, plant, and aquatic life, by HRK's failure to comply with the Administrative Agreement pursuant to sections 120.69(2) and 403.141, Fla. Stat.;

D. Awarding the Department all costs and expenses, including attorney's fees, in maintaining this action which are recoverable pursuant to sections 120.69(2) and 403.141, Fla. Stat.;

E. Granting all other relief as the Court deems just and proper.

COUNT III - APPOINTMENT OF RECEIVER

78. Paragraphs 1 through 77 are realleged herein.

79. The NGS-S and NGS-N lined compartments comprise a portion of the phosphogypsum stack at the Facility as defined in section 403.4154(1)(d), Fla. Stat.

80. The NGS-S and NGS-N lined compartments are included with the phosphogypsum stack system at the Facility as defined in section 403.4154(1)(e), Fla. Stat.

81. On April 3, 2021, Governor Ron DeSantis issued an Executive Order declaring a state of emergency in Hillsborough, Manatee and Pinellas Counties due to a possible environmental emergency related to the failure and discharges from NGS-S at the Facility (Copy of Executive Order attached hereto as Exhibit 3).

82. Pursuant to Section 403.4154(3)(c) Fla. Stat., the Department may consider the failure of an owner or operator of a phosphogypsum stack system to comply with Department rules requiring demonstration of closure financial responsibility in determining whether a phosphogypsum stack poses an imminent hazard. As alleged in paragraphs 50 through 52 above, HRK has failed to comply with Department financial responsibility rules regarding providing proof of financial assurance for the cost of closure, including costs of closing, long-term care, and water management of the System, which the Department asserts constitutes an imminent hazard at least as to the NGS-S and NGS-N lined compartments.

83. Pursuant to Section 403.4154(3)(e) Fla. Stat., to abate or substantially reduced an imminent hazard posed by the stack system the Department may fund a receiver to perform all or part of the necessary work for closure of the phosphogypsum stack systems.

84. In addition, pursuant to 403.4154(5)(b) if a court finds that closure of phosphogypsum stack system is appropriate, the court may appoint a receiver to oversee the closure and post closure activities.

PRAYER FOR RELIEF COUNT III

WHEREFORE, the Department respectfully requests this Court appoint a receiver over the phosphogypsum stack system for the following purposes and under such terms as the Court deems appropriate:

A. To retain such persons or entities as necessary to conduct the day-to-day maintenance of the phosphogypsum stack system to prevent spills and other discharges.

B. To contract with such entities as appropriate to treat, discharge or otherwise dispose of process water to lessen the danger of a catastrophic spill during the rainy season.

C. To contract with such entities as appropriate to design, construct and close the phosphogypsum stack system in accordance with the Department's rules.

D. To retain such persons and professionals as necessary to account for funds expended, obtain such legal authorizations as necessary and oversee the closure of the facility.

E. Granting all other relief as the Court deems just and proper.

DATED this 5th day of August 2021.

Respectfully submitted,

Florida Department of Environmental Protection

/s/ Kirk White

Kirk S. White

Deputy General Counsel

FBN. 073113

Ronald Hoenstine

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Tallahassee, Florida 32399-3000

**BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

IN THE OFFICE OF THE
SOUTHWEST DISTRICT

vs.

OGC FILE NO.: 06-1685

HRK HOLDINGS, LLC,
Respondent.

CONSENT ORDER

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department") and HRK Holdings, LLC ("HRK" or "Respondent") to reach a settlement of certain matters at issue between the Department and Respondent.

The Department finds 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 ("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. HRK is a Florida limited liability company registered to conduct business in the State of Florida.
3. On August 15, 2006, HRK purchased certain personal and real property from the Trustee in bankruptcy for Piney Point Phosphates, Inc. ("PPPI").
4. The real property purchased by HRK consisted of undeveloped real property and a former phosphate fertilizer manufacturing complex and an associated phosphogypsum stack

system, all of which are located on Highway 41 North, Palmetto, Florida, and geographically at Latitude: 27° 53' 30" N Longitude: 81°57' 30" W (the "Property").

5. The former phosphate fertilizer manufacturing complex and phosphogypsum stack system, which constitute part of the Property, is a "facility" as that term is defined in Rule 62-673.200(6), F.A.C.

6. The sale of the Property by the Trustee to HRK, by order of the Bankruptcy Court, was premised upon HRK taking responsibility for certain environmental obligations associated with the phosphogypsum stack system, as that term is defined in Rule 62-673.200(15), F.A.C., (the "Stack System").

7. On August 16, 2006, the Department entered an Order, denominated Administrative Agreement 06-1685 (the "Administrative Order"), describing the responsibilities of HRK with regard to the Stack System under the Administrative Order, law and rule.

8. By virtue of its acquisition and ownership of the Stack System, and pursuant to the terms of the Administrative Order, HRK assumed responsibility for providing and conducting long-term care, maintenance, monitoring, and uses of the closed portions of the Stack System ("Long Term Care"), in accordance with a long-term care plan, which is subject to approval by the Department and the applicable provisions of Chapter 62-673, F.A.C. (a "Long Term Care Plan"). No Long-Term Care Plan has, as of yet, been submitted to or approved by the Department.

9. The Administrative Order authorized and approved HRK's proposed use of interim financial assurance for Long Term Care with regard to the Stack System.

10. Pursuant to the terms of the Administrative Order, HRK established a Phosphogypsum Stack Standby Trust Fund Agreement to Demonstrate Closure, Water Management and/or Long Term Care Financial Assurance (the "LTC Trust Fund") to receive the

required financial assurance, pursuant to the provisions of Rule 62-673.640, F.A.C., and HRK provided interim partial financial assurance, and continues to maintain as partial financial assurance as specified under the Administrative Order, a \$1.65 Million letter of credit from Regions Bank payable to the LTC Trust Fund, for the benefit of the Department.

11. On July 1, 2010, the Department and HRK entered into a Settlement Agreement (the "Settlement Agreement") to, *inter alia*, establish alternative criteria for determining the date HRK would assume full responsibility for compliance with financial assurance requirements imposed by Chapter 62-673, F.A.C. for the Stack System.

12. Under the terms of the Settlement Agreement, and the Administrative Order, on May 1, 2013, HRK became responsible for full compliance with the applicable Long-Term Care and financial assurance requirements imposed by Chapter 62-673, F.A.C. for the Stack System.

13. Pursuant to the terms of the Settlement Agreement on January 28, 2011, HRK assumed responsibility for those administrative and physical activities associated with the operation, maintenance, and management of the Stack System, including the completion of certain closure related items and compliance with existing or renewed state, local, or federal permits, or other authorizations ("Site Operations").

14. On June 27, 2012, HRK filed Voluntary Petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Middle District of Florida, Tampa Division (the "Bankruptcy Court") in HRK's Chapter 11 Case No. 8:12-bk-9868-KRM (the "Bankruptcy Case").

15. HRK continues to operate its business and manage its property at the Stack System as a debtor in possession pursuant to 11 U.S.C. §1107 and 28 U.S.C. §959.

16. HRK is presently in violation of certain provisions of Chapter 62-673, F.A.C and other rules applicable to the Stack System, specifically including but not limited to its failure to perform or provide the following:

- a. The submittal of annual wastewater regulatory and surveillance fees pursuant to Rule 62-4.052, F.A.C., in the amount of \$15,400.
- b. The submittal of an updated site-specific water management plan pursuant to Rule 62-672.780(8), F.A.C.
- c. The submittal and implementation of a plan to remove process water from the portion of the Stack System denoted the new gypsum stack – south (“NGS-S”) used as an emergency diversion impoundment in accordance with Rule 62-672.870(3), F.A.C.
- d. Providing cost estimates and full financial assurance for Long Term Care of the Stack System pursuant to Rule 62-673.640, F.A.C. (the “Rule”).

17. With respect to these matters, the Respondent and the Department have entered into settlement discussions, which have culminated and resulted in this Order. It is the Respondent’s contention that neither this Order nor actions taken hereunder shall constitute an admission by the Respondent of liability for any wrongdoing regarding any of the events leading up to the signing of the Order. Accordingly, the Respondent does not admit, by signature of this Order or otherwise, any of the foregoing findings by the Department, or that it has violated any statute or rule promulgated thereunder. The Department and HRK are entering into this Order to enable activities described in or authorized by this Order to be implemented without resort to litigation, which could delay such implementation.

These premises considered, the Department and the Respondent have mutually agreed, and it is hereby ORDERED:

A. HRK shall pay the balance of \$15,400 due on the annual wastewater regulatory and surveillance fee within 60 days of filing of this Order, and shall promptly remit future fees pursuant to Rule 62-4.052, F.A.C.

B. HRK shall submit a process water management plan, on how it will remove process water currently contained in the new gypsum stack - north ("NGS-N") and NGS-S compartments, by February 15, 2014. Such plan shall provide for removal of process water from these compartments by no later than February 15, 2019. The process water management plan shall also include information, including results of a water balance analysis, that meets the requirements for a site specific process water management plan pursuant to Rules 62-672.780 (8), (9) and (10) and 62-673.600(3)(b) F.A.C. The process water management plan shall be updated annually and submitted no later than February 15 of each successive year. Submittal of the process water management plan shall be considered as meeting the requirement for a plan under Rule 62-672.870(3), F.A.C.

C. HRK shall submit a Long Term Care Plan for the Stack System by June 15, 2014, pursuant to the Rules 62-673.600 -.640, F.A.C., and shall submit updated cost estimates annually no later than December 31 of each successive year. Such cost estimates shall include the cost of implementing the process water management plan required in paragraph B above, and when approved by the Department, shall be HRK's funding obligation (the "Funding Obligation") for purposes of this Order. Provided, however, that until such time as the above plan and estimates are submitted and approved by the Department, HRK shall adopt and use the agreed upon figures set out in Sections E.3.a. and E.3.b., below, as its required contribution under its Funding Obligation for the first and second installment contributions to the LTC Trust Fund. For purposes of calculating any required installment contributions to the LTC Trust Fund by HRK, HRK shall be given credit for any funds previously paid into the LTC Trust Fund from either advances under the Debtor in Possession credit facility to be provided to HRK by Regions Bank pursuant to the provision of Section E.1. below or the Standby Letter of Credit previously issued by Regions Bank for the benefit of the Department .

1. The cost estimates shall be submitted on Department form 62-673.900(4)(j), Phosphogypsum Stack System Closure, Water Management and Long Term Care Cost Estimate. The Long Term Care Plan shall describe the monitoring, maintenance, and inspection activities to be conducted over the Long Term Care period, as well as any other relevant activities referenced under Rules 62-673.600 - .640, F.A.C. Monitoring activities shall include the monitoring of ground water, surface water, and leachate. Maintenance activities shall include the maintenance of the stormwater system, seepage collection system, spray evaporation or other water treatment and management systems, and ground water monitoring well system; grassing, mowing, and other landscape activities; erosion control and cover maintenance, and; liner repair. Inspection activities include those required by Rule 62-672.770, F.A.C. The Long Term Care Plan shall describe the provisions for cover material for Long Term Care erosion control, filling other depressions, maintaining berms, and general maintenance of the Stack System, and shall specify the anticipated source and amount of material necessary.

2. The Long Term Care Plan shall describe how access to the Stack System shall be restricted to prevent any future waste dumping or use of the Stack System by unauthorized persons. The Long Term Care Plan shall describe any proposed final use or uses of the Stack System.

