



FLORIDA DEPARTMENT OF Environmental Protection

Central District Office
3319 Maguire Blvd., Suite 232
Orlando, Florida 32803

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

November 23, 2021

Sohil Jivani, Manager and Registered Agent
ABDC Property I LLC
232 Edgemere Way East
Naples, FL 34105
jivanialex@gmail.com

Re: Express Shop III
TK Facility ID #9801642
OGC Case #20-0113

Dear Mr. Jivani:

Enclosed is the executed Consent Order to resolve the above referenced case. This copy is for your records.

Should you have any questions or comments, please contact Allen Rainey at 407-897-2929 or via e-mail at allen.rainey@floridadep.gov.

Your cooperation in this matter will be appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to read "AW", is written over a light blue horizontal line.

On behalf of:

Aaron Watkins
Director, Central District

Enclosure

cc: Marshall Mott-Smith, Mott-Smith Consulting Group, LLC, marshall@mott-smithconsulting.com
Lea Crandall, OGC, lea.crandall@dep.state.fl.us
Zoey Carr, Central District
Daun Festa, Central District
Allen Rainey, Central District

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)
OF ENVIRONMENTAL PROTECTION)
)
v.)
)
ABDC PROPERTY I LLC)
c/o Sohil Jivani, LLC Manager)

IN THE OFFICE OF THE
CENTRAL DISTRICT

OGC FILE NO. 20-0113

CONSENT ORDER

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department") and ABDC Property I LLC, Sohil Jivani, LLC Manager ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and Respondent admits the following:

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.
2. Respondent is a Florida Limited Liability Company corporation (LLC), and is a "person" within the meaning of Sections 376.301(29) and 403.031(5), F.S.
3. Since November 5, 2018, Respondent has owned non-residential property containing two (2) underground storage tank systems. ("Property"). The Property is located at 1930 E Osceola Parkway, Kissimmee, Florida, 34743, in Osceola County, Florida further identified by Osceola County Property Appraiser Parcel ID 01-25-29-5162-000-10020. The Department has assigned Facility Identification Number 9801642 to the Property.
4. Respondent is the owner of two (2) underground storage tank systems located at the Property.

5. The Property contains two (2) underground storage tank systems ("Systems"), each consisting of an underground storage tank and its associated piping and dispenser. Since November 5, 2018, Respondent has owned the Systems. Each storage tank at the Property is an enclosed stationary container with a volume in excess of 110 gallons in size that contains or contained vehicular fuel. The tanks, which are constructed of steel with secondary containment, were installed at the Property on or about April 1, 1999.

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

7. The Department finds that the following violations occurred:

- a) Respondent failed to provide access to all system components, according to Rule 62-761.100(3) F.A.C.
- b) Respondent failed to pay the registration fees according to Rule 62-761.400(4) F.A.C.
- c) Respondent failed to post the registration placard on site according to Rule 62-761.400(5) F.A.C.
- d) Respondent failed to provide Financial responsibility documentation according to Rule 62-761.420(2) F.A.C.
- e) Respondent failed to perform monthly visual inspection of release detection devices according to Rule 62-761.600(1) (d) F.A.C.
- f) Respondent failed to perform annual operability and in-line leak detector tests according to Rule 62-761.600(4) F.A.C.
- g) Respondent failed to anchor the shear valve of dispenser 5/6 according to Rule 62-761.700(1)(a) F.A.C.
- h) Respondent failed to properly manage Petroleum Contact Water (PCW) in spill containment, interstices and dispenser sumps according to Rule 62-761.700(3)(b)(1) F.A.C.
- i) Respondent failed to make records required available within five days' notice according to Rule 62-761.710(1) F.A.C.

