



# FLORIDA DEPARTMENT OF Environmental Protection

Northwest District  
160 W. Government Street, Suite 308  
Pensacola, FL 32502

**Ron DeSantis**  
Governor

**Jeanette Nuñez**  
Lt. Governor

**Shawn Hamilton**  
Secretary

March 22, 2022

Mohammed Rahman, Registered Agent & Manager  
S Food Mart Seven LLC  
4339 Private Point Drive  
Pensacola, FL 32503  
[azad1275@gmail.com](mailto:azad1275@gmail.com)

Subject: Executed Consent Order, DEP vs S Food Mart Seven LLC, OGC File No. 21-0242;  
Escambia County

Dear Mr. Rahman:

Enclosed is the executed Consent Order (OGC File No. 21-0242) to resolve storage tank issues relating to Windy City Philly's, Facility No. 8500468, located at 550 N. New Warrington Road, Pensacola, Escambia County, Florida.

Please note the requirements of the Consent Order for which you are responsible and fulfill all pertinent actions accordingly. All Consent Order time requirements begin the date that it is clerked by our Department unless otherwise noted.

Your cooperation in resolving this matter is appreciated. If you have questions, please contact Ms. Sara Merritt at (850) 595-0589 or at [Sara.Merritt@floridadep.gov](mailto:Sara.Merritt@floridadep.gov).

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth Mullins Orr".

Elizabeth Mullins Orr  
Director

EMO/sm

c: Rebecca Wilson, DEP Pensacola Office, ([Rebecca.A.Wilson@floridadep.gov](mailto:Rebecca.A.Wilson@floridadep.gov))  
Erin Rasnake, DEP Pensacola Office, ([Erin.Rasnake@FloridaDEP.gov](mailto:Erin.Rasnake@FloridaDEP.gov))

Enclosures: Consent Order  
Penalty Calculation Worksheet

BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT	)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION	)	NORTHWEST DISTRICT
	)	
v.	)	OGC FILE NO. 21-0242
	)	
S FOOD MART SEVEN LLC	)	
_____	)	

**CONSENT ORDER**

This Consent Order (Order) is entered into between the State of Florida Department of Environmental Protection (Department) and S Food Mart Seven LLC (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 registered limited liability company and is a "person" within the meaning of Sections 376.301(29) and 403.031(5), F.S.
3. Since September 29, 2020, Respondent has owned non-residential property containing an underground storage tank system (Property). The Property is located at 550 N. New Warrington Road, Pensacola, Escambia County, Florida 32506, further identified by Escambia County Property Appraiser Parcel Identification Number 342S301331001001. The Department has assigned Facility Identification Number 17-8507876 to the Property.
4. The Property contains an underground storage tank system (System), that consists of one (1) 12,000-gallon underground storage tank and one (1) 8-000-gallon

underground storage tank containing petroleum fuel products, three (3) submersible turbine pump sumps, underground piping, and two (2) dispensers. 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 storage tanks, which are constructed of double-walled, cathodically protected steel, were installed at the Property on or about August 1, 1995

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

6. The Department finds that the following violations occurred:

a) During the November 12, 2019 Routine Compliance Inspection, it was noted that the Respondent failed to provide records of monthly visual inspections of the storage tank systems as required by Rule 62-761.600(1)(e), F.A.C.

b) During the November 12, 2019 Routine Compliance Inspection, it was noted that the Respondent failed to perform and provide required integrity testing results of the System's secondary containment components as required by Rule 62-761.700(3)(a), F.A.C.

c) During the November 12, 2019 Routine Compliance Inspection, it was noted that the Respondent failed to perform and provide test records for required annual operability testing of the System's line leak detectors and automatic tank gauge as required by Rule 62-761.600(4), F.A.C.

d) During the November 12, 2019 Routine Compliance Inspection, it was noted that the Respondent failed to perform and provide test records for required annual operability testing on the System's overfill valves for the designated primary overfill protection device as required by Rule 62-761.500(7)(d), F.A.C.

e) During the November 12, 2019 Routine Compliance Inspection, it was noted that the Respondent failed to designate a Class A, Class B, and Class C Operator for this facility and provide training certifications as required by Rule 62-761.350, F.A.C.

f) During the November 12, 2019 Routine Compliance Inspection, it was noted that the Respondent failed to provide access for visual inspection of the pump sumps as required by Rule 62-761.100(3), F.A.C.

g) During the November 12, 2019 Routine Compliance Inspection, it was noted that the Respondent failed to demonstrate and maintain financial responsibility for the storage tank systems as required by Rule 62-761.420(4), F.A.C.