D. HRK shall update the application submitted on September 28, 2009, (FL0000124), for renewal of the Phosphate Management facility permit at the Eastport Development and Piney Point Complex by no later than August 15, 2014. The update shall include and reflect the process water management plan and Long Term Care Plan required by paragraphs B and C.

E. HRK shall establish and maintain compliance with the financial assurance requirements of the Rule, in the amount of the Funding Obligation described in paragraph C, by the following means and on the following schedule:

1. a. There is presently pending in the Bankruptcy Case HRK's Fourth Motion for Authority to Obtain Post-Petition Financing from Regions Bank, N.A., to Establish a Line of Credit for Long Term Care Issues and to Grant Senior Liens and Superpriority Administrative Expense Status (the "Motion") [DE 436]. Upon entry of an order granting the Motion and HRK's execution and delivery to Regions Bank of appropriate loan documentation, Regions Bank shall then extend to HRK, for the benefit of the Department and payable only into the LTC Trust Fund, a Long Term Care Trust Funding Line of Credit facility in the maximum amount of \$2,500,000.00 (the "LTCTF LOC"). The formula determining the amount of funding available under the LTCTF LOC will be made at and from the following events: (i) 30% of the net sales proceeds received by Regions Bank at closing from the first of the currently contemplated sales of real property by HRK to Thatcher Chemical, Allied Universal and Mayo Fertilizer respectively (collectively the "Entities"); (ii) an additional 35% of the net sales proceeds received by Regions Bank at closing from the second sale by HRK to one of the Entities; and (iii) as necessary, 40% of the net proceeds received by Regions Bank at closing from the third sale by HRK to one of the Entities. Provided, however, that the maximum availability under the LTCTF LOC shall under no circumstances exceed the lesser of 40% of the aggregate net sales proceeds ultimately received by Regions Bank at closing from sales of real property by HRK to the Entities or the sum of \$2,500,000.00. Provided further, however, that should less than all of the three sales by HRK to the above-referenced Entities have closed by December 31, 2013, then in such event the

minimum availability under the LTCTF LOC shall, as of that date, be the lesser of 40% of the aggregate net sales proceeds received by Regions Bank from those sales to the above-referenced Entities that have closed or the sum of \$2,500,000.00.

- b. All or any portion of the principal balance actually available under the LTCTF LOC from time to time under the above-referenced percentage formula shall be payable by Regions Bank on and at the demand of the Department and only into the LTC Trust Fund upon any future default by HRK under the terms of this Order or the Rule as determined by the Department in its sole discretion. Additionally, the principal balance actually available under the LTCTF LOC under the above-referenced percentage formula shall also be paid into the LTC Trust Fund by Regions Bank upon the maturity of said LTCTF LOC, unless previously extended or unless HRK, the Department and Regions Bank jointly agree in writing to some alternative process or treatment, including but not limited to, HRK substituting cash paid into the LTC Trust Fund in an amount equal to the then available principal balance under the LTCTF LOC.
2. HRK shall establish additional financial assurance (either by deposit of cash to the LTC Trust Fund or, if agreed to by the Department, in the form of additional financial instruments) in amounts agreed to by the Department from the net proceeds of each future sale of real property by HRK, whether approved by the Bankruptcy Court pursuant to motion or a confirmed plan of reorganization or which sales occur subsequent to such confirmation. Additional financial assurance deposits shall not exceed the amount of HRK's Funding Obligation established by paragraph C above, or as such estimate may be revised pursuant to subparagraph

E.4 below. Additional or alternative financial assurance may be provided by other methods, as may be agreed to by the Department and contained in a modification to this Order.

3. To the extent the financial assurance instruments provided for in subparagraph E.1 and E.2 above do not meet or total the amount of HRK's Funding Obligation established under paragraph C above, HRK shall make annual payments, on or before the last day of December of each year commencing on December 31, 2014, as follows:

- a. On or before, December 31, 2014, an amount sufficient to bring the balance in the LTC Trust Fund to at least 20% of the Funding Obligation (or, in the event no Funding Obligation has been established by submittal and approval of the Long Term Care Plan, then not less than Five Million dollars (\$5,000,000.00) ;

- b. On or before, December 31, 2015, an amount sufficient to bring the balance in the LTC Trust Fund to at least 36.5% of the Funding Obligation (or, in the event no Funding Obligation has been established by submittal and approval of the Long Term Care Plan, then not less than Nine Million dollars (\$9,000,000.00);

- c. On or before, December 31, 2016, an amount sufficient to bring the balance in the LTC Trust Fund to at least 50.5% of the Funding Obligation;

- d. On or before, December 31, 2017, an amount sufficient to bring the balance in the LTC Trust Fund to at least 62% of the Funding Obligation;

- e. On or before, December 31, 2018, an amount sufficient to bring the balance in the LTC Trust Fund to at least 70% of the Funding Obligation;

- f. On or before, December 31, 2019, an amount sufficient to bring the balance in the LTC Trust Fund to at least 75% of the Funding Obligation;

- g. On or before, December 31, 2020, an amount sufficient to bring the balance in the LTC Trust Fund to at least 80% of the Funding Obligation;

- h. On or before, December 31, 2021, an amount sufficient to bring the balance in the LTC Trust Fund to at least 85% of the Funding Obligation;

- i. On or before, December 31, 2022, an amount sufficient to bring the balance in the LTC Trust Fund to at least 90% of the Funding Obligation;
 - j. On or before, December 31, 2023, an amount sufficient to bring the balance in the LTC Trust Fund to at least 95% of the Funding Obligation;
 - k. On or before, December 31, 2024, an amount sufficient to bring the balance in the LTC Trust Fund to at least 100% of the Funding Obligation.
 4. If and to the extent that the approved cost estimates provided pursuant to paragraph C above change, either as a result of more efficient means and methods of water treatment and disposal, or water management, or by virtue of any change in rule or statute, or for any other reason as referenced or authorized pursuant to Chapter 62-673, F.A.C., the revised estimates may be used to determine the Funding Obligation required to meet the compliance schedule specified herein.
 5. Installment payments into the LTC Trust Fund, pursuant to subparagraph E.3 above, shall constitute a cash deposit arrangement as referenced under the Rule. Expenditures from the LTC Trust Fund shall be at the direction or approval of the Department and only for the purpose of directly implementing all or some portion of Long Term Care for the Stack System as required under this Order. HRK may request the Department's approval of distribution of funds from the LTC Trust Fund for reimbursement or payment of approved costs of such implementation.
- F. HRK shall allow all authorized representatives of the Department access to the Stack System at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.
- G. In the event of a sale or conveyance of the Stack System or of any portion thereof, if all of the requirements of this Order have not been fully satisfied, HRK shall, at least 30 days prior to the proposed sale or conveyance, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the proposed purchaser, operator, and/or person(s) to be in

control of the Stack System, and (c) provide a copy of this Order with all attachments to the proposed purchaser, operator, or person(s) in control of the Stack System.

H. The sale or conveyance of the Stack System or the Property does and shall not relieve HRK of the obligations imposed in this Order, unless and until the Department determines that the purchaser, operator, and/or person(s) in control of the Stack System has assumed and shall be legally responsible for meeting those requirements and obligations of this Order which have not been fully satisfied, and is capable of meeting the requirements of the Rule as transferee (as such Rule may be modified by this Order and the Administrative Order).

I. 1. If HRK becomes aware of any event beyond its reasonable control and which event could not have been or cannot be overcome by HRK's due diligence, including administrative or judicial challenges by third parties unrelated to HRK, which event causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, HRK shall notify the Department by the next working day and shall, within seven calendar days 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 HRK intends to implement these measures. HRK shall have the burden of proving the event and delay was or will be caused by circumstances beyond its reasonable control and could not have been or cannot be overcome by HRK's due diligence.

2. If HRK demonstrates and the Department agrees that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of HRK, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. The agreement to extend compliance must describe the provision or provisions extended, the new compliance date or dates, and the additional measures HRK must take to avoid or minimize the delay, if any. Failure of HRK to comply with the notice requirements of this Paragraph in a timely manner constitutes a waiver of HRK's right to request an extension of time for compliance for those circumstances.

J. The Department, for and in consideration of the complete and timely performance by HRK 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 HRK's complete compliance with all of the terms of this Order.

K. 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 HRK of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

L. HRK is fully aware that a violation of the terms of this Order may subject HRK to judicial imposition of damages, civil penalties up to \$50,000.00 per day per violation, and criminal penalties.

M. HRK 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. HRK also acknowledges and waives its right to appeal the terms of this Order pursuant to Section 120.68, F.S.

N. Electronic signatures or other versions of the Parties' signatures, such as a .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 HRK and the Department, and filed with the clerk of the Department.

O. 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.

P. This 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.

Q. The parties acknowledge that HRK's authority to enter into any post petition commitments to spend funds (including those commitments in this Order) and to sell property is subject to Bankruptcy Court approval. By motion to the Bankruptcy Court, HRK shall seek approval of the commitments of HRK to meet its financial obligations contained in this Order, which approval shall be evidenced by a final non-appealable Order entered in the Bankruptcy Case. The Department's execution and entry of this Order shall be contingent and predicated upon the Bankruptcy Court's authorization.

R. The above and foregoing notwithstanding, nothing contained herein shall constitute a waiver of sovereign immunity or consent to confer jurisdiction over this Order in any court or administrative venue other than the administrative and judicial courts of the State of Florida. This Order is entered pursuant to the police and regulatory powers of the Department as a governmental unit of the State of Florida.

S. HRK may notify the Department of its good faith belief that its obligations under this Order have been fully satisfied. Upon such notification, the Department shall determine whether the Order has been fully satisfied. If the Department concurs that the Order has been fully satisfied, it will notify HRK in writing and close the enforcement file opened in this case. If the Department does not concur, the Department reserves the right to enforce the terms of the Order or to take whatever other actions it deems appropriate.

T. Rules referenced in this Order are available at <http://www.dep.state.fl.us/legal/Rules/rulelistnum.htm>.

FOR THE RESPONDENT:

HRK HOLDINGS, LLC

By: _____

As its: _____

(Print Title)

Date: _____

HRK Holdings, LLC
Consent Order; OGC File No.: 06-1685
Page 14

FOR THE RESPONDENT:

HRK HOLDINGS, LLC

By: 
As its: Authorized representative
(Print Title)
Date: 12-2-2013

DONE AND ORDERED this ___ day of _____, 2013, in _____ County,
Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

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

Clerk

Date

cc: Lea Crandall, Agency Clerk - Mail Station 35

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DONE AND ORDERED this 25 day of February, 2014, in Leon County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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

Deputy
_____ 3/17/14
Clerk Date

cc: Lea Crandall, Agency Clerk - Mail Station 35

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**BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE TALLAHASSEE OFFICE OF THE DEPARTMENT

In regards to:

HRK HOLDINGS, L.L.C.
13300 U.S. Highway 41 North
Palmetto, FL 34221-8661

Eastport Development and Piney Point Complex
Wastewater Permit No. FL0000124
FDEP FILE NO. FL0000124-003-AA

ADMINISTRATIVE AGREEMENT

This Administrative Agreement is entered into between the State of Florida Department of Environmental Protection ("Department") and **HRK Holdings, L.L.C.** ("Responsible Authority" or "HRK"), as a binding agreement for the operation of a wastewater facility associated with the operation and future long-term care of the phosphogypsum stack system, and operation of a bulk storage area as described in this Administrative Agreement.

