

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF:

DONICA RECEIVERSHIP SERVICES, LLC
CONCEPTUAL CLOSURE PLAN
FORMER PINEY POINT
PHOSPHOGYPSUM STACK SYSTEM

IN THE OFFICE OF THE DIVISION OF
WATER RESOURCE MANAGEMENT
OGC FILE NO. 22-0468

ORDER APPROVING CONCEPTUAL CLOSURE PLAN

The Florida Department of Environmental Protection (Department) hereby issues this Order Approving Conceptual Closure Plan (Order) to Donica Receivership Services (Receiver) and finds:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes (Fla. Stat.), and the rules promulgated and authorized in Title 62, Florida Administrative Code (Fla. Admin. Code). The Department has jurisdiction over the matters addressed in this Order.

2. The Receiver was appointed pursuant to an August 25, 2021, Agreed Order on Motion to Appoint Receiver (Receiver's Order) under Civil Action No. 2020-CA-004459-AX in the Manatee County circuit court, and ordered to: (a) "maintain, manage and close as efficiently and expeditiously as possible the Facility in accordance with all applicable State and Federal laws"; and (b) "develop a closure plan (consistent with all applicable laws and rules)," for submittal to the Department.

3. The Facility is situated on real property located at 13300 U.S. Highway 41 North, Palmetto, FL 34221-8661, in Manatee County, Florida, at approximately, Latitude: 27° 38' 4.82" North and Longitude: 82° 32' 2.95" West.

4. Under the Receiver's Order, the Receiver is authorized and directed to preserve or obtain whatever licenses, permits or authorizations as are necessary in the preservation,

maintenance, management, or closure of the Facility, and is also authorized to take any action necessary to comply with any environmental or other law governing the Facility.

5. The conceptual closure plan (Conceptual Plan) submitted by the Receiver to the Department on March 25, 2022 conforms with the closure plan performance standards of Rule 62-673.610, Fla. Admin. Code.

WHEREFORE IT IS ORDERED:

6. The Conceptual Plan is hereby approved for the closure of the portions of the Facility as therein specified, subject to the conditions and requirements of this Order and the closure performance requirements of Rule 62-673.610, Fla. Admin. Code.

7. The Receiver shall submit a detailed closure design analysis, construction drawings, and technical specifications (Detailed Closure Design Report) to the Department for review, including any sequence and timeframes for completion thereof, for each element or phase of closure, for review and approval by the Department, at least 30 days prior to initiation of construction activities. Such Detailed Closure Design Reports shall be consistent with the Conceptual Plan, and the closure performance requirements of Rule 62-673.610, Fla. Admin. Code and incorporate the following information as applicable to the phase or work areas included in each such Detailed Closure Design Report:

a. improvements or modifications to the Facility as specified in Addendum 1 of the Conceptual Plan to contain the 100-year, 24-hour storm rainfall, or as necessary to provide erosion protection for any modeled controlled overflow locations for non-contact stormwater based on the 100-year, 24-hour storm event;

b. verification of dike elevations in all downstream Facility stormwater conveyances from the corresponding proposed closure areas, and, where existing dikes are at or below elevations used for Conceptual Plan hydrologic and hydraulic analyses, confirmation that such dikes are being (or have been) restored or otherwise raised to provide for modeled stormwater conveyance conditions;

c. a review and plans for modification of all stormwater drainage connections discharging to Basin 2 at the Facility to ensure that all such connections provide outlet erosion protection where needed and elevations accommodating

maintenance of a minimum of 2 ft. of soil cover above the liner at the point of discharge into Basin 2.

8. The Department may request additional information upon review of the Detailed Closure Design Report. Receiver shall only initiate closure construction activities associated with a design element or phase, after receipt of written approval from the Department.

9. Receiver shall revise any submittal, specification, or schedule in accordance with the Department's written comments or requests for additional information, within thirty (30) days of Receiver's receipt of the Department's written comments or requests, unless such comments or requests specify an alternative due date, in which case Receiver shall submit to the Department any revised submittal, specification, or schedule in accordance with the due date specified by the Department. Revised submittals are also subject to approval, approval with conditions and/or modifications, or disapproval by the Department following the same approval procedures for the previous submittals detailed above.

10. Upon receipt of the Department's written approval, or approval with conditions and/or modifications, Receiver shall implement any approved closure work plan in accordance with the specifications and provisions contained therein.

11. Receiver shall submit monthly progress reports to the Department including the status of planned closure activities, and a monthly updated water balance projection, including corresponding water removal rates for closure, and projected future closure schedule dates.

