



Jeb Bush  
Governor

# Department of Environmental Protection

Northwest District  
160 Governmental Center  
Pensacola, Florida 32501-5794

David B. Struhs  
Secretary

JULY 16, 2002

**CERTIFIED, RETURN  
RECEIPT REQUESTED**

Mr. C. Keith Meiser  
Senior Counsel  
CSX Transportation, Inc.  
500 Water Street – J150  
Jacksonville, Florida 32202-4422

RECEIVED  
JUL 18 2002  
DIVISION OF  
WASTE MANAGEMENT

Subject: Conditional Site Rehabilitation Completion Order  
CSX Transportation Railroad Engine #37720 Spill Incident  
Intersection of State Road 12 and Highway 90  
Quincy, Gadsden County

Dear Mr. Meiser:

This is in response to the June 28, 2002 letter prepared by CSX Transportation for the subject site. The letter enclosed a copy of the May 14, 2002 Declaration of Restrictive Covenant and the receipt for filing it with the Clerk of the Circuit Court, Gadsden County, Florida.

Upon review of the documents, we find that along with the October 2, 2001 No Further Action with Conditions Proposal (NFAP), and November 9, 2001 letter, the criteria set forth in Rule 62-770.680(2), Florida Administrative Code (FAC.), have been met. A declaration of restrictive covenant has been recorded with the deed for this property. The NFAP is hereby incorporated by reference in this Site Rehabilitation Completion Order (Order). Therefore, you are released from any further obligation to conduct site rehabilitation at the site for petroleum product contamination associated with the discharge listed above. Failure to comply with the provisions contained within the Declaration of Restrictive Covenant filed prior to the execution of this Order (Exhibit I) will result in the revocation of this Order. Additionally, you are required to properly abandon all monitoring wells within 60 days of receipt of this Order. The monitoring wells must be abandoned in accordance with the requirements of Rule 62-532.500(4), F.A.C.

### Legal Issues

The Department's Order shall become final unless a timely petition for an administrative proceeding (hearing) is filed under Sections 120.569 and 120.57, Florida Statutes (F.S.), within 21 days of receipt of this Order. The procedures for petitioning for a hearing are set forth below.

Persons affected by this Order have the following options:

If you choose to accept the above decision by the Department about the NFAP you do not have to do anything. This Order is final and effective as of the date on the top of the first page of this Order.

If you disagree with the decision, you may do one of the following:

- (1) File a petition for administrative hearing with the Department's Office of General Counsel within 21 days of receipt of this Order; or
- (2) File a request for an extension of time to file a petition for hearing with the Department's Office of General Counsel within 21 days of receipt of this Order. Such a request should be made if you wish to meet with the Department in an attempt to informally resolve any disputes without first filing a petition for hearing.

Please be advised that mediation of this decision pursuant to Section 120.573, F.S., is not available.

### How to Request an Extension of Time to File a Petition for Hearing

For good cause shown, pursuant to Rule 62-110.106(4), F.A.C., the Department may grant a request for an extension of time to file a petition for hearing. Such a request must be filed (received) in the Department's Office of General Counsel at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this Order. Petitioner, if different from CSX Transportation, shall mail a copy of the request to CSX Transportation at the time of filing. Timely filing a request for an extension of time tolls the time period within which a petition for administrative hearing must be made.

### How to File a Petition for Administrative Hearing

A person whose substantial interests are affected by this Order may petition for an administrative hearing under Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this Order. Petitioner, if different from CSX

Transportation, shall mail a copy of the request to CSX Transportation at the time of filing. Failure to file a petition within this time period shall waive the right of anyone who may request an administrative hearing under Sections 120.569 and 120.57, F.S.

Pursuant to Section 120.54(5)(b)4.a., F.S. (1998, Supp.), and Rule 28-106.201, F.A.C., a petition for administrative hearing shall contain the following information:

- (a) The name, address, and telephone number of each petitioner, the name, address, and telephone number of the petitioner's representative, if any, the site owner's name and address, if different from the petitioner, the FDEP facility number, and the name and address of the facility;
- (b) A statement of how and when each petitioner received notice of the Department's action or proposed action;
- (c) An explanation of how each petitioner's substantial interests are or will be affected by the Department's action or proposed action;
- (d) A statement of the material facts disputed by the petitioner, or a statement that there are no disputed facts;
- (e) A statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the Department's action or proposed action;
- (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the Department's action or proposed action; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Department's action or proposed action.