1. The Department and **HRK Holdings, L.L.C.** agree to the following facts:
 - a. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes (F.S.), and the rules promulgated thereunder, Title 62, Florida Administrative Code (F.A.C.). The Department has jurisdiction over the matters addressed in this Administrative Agreement. The Department contends that the facility referenced in this Administrative Agreement is subject to one or more of the following; Section 403.088, Florida Statutes, and Chapters 62-160, 62-302, 62-620, 62-660, 62-520, 62-522, 62-550, 62-672, and 62-673 F.A.C.
 - b. **HRK Holdings, L.L.C.** is a person within the meaning of Section 403.031(5), of the Florida Statutes.
 - c. On October 6, 1999, Wastewater Permit No. FL0000124 [FDEP File No. FL0000124-001, herein referred to as the Wastewater Permit] was issued to Piney Point Phosphates, Incorporated for the operation of a phosphate fertilizer manufacturing facility including a phosphogypsum stack system and the discharge of treated wastewater through two outfalls, 002 and 003. Outfall 002 discharges into Piney Point Creek, which empties into Tampa Bay. Outfall 003 discharges into Buckeye Road ditch, which flows into Bishops Harbor and thence to Tampa Bay. The permit had an expiration date of March 25, 2001. The facility is located at 13300 Highway 41 North, Palmetto in Manatee County, Florida and geographically at:

Latitude: 27° 53' 30" N Longitude: 81° 57' 30" W.
 - d. On September 22, 2000, Piney Point Phosphates, Incorporated submitted an application [FDEP File No. FL0000671-002] for the renewal of the Wastewater Permit.
 - e. On December 4, 2000, the Department issued a denial for the renewal of the Wastewater Permit [FDEP File No. FL0000124-002] to Piney Point Phosphates, Incorporated.
 - f. On December 13, 2000, Piney Point Phosphates, Incorporated filed a Petition For Extension Of Time To File A Petition For An Administrative Hearing with the Department. On February 7, 2001, Piney Point Phosphates, Incorporated filed a second Petition For Extension Of Time To File A Petition For An Administrative Hearing and also filed a petition for formal administrative proceedings.
 - g. On February 8, 2001, Piney Point Phosphates, Incorporated filed a Chapter 11 petition for reorganization with the United States Bankruptcy Court that was converted to Chapter 7 on August 15, 2001.

- h. On February 23, 2005 **CDM Constructors, Inc.**, (“Contractor”) entered into DEP Contract Number No. SP644 (Contract) with the Department pursuant to which the Contractor provided services to the Department relating to the closure of the Phosphogypsum Stack System with the intent of minimizing the present environmental risks at the Piney Point Phosphates Facility, closing the Phosphogypsum Stack System, treatment and disposal of all process water, long-term care of the facility including the closed Phosphogypsum Stack System, and other services as more fully detailed in the Contract.
 - i. On March 30, 2005, the Department entered into an Administrative Agreement (“Contractor AA”) with the Contractor, subsequently amended on July 7, 2006, to authorize the management, operation, and monitoring of the Piney Point Facility phosphogypsum stack system. The NPDES wastewater Permit No. FL0000124 (PA File No. FL0000124-001-IW1S/NR) for this system, which was formerly issued to Piney Point Phosphates, Inc., was transferred to CDM Constructors, Inc., on April 25, 2006. The Contractor AA was to remain in effect until the Department took final agency action on the issuance of the NPDES permit.
 - j. HRK acquired the Piney Point Complex site from the U.S. Bankruptcy Court in August 2006. During 2007 and early 2008, HRK demolished and removed all manufacturing buildings and equipment from the site. The main maintenance parts warehouse, maintenance shop, fertilizer product warehouse, lime treatment facility and other minor structures were retained for future use.
 - k. On September 8, 2009, the NPDES wastewater Permit No. FL0000124 (PA File No. FL0000124-001-IW1S/NR), which had been transferred to the Contractor as described in paragraph i above, was transferred to HRK Holdings, L.L.C., by the Department.
 - l. The Contractor, **having** completed a portion of the specified closure services prior to expiration of the Contract on January 28, 2011, is no longer providing such services to the Department.
 - m. Pursuant to the Settlement Agreement between **HRK Holdings, L.L.C.**, and the Department, as approved on July 1, 2010, by the Florida Department of Financial Services, **HRK** has assumed responsibility for Site Operations as of the HRK Site Operations Date of January 28, 2011, as defined in accordance with the Settlement Agreement. With the execution of this Administrative Agreement with **HRK Holdings, L.L.C.**, the Contractor AA shall cease to be in effect except for requirements for site activities or services required prior to expiration of the Contract.
2. This Administrative Agreement will continue in-force until the Department takes Final Agency Action on re-issuance of the NPDES Wastewater Permit No. FL0000124.
 3. Having reached a resolution of the matter, the Department and **HRK Holdings, L.L.C** mutually agree and enter into the following:
 - a. **HRK Holdings, L.L.C** commits and agrees to comply with the conditions of the Administrative Agreement while it is in effect.

4. **Surface Water Discharges**

The Responsible Authority shall comply with the limits referenced below beginning on the effective date of this Administrative Agreement and ending as specified in the paragraphs above. During this period, the Responsible Authority is authorized to discharge contact and non-contact stormwater from Outfalls D-001, D-002 and D-003. Outfall D-003 will not discharge treated process water but only stormwater from the closed phosphogypsum system. Outfall D-001 will discharge stormwater from the closed phosphogypsum stack system, portions of the closed plant area, and the entirety of the proposed south grassed treatment spray area. Outfall D-002 will discharge stormwater from the entirety of the proposed HRK bulk storage facility along with portions of the closed plant area. Such discharges shall be limited and monitored by the Responsible Authority as specified below:

a. Discharge from Outfall 003:

TABLE 1.

Parameters (units)	Discharge Limitations			Monitoring Requirements		
	Daily Minimum	Monthly Average	Daily Maximum	Monitoring Frequency	Sample Type	Sample Points
Flow (MGD)	N/A	Report	Report	Continuous	Recorder	EFF-003
pH (SU) (See Part 4i)	6.0	Report	8.5	Continuous	Recorder	EFF-003
Oxygen, Dissolved (DO) (MG/L)	5.0	Report	N/A	Weekly	Instantaneous	EFF-003
Specific Conductance (UMHOS/CM) (See Part 4j)	N/A	Report	See Part 4j	Weekly	Instantaneous	EFF-003
Turbidity (NTU) (See Part 4k)	N/A	Report	29	Weekly	Instantaneous	EFF-003
Total Suspended Solids (MG/L)	N/A	Report	Report	Weekly	24-hour composite	EFF-003
Temperature (C), Water (DEG.C) (See Part 4i)	N/A	Report	Report	Weekly	Instantaneous	EFF-003
Fluoride, Total (as F) (MG/L)	N/A	Report	10.0	Weekly	24-hour composite	EFF-003
Beryllium, Total (UG/L) (See Part 4e)	N/A	Report	Report	Weekly	Grab	EFF-003
Iron, Total (as Fe) (MG/L)	N/A	Report	1.0	Weekly	Grab	EFF-003
Phosphorus, Total (as P) (MG/L)	N/A	Report	Report	Weekly	24-hour composite	EFF-003
Phosphorus, Total (as P) (LBS/DAY) (See Parts 4f, g & h)	N/A	Report	Report	Weekly	Calculation	EFF-003
Nitrogen, Total (as N) (MG/L)	N/A	Report	Report	Weekly	24-hour composite	EFF-003
Nitrogen, Total (as N) (LBS/DAY) (See Parts 4f, g & h)	N/A	Report	Report	Weekly	Calculation	EFF-003
Nitrogen, Ammonia, Total (as N) (MG/L) (See Part 4i)	N/A	Report	Report	Weekly	Grab	EFF-003
Ammonia, Un-ionized (as NH ₃) (MG/L) (See Part 4i)	N/A	Report	0.02	Weekly	Calculation	EFF-003
Alpha, Gross Particle Activity (PCI/L) (See Part 4d)	N/A	N/A	15.0	Quarterly	24-hour composite	EFF-003
Radium ²²⁶ + Radium ²²⁸ , Combined (PCI/L) (See Part 4d)	N/A	N/A	5.0	Quarterly	24-hour composite	EFF-003
Acute Whole Effluent Toxicity, 96 Hour LC50 (Ceriodaphnia dubia)	100%	See Part 4m			Single Grab	EFF-003
Acute Whole Effluent Toxicity, 96 Hour LC50 (Cyprinella leedsi)	100%	See Part 4m			Single Grab	EFF-003

b. Discharge from Outfalls D-001 and D-002:

TABLE 2.

Parameters (units)	Discharge Limitations			Monitoring Requirements		
	Daily Minimum	Monthly Average	Daily Maximum	Monitoring Frequency	Sample Type	Sample Points
Flow (MGD)	N/A	Report	Report	Continuous	Recorder	†
pH (SU) (See Part 4i)	6.0	Report	8.5	Continuous	Recorder	EFF-002 or EFF-02R

Parameters (units)	Discharge Limitations			Monitoring Requirements		
	Daily Minimum	Monthly Average	Daily Maximum	Monitoring Frequency	Sample Type	Sample Points
pH (SU) (See Part 4i)	6.0	Report	8.5	Daily	Instantaneous	EFF-001
Oxygen, Dissolved (DO) (MG/L)	5.0	Report	N/A	Weekly	Instantaneous	†
Specific Conductance (UMHOS/CM)	N/A	Report	See Part 4j	Weekly	Instantaneous	†
Turbidity (NTU) (See Part 4k)	N/A	Report	29	Weekly	Instantaneous	†
Temperature (C), Water (DEG.C) (See Part 4i)	N/A	Report	Report	Weekly	Instantaneous	†
Total Suspended Solids (MG/L)	N/A	Report	Report	Weekly	24-hour composite	EFF-002 or EFF-02R
Fluoride, Total (as F) (MG/L)	N/A	Report	10.0	Weekly	Grab	†
Beryllium, Total (UG/L) (See Part 4e)	N/A	Report	Report	Weekly	Grab	†
Iron, Total (as Fe) (MG/L)	N/A	Report	1.0	Weekly	Grab	†
Phosphorus, Total (as P) (MG/L)	N/A	Report	Report	Weekly	Grab	†
Phosphorus, Total (as P) (LBS/DAY) (See Parts 4f, g & h)	N/A	Report	Report	Weekly	Calculation	†
Nitrogen, Total (as N) (MG/L)	N/A	Report	Report	Weekly	Grab	†
Nitrogen, Total (as N) (LBS/DAY) (See Parts 4f, g & h)	N/A	Report	Report	Weekly	Calculation	†
Nitrogen, Ammonia, Total (as N) (MG/L) (See Part 4i)	N/A	Report	Report	Weekly	Grab	†
Ammonia, Un-ionized (as NH ₃) (MG/L) (See Part 4i)	N/A	Report	0.02	Weekly	Calculation	†
Acute Whole Effluent Toxicity, 96 Hour LC50 (Ceriodaphnia dubia)	100%	See Part 4m			Single Grab	†
Acute Whole Effluent Toxicity, 96 Hour LC50 (Cyprinella leedsi)	100%	See Part 4m			Single Grab	†

† Sampling Points shall be EFF-001 and either existing EFF-002 or new EFF-02R upon relocation of Outfall 002.

