

**BEFORE THE ENVIRONMENTAL PROTECTION  
COMMISSION OF HILLSBOROUGH COUNTY**

**ENVIRONMENTAL PROTECTION  
COMMISSION OF HILLSBOROUGH COUNTY,**

Complainant,

vs.

**EPC Case #:21-05684**

**BREIT FLORIDA PROPERTY OWNER LLC,**

Respondent.

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**CONSENT ORDER**

This Consent Order is made and entered into between the Environmental Protection Commission of Hillsborough County (EPC) and Breit Florida Property Owner LLC (Respondent), in resolution of the above case pursuant to Chapter 84-446, as amended, Laws of Florida (EPC Act) and the rules promulgated thereunder.

EPC finds and Respondent admits the following:

1. The EPC is a local regulatory agency vested by the Florida Legislature with the power and duty to protect Hillsborough County's air, soil, and water resources and to administer and enforce the EPC Act, and the EPC rules promulgated thereunder. The EPC has jurisdiction over the matters addressed in this Consent Order pursuant to its own local authority under the EPC Act and the rules promulgated thereunder, specifically Chapter 1-10, Rules of the EPC and pursuant to a contract with the Florida Department of Environmental Protection for the regulation of petroleum containing storage tanks in Hillsborough County under Chapter 403 and 376, Florida Statutes (F.S.) and the rules promulgated thereunder, specifically Chapter 62-762, Florida Administrative Code (F.A.C.).
2. Respondent is an active registered Florida corporation and is a person within the meaning of the EPC Act and Chapter 403, F.S.
3. Respondent owns real property at 13305 Tampa Oaks Boulevard, Temple Terrace, Florida, (folio #037476.5402), in Hillsborough County, Florida (Property). All of its operations are subject to the prohibitions of the EPC Act and rules promulgated thereunder, Chapter 403, F.S., and the Florida Administrative Code (F.A.C.).
4. The Property includes one (1) 1,000 gallon above ground storage tanks (AST) on the site. An inspection of the Property conducted on March 2, 2020, revealed several violations of

applicable AST rules under which the EPC has contracted authority.

5. The EPC finds that the following violation(s) occurred:
  - a) Section 62-762.401(3)(a), F.A.C. – Failure to submit Storage Tank Registration Form within 10 days following the change in facility operator.
  - b) Section 62-762.401(4)(i), F.A.C. – Failure to post current registration placard onsite.
  - c) Section 62-762.501(2)(e), F.A.C. – Failure to provide annual operability test results for the primary overfill protection device for 2018 and 2019.
  - d) Section 62-762.601(7), F.A.C. – Failure to provide annual operability test results for the release detection device for 2018 and 2019.
  - e) Section 62-762.421(2), F.A.C. – Failure to show proof of financial assurance documentation for insurance policy from March 2, 2018 to July 2022.
6. Not all of the violations have been resolved to date.

**THEREFORE**, having reached a resolution of these matters, Respondent and the EPC mutually agree, and it is **ORDERED**:

7. Within 120 days of the Execution Date of this Consent Order, Respondent shall:
  - a) Perform an operability test of the primary overfill protection device per manufacturer's specifications and submit test results to EPC for review in accordance with Section 62-762.501(2)(e), F.A.C.
  - b) Perform an operability test of the release detection device per manufacturer's specifications and submit test results to EPC for review in accordance with Section 62-721.601(7), F.A.C.
  - c) Post current registration placard on site and submit a photo of the placard posted onsite to EPC accordance with Section 62-762.401(4)(i), F.A.C.
8. Within 30 days of the effective date of this Consent Order, Respondent shall pay the EPC a total of \$5,720.00 in settlement of the matters addressed in this Consent Order. This amount includes \$5,250.00 for civil penalties and \$470.00 for costs and expenses incurred by the EPC during the investigation of this matter and the preparation and tracking of this Consent Order.

Payment shall be by check or money order and shall be made payable to "Environmental Protection Commission" and shall reference this Consent Order and the case number above

and shall be mailed to 3629 Queen Palm Drive, Tampa, Florida 33619 in care of Shannon Camp in the Waste Division. If Respondent fails to timely make an agreed payment or if the Respondent files for bankruptcy, Respondent shall notify EPC immediately and any unpaid balance will become immediately due and owing.

9. Notwithstanding the above, Respondent shall pay an agreed stipulated penalty in the amount of \$100.00 per day for each day following any deadline specified in paragraph 7 of this Consent Order in which the requirement for that deadline has not been met.

Payment will be due within 15 days of date on the demand letter issued by the EPC. Payment shall be made by check or money order payable to the "Environmental Protection Commission" and shall reference this Consent Order and the case number above. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 8 of this Consent Order. Nothing in this paragraph shall prevent EPC from filing suit to specifically enforce any of the terms of this Consent Order. If EPC is required to file a lawsuit to recover stipulated penalties under this paragraph, EPC will not be foreclosed from seeking civil penalties in an amount greater than the stipulated penalties due under this paragraph.

10. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the 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 EPC by the next working day. Additionally, within seven calendar days of occurrence of an event causing delay or upon becoming aware of a potential for delay, Respondent shall notify the EPC 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. The agreement to extend any deadline(s) must be in writing from the EPC but does not necessarily require execution of an amended Consent Order. 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.
11. If Respondent sells, leases, or otherwise conveys all or part of the referenced Property or Facility, Respondent shall provide the new owner or lessee with a copy of this Consent Order

and shall reserve the right to access the property to complete performance of its terms. Respondent shall remain completely responsible to the EPC for compliance with the terms of this Consent Order regardless of any sale or lease, unless the new owner or lessee specifically assumes the Respondent's responsibilities hereunder in writing and the Executive Director specifically approves the assumption in writing.

12. This Consent Order is a settlement of the EPC's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent 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 Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances, and all applicable permits and orders issued under those laws, regulations or ordinances. This Consent Order shall not be a defense to any actions commenced pursuant to said laws, regulations, ordinances, orders, or permits, except as expressly described in this Consent Order.
13. The EPC hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the EPC that are not specifically resolved by this Consent Order. The EPC reserves its right to pursue any and all of its legal remedies as to any other persons not party to this settlement.
14. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to the EPC Act. Failure to comply with the terms of this Consent Order shall constitute a violation of the EPC Act.
15. The EPC, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Consent Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Consent Order. This waiver is conditioned upon Respondent's complete compliance with all the terms of this Consent Order. The Respondent acknowledges and agrees that in no event shall this Consent Order shall be construed to apply as a waiver by the EPC to undertake causes of action not addressed by this Consent Order.
16. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties up to \$15,000.00 per day per violation, costs and expenses of litigation, and criminal penalties.
17. The provisions of the Consent Order shall apply to, inure, and be binding upon the parties and their successors and assigns. Each of the parties hereby agrees that in the event one of the parties attempts to enforce the terms of this Consent Order, no defense will be raised as to the validity or enforceability of this Consent Order. This Consent Order shall be construed and enforced under Florida Law.
18. The EPC, does not, by execution of this Consent Order, warrant or assert in any manner that the Respondent's compliance with this Consent Order will result in compliance with Respondent's permit(s). Notwithstanding the EPC's review or approval of any plans, reports,

schedules, policies, or procedures prepared pursuant to this Consent Order, the Respondent and its successors and assigns shall remain solely responsible for any noncompliance with the terms of this Consent Order, all applicable federal, state or local laws, regulations or ordinances.

19. Respondent acknowledges and waives its right to an administrative appeal (a/k/a hearing) pursuant to Section 9 of the EPC Act and Chapter 1-2, Rules of the EPC, on the terms of this Consent Order. Respondent hereby foregoes, surrenders, waives, and disclaims any and all other hearing and appeal rights under Chapter 120, F.S. or Section 9 of the EPC Act and any and all other suits, appeals, claims, or causes of action in any court of competent jurisdiction, including but not limited to County Court, Circuit Court, the Division of Administrative Hearings, appellate courts, or any other EPC hearing processes against the EPC and DEP arising out of or relating to the violations specifically addressed in this Consent Order, and Respondent, and their counsel, further agree not to encourage or support any such actions by other parties or entities to challenge this Consent Order. If Respondent is charged with violation of this Consent Order, Respondent does not waive its right to prove compliance with the terms of this Consent Order in any court of competent jurisdiction. The entry of this Consent Order does not abrogate the rights of substantially affected persons who are not parties to this Consent Order to challenge this Consent Order pursuant to Chapter 1-2, Rules of the EPC.
20. Respondent shall allow all authorized representatives of the EPC access to the Property and Facility at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the applicable rules and statutes. Access to the property includes, but is not limited to, inspecting, taking photographs, video recording, sampling, collecting, testing, and analyzing.
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. The parties hereto may execute this Consent Order in counterpart and such signatures shall have the same effect as if signed all at the same time. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both Respondent and the EPC.
22. All parties agree to pay their own fees and costs, including attorney's fees and costs, related to the violations addressed in this Consent Order and incurred up to the date of execution of this Consent Order, except that Respondent shall pay for any penalties, cost, and fees agreed to in this Consent Order.
23. This Consent Order shall take effect upon the date that it is signed by the Executive Director or her designee (Execution Date) and shall constitute final agency action by the EPC.
24. Nothing herein shall be construed to limit the authority of the EPC to undertake any action against Respondent in response to, or to recover the cost of responding to, conditions at or from the site requiring EPC action to abate an imminent hazard to the public health, welfare, or the environment.)

25. Respondent's obligations agreed to in this Consent Order shall terminate upon issuance by the EPC of a Letter of Closure when all terms of this Consent Order have been satisfactorily completed. The Letter of Closure shall reference this Consent Order, this paragraph, and shall specifically state that the EPC's enforcement file in this matter is "closed."