This Order is final and effective as of the date on the top of the first page of this Order. Timely filing a petition for administrative hearing postpones the date this Order takes effect until the Department issues either a final order pursuant to an administrative hearing or an order responding to supplemental information provided pursuant to meetings with the Department.

#### Judicial Review

Any party to this Order has the right to seek judicial review of it under Section 120.68, F.S., by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, 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 of appeal must be filed within 30 days after this Order is filed with the clerk of the Department (see below).

Mr. C. Keith Meiser  
CSX Transportation, Inc.  
Page four

Any questions regarding the Department's review of your NFAP should be directed to Carol Melton at (850) 595-8360, extension 1251. Questions regarding legal issues should be referred to the Department's Office of General Counsel at (850) 488-9314. Contact with any of the above does not constitute a petition for administrative hearing or request for an extension of time to file a petition for administrative hearing.

Sincerely,

  
Mary Jean Yon  
Director of District Management


MJY:cml

Enclosure

cc: Keith A. Brinker, CSX Transportation  
Leslie L. Herd, P.G., Arcadis Geraghty & Miller, Inc.  
Debbie Cobb, FDEP Division Of Waste Management, MS 4500  
David J. Tarbert, FDEP Office of General Counsel, MS 35

#### FILING AND ACKNOWLEDGMENT

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

  
Clerk

7/16/02  
Date

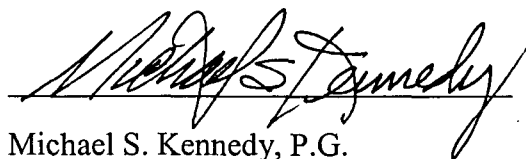
### P.G. Certification

Site Rehabilitation Completion Order for contamination for the November 3, 1998 CSX Transportation Railroad Engine #37720 Spill Incident (OGC File No.: 00-2298-20-CL, FDEP # 209801187) at the intersection of State Road 12 and Highway 90 in Quincy, Gadsden County, Florida.

I hereby certify that in my professional judgment, the geological components of the June 28, 2002 letter, October 2, 2001 No Further Action with Conditions Proposal (NFAP), and November 9, 2001 letter satisfy the requirements set forth in Chapter 62-770, Florida Administrative Code (FAC). The geological interpretations included in the reports provide reasonable assurance of achieving the minimum requirements of Rule 62-770.680(2), FAC.

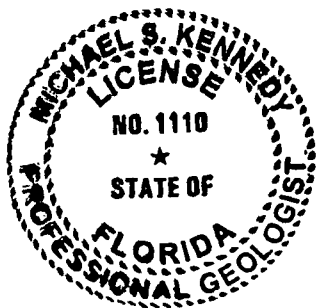
\_\_\_\_\_ I personally completed this review.

  X   This review was conducted by Ms. Carol A. Melton  
working under my direct supervision.



Michael S. Kennedy, P.G.  
Professional Geologist No. 1110  
Cleanup Section Supervisor  
Northwest District

7/15/02  
Date



0205976

02 JUN 10 PM 3:00

This document prepared by:  
C. Keith Meiser, Esq.  
CSX Transportation, Inc.  
500 Water Street J-150  
Jacksonville, FL 32202

### DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT ( hereinafter "Declaration") is made this 14<sup>th</sup> day of May, 2002, by CSX Transportation, Inc., a corporation authorized to conduct business in the State of Florida, (hereinafter "CSXT") and the Florida Department of Environmental Protection (hereinafter "DEP").