- c. Effluent samples shall be taken at the monitoring site locations listed in Parts 4a. and b. as described in **TABLE 3.** below (see Attachment A):

TABLE 3.

Sample Point	Description of Monitoring Location
EFF-001	Outfall D-001: Southwest corner of property boundary
EFF-002	Outfall D-002: North side of property near old plant site and south of Piney Point Creek confluence
EFF-02R	Relocated Outfall D-02R: same location as Outfall D-002 and south of Piney Point Creek
EFF-003	Outfall D-003: South central area of facility's property boundary

- d. During any sampling event performed in accordance with the monitoring requirements for the radioactive species specified in Parts 4a. and b. above, a properly preserved sample must be taken for the determination of gross alpha particle activity, and combined radium²²⁶⁺²²⁸. The sample must first be analyzed for gross alpha particle activity and if the total value exceeds the MCL of 15.0 pCi/L, the same sample (appropriately preserved as required above) shall be analyzed for combined radium²²⁶⁺²²⁸. The analytical results shall be reported as required by this administrative agreement. [62-302.530(57)(a & b), F.A.C.]

- e. The annual average for Beryllium shall not exceed 0.13 µg/L as per Rule 62-302.530(9), F.A.C. The Responsible Authority shall report the annual average concentration for Outfalls D-001, D-002 or D-02R, and D-003 annually from the effective date of the administrative agreement.
- f. The reported nutrient loadings for Total Nitrogen and Total Phosphorus are to be calculated using the total daily flow recorded for the day on which the sample is taken.
- g. Until a Load Allocation for total phosphorus is determined for this facility and this administrative agreement modified pursuant to Florida Administrative Code Rules 62-4.080 and 62-620.325, the Responsible Authority shall monitor and report loading for total phosphorous (as P) from Outfalls D-001, D-002 or D-02R, and D-003 as listed in Parts 4a. and b. above. The facility shall only be operated as authorized by this administrative agreement and shall make no changes outside of the scope of this authorization, which would increase nutrient loading without prior approval from the Department.

The total nutrient loading for the calendar year is determined using the formula as shown below.

5-Year Rolling Annual Average Nutrient Load Calculation for Weekly Sampling

$$TN_L = \frac{\sum_i^{260} (F_{Wk_i} \times C_{TN_i} \times 8.345)}{5}$$

TN_L = Annual Total Nutrient Load in pounds per calendar year

\sum_i^{260} = Sum of Total Nutrient Loads for the past 260 calendar weeks
 (current ($i = 1$) + previous 259) in pounds

F_{Wk_i} = Total discharge flow in million gallons per calendar week

C_{TN_i} = Measured Nutrient concentration in parts per million per calendar week

- h. The Responsible Authority shall report the results of the annual nutrient loads as specified in **TABLE 4.** below and submit them to the Department per Part 6c.

TABLE 4.

PARAMETERS (UNITS)	DISCHARGE	STATISTICAL	MONITORING REQUIREMENTS		
	LIMITATIONS	BASIS	Monitoring Frequency	Sample Type	Sample Point
Nitrogen, Total (as N) (tons/year)	Report (See Part 4h(i) below)	5-Year Rolling Annual Average	Annually	Calculation	††
Phosphorus, Total (as P) (tons/year)	Report	5-Year Rolling Annual Average	Annually	Calculation	††

†† **5-year rolling annual average loading calculations shall be made from combined data taken at sample points EFF-001, EFF-002 or EFF-02R, and EFF-003.**

- (i) The sum of the total nitrogen loading values from all outfalls shall not exceed 0.9 tons/year based on a 5-year rolling annual average calculation. For the purpose of calculating the 5-year rolling annual average, the effective date of the administrative agreement starts year one and the 5-year rolling annual average shall be determined at the end of the following fifth year. Compliance with the Total Nitrogen loading from all outfalls shall be determined based on the Responsible Authority’s compliance with the Stormwater Management Plan (SWMP) required to be developed and implemented as required in Part 10.g. below.
- i. Effluent samples for pH and temperature shall be monitored at the same time and location as the total ammonia grab sample, which is used to calculate the unionized ammonia value. Unionized ammonia shall be calculated using the DEP Standard Operating Procedure for “Calculation of Un-Ionized Ammonia in

Fresh Water” dated February 12, 2001. All measured values for pH, temperature, and total ammonia used to calculate an un-ionized ammonia value shall be kept on record. The daily maximum value and average monthly value for un-ionized ammonia for each reporting period shall be reported. [62-4.246(4) and 62-302.530(3)]

- j. For Outfalls D-001, D-002 or D-02R, and D-003, the limit for Specific Conductance shall be 1.5 times the background value or 1275 µmhos/cm, whichever is greater as per Rule 62-302.530(22), F.A.C. The measured effluent value shall be recorded in the parameter row for Specific Conductance (effluent). The measured background value shall be recorded in the parameter row for Specific Conductance (background). The calculated effluent limit shall be recorded in the parameter row for Specific Conductance (calculated limit). Compliance with the effluent limitation is determined by calculating the difference between the measured effluent value and the calculated effluent limit. The compliance value shall be recorded in the parameter row for Specific Conductance (measured effluent value minus calculated effluent limit). If the compliance value is greater than 0.00, the Responsible Authority will be considered in violation of the limitation.
- k. For Outfalls D-001, D-002 or D-02R, and D-003, the final daily maximum effluent limit for Turbidity shall be set at 29 nephelometric turbidity units (NTUs).
- l. The discharge shall not contain components that settle to form putrescent deposits or float as debris, scum, oil, or other matter. [62-302.500(1)(a)]
- m. The Responsible Authority shall comply with the following requirements to evaluate acute whole effluent toxicity of the discharge from Outfalls D-001, D-002 or D-02R, and D-003.
 - i. Effluent Limitation
 - (1) In any routine or additional follow-up test for acute whole effluent toxicity, the 96-hour LC50 shall not be less than 100% effluent. [Rules 62-302.200(1), 62-302.500(1)(a)4., 62-4.244(3)(a), and 62-4.241, F.A.C.]
 - ii. Monitoring Frequency
 - (1) Routine toxicity tests shall be conducted once every 12 months, the first starting within 180 days of the issuance date of this administrative agreement and lasting for the duration of this administrative agreement.
 - iii. Sampling Requirements
 - (1) All tests shall be conducted on a single grab sample of final effluent.
 - iv. Test Requirements
 - (1) Routine Tests: All routine tests shall be conducted using a control (0% effluent) and a minimum of five dilutions: **100%, 75%, 50%, 25%, and 12.5%** effluent.
 - (2) The Responsible Authority shall conduct 96-hour acute static renewal multi-concentration toxicity tests using the daphnid, **Ceriodaphnia dubia**, and the bannerfin shiner, **Cyprinella leedsi**, concurrently.
 - (3) All test species, procedures and quality assurance criteria used shall be in accordance with **Methods for Measuring Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms**, 5th Edition, EPA-821-R-02-012. Any deviation of the bioassay procedures outlined herein shall be submitted in writing to the Department for review and approval prior to use. In the event the above method is revised, the Responsible Authority shall conduct acute toxicity testing in accordance with the revised method.
 - (4) The control water and dilution water shall be moderately hard water as described in EPA-821-R-02-012, Table 7.
 - v. Quality Assurance Requirements
 - (1) A standard reference toxicant (SRT) quality assurance (QA) acute toxicity test shall be conducted with each species used in the required toxicity tests either concurrently or initiated no more than 30 days before the date of each routine or additional follow-up test conducted. Additionally, the SRT test must be conducted concurrently if the test organisms are obtained from outside the test laboratory unless the

test organism supplier provides control chart data from at least the last five monthly acute toxicity tests using the same reference toxicant and test conditions. If the organism supplier provides the required SRT data, the organism supplier's SRT data and the test laboratory's monthly SRT-QA data shall be included in the reports for each companion routine or additional follow-up test required.

- (2) If the mortality in the control (0% effluent) exceeds 10% for either species in any test, the test for that species (including the control) shall be invalidated and the test repeated. The repeat test shall begin within 14 days after the last day of the invalid test.
- (3) If 100% mortality occurs in all effluent concentrations for either species prior to the end of any test and the control mortality is less than 10% at that time, the test (including the control) for that species shall be terminated with the conclusion that the test fails and constitutes non-compliance.
- (4) Routine and additional follow-up tests shall be evaluated for acceptability based on the concentration-response relationship, as required by EPA-821-R-02-012, Section 12.2.6.2., and included with the bioassay laboratory reports.

vi. Reporting Requirements

- (1) Results from all required tests shall be reported as follows:
 - (a) Routine Test Results: If an LC50 >100% effluent occurs in the test for the test species, ">100%" shall be entered on the report for that test species. If an LC50 <100% effluent occurs, the calculated LC50 effluent concentration shall be entered on the report for that test species.
 - (b) Additional Follow-up Test Results: For each additional test required, the calculated LC50 value shall be entered on the report for that test species.
- (2) A bioassay laboratory report for the routine test shall be prepared according to EPA-821-R-02-012, Section 12, Report Preparation and Test Review, and mailed to the Department at the address below within 30 days after the last day of the test.
- (3) For additional follow-up tests, a single bioassay laboratory report shall be prepared according to EPA-821-R-02-012, Section 12, and mailed within 30 days after the last day of the second valid additional follow-up test.
- (4) Data for invalid tests shall be included in the bioassay laboratory report for the repeat test.
- (5) The same bioassay data shall not be reported as the results of more than one test.
- (6) All bioassay laboratory reports shall be sent to:

**Florida Department of Environmental Protection
Bureau of Mining and Minerals Regulation
Phosphate Management Program
13051 N. Telecom Parkway
Temple Terrace, Florida 33637-0926**

vii. Test Failures

- (1) A test fails when the test results do not meet the limits in m.i.(1).
- (2) Additional Follow-up Tests:
 - (a) If a routine test does not meet the acute toxicity limitation in m.i.(1) above, the Responsible Authority shall notify the Department at the address above within 21 days after the last day of the failed routine test and conduct two additional follow-up tests on each species that failed the test in accordance with m.iv.
 - (b) The first test shall be initiated within 28 days after the last day of the failed routine test. The remaining additional follow-up tests shall be conducted weekly thereafter until a total of two valid additional follow-up tests are completed.
 - (c) The first additional follow-up test shall be conducted using a control (0% effluent) and a minimum of five dilutions: 100%, 75%, 50%, 25%, and 12.5% effluent. The Responsible Authority may modify the dilution series in the second additional follow-up test to more accurately bracket the toxicity such that at least two dilutions above and two dilutions below the target concentration and a control (0% effluent) are run. All test results shall be statistically analyzed according to the Appendices in EPA-821-R-02-012.
- (3) In the event of three valid test failures (whether routine or additional follow-up tests) within a 12-month period, the Responsible Authority shall notify the Department within 21 days after the last day of the third test failure.