- j) Respondent failed to keep the records of annual operability and monthly visual inspections for the past three years, according to Rule 62-761.710 (2) F.A.C.
- k) Respondent failed to properly close a storage tank system that does not meet the storage tank systems requirements of Rule 62-761.500, F.A.C. or Out of Service requirements of Rule 62-761.800 (1) 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 within the stated time periods:
- a) **Within thirty (30) days from the effective date of this Order,**
Respondent shall provide Department with Site Access, according to Rule 62-761.100(3) F.A.C.
 - b) **Within thirty (30) days from the effective date of this Order,**
Respondent shall update registration and pay fees of \$ 439.20 according to Rule 62-761.400(4) F.A.C.
 - c) **Within thirty (30) days from the effective date of this Order,**
Respondent shall obtain and post the current registration placard according to Rule 62-761.400(5) F.A.C.
 - d) **Within thirty (30) days from the effective date of this Order,**
Respondent shall provide documentation of 6 months Release Detection according to Rule 62-761.600(1)(d) F.A.C.
 - e) **Within forty-five (45) days from the effective date of this Order,**
Respondent shall conduct required operability testing according to Rule 62-761.600(4) F.A.C.

- f) **Within thirty (30) days from the effective date of this Order,** respondent shall provide documentation that shear valve is anchored according to Rule 62-761.700(1)(a) F.A.C.
- g) **Within thirty (30) days from the effective date of this Order,** Respondent shall remove all regulated substances from sumps according to Rule 62-761.700(3)(b) F.A.C.
- h) **Within forty-five (45) days from the effective date of this Order,** Respondent shall provide all required facility records according to Rule 62-761.710(1) F.A.C.
- i) **Within ninety (90) days from the effective date of this Order,** Respondent shall perform annual operability tests for overflow protection and release detection devices according to Rules 62-761.500(7)(d) and 62-761.600(4), F.A.C., respectively
- j) **Within one hundred eighty (180) days from the effective date of this Order,** Respondent shall document the storage tank system meets the storage tank systems requirements of Rule 62-761.500, F.A.C. or Out of Service requirements of Rule 62-761.800 (1) or be properly closed in according to Rule 62-761.800(2) F.A.C.

9. Within 180 days of the effective date of this Order, and prior to bringing the System into service, Respondent shall provide documentation of Certificate of Financial Responsibility according to Rule 62-761.420(2) F.A.C.

10. Within 60 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.

11. Within 90 days of the effective date of this Order, Respondent shall pay the Department \$ 5,500 in settlement of the regulatory matters addressed in this Order. This

amount includes \$ 5,000 for civil penalties and \$ 500 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 includes 11 violations that each warrant a penalty of \$500.00 or more.

12. 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.

13. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Allen Rainey, Department of Environmental Protection, 3319 Maguire Blvd., Suite 232, Orlando, FL 32801.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. This Consent 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 Consent Order will not be effective until further order of the Department.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF CONSENT ORDER

The Department of Environmental Protection ("Department") gives notice of agency action of entering into a Consent Order with ABDC PROPERTIES I LLC pursuant to section 120.57(4), Florida Statutes. The Consent Order addresses the Underground Storage Tank System violations at 1930 E. Osceola Parkway, Kissimmee, FL 34743 in Osceola County, Florida. The Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, Central District, 3319 Maguire Blvd. Suite 232, Orlando, FL 32801.

Persons who are not parties to this Consent 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, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department's final action may be different from the position it has taken in the Consent Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Consent Order;
- b) The name, address, and telephone number of each petitioner; 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;
- c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- d) A statement of when and how the petitioner received notice of the Consent Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;

- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Consent Order.

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 Central District Office at 3319 Maguire Blvd. Suite 232, Orlando, FL 32801. 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, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. 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, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

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

FOR THE RESPONDENT:

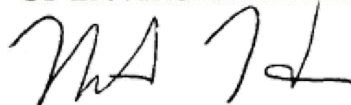


Sohil Jivani
LLC Manager

11/17/2021
Date

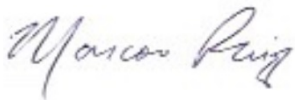
DONE AND ORDERED this 23 day of November, 2021, in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



on behalf of
Aaron Watkins
District Director
Central District

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



Clerk

November 23, 2021

Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35