### RECITALS

- A. CSXT is the owner of that certain real property situated in the County of Gadsden, State of Florida, more particularly described in Exhibit "A" attached hereto and made a part thereof (hereinafter the "Property");
- B. The DEP Facility Identification Number for the Property is 209801187. The facility name at the time of this Declaration is Locomotive Fuel Tank Rupture Site, Quincy, Florida;
- C. Information related to the discharge of a petroleum product on the Property, the boundaries of its impact, the concentrations of constituents of concern, and the assessment and cleanup of the Property is documented in the following reports which are incorporated by reference:
  - 1. Contamination Assessment Report, dated 6 November 2000, submitted by ARCADIS Geraghty & Miller, Inc.;
  - 2. Site Assessment Report, dated 19 February 2001, submitted by ARCADIS Geraghty & Miller, Inc.; and
  - 3. Site Assessment Report Addendum, dated 3 October 2001, submitted by ARCADIS G&M, Inc.;
- D. The Reports noted in Recital C set forth the nature and extent of the petroleum impact on the Property. These reports confirm that groundwater on the Property was not contaminated, as defined by Chapter 62-770, Florida Administrative Code, by this release. Also, these reports document that impacted soil exists on the Property in the three spill zone areas;

- E. The DEP has agreed to issue a No Further Action with Conditions (hereinafter "Order") upon recording of this Declaration, and the DEP can unilaterally revoke the Order if the conditions of this Declaration or of the Order are not met. The Order relating to this CSXT Property, DEP Facility No. 209801187, is on file with the DEP Northwest District, 160 Governmental Center, Pensacola, Florida 32501; and
- F. CSXT deems it desirable and in the best interest of all present and future owners of the Property that a No Further Action with Conditions be obtained and that the Property be held subject to certain restrictions and changes, all of which are more particularly hereinafter set forth.

NOW, THEREFORE, to induce the DEP to issue the No Further Action with Conditions and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the undersigned parties, CSXT agrees as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. CSXT hereby imposes on the Property the following use restriction:

The site will remain in industrial use and, in the event the residual impacted soil is ever excavated, it will be handled and disposed of properly.

3. For the purpose of monitoring the restrictions contained herein, DEP or its respective successors and assigns shall have site access to the Property at reasonable times and with reasonable notice to CSXT.
4. It is the intention of CSXT that the restriction contained in this Declaration shall touch and concern the Property, run with the land and with the title to the Property, and shall apply to and be binding upon and inure to the benefit of the successors and assigns of CSXT, and to DEP, its successors and assigns, and to any and all parties hereafter having any right, title or interest in the Property or any part thereof. This Declaration shall continue in perpetuity, unless otherwise modified in writing by CSXT and the DEP as provided in paragraph 7 hereof. These restrictions may be enforced in a court of competent jurisdiction by the DEP or its successor agency, or by any other person, firm, corporation, or governmental agency that is substantially benefited by this restriction.
5. In order to ensure the perpetual nature of these restrictions, CSXT, its successors and assigns, shall reference these restrictions in any subsequent deed of conveyance, including the recording book and page of record of this Declaration.

6. CSXT undertakes no affirmative obligation to protect the Property against third parties or to enforce the terms hereof against third parties.
7. This agreement is binding until a release of covenant is executed by the DEP Secretary (or designee) and is recorded in the county land records. To receive prior approval from DEP to remove any requirement herein, active cleanup of the Property must resume or cleanup target levels established pursuant to Florida Statutes and DEP rules must have been achieved. This Declaration may be modified in writing only. Any subsequent amendment must be executed by both CSXT and the DEP or their respective successors and assigns and be recorded by the owner as an amendment hereto. If it revokes this Order, the DEP will not withhold approval of a joint release of covenant.
8. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions thereof. All such other provisions shall continue unimpaired in full force and effect.

IN WITNESS WHEREOF, CSX Transportation, Inc. has executed this instrument, this

14<sup>th</sup> day of MAY, 2002.

Signed, sealed and delivered in the presence of:

Betty D. Jones Of: CSX Transportation, Inc.  
 Print Name: BETTY D. JONES Its: [Signature]  
500 Water Street  
Jacksonville, FL 32202

Karen P. Clarke Date: May 14, 2002  
 Witness  
 Print Name: Karen P. Clarke

\_\_\_\_\_  
 Date: \_\_\_\_\_  
 Witness  
 Print Name: \_\_\_\_\_

STATE OF FLORIDA \_\_\_\_\_)

COUNTY OF DUVAL \_\_\_\_\_)

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of May, 2002, by J. RANDALL EVANS.