- (a) The Responsible Authority shall submit a plan for correction of the effluent toxicity within 60 days after the last day of the third test failure.
 - (b) The Department shall review and approve the plan before initiation.
 - (c) The plan shall be initiated within 30 days following the Department’s written approval of the plan.
 - (d) Progress reports shall be submitted quarterly to the Department at the address above.
 - (e) During the implementation of the plan, the Responsible Authority shall conduct quarterly routine whole effluent toxicity tests in accordance with m.iv. Additional follow-up tests are not required while the plan is in progress. Following completion or termination of the plan, the frequency of monitoring for routine and additional follow-up tests shall return to the schedule established in m.ii.(1). If a routine test is invalid according to the acceptance criteria in EPA-821-R-02-012, a repeat test shall be initiated within 14 days after the last day of the invalid routine test.
 - (f) Upon completion of four consecutive, valid routine tests that demonstrate compliance with the effluent limitation in m.i.(1) above, the Responsible Authority may submit a written request to the Department to terminate the plan. The plan shall be terminated upon written verification by the Department that the facility has passed at least four consecutive valid routine whole effluent toxicity tests. If a test within the sequence of the four is deemed invalid, but is replaced by a repeat valid test initiated within 14 days after the last day of the invalid test, the invalid test will not be counted against the requirement for four consecutive valid tests for the purpose of terminating the plan.
- (4) The additional follow-up testing and the plan do not preclude the Department taking enforcement action for whole effluent toxicity failures. [62-4.241, 62-620.620(3)]
- n. The Responsible Authority shall ensure that the water quality standards for Class III surface waters as defined in Florida Administrative Code Rules 62-302.500 and 62-302.530 are not violated at the points of discharge, except where allowed by administrative agreement or the Department's official Agency Action.
 - o. The Responsible Authority shall sample the surface water, when Outfalls D-001 and/or D-003 are discharging, at the Downstream/Upstream Monitoring Stations (D-03B/D-03A) listed in Part 4q. as specified below:

PARAMETERS (UNITS)	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS		
	Daily Minimum	Monthly Average	Daily Maximum	Monitoring Frequency	Sample Type	Sample Point
Stream Flow (MGD)	N/A	N/A	Report	1/Month	Estimation	Part 4q
pH (standard units)	N/A	N/A	Report	1/Month	Instantaneous	Part 4q
Dissolved Oxygen (DO) (mg/L)	Report	N/A	N/A	1/Month	Instantaneous	Part 4q
Fluoride, Total (as F) (mg/L)	N/A	N/A	Report	1/Month	Grab	Part 4q
Phosphorus, Total (as P) (mg/L)	N/A	N/A	Report	1/Month	Grab	Part 4q
Nitrogen, Total (as N) (mg/L)	N/A	N/A	Report	1/Month	Grab	Part 4q
Specific Conductance (µmhos/cm)	N/A	N/A	Report	1/Month	Instantaneous	Part 4q
Temperature (C), Water (DEG.C)	N/A	N/A	Report	1/Month	Instantaneous	Part 4q
Turbidity (NTUs)	N/A	N/A	Report	1/Month	Instantaneous	Part 4q

- p. The Responsible Authority shall sample the surface water, when Outfall D-002 or D-02R is discharging, at the Downstream/Upstream Monitoring Stations (D-02B/D-02A) listed in Part 4q. as specified below:

PARAMETERS (UNITS)	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS		
	Daily Minimum	Monthly Average	Daily Maximum	Monitoring Frequency	Sample Type	Sample Point
Stream Flow (MGD)	N/A	N/A	Report	1/Month	Estimation	Part 4q
pH (standard units)	N/A	N/A	Report	1/Month	Instantaneous Grab	Part 4q
Dissolved Oxygen (DO) (mg/L)	Report	N/A	N/A	1/Month	Instantaneous Grab	Part 4q

PARAMETERS (UNITS)	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS		
	Daily Minimum	Monthly Average	Daily Maximum	Monitoring Frequency	Sample Type	Sample Point
Phosphorus, Total (as P) (mg/L)	N/A	N/A	Report	1/Month	Grab	Part 4q
Nitrogen, Total (as N) (mg/L)	N/A	N/A	Report	1/Month	Grab	Part 4q
Specific Conductance (umhos/cm)	N/A	N/A	Report	1/Month	Instantaneous Grab	Part 4q
Temperature (C), Water (DEG.C)	N/A	N/A	Report	1/Month	Instantaneous	Part 4q
Turbidity (NTUs)	N/A	N/A	Report	1/Month	Instantaneous Grab	Part 4q
Chlorophyll - a (ug/L)	N/A	N/A	Report	1/Month	Grab	Part 4q

- q. Effluent samples, listed in Parts 4o. & p. above, shall be taken at the monitoring site locations as described below and shown on **Attachment A:**

Sample Point	Alternate Name	Latitude	Longitude	Description of Monitoring Location
SWD-01	D-03B	27° 37' 24.86" N	82° 32' 24.19" W	West side of US 41 @ Buckeye Rd.
SWB-01	D-03A	27° 37' 25.20" N	82° 32' 22.33" W	Buckeye Road ditch upstream of Outfall D-003
SWD-02	D-02B	27° 38' 25.51" N	82° 31' 55.21" W	Piney Point Creek at structure east of US 41
SWB-02	D-02A	27° 38' 13.83" N	82° 31' 54.55" W	Piney Point Creek upstream of the discharge ditch
SWD-03	D-03B	27° 37' 24.86" N	82° 32' 24.19" W	West side of US 41 @ Buckeye Rd.
SWB-03	D-03A	27° 37' 25.20" N	82° 32' 22.33" W	Buckeye Road ditch upstream of Outfall D-003

5. The facility currently removes the treated process water by discharging directly into the Manatee County Utilities Department sanitary sewer system. The Piney Point facility was issued the Permit No. IW-0030S on February 7, 2007, to discharge treated process water directly into the Manatee County Utilities Department sanitary sewer system and the permit expiration is February 6, 2011. The permit allows for renewals and continuations. According to the permit renewal application provided by applicant it is intended that the Responsible Authority apply for renewal to extend the permit with the Manatee County Utilities Department for the life of this Administrative Agreement. The Piney Point facility must mix in the proper amount of lime, sodium hydroxide, or other caustic additive as needed to raise the pH of the seepage waters to vary between 5.0 and 11.5 standard units to be in accordance with the county sewer discharge permit. The county permit allows Piney Point to discharge up to 150,000 gallons per day into the sewer system. A pump located adjacent to the above grade lined seepage collection pond, pumps the treated process water directly into the county sewer stub-out located on Piney Point facility property several hundred feet to the west of the above grade lined seepage collection pond. In addition, the facility consumes process waters by operating a spray evaporation system within the closed stack's New North lined settling compartment. During 2010 approximately, 27.6 million gallons of process water was removed by spray evaporation and during 2009 the total was 60.5 million gallons. The Responsible Authority shall provide monthly totals for sewer discharge and spray evaporation, in accordance with reporting requirements in Part 6c.

6. Other Limitations and Monitoring and Reporting Requirements

- a. The sample collection, analytical test methods, and method detection limits (MDLs) applicable to this administrative agreement shall be conducted using a sufficiently sensitive method to ensure compliance with applicable water quality standards and effluent limitations and shall be in accordance with Rule 62-4.246, Chapters 62-160 and 62-601, F.A.C., and 40 CFR 136, as appropriate. The list of Department established analytical methods, and corresponding MDLs (method detection limits) and PQLs (practical quantitation limits), which is titled "FAC 62-4 MDL/PQL Table (April 26, 2006)" is available at <http://www.dep.state.fl.us/labs/library/index.htm>. The MDLs and PQLs as described in this list shall constitute the minimum acceptable MDL/PQL values and the Department shall not accept results for which the laboratory's MDLs or PQLs are greater than those described above unless alternate MDLs and/or PQLs

have been specifically approved by the Department for this administrative agreement. Any method included in the list may be used for reporting as long as it meets the following requirements:

- i. The laboratory's reported MDL and PQL values for the particular method must be equal or less than the corresponding method values specified in the Department's approved MDL and PQL list;
- ii. The laboratory reported MDL for the specific parameter is less than or equal to the administrative agreement limit or the applicable water quality criteria, if any, stated in Chapter 62-302, F.A.C. Parameters that are listed as "report only" in the administrative agreement shall use methods that provide a MDL, which is equal to or less than the applicable water quality criteria stated in 62-302, F.A.C.; and
- iii. If the MDLs for all methods available in the approved list are above the stated administrative agreement limit or applicable water quality criteria for that parameter, then the method with the lowest stated MDL shall be used.

When the analytical results are below method detection or practical quantification limits, the Responsible Authority shall report the actual laboratory MDL and/or PQL values for the analyses that were performed following the instructions on the applicable discharge monitoring report.

Where necessary, the Responsible Authority may request approval of alternate methods or for alternative MDLs or PQLs for any approved analytical method. Approval of alternate laboratory MDLs and PQLs are not necessary if the laboratory reported MDLs and PQLs are less than or equal to the administrative agreement limit or the applicable water quality criteria, if any, stated in Chapter 62-302, F.A.C. Approval of an analytical method not included in the above-referenced list is not necessary if the analytical method is approved in accordance with 40 CFR 136 or deemed acceptable by the Department. [62-4.246 and 62-160, F.A.C.]

- b. The Responsible Authority shall provide safe access points for obtaining representative influent and effluent samples, which are required by this administrative agreement. [62-620.320(6), F.A.C.]
- c. Monitoring requirements under this administrative agreement are effective following administrative agreement issuance. During the period of operation authorized by this Administrative Agreement, the Contractor shall complete and submit reports summarizing the results for surface water and groundwater monitoring on a monthly, quarterly, and annual basis, as applicable. The reports are to be submitted to the Department on or before the 28th day of the month following the monitoring period.

Unless specified otherwise in this administrative agreement, all reports and notifications required by this administrative agreement, including twenty-four hour notifications shall be submitted to or reported to the Department at the address specified below:

**Florida Department of Environmental Protection
Bureau of Mining and Minerals Regulation
Phosphate Management Program
13051 N. Telecom Parkway
Temple Terrace, Florida 33637-0926**

Phone Number: (813) 632-7600, Ext. 138

FAX Number: (813) 632-7670

(All FAX and electronic submittals or notifications shall be followed by original mailed copies.)

- d. All reports and other information shall be signed in accordance with requirements of Rule 62-620.305, F.A.C. [62-620.305, F.A.C.]
- e. If there is no discharge from the facility on a day when the facility would normally sample, the sample shall be collected on the day of the next discharge. [62-620.320(6), F.A.C.]
- f. Any bypass of the treatment facility which is not included in the monitoring specified in sections Part 4a. and b., is to be monitored for flow and all other required parameters. For parameters other than flow, at least one grab sample per day shall be monitored. Daily flow shall be monitored or estimated, as appropriate, to obtain reportable data. [62-620.320(6), F.A.C.]

- g. Unless specified elsewhere in the Administrative Agreement, samples taken in compliance with the monitoring requirements specified in Conditions 4.a. and 4.b. shall be taken at the nearest accessible point after final treatment but prior to actual mixing with the receiving water body.
- h. Any bypass of the treatment facility, which is not included in the monitoring specified in Conditions 4.a., and 4.b. above, is to be monitored by the Responsible Authority for flow and all other required parameters. For parameters other than flow, at least one grab sample per day shall be monitored. Daily flow shall be monitored or estimated, as appropriate, to obtain reasonable data. All monitoring results shall be reported to the Department in an appropriate report format.

