



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

March 25, 2022

Ayad Shammas, President
140 S. Atlantic Avenue, Inc.
390 Bay Street
#1402
Toronto, Ontario M5H-2Y2 Canada
sheriffguindi@gmail.com

Re: Oceanside Executive Center
Regulated Storage Tanks Facility 9809154
OGC Case No: 22-0290

Dear Mr. Shammas:

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 Sean Boyles at (407) 897-4167 or via e-mail at Sean.Boyles@FloridaDEP.gov.

Your cooperation in this matter will be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "AW 7L".

On behalf of:

Aaron Watkins
Director, Central District

Enclosure

cc: Lea Crandall, OGC
Daun Festa, Sean Boyles, Zoey Carr, Central District
Ronald Hertel, Hertel Legal, ron@hertellegal.com
Lana DeGrande, Hertel Legal, reception@hertellegal.com

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	CENTRAL DISTRICT
)	
v.)	OGC FILE NO. 22-0290
)	
140 S. ATLANTIC AVENUE, INC.)	
_____)	

CONSENT ORDER

This Consent Order (“Order”) is entered into between the State of Florida Department of Environmental Protection (“Department”) and 140 S. Atlantic Avenue, Inc. (“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 Corporation and is a “person” within the meaning of Sections 376.301(29) and 403.031(5), F.S.
3. Since October 31, 2019, Respondent has owned non-residential property containing an aboveground storage tank system (“Property”). The Property is located at 140 S. Atlantic Avenue, Ormond Beach, Florida 32176, in Volusia County, Florida. The property is further identified by the Parcel ID 421409060070, given by the Volusia County Property Appraiser. The Department has assigned Facility Identification Number 9809154 to the Property.
4. The Property contains 1 aboveground storage tank systems (“Systems”), each consisting of an aboveground storage tank. Since October 31, 2019, Respondent has owned and operated the Systems. The storage tank at the Property is an enclosed stationary container with a volume in excess of 550 gallons in size that contains or contained diesel fuel. The tank was installed at the Property on or about July 1, 2007.

5. The Property and the aboveground system constitute a “Facility” within the meaning of Section 376.301(19), F.S.

6. The Department finds the following violations(s) occurred:

- a) The facility failed to update the registration with the new owners of the facility after taking owner on October 31, 2019.
- b) The facility failed to pay the storage tank registration fees since 2019.
- c) The facility has failed to maintain financial responsibility since 2019.
- d) The facility failed to conduct the required testing for annual operability of overfill protection devices.
 - i) The annual operability for overfill protection devices was completed on June 21, 2021.
- e) The facility failed to correctly label the spill bucket with the type of fuel in the tank.
- f) The facility has failed to conduct required monthly visual inspections.
 - i) The inspections are now being completed monthly by Petroleum Technicians.
- g) The facility failed to conduct the required testing for annual operability of release detection devices.
 - i) The annual operability of release detection devices was completed on June 21, 2021.
- h) The facility failed to address and repair the heavy corrosion on the storage tank and spill bucket.
 - i) The spill buck has been replaced by Petroleum Technicians.

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

ORDERED:

7. Within thirty (30) days of the effective date of this order, the Respondent shall place a label, notating the type of fuel in the aboveground storage tank spill bucket and provide photographic documentation showing that the corrective action has been completed to the Department.

8. Within thirty (30) days of the effective date of this order, the Respondent shall address and repair, any and all, corrosion on the aboveground storage tank and provide photographic documentation showing that the corrective action has been completed to the Department.

9. Within thirty (30) days of the effective date of this order, the Respondent shall submit to the Department documentation of Financial Responsibility, to include: the insurance policy, Part D showing the tank that is being covered, and State Form Part P.

10. If Financial Responsibility is not able to be obtained, the Respondent shall permanently close the aboveground storage tank system within ninety (90) days per the requirements of Chapter 62-762.801(2)(b).1-8, F.A.C.

11. Within thirty (30) days of the effective date of this Order, Respondent shall pay the Department \$12,500.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$12,000.00 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 includes 2 violations that each warrant a penalty of \$2,000.00 or more.

12. Respondent agrees to pay the Department stipulated penalties in the amount of \$1,000.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraphs 7-10 of this Order. The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within thirty (30) days of the Department's issuance of written demand for payment and shall do so as further described in paragraph 13, 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 11 of this Order.

13. 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 22-0290 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.

14. Except as otherwise provided, all submittals and payments required by this Order shall be sent to DEP_CD@FloridaDEP.gov, Department of Environmental Protection, Central District, Suite 232, Orlando, Florida 32803.

15. 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.

16. 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 thirty (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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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 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, Central District, Suite 232, Orlando, Florida 32803. 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.

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

FOR THE RESPONDENT:

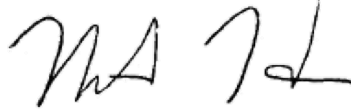


Ayad Shammas
President

11/09/2021
Date

DONE AND ORDERED this 25 day of March, 2022, 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

March 25, 2022

Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35