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

**ORDERED:**

7. Respondent shall comply with the following corrective actions within the stated time periods:

a) **By no later than April 1, 2023**, Respondent shall submit the following documentation to the Department:

- i. Copies of monthly inspection records and monthly printouts from the automatic tank gauge for the previous three months in accordance with all the requirements of Fla. Admin. Code Rules 62-761.600(1)(e);
- ii. Copy of the integrity test results of the pump sumps in accordance with all the requirements of Rule 62-761.700(3)(a)(1)(b), Fla. Admin. Code;
- iii. Copy of the integrity test results of the dispenser sumps in accordance with all the requirements of Rule 62-761.700(3)(a)(1)(c), Fla. Admin. Code;
- iv. Copy of the integrity test results of the spill buckets in accordance with all the requirements of Rule 62-761.700(3)(a)(1)(f), Fla. Admin. Code.
- v. Copy of annual operability test results for the line leak detectors in accordance with all the requirements of Rule 62-761.600(4), Fla. Admin. Code;
- vi. Copy of annual operability test results for the automatic tank



gauge in accordance with all the requirements of Rule 62-761.600(4), Fla. Admin. Code;

- vii. Copy of annual operability test results for the overfill valve in accordance with all the requirements of Rule 62-761.500(7)(d), Fla. Admin. Code;
- viii. Copies of Class A, Class B and Class C operator training certificates in accordance with all the requirements of Fla. Admin. Code Rules 62-761.350(1); and
- ix. Updated registration form showing a change in property owner and account owner in accordance with all the requirements of Rule 62-761.400(3)(a), Fla. Admin. Code;

b) **By no later than April 1, 2023**, Respondent shall contact the Department to schedule a time when the inspector can access the pump sumps.

c) **Within 60 days of the effective date of this Order**, Respondent shall complete and submit to the Department a completed Certification of Financial Responsibility [Form 62-761.900(3) Part P and either Form 62-761.900(3) Part C or Part D] including the Financial Mechanism Form, pursuant to Rules 62-761.421(2), F.A.C., along with documentation demonstrating financial responsibility in accordance with DEP Form 62-761.900(3).

8. **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.

9. **By no later than April 1, 2023**, Respondent shall pay the Department **\$23,000.00** in settlement of the regulatory matters addressed in this Order. This amount includes \$22,500.00 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 is apportioned as follows: \$3,000.00 for violation of Rule 62-

761.600(1)(e), F.A.C., \$3,000.00 for violation of Rule 62-761.700(3)(a), F.A.C., \$3,000.00 for violation of Rule 62-761.600(4), F.A.C., \$3,000.00 for violation of Rule 62-761.500(7)(d), F.A.C., \$1,500.00 for violation of Rule 62-761.350(1), F.A.C., \$1,500.00 for violation of Rule 62-761.100(3), F.A.C., and \$7,500.00 for violation of Rule 62-761.420(2), F.A.C.

10. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph 7 of this Order. The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment and shall do so as further described in paragraph 11, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph 9 of this Order.

11. 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 (21-0242) 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.

12. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Sara Merritt, Compliance Assurance Program, Department of Environmental Protection, Northwest District Office, 160 West Government Street, Suite 308, Pensacola, Florida 32502.

13. 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.

14. 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.

15. 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.

16. 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 timely and complete compliance with all of the terms of this Order.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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, F.S. 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.