7. Groundwater Monitoring Requirements

a. Construction Requirements

- (1) Prior to construction of new ground water monitor wells, a soil boring shall be made at each new monitor well location in order to properly determine the well depth and screen interval.
- (2) The Responsible Authority shall give at least 72-hours notice to the Department, prior to the installation of any monitor wells detailed in this Administrative Agreement.
- (3) Within 30 days after installation of a new monitor well, the Responsible Authority shall submit to the Department's Bureau of Mining and Minerals Regulation District Office detailed information on the well's location and construction on the attached DEP Form(s) 62-522.900(3), Monitor Well Completion Report.

b. Operational Requirements

- (1) During the period of operation authorized by this Administrative Agreement, the Responsible Authority shall continue to sample ground water at the existing monitor wells identified in Condition 7.b.(2) below, in accordance with this Administrative Agreement and the approved ground water monitoring plan prepared in accordance with Rule 62-522.600, F.A.C.
- (2) The following monitor wells in the table below shall be sampled for the Groundwater Monitoring Plan (See **Attachment B**):

Monitoring Well ID	Site Location	Depth	Aquifer	New or Existing
MWB-01	SE property corner	12	Surficial	Existing
MWC-02	300' south of property	22	Surficial	Existing
MWI-03	700' west of north cooling pond	20	Surficial	Existing
MWI-04B	500' west of liming station	20	Surficial	Existing
MWC-5R	250' south of Buckeye Rd.	20	Surficial	Existing
MWC-6A	West of the stack	65.3	Intermediate	Existing
MWB-07	SE property corner	90	Intermediate	Existing
MWC-08	West property line	18	Surficial	Existing
MWC-09	North of Lower North stack	23.3	Surficial	Existing
MWB-10B	East of Gypsum Stack	15	Surficial	Existing
MWI-11	East of Closed Plant	20	Surficial	Existing
MWI-13	SW property corner	15	Surficial	Existing
MWI-17	South property line	12	Surficial	Existing
MWC-18	Most NE property corner	18	Surficial	Existing
MWC-19	North of Closed North Pond	15	Surficial	Existing
MWI-20	South property line	21	Surficial	Existing
MWI-21	Supply well	335	Floridan	Existing
MWC-22	200' south of property	15	Surficial	Existing
MWC-23	200' south of property	15	Surficial	Existing

MWB = Background; MWI = Intermediate/Observation; MWC = Compliance; MWP = Piezometer; TBD = To be determined

- (3) Routine Sampling - The monitor wells included in the ground water monitoring plan shall be sampled and analyzed by the Responsible Authority for the parameters and at the frequencies listed in the table below:

Parameter Name	Compliance Well Limit	Units	Sample Type	Monitoring Frequency
Water Level Relative to MSL	Report	FEET	In-situ	Quarterly
Temperature (C), Water	Report	DEG.C	In-situ	Quarterly
Specific Conductance	Report	UMHO/CM	In-situ	Quarterly
pH	6.5 to 8.5	SU	In-situ	Quarterly
Turbidity	Report	NTU	Grab	Quarterly
Sodium, Total Recoverable	160	MG/L	Grab	Quarterly
Fluoride	4	MG/L	Grab	Quarterly
Sulfate	250	MG/L	Grab	Quarterly
Total Nitrate + Nitrite	10	MG/L	Grab	Quarterly
Orthophosphate as PO4	Report	MG/L	Grab	Quarterly
Total Dissolved Solids	500	MG/L	Grab	Quarterly
Alpha, Gross Particle Activity	15 (See 7.b.(5))	PCI/L	Grab	Quarterly
Radium 226 + Radium 228, Total	5 (See 7.b.(5))	PCI/L	Grab	Quarterly
Arsenic, Total Recoverable	50	UG/L	Grab	Quarterly
Cadmium, Total Recoverable	5	UG/L	Grab	Quarterly
Chromium, Hexavalent Total Recoverable	100	UG/L	Grab	Quarterly
Lead, Total Recoverable	15	UG/L	Grab	Quarterly

- (4) Water levels shall be recorded prior to evacuating the well for sample collection. Measurements, referenced to mean sea level, shall include the top of the well casing, depth to ground water, and the calculated ground water elevation at a precision of plus or minus 0.1 feet. Additionally, water elevations at a precision of plus or minus 0.1 feet shall be collected from the staff gauge in the Seepage Ditch and also the staff gauge in Buckeye Ditch concurrently with the water levels from the monitor wells.
- (5) The concentration of Combined Radium ($Ra^{226+228}$), as well as Gross Alpha Particle Activity shall be limited in accordance with Rule 62-550.310(4)(a), F.A.C., respectively. During any sampling event performed in accordance with the monitoring requirements of Condition 7.b.(3) above, a properly preserved sample must be taken for the determination of Gross Alpha Particle Activity and Combined Radium. The sample must be first analyzed for the Gross Alpha Particle Activity. If the value of Gross Alpha Particle Activity exceeds the MCL of 15 pCi/l, the same sample shall be analyzed for Combined Radium.
- (6) If a monitor well becomes damaged or cannot be sampled for some reason, the Responsible Authority shall notify the Department with a written report within seven days detailing the circumstances and remedial measures taken or proposed. Replacement of the monitor wells shall be approved in advance by the Department. [Section 62-620.610(7), F.A.C.]
- (7) Analyses shall be conducted on un-filtered samples, unless filtered samples have been approved by the Department as being more representative of ground water conditions.
- (8) All sampling procedures and field activities required by this Administrative Agreement must follow the Department of Environmental Protection Standard Operating Procedures for Field Activities (DEP-SOP-001/01), which is available at <http://www.floridadep.org/labs/qa/2002sops.htm>.

- (9) If the concentration for any constituent listed in Administrative agreement Condition 7.b.(3) in the natural background quality of the ground water is greater than the stated maximum, or in the case of pH is also less than the minimum, the representative natural background quality shall be the prevailing standard.
- (10) Ground water monitor wells shall be purged prior to sampling to obtain a representative sample.
- (11) All piezometers and wells not part of the approved ground water monitoring plan are to be plugged and abandoned in accordance with Rule 62-532.500(4), F.A.C., unless there is intent for their future use.
- (12) The Responsible Authority shall provide verbal notice to the Department as soon as practical after discovery of a sinkhole within an area for the management or application of wastewater or sludge. The Responsible Authority shall immediately implement measures appropriate to control the entry of contaminants, and shall detail these measures to the Department in a written report within 7 days of the sinkhole discovery.
- (13) Ground water monitoring test results shall be reported on Part D of DEP Form 62-620.910(10) and shall be submitted for each calendar quarter as specified in Condition 6.c. above.
- (14) The ground water zone of discharge shall extend horizontally along the ground surface to the property line, as depicted in **Attachment B**, and to the base of the surficial aquifer.
- (15) The Responsible Authority's discharge to ground water shall not cause a violation of water quality standards for Class G-II ground waters at the boundary of the zone of discharge in accordance with Rules 62-520.400 and 62-520.420, F.A.C.
- (16) The Responsible Authority's discharge to ground water shall not cause a violation of the minimum criteria for ground water specified in Rule 62-520.400, F.A.C., within the zone of discharge.

8. Operation and Maintenance Requirements

a. Operation of Treatment and Disposal Facilities

- (1) The Responsible Authority shall ensure that the operation and maintenance of the phosphogypsum stack system during closure and long-term care of this facility is in accordance with Rule 62-673, F.A.C.
- (2) The Responsible Authority shall ensure that the operation of the pollution control facilities described in this Administrative Agreement shall be under the supervision of a person who is qualified by formal training and/or practical experience in the field of water pollution control.
- (3) The Responsible Authority shall ensure that all aboveground impoundments are operated, maintained and inspected in accordance with Rule 62-672, F.A.C.

b. Record keeping Requirements

The Responsible Authority shall maintain the following records on the site of the Piney Point facility or other Department approved location and make them available for inspection:

- (1) Records of all compliance monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, including, if applicable, a copy of the laboratory certification showing the certification number of the laboratory, for at least three years from the date the sample or measurement was taken.
- (2) Copies of all reports, other than those required in item (1) of this section, required by this Administrative Agreement for at least three years from the date the report was prepared, unless otherwise specified by Department rule.
- (3) A copy of this Administrative Agreement.
- (4) A copy of any required record drawings.
- (5) Copies of the logs and schedules showing plant operations and equipment maintenance for three years from the date on the logs or schedule.

9. Compliance Schedules and Self-imposed Improvement Schedules

- a. N/A.

10. Other Specific Conditions

- a. Drawings, plans, documents or specifications submitted by the Responsible Authority, not attached hereto, but retained on file at the Phosphate Management Program Office, are made a part hereof.
- b. Where required by Chapter 471 (P.E.) or Chapter 492 (P.G.) Florida Statutes, applicable portions of reports to be submitted under this Administrative Agreement, shall be signed and sealed by the professional(s) who prepared them.
- c. This Administrative Agreement satisfies Industrial Wastewater program requirements only and does not authorize any construction, modification and/or operation of this facility prior to obtaining all other approvals required by local, State and Federal agencies.
- d. If significant historical or archaeological artifacts are discovered at any time within the project site, the Responsible Authority shall immediately notify the District Office and the Bureau of Historic Preservation, Division of Archives, History and Records Management, R.A. Gray Building, Tallahassee, Florida 32301.
- e. The Responsible Authority shall notify the Department's Phosphate Management Program within twenty-four hours of any problems that may seriously hinder compliance with this Administrative Agreement. Notification to the Department shall be by phone (813/632-7600, ext. 138) or facsimile (813/632-7670) if after working hours. The Department may require a detailed written report describing the problem, remedial measures taken to assure compliance and measures taken to prevent recurrence of the problem.
- f. The Responsible Authority shall report all critical (having potential to significantly pollute surface or ground waters) spills of liquid or liquid-solid materials, not confined to a building or similar containment structure, to the Department by phone (813/632-7600, ext. 138) or facsimile (813/632-7670) if after working hours, within twenty-four hours after the discovery and submit a written report within forty-eight hours, excluding weekends, from the original notification. The written report shall include, but not be limited to, a detailed description of how the spill occurred, the name and chemical make-up (include any MSDS sheets) of the substance, the amount spilled, the time and date of the spill, the name and title of the person who first reported the spill, the area size of the spill and surface types (impervious, ground, water bodies, etc.) it impacted, the cleanup procedures taken and status of completion, and include a map or aerial photograph showing the extent and paths of the material flow. Any deviation from this requirement must receive prior approval from the Department.
- g. The Responsible Authority shall develop and implement a Stormwater Management Plan (SWMP) / Stormwater Pollution Prevention (SWPP) Plan for the activities and land uses at the facility per the schedule in the table below. The SWMP/SWPP Plan shall be prepared in accordance with good engineering practices and with the factors outlined in 40 CFR §125.3(d)(2) or (3) as appropriate. The plan shall identify the handling of stormwater, and potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in stormwater discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this Administrative Agreement.

Action Item		Scheduled Completion Date
1	Develop and Submit a SWMP/SWPP Plan	Issuance Date of Administrative Agreement + 6 months
2	Implement the SWMP/SWPP Plan	Thirty days Following Department Approval

11. Administrative Provisions

- a. If any event, excluding administrative or judicial challenges by third parties unrelated to the Responsible Authority, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Administrative Agreement, the Responsible Authority shall have the burden of demonstrating that the delay was or will be caused by circumstances beyond the reasonable control of the Responsible Authority and could not have been or cannot be overcome by the Responsible Authority's due diligence. Economic circumstances shall not be considered circumstances beyond the reasonable control of

the Responsible Authority, nor shall the failure of a Contractor Authority, sub-contractor 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 the Responsible Authority, unless the cause of the Responsible Authority's late performance was also beyond the Responsible Authority's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, the Responsible Authority shall notify the Department orally at: **813/632-7600, extension 138** 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 at the address listed in Part 6c., 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 the Responsible Authority 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 the Responsible Authority, 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.