Personally Known ✓ OR Produced Identification \_\_\_\_\_  
 Type of Identification Produced \_\_\_\_\_

Betty D. Jones  
 Signature of Notary Public

BETTY D. JONES  
 Print Name of Notary Public

Commission No. \_\_\_\_\_

Commission Expires: \_\_\_\_\_



Approved as to form by the Florida Department of Environmental Protection, Office of  
General Counsel [Signature], Senior Assistant General Counsel 4/27/02

IN WITNESS WHEREOF, the Florida Department of Environmental Protection  
has executed this instrument, this 14<sup>th</sup> day of May, 2002.  
Signed, sealed and delivered in the presence of:

FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By: [Signature]

Print Name: Mary Jean Yon  
Director of District Management  
DEP Northwest District  
160 Governmental Center  
Pensacola, FL 32501-5794

Witness: [Signature]

Date: 5/14/02

Print Name: BARBARA A. RAGGHIANI

Witness: [Signature]

Date: 5/14/02

Print Name: SUSAN P. BRICE

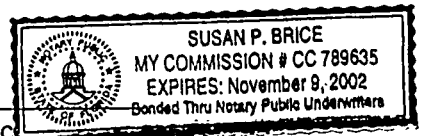
STATE OF FLORIDA \_\_\_\_\_  
COUNTY OF ESCAMBIA \_\_\_\_\_

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of May,  
2002, by Mary Jean Yon, Director of District Management and representative for the  
Florida Department of Environmental Protection.

Personally Known ☒ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

[Signature]  
Signature of Notary Public

Print Name of Notary Public



Commission No. \_\_\_\_\_

Commission Expires: \_\_\_\_\_

## EXHIBIT A

OR 546 PG 0242

### Area 1

All that portion of the CSX Transportation Operating Corridor situate and lying in the NE1/4, NW1/4 and the NW1/4, NW1/4 of Section 9, Township 2 North, Range 4 West, Gadsden County, Florida more particularly described as follows:

BEGINNING at the point formed by the intersection of the north right-of-way line of State Road No. 12 (a.k.a. State road No. 65 and/or Greensboro Highway) with the southwesterly line of the CSX Transportation operating corridor, being 60 feet (as measured in a radial direction), distant from the centerline of tracks; thence in a northeasterly direction and radial to the tracks a distance of 120 feet to the northeasterly line of said CSX Transportation operating corridor; thence along said northeasterly line in a southeasterly direction a distance of 235 feet, more or less, to the north line of State Road 12; thence along said north line, in a westerly direction, a distance of 273 feet more or less, to the POINT OF BEGINNING, containing 0.36 of an acre, more or less.

### Area 2

All that portion of the CSX Transportation Operating Corridor situate and lying in the NE1/4, NW1/4 of Section 9, Township 2 North, Range 4 West, Gadsden County, Florida more particularly described as follows:

Commencing at the point formed by the intersection of the centerline of the of State Road No. 12 (a.k.a. State road No. 65 and/or Greensboro Highway) with the centerline of the CSX Transportation Railroad Tracks; thence along said centerline of tracks in a southeasterly direction a distance of 990 feet to the POINT OF BEGINNING; thence northeasterly, perpendicular to the track, a distance of 60 feet to the northeasterly line of the CSX Transportation operating corridor; thence along said northeasterly line in a southeasterly direction, a distance of 100' to a point; thence southwesterly, perpendicular to the track, a distance of 120 feet to the southwesterly line of said operating corridor; thence along said southwesterly line, in a northwesterly direction, a distance of 100 feet to a point; thence northeasterly 60 feet to the POINT OF BEGINNING, containing 0.28 of an acre, more or less.

Areas 1 and 2 can be found on Railroad Valuation Map No. V1FL/L-4/44 (GIS No. V04241) which is incorporated herein by reference and a fragment copy of which is attached hereto, marked Exhibit A-1 and made a part of.