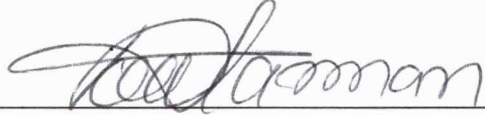
The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 or received via electronic correspondence at [Agency\\_Clerk@floridadep.gov](mailto:Agency_Clerk@floridadep.gov), within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at Northwest District Office, 160 W. Government St., 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 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, 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.

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

26. The undersigned certifies that as a managing member of Respondent LLC, he is authorized and empowered to negotiate, enter into and execute, in the name and on behalf of the Respondent, S Food Mart Seven LLC, any agreements, documents,

instruments, certificates, including and without limitation, this Consent Order entered into between Respondent and the State of Florida Department of Environmental Protection.

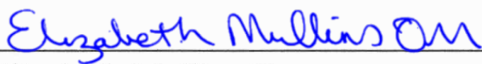
FOR THE RESPONDENT:

  
\_\_\_\_\_  
Mohammed Rahman  
Managing Member

3/17/22  
\_\_\_\_\_  
Date

DONE AND ORDERED this 22nd day of March, 2022, in  
Orange County, 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

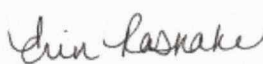
March 22, 2022  
\_\_\_\_\_  
Date

Copies furnished to:  
Lea Crandall, Agency Clerk, [Lea.Crandall@dep.state.fl.us](mailto:Lea.Crandall@dep.state.fl.us)



PENALTY COMPUTATION WORKSHEET  
SUBJECT TO FINAL APPROVAL

Violator's Name:	<b>S Food Mart Seven LLC (Windy City Phillys FAC ID#8507876)</b>						
Address:	550 N. New Warrington Road, Pensacola, Escambia Co., Florida 32506						
Name of Department Staff Responsible for the Penalty Computations:							
Sara Merritt							
Date: February 25, 2021							
<b><u>PART I - PENALTY DETERMINATIONS</u></b>							
Violation Type and description	RCRA Guideline	ELRA Schedule	ENVIRON- MENTAL Harm	Extent of Dev.	Matrix Amount	Adjust-ments	Total
<b>I</b> Subparagraph 62-761.600(1)(e), F.A.C. Visual inspections. At least once a month every component of a storage tank system shall be visually inspected and documented as to its condition. <i>No monthly inspection reports were provided.</i>	N/A	403.121(3)(g), F.S. Failure to conduct required release detection.	N/A	N/A	N/A	N/A	\$3,000.00
<b>II</b> Subparagraph 62-761.700(3)(a), F.A.C. Requires that the integrity of all secondary containment systems be tested by Jan. 11, 2018. <i>No test results for spill buckets, dispenser sumps or pump sumps were provided.</i>	N/A	403.121(4)(d), F.S. Failure to conduct required monitoring or testing.	N/A	N/A	N/A	N/A	\$3,000.00
<b>III</b> Subparagraph 62-761.600(4), F.A.C. All release detection devices shall be tested annually. <i>No line leak detector or ATG test results were provided.</i>	N/A	403.121(4)(d), F.S. Failure to conduct required monitoring or testing.	N/A	N/A	N/A	N/A	\$3,000.00

IV Subparagraph 62-761.500(7)(d), F.A.C. An annual operability test shall be performed on the designated primary overfill protection device. <i>No test results were provided.</i>	N/A	403.121(4)(d), F.S. Failure to conduct required monitoring or testing.	N/A	N/A	N/A	N/A	\$3,000.00
V Paragraph 62-761.350(1), F.A.C. Owners/operators shall designate for each UST system at least one Class A, B, and C operator. All individuals shall be trained in accordance with this rule.	N/A	403.121(4)(e), F.S. Failure to conduct required training.	N/A	N/A	N/A	N/A	\$1,500.00
VI Paragraph 62-761.100(3), F.A.C., Requires that access to the facility and individual storage tank systems or system components shall be provided for compliance inspections	N/A	403.121(3)(g), F.S. Failure to properly operate, maintain, or close a storage tank system.	N/A	N/A	N/A	N/A	\$1,500.00
VII Subparagraph 62-761.420(2), F.A.C. Financial responsibility (FR) shall be maintained and demonstrated to the county or Department for all storage tank systems until the storage tank systems are properly closed. <i>No FR was provided.</i>	N/A	403.121(4)(a), F.S. Failure to satisfy financial responsibility requirements.	N/A	N/A	N/A	N/A	\$7,500.00
Subtotals:					\$0	\$0.00	\$22,500.00
<b>Total Penalties for all violations:</b>					<b>\$22,500.00</b>		
Department Costs:					\$500.00		
 Elizabeth Mullins Orr, District Director			On behalf of		04/07/2021		
					Date		