- b. Persons who are not parties to this Administrative Agreement, but whose substantial interests are affected by this Administrative Agreement, have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below 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 receiving notice of the Administrative Agreement. A copy of the Petition must also be mailed at the time of filing to the Department's Phosphate Management Office at 13051 North Telecom Parkway, Temple Terrace, FL 33637-0926. Failure to file a petition within the **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:

- (1) The name, address, and telephone number of each petitioner; the Department's Administrative Agreement identification number and the county in which the subject matter or activity is located;
 - (2) A statement of how and when each petitioner received notice of the Administrative Agreement;
 - (3) A statement of how each petitioner's substantial interests are affected by the Administrative Agreement;
 - (4) A statement of the material facts disputed by petitioner, if any;
 - (5) A statement of facts which petitioner contends warrant reversal or modification of the Administrative Agreement;
 - (6) A statement of which rules or statutes petitioner contends require reversal or modification of the Administrative Agreement;
 - (7) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Administrative Agreement.
- c. 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 the Administrative Agreement. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Administrative Agreement 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 **21** days of receiving notice of the Administrative Agreement 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. Mediation is not available for this proceeding.
- d. The Responsible Authority may, at its discretion, publish a Notice of Administrative Agreement in a newspaper of general circulation in the county in which the facility is located. The publication shall contain a description of the property affected, and a notice of rights, which shall contain the language in Sections 10.b. and 10.c., above. Failure to publish may result in an extension of the time in which affected parties are allowed to file a petition for an administrative proceeding.

- e. The Responsible Authority shall allow all authorized representatives of the Department access to the property at reasonable times for the purpose of determining compliance with the terms of this Administrative Agreement and the rules and statutes of the Department.
- f. All submittals required by this Administrative Agreement to be submitted to the Department shall be sent to the Florida Department of Environmental Protection as specified in Section 6. above.
- g. This Administrative Agreement is an agreement with the Responsible Authority to recognize the Department's authority arising under Florida law to regulate the matters addressed herein. This Administrative Agreement is not a settlement of any criminal liabilities which may arise under Florida or federal law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under Florida or federal law.
- h. 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 for either past or future violations of the terms of this Administrative Agreement. Any subsequent enforcement action taken by the Department may result in an enforcement order requiring an acceleration of the deadlines for the requirements addressed in this Administrative Agreement through a subsequent Order of the Department and an imposition of administrative fines and civil penalties.
- i. The terms and conditions set forth in this Administrative Agreement 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 Administrative Agreement shall constitute a violation of Section 403.161(1)(b), Florida Statutes.
- j. Entry into this Administrative Agreement does not relieve the Responsible Authority of the need to comply with applicable federal, state or local laws, regulations or ordinances.
- k. If data from the Bishop Harbor monitoring efforts indicates that changes in the discharge and operation limitations stipulated under the terms of this Agreement are needed to prevent adverse impacts, then this agreement may be modified as appropriate.
- l. This Agreement may be amended by mutual consent of the parties. No modifications of the terms of this Administrative Agreement shall be effective until reduced to writing and executed by both the Responsible Authority and the Department.
- m. The Responsible Authority acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, on the terms of this Administrative Agreement. The Responsible Authority acknowledges its right to appeal the terms of this Administrative Agreement pursuant to Section 120.68, Florida Statutes, and waives that right upon signing this Administrative Agreement.
- n. This Administrative Agreement 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 Administrative Agreement will not be effective until further order of the Department.

Agreed to this 28th day of January, 2011, in Tallahassee, Florida.

FOR HRK HOLDINGS, L.L.C.:



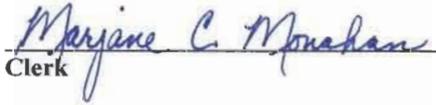
Jeff Barath
Principal/Site Manager
HRK Holdings, L.L.C.
13300 U.S. Highway 41 North
Palmetto, Florida 34221-8661

**FOR THE STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION**



John A. Coates, P.E.
Deputy Director
Division of Water Resource Management
2051 East Paul Dirac Drive
Tallahassee, Florida 32310-3760

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


Clerk

1/28/11
Date

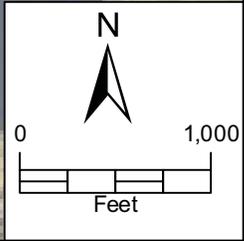
Copies furnished to:

FDEP - Office of General Counsel
U.S. Environmental Protection Agency - Region 4



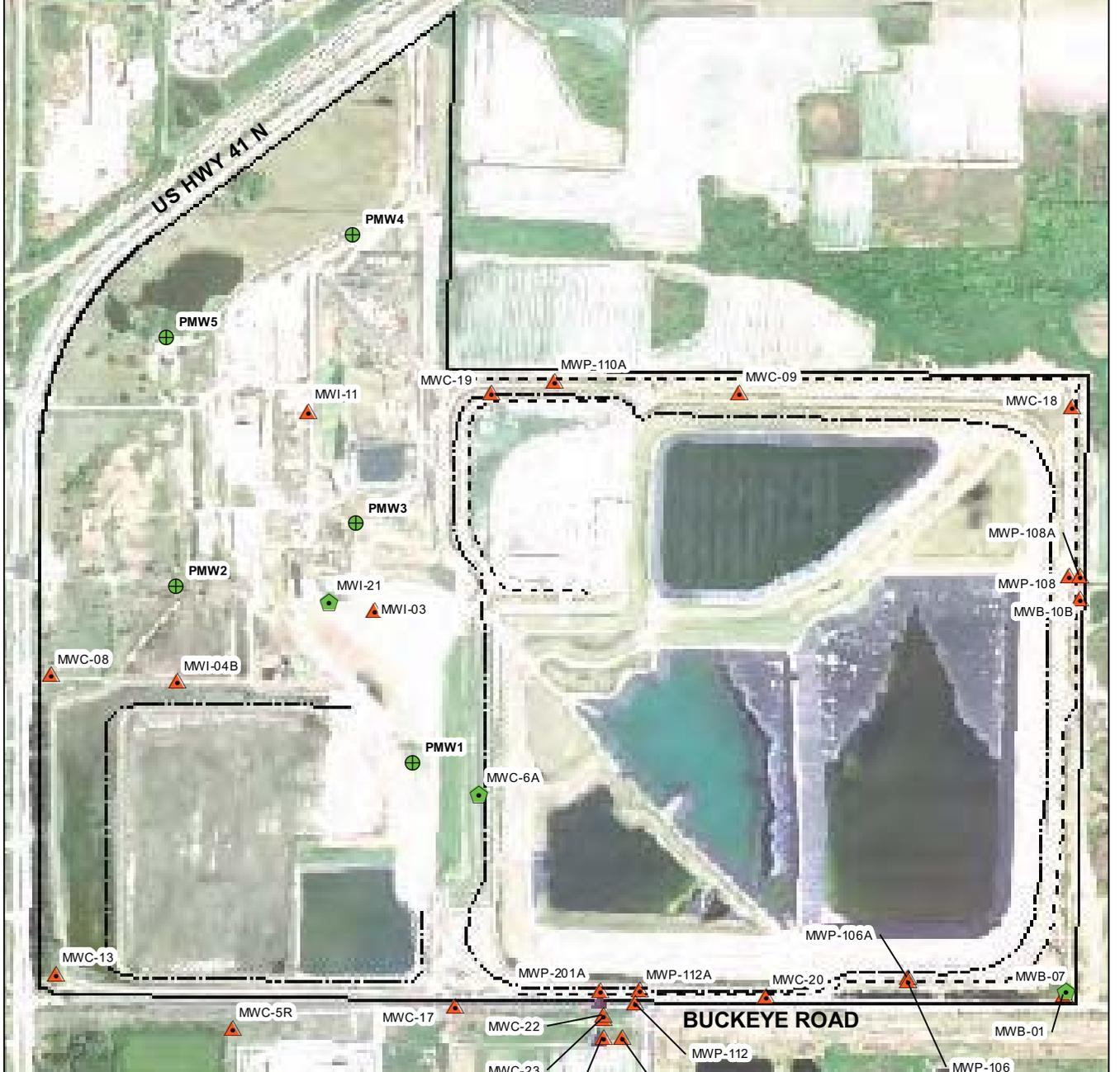
Legend

- Monitoring Sites
- Outfall Locations
- Project Boundary
- Process Water Collection Area
- Stormwater Ponds
- Compartments
- Collection Ditches
- Stormwater Flow Arrow



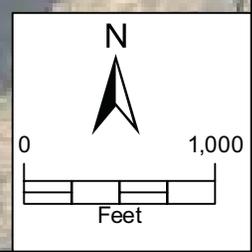
ATTACHMENT A.
 FACILITY WATER MANAGEMENT FEATURES
 NPDES PERMIT RENEWAL FL 0000124
 EASTPORT DEVELOPMENT
 HRK HOLDINGS, LLC
 Sources: Google Earth, 2010; ECT, 2010.





Legend

- ⊕ Proposed Monitoring Wells
- ⬠ Monitoring Well - Confined Aquifer
- ▲ Monitoring Well - Surficial Aquifer
- ▲ Piezometer
- ▭ Project Boundary
- - - Soil Bentonite Clay Slurry Wall
- - - Underground Seepage Collection



ATTACHMENT B
 GROUNDWATER MONITORING AND CONTROL FEATURES
 NPDES PERMIT RENEWAL FL 0000124
 EASTPORT DEVELOPMENT
 HRK HOLDINGS, LLC
 Sources: Google Earth, 2010; ECT, 2010.



STATE OF FLORIDA

OFFICE OF THE GOVERNOR EXECUTIVE ORDER NUMBER 21-82

(Emergency Management-Eastport Terminal Facility)

WHEREAS, on March 25, 2021, HRK Holdings L.L.C., who is the responsible entity for the operation of the phosphogypsum stacks at Eastport Terminal facility, reported increased flow and specific conductivity measurements indicating the presence of a leak from the Site's NGS-S lined compartment; and

WHEREAS, the Site's NGS-S Structure 1 lined compartment contains 480 million gallons of a mixture of seawater and remnant process water from the historical fertilizer manufacturing operations at the site; and

WHEREAS, as of March 28, 2021, the drain flow rates and conductivity measurements have continued to increase by an unidentified source, causing potential risks and system instability; and

WHEREAS, the Department of Environmental Protection has determined that the site is an imminent hazard pursuant to section 403.4154, Florida Statutes, which creates an immediate and substantial danger to human health, safety, welfare and the environment; and

WHEREAS, the Department of Environmental Protection has determined the potential risks caused by the conductivity measurements at Structure 1 create an imminent threat of potential loss of containment and the release of large amounts of seawater, mixed process water, and embankment materials if immediate action is not taken; and

WHEREAS, due to this danger it is vital that local disaster response agencies prepare for the evacuation of persons from communities at risk of flooding due to their close proximity to

the facility for the safety of the residents and law enforcement will need to take action as needed to divert traffic and clear waterways; and

WHEREAS, other emergency measures may be needed to protect the lives and property of the people in the threatened communities, and the general welfare of the State of Florida; and

WHEREAS, immediate emergency actions shall be taken to abate or substantially reduce the imminent hazard and stabilize all of the systems dikes, berms, and ditches to prevent a containment failure; and

WHEREAS, as Governor, I am responsible for meeting the dangers presented to this state and its people by this emergency.