12. Receiver shall submit a certification of completion of construction following completion of construction of each Department approved element or phase of closure, within 30 days of completion. As built record drawings shall be submitted to the Department within 90 days of completion of construction.

13. The Receiver shall be responsible for oversight of its contractor's performance of the closure actions required herein, including oversight of such actions and any decisions made in the field by the Receiver or its representatives, to ensure such performance of work herein is consistent with the plans, work plans, or submittals approved by the Department pursuant to this Order. In any case where there are substantial deviations from an approved

plan, or where circumstances arise that pose an immediate threat to health or the environment, the Receiver shall notify the Department within 24 hours of such discovery and provide a written summary of the deviations or circumstances to the Department within five business days. Applicable portions of technical documents submitted by the Receiver to the Department shall be signed and sealed by a professional engineer registered pursuant to Chapter 471, Fla. Stat., or a professional geologist registered pursuant to Chapter 492, Fla. Stat., certifying that the applicable portions of the technical document and associated work comply with standard professional practices, this chapter and other rules of the Department, and any other applicable laws and rules governing the profession.

14. Except as otherwise provided, all submittals and reports required by this Order shall be sent to:

Phosphate Management Program, attention Vishwas Sathe, Environmental
Administrator or successor, Department of Environmental Protection
13051 N Telecom Parkway, Suite 101
Temple Terrace, Florida 33637-0926

15. Electronic mail, for submittals other than payments, may be provided in lieu of paper where appropriate, and sent to the Phosphate Management electronic mailbox: dwrmiw.pm@dep.state.fl.us.

16. The Department shall have access to the Facility and the Property at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

17. Receiver shall publish the following notice in a newspaper of daily circulation in Manatee County, Florida. The notice shall be published one time only within 15 days of the effective date of the Order. Receiver shall provide a certified copy of the published notice to the Department within 10 days of publication.

**STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL
PROTECTION NOTICE OF CLOSURE ORDER**

The Department of Environmental Protection (“Department”) gives notice of agency action of issuing an Order Approving Conceptual Closure Plan (Order) to

Donica Receivership Services, LLC (Receiver). The Order addresses the duties and responsibilities of the Receiver, to secure the environmental safety of the Piney Point Facility by satisfactorily completing closure of the phosphogypsum stack system in accordance with the order appointing the Receiver by the Manatee County Circuit Court in Civil Action No. 2020-CA-004459-AX. The Facility is located at 13300 US Highway 41 North, Palmetto FL 34221. The Order is electronically available for public review and downloading from the Department of Environmental Protection electronic database at <https://depedms.dep.state.fl.us/Oculus/servlet/login>. (Public Users may use the Public Oculus Login and search under Catalog: Mining & Minerals Regulation; Profile: Discovery_Compliance, and Facility-Site ID MMR_FL0000124.)

NOTICE OF RIGHTS

Petition for Administrative Hearing

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rules 28-106.201 and 28-106.301, F.A.C., a petition for an administrative hearing must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Agency Clerk) in the Department's Office of the General Counsel at 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 or via electronic correspondence at Agency_Clerk@floridadep.gov.

Also, a copy of the petition must be mailed to the Receiver at the time of filing at:

Herbert R. Donica, Esquire
Donica Law Firm, P.A.
238 East Davis Blvd., Suite 209
Tampa, Florida 33606

Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by must be filed within **21** days of receipt of this written notice or publication of the notice, whichever occurs first.

The failure to file a petition within the appropriate time period shall constitute a waiver of the right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C. If you do not publish notice of this action, this waiver may not apply to persons who have not received a clear point of entry.

Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at Agency_Clerk@dep.state.fl.us, before the deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Mediation

Mediation is not available in this proceeding.

Judicial Review

Parties to final orders resulting from administrative proceedings have the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Florida Rules of Appellate Procedure 9.110 and 9.190 with the Clerk of the Department in the Office of General Counsel (Station #35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000) and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice must be filed within 30 days from the date this final order is filed with the Clerk of the Department.

18. This Order is a final order of the Department pursuant to section 120.52(7), Fla. Stat., 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, Fla. Stat., as enumerated under the "Notice of Rights" heading in paragraph 18 above. Upon the filing of a timely and sufficient petition, this Order will not be effective until a subsequent order of the Department.

19. Rules referenced in this Order are available at <https://floridadep.gov/ogc/ogc/content/rules>.

DONE AND ORDERED this 30th day of March, 2022, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



John J. Truitt
Deputy Secretary for Regulatory Programs

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

Clerk

Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35;

Herbert R. Donica, Esquire
Donica Law Firm, P.A.
238 East Davis Blvd., Suite 209
Tampa, Florida 33606

