

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	NORTHWEST DISTRICT
)	
v.)	OGC FILE NO. 21-0220
)	
CANNON OIL CORPORATION.)	
<hr/>)	

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department") and Cannon Oil Corporation ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapters 376 and 403, Florida Statutes ("F.S."), and the rules promulgated and authorized in Title 62, Florida Administrative Code ("F.A.C."). The Department has jurisdiction over the matters addressed in this Order.

3. Since July 27, 1989, Respondent has owned non-residential property located at 1520 Martin Luther King Jr. Boulevard, Panama City, in Bay County, Florida ("Property"). The Department has assigned Facility Identification Number 03-9046760 to the Property.

4. Respondent is the owner and operator of three underground storage tank systems ("Systems") located at the Property. Each System at the Property is an enclosed stationary container with a volume in excess of 110 gallons in size that contains or contained vehicular fuel. Each System consists of a 20,000-gallon underground storage

tank, and its associated piping and dispenser. The tanks, which are constructed of double-walled fiberglass-clad steel, were installed at the Property on or about July 1, 2009.

5. Since July 1, 2009, Respondent has owned and operated the Systems.

6. The Property and the Systems constitute a "Facility" within the meaning of Section 376.301(19), F.S.

7. The Department finds that the following violation(s) occurred:

a) Respondent has failed to maintain and demonstrate financial responsibility since August 26, 2017 in violation of Rule 62-761.420(2), F.A.C.

b) Respondent has failed to close the Systems within 90 days of termination of the financial mechanism in accordance with the provisions of Rule 62-761.800(2), F.A.C.

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

ORDERED:

8. Respondent shall comply with the following corrective actions outlined below, within the stated time periods:

(a) **Commencing immediately and hence forth**, Respondent shall forthwith comply with all Department statutes, rules, regulations, and Orders regarding Underground Storage Tank Systems, except as provided herein.

(b) **Within 60 days of the effective date of this Order**, the systems shall meet all applicable out-of-service requirements pursuant to rule 62-761.800(1), F.A.C., (with the expectation of rule 62-761.800(1)(b)2). Respondent shall make notification to the County and the Department of the change in status pursuant to rules 62-761.405(2)(a) and (b), F.A.C., and shall register the systems as out-of-service in accordance with rule 62-761.400, F.A.C. Notwithstanding the foregoing, the Department acknowledges that surface structures at the facility were destroyed by

Hurricane Michael and that electricity necessary to operate the facility has not, as of the date of this Order, been restored. Therefore, any rule requirements that are dependent on electrical power or that cannot be met due to safety considerations must be met when electrical power is restored, and activities may be safely performed. The Respondent shall notify the Department of any such delays.

(c) **Within 365 days of the effective date of this Order**, Respondent shall meet the requirements of rule 62-761.800(1)(b)2., F.A.C., by maintaining and demonstrating financial responsibility to the Department for all systems pursuant to rule 62-761.420(2), F.A.C. If Respondent fails to comply with the requirements of rule 62-761.800(1)(b)2., F.A.C., within the stated deadline, then, within 455 days of the effective date of this Order, Respondents shall close its tanks in accordance with the provisions of rule 62-761.800(2), F.A.C.

14. **Within 30 days of the effective date of this Order**, Respondent shall submit a written estimate of the total cost of the corrective actions required by this Order to the Department. The written estimate shall identify the information the Respondent relied upon to provide the estimate.

15. **Within 30 days of the effective date of this Order**, Respondent shall pay the Department \$ 5,500.00 in settlement of the regulatory matters addressed in this Order, or that could have been addressed in this Order. This amount includes \$ 5,000.00 for civil penalties and \$ 500.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order. The civil penalty in this case is for a violation of Rule 62-761.420(2), F.A.C, that warrants a penalty of \$5,000.00.

17. Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the

OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at: <http://www.fldepportal.com/go/pay/>. It will take a number of days after this order becomes final, effective and filed with the Clerk of the Department before ability to make online payment is available.

18. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Susan Bristol, Environmental Specialist III, Department of Environmental Protection, Department of Environmental Protection, 160 W. Government Street, Suite 308, Pensacola, Florida 32502.

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

20. In the event of a sale or conveyance of the Facility, if all of the requirements of this Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Facility, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser of the Facility and (c) provide a copy of this Order with all attachments to the purchaser of the Facility. The sale or conveyance of the Facility does not relieve Respondent of the obligations imposed in this Order.

21. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond the control of Respondent (unless the cause of the

contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department by the next working day and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

22. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for alleged violations up to the date of the filing of this Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

23. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

24. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Order.

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

26. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this Order. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to section 120.68, F.S.

27. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

28. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), F.S.

29. 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.

30. Persons who are not parties to this Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections 120.569 and 120.57, F. S. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Order means that the Department's final action may be different from the position it has taken in the Order.

The petition for administrative hearing must contain all of 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 the petitioner contends warrant reversal or modification of the agency's proposed action;
- f) A statement of the specific rules or statutes 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 petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 or received via electronic correspondence at Agency_Clerk@floridadep.gov, within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at Department of Environmental Protection, 160 W. Government Street, Suite 308, Pensacola, Florida 32502. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, F. S. Before

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the deadline for filing a petition, a person whose substantial interests are affected by this Order may choose to pursue mediation as an alternative remedy under section 120.573, F. S. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, F. S., and Rule 62-110.106(12), F. A. C.

31. Rules referenced in this Order are available at

<http://www.dep.state.fl.us/legat/Rules/regindex.htm>.

FOR THE RESPONDENT:



Pamela Weathers
CEO

Cannon Oil Corporation

8-6-21

Date

DONE AND ORDERED this 9th day of August, 2021, in ~~Sebastian~~^{Orange}, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Elizabeth Mullins Orr
District Director
Northwest District

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



Clerk

August 9, 2021

Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35