NOW, THEREFORE, I, RON DESANTIS, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section 1(a) of the Florida Constitution and by the Florida Emergency Management Act, as amended, and all other applicable laws, promulgate the following Executive Order, to take immediate effect:

Section 1. Because of the foregoing conditions, I find that the prospect of one or more systems failures at the Eastport Terminal Facility threatens the State of Florida with a disaster and environmental emergency. I therefore declare that a state of emergency exists in Hillsborough, Manatee, and Pinellas Counties due to the proximity of these counties to the facility. I further find that in the event a dangerous release is imminent, central authority over the evacuation of these counties will be needed to coordinate the evacuation, because the evacuation will exceed the capabilities of the local governments in these communities.

Section 2. I designate the Director of the Division of Emergency Management as the State Coordinating Officer for the duration of this emergency. In exercising the powers delegated by this Executive Order, the State Coordinating Officer shall confer with the Governor to the fullest extent practicable. In accordance with sections 252.36(1)(a) and 252.36(5), Florida

Statutes, I delegate to the State Coordinating Officer the following powers, which he shall exercise subject to the limitations of section 252.33, Florida Statutes, as needed to meet this emergency:

A. The authority to activate the Comprehensive Emergency Management Plan (“CEMP”);

B. The authority to invoke and administer the Statewide Mutual Aid Agreement (“SMAA”), and the further authority to coordinate the allocation of resources under that Agreement so as best to meet this emergency;

C. The authority to seek direct assistance from any and all agencies of the United States Government as may be needed to meet the emergency;

D. The authority to distribute any and all supplies stockpiled to meet the emergency;

E. The authority to suspend existing statutes, rules, ordinances, and orders for the duration of this emergency to the extent that literal compliance with such statutes, rules, ordinances, and orders may be inconsistent with the timely performance of disaster response functions;

F. The authority to suspend the effect of any statute or rule governing the conduct of state business, and the further authority to suspend the effect of any order or rule of any governmental entity, to include, without limiting the generality of the foregoing, any and all statutes and rules which affect budgeting, printing, purchasing, leasing, procurement, and the conditions of employment and the compensation of employees; provided, however, that the State Coordinating Officer shall have authority to suspend the effect of any statute, rule or order only to the extent necessary to ensure the timely performance of vital emergency response functions;

G. The authority to relieve any and all state agencies responsible for processing applications or petitions for any order, rule, or other final action subject to the Administrative

Procedure Act, as amended, from the deadlines specified in that Act and in other applicable laws for the duration of this emergency, if the State Coordinating Officer finds that such deadlines cannot be met because of this emergency;

H. The authority to direct all state, regional, and local governmental agencies, including law enforcement agencies, to identify personnel needed from those agencies to assist in meeting the needs created by this emergency, and to place all such personnel under the direct command of the State Coordinating Officer to meet this emergency;

I. The authority to seize and utilize any and all real or personal property as needed to meet this emergency, subject always to the duty of the State to compensate the owner;

J. The authority to order evacuation, and the authority to direct the sequence of evacuation in which such evacuations shall be carried out, and the further authority to regulate the movement of persons and traffic to, from, or within the affected counties to the extent needed to cope with this emergency;

K. The authority to regulate the return of the evacuees to their home communities;

L. The authority to designate such Deputy State Coordinating Officers as the State Coordinating Officer may deem necessary to cope with the emergency; and

M. The authority to enter such orders as may be needed to implement any or all of the foregoing powers.

Section 3. I direct each of the counties named in Section 1 of this Executive Order to activate its County Emergency Management Plan to ensure an immediate state of operational readiness, and I further direct the remaining counties in the State of Florida, at the discretion of the State Coordinating Officer, to prepare to activate all shelters to accommodate the evacuees.

Section 4. I direct all state, regional, and local agencies to place any and all available resources under the direction of the State Coordinating Officer as needed to meet this

emergency. The Department of Law Enforcement shall have the operational authority to coordinate and direct law enforcement resources and other resources of any and all local, regional, and state governmental agencies that the Department may designate to take the precautions needed to protect the State of Florida from terrorist acts. I place all law enforcement resources under the operational authority of the Department of Law Enforcement while this Executive Order remains in effect. In exercising the powers delegated by this Executive Order, the State Coordinating Officer shall coordinate the response to this event by law enforcement resources of the State in consultation with the Department of Law Enforcement.

Section 5. I designate all state, regional, and local governmental facilities including, without limiting the generality of the foregoing, all public elementary and secondary schools, all Community Colleges, and all State Universities, at the discretion of the State Coordinating Officer for use as shelters to ensure the proper reception and care of all evacuees.

Section 6. In accordance with sections 252.36(5)(a) and 252.46(2), Florida Statutes, all statutes, rules, and orders are hereby suspended for the duration of this emergency to the extent that literal compliance with such statutes, rules, and orders may be inconsistent with the timely performance of emergency response functions. I also find that the special duties and responsibilities resting upon some state, regional and local agencies and other governmental bodies in responding to the emergency may require them to deviate from the statutes and rules they administer. Without limiting the generality of the foregoing, I order the following:

- A. Pursuant to section 252.36(1)(a), Florida Statutes, the Executive Office of the Governor may suspend all statutes and rules affecting budgeting to the extent necessary to provide budget authority for state agencies to cope with this emergency.
- B. To the extent that the demands placed upon the funds appropriated to the agencies of the State of Florida and to local agencies are unreasonably great and the funds currently

available may be inadequate to pay the costs of coping with this emergency, I direct that sufficient funds be made available, as needed, by transferring and expending moneys appropriated for other purposes, moneys from unappropriated surplus funds, or from the Budget Stabilization Fund.

- C. I authorize the Department of Transportation to waive the size and weight restrictions for divisible loads on any vehicles transporting emergency equipment, services and supplies, allowing the establishment of alternate size and weight restrictions for all such vehicles for the duration of the emergency, to the extent such waivers are needed to meet this emergency. Commercial vehicles allowed to operate outside the normal restrictions for such vehicles under the authority of this Executive Order shall be issued permits by the Department of Transportation, and such vehicles shall be subject to such special conditions as the Department may endorse on any such permits. Nothing in this Executive Order shall be construed to allow any vehicle to exceed weight limits posted for bridges and like structures, nor shall anything in this Executive Order be construed to relieve any vehicle or the carrier, owner, or driver of any vehicle from compliance with any restrictions other than those specified in this Executive Order, or from any statute, rule, order or other legal requirement not specifically waived herein.
- D. At the request of the director of a county emergency management agency, I direct the Department of Health take over the operation of all shelters in that county that are intended for use by those evacuees with special personal, medical or psychological needs, and to station licensed medical professional and paraprofessional personnel at those shelters as needed to provide appropriate reception and care for such evacuees.
- E. I give the Department of Environmental Protection the authority to take any actions necessary to abate the imminent hazard and to minimize adverse environmental impacts,

including those specified in section 403.4154, Florida Statutes. Additionally, the Department of Environmental Protection has the authority to close state parks and other state recreational facilities under its jurisdiction in those counties of the State affected by the emergency, as needed to meet the emergency.

- F. I give all agencies of the State, including the collegial bodies within those agencies, the authority to suspend the effect of any statute, rule, ordinance, or order of any state, regional, or local government entity, to the extent needed to procure any and all necessary supplies, commodities, services, temporary premises, and other resources, to include, without limiting the generality of the foregoing, any and all statutes, rules, ordinances, or orders which affect budgeting, leasing, printing, purchasing, travel and the condition of employment and the compensation of employees, but any statute, rule, ordinance, or order shall be suspended only to the extent necessary to ensure the timely performance of disaster response functions as prescribed in the State Comprehensive Emergency Plan (CEMP), or as directed by the State Coordinating Officer; however, any waiver of statutes, rules, or ordinances governing travel shall expire in fourteen (14) days from the date of this Executive Order unless extended (in increments of no more than fourteen days) by the agency.
- G. I give all agencies of the State the authority to allow overnight stays by employees of the State who travel a distance of less than fifty (50) miles for the performance of official duties in connection with the emergency, and the authority to allow employees of the State reimbursement for the cost of meals during Class C travel incurred in connection with this emergency.

- H. I give all agencies of the State responsible for the use of state buildings and facilities the authority to close such buildings and facilities in those portions of the State affected by this emergency, to the extent to meet this emergency; and
- I. I give all agencies of the State, including the collegial bodies within those agencies, the authority to abrogate the time requirements, notice requirements, and deadlines for final action on applications for permits, licenses, rates, and other approvals under any statutes or rules under which such application are deemed to be approved unless disapproved in writing by specified deadlines, and all such time requirements that have not yet expired as of the date of this Executive Order are suspended and tolled to the extent needed to meet this emergency.

Section 7. Pursuant to section 376.121, Florida Statutes, to the extent permitted by law, state agencies responding to this emergency shall seek reimbursement from the responsible party.

Section 8. Medical professionals and workers, social workers, and counselors with good and valid professional licenses issued by States other than the State of Florida may render such services in the State of Florida during this emergency for persons affected by this emergency with the condition that such services be rendered to such persons free of charge, and with the further condition that such services be rendered under the auspices of the American Red Cross or the Department of Health.

Section 9. All state agencies that enter emergency final orders or take other final actions based on the existence of this emergency shall advise the State Coordinating Officer in writing of the action taken as soon as practicable, but in no event later than the expiration of sixty (60) days from the date of this Executive Order.

Section 10. All actions taken by the Director of the Division of Emergency Management with respect to this emergency before the issuance of this Executive Order are hereby ratified.

This Executive Order shall expire sixty (60) days from this date unless extended.

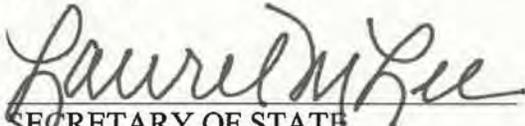


IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 3rd day of April, 2021.



RON DESANTIS, GOVERNOR

ATTEST:



SECRETARY OF STATE

FILED
2021 APR -3 PM 4: 13
DEPARTMENT OF STATE
TALLAHASSEE, FL

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CIVIL DIVISION

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiff,

vs.

Civil Action No.

HRK HOLDINGS, LLC, a Florida limited liability
company,

Defendant.

_____ /

CORPORATE SUMMONS

THE STATE OF FLORIDA:
TO EACH SHERIFF OF THE STATE:

YOU ARE COMMANDED to serve this summons and a copy of the complaint or
petition in this action on defendant:

HRK HOLDINGS, LLC
C/O JEFFREY BARATH, REGISTERED AGENT
13500 SCALE AVENUE
PALMETTO FL 34221

Each defendant is required to serve written defenses to the complaint or petition on
plaintiff's attorney, whose name and address is:

KIRK WHITE
Senior Assistant General Counsel
3900 Commonwealth Blvd., MS 35
Tallahassee, FL 32399-3000
Telephone: (850) 245-2258; Fax: (850) 245-2298

within 20 days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

DATED ON this _____ day of _____, 2021.

CLERK OF THE CIRCUIT COURT

BY: _____
As Deputy Clerk

“If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Manatee County Jury Office, P.O. Box 25400, Bradenton, Florida 34206, (941)741-4062, at least seven (7) days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than seven (7) days; if you are hearing or voice impaired, call 711.”