Mary Alice McElheney  
Assistant Deputy Secretary, Regulatory

Date

Peer Reviewed by Division: Yes ( ) No ( X )

PART II - MULTI-DAY PENALTIES AND ADJUSTMENTS

<u>Adjustments</u>	<u>Amount</u>
Good faith prior to discovery:	\$0.00
Justification:	
Good faith after discovery:	\$0.00
Justification:	
History of non-compliance:	\$0.00
Justification:	
Economic benefit of non-compliance:	Economic benefit was calculated to be insignificant and will not be added to the penalties. Refer to descriptions and calculations below.
	\$0.00
Justification:	
Ability to pay:	\$0.00
Justification:	
Total Adjustments:	
\$0.00	



**ECONOMIC BENEFIT CALCULATIONS**

**EB = AC(1-T) + DC(I) =**

AC = Avoided Costs – expenditures that will never be incurred for violator's noncompliance.

DC = Delayed Costs – expenditures deferred by violator's failure to comply.

T = Corporate Tax Rate = 21% (in 2020)

I = Interest rate charged by IRS for delinquent accounts = 4% (in 2020)

**Avoided Costs (AC) and/or Delayed Costs (DC) for each Violation:**

Count	Issue		Avoided	Corporate	Delayed	Interest	Economic	# of	TOTAL
			Cost	Tax Rate	Costs	Rate for			
			AC	2020=21%		Delinquent	Benefit	Components	
				1-21%		Accounts	AC(T) + DC(I)	or Occurences	
				T	DC	2020=4%			
III	Line Leak Detector Testing	=		0.79	\$65	0.04	= \$2.60	3	\$7.80
IV	Overfill testing	=		0.79	\$50	0.04	= \$2.00	3	\$6.00
II	Spill Bucket testing	=		0.79	\$50	0.04	= \$2.00	3	\$6.00
II	Dispenser testing	=		0.79	\$100	0.04	= \$4.00	2	\$8.00
II	Pump Sump testing	=		0.79	\$175	0.04	= \$7.00	3	\$21.00
VI	Components not accessible	=		0.79	\$0	0.04	= \$0.00	1	\$0.00
V	Operator Training A	=		0.79	\$150	0.04	= \$6.00	1	\$6.00
V	Operator Training B	=		0.79	\$150	0.04	= \$6.00	1	\$6.00
V	Operator Training C	=		0.79	\$10	0.04	= \$0.40	1	\$0.40
VII	Insurance	=		0.79	\$700	0.04	= \$28.00	1	\$28.00
I	Monthly Inspections	=		0.79	\$50	0.04	= \$2.00	36	\$72.00
<b>TOTAL:</b>									<b>\$161.20</b>

The total estimated Economic Benefit is calculated above.

Economic Benefit will not be added to the Penalty Calculations as it was found to be insignificant.

**MULTI-DAY PENALTIES****Number of days adjustment factor(s) to be applied:****Justification:** \_\_\_\_\_ **\$0.00****Or****Number of days matrix amount is to be multiplied:****Justification:** \_\_\_\_\_ **\$0.00****Comments:**

PART III - OTHER ADJUSTMENTS MADE AFTER MEETING WITH THE RESPONSIBLE PARTY

ADJUSTMENT	Dollar Amount
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Relative merits of the case:	_____
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Resource Considerations:	_____
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Other Justification:
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_____	_____
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Date	Elizabeth Mullins Orr, District Director
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