**RESPONDENT:  
Breit Florida Property Owner LLC**

03/22/2023  
\_\_\_\_\_  
Date

By: Ron Bitz  
Name: Ron Bitz  
Title: Area Director

**DONE and ORDERED** this 22nd day of March, 2023.

For the Environmental Protection  
Commission of Hillsborough County

*Janet D. Lorton*

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Janet D. Lorton  
Executive Director  
3629 Queen Palm Drive  
Tampa, Florida 33619  
(813) 627-2600

## **CONSENT ORDER NOTICE OF RIGHTS FOR THIRD PARTIES**

Pursuant to Section 9 of the Hillsborough County Environmental Protection Act, Chapter 84-446, as amended, Laws of Florida, (EPC Act) and Rule 1-2.30, Rules of the Environmental Protection Commission of Hillsborough County (EPC) any person whose interests are protected by the EPC Act and who is adversely affected or otherwise aggrieved by this Consent Order has the right to appeal this Consent Order, unless the right was previously waived. **Written Notice of Appeal for a Section 9 Administrative Hearing must be received by the EPC Commission Chair, c/o EPC Legal Department, 3629 Queen Palm Dr., Tampa, Florida 33619 or via electronic mail at [legalclerk@epchc.org](mailto:legalclerk@epchc.org), within twenty (20) days of receipt of this notice.** Pursuant to Section 1-2.30(c), Rules of the EPC, a Notice of Appeal must include the following information:

- (1) The name, address, and telephone number of the Appellant; the name, address, and telephone number of the Appellant's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the Appellant will be aggrieved or how his or her interests will be adversely affected by the Executive Director's decision;
- (2) A statement of when and how the Appellant received notice of the agency decision;
- (3) A statement of all disputed issues of material fact. If there are none, the Notice of Appeal must so indicate;
- (4) The specific facts the Appellant contends warrant reversal or modification of the Executive Director's proposed action;
- (5) A statement of the specific laws or rules the Appellant contends require reversal or modification of the Executive Director's proposed action; and
- (6) A statement of the relief sought by the Appellant, stating precisely the action Appellant wishes the Commission to take with respect to the Executive Director's proposed action or decision.

**Pursuant to Section 1-2.31, Rules of the EPC, you may request additional time to file a Notice of Appeal by filing a REQUEST FOR EXTENSION OF TIME TO FILE A NOTICE OF APPEAL.** The Request for Extension of Time must include a statement when and how the Appellant received notice of the agency decision and a statement why good cause exists for the extension. The Request must be sent to and received by the EPC Legal Department at the address, e-mail, or fax noted above within twenty (20) calendar days of receipt of this notice. **By submitting a "Notice of Appeal" or a "Request for Extension of Time to file a Notice of Appeal" via e-mail, you are agreeing to service and receipt of correspondences via e-mail at the originating e-mail address identified in the e-mail submission.**

**This Order is FINAL unless the party timely files, pursuant to Chapter 1-2, Part IV, Rules of the EPC, a "Notice of Appeal" or files a "Request for Extension of Time to file a Notice of Appeal" for a formal hearing.** Pursuant to Section 1-2.31(e), Rules of the EPC, failure to request an administrative hearing by filing a Notice of Appeal within twenty (20) days after receipt of this Order shall constitute a WAIVER of one's right to have an appeal heard, and this unappealed Order shall automatically become a final and enforceable Order of the Commission.

Upon receipt of a sufficient Notice of Appeal for a Section 9 Administrative Hearing an independent hearing officer will be assigned. The hearing officer will schedule the appeal hearing at the earliest reasonable date. Following an evidentiary hearing, the hearing officer will render his/her decision as a recommendation before the EPC board. Pursuant to Section 1-2.35, Rules of the EPC, the EPC board will take final agency action on the findings of fact and conclusions of law of the hearing officer. A written decision will be provided by the EPC board, which affirms, reverses or modifies the hearing officer's decision. Should this final administrative decision still not be in your favor, you may seek review in accordance with Section 9 of the Hillsborough County Environmental Protection Act, Chapter 84-446, as amended, Laws of Florida, and the Administrative Procedure Act, Chapter 120, part II, Florida Statutes, 1961 by filing an appeal under Rule 9.110 of the Florida Rules of Appellate Procedure, with the clerk of the Environmental Protection Commission, EPC Legal Department, 3629 Queen Palm Dr., Tampa, FL 33619, and by filing a notice of appeal accompanied by the applicable filing fee with the Second District Court of Appeal within 30 days from the date of this order becoming an Order of the Commission. Please note that this judicial review appeal differs from the Section 9 Appeal.

Copies of EPC rules referenced in this Order may be examined at any EPC office, may be found on the internet site for the agency at <http://www.epchc.org>, or may be obtained by written request to the EPC Legal Department at 3629 Queen Palm Dr., Tampa, FL 33619.