

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

**ENVIRONMENTAL PROTECTION
COMMISSION OF HILLSBOROUGH COUNTY,**

Complainant,

vs.

EPC Case #: 23-25170

BROADWAY QUICK MART INC.,

Respondent.

CONSENT ORDER

This Consent Order is made and entered into between the Environmental Protection Commission of Hillsborough County (EPC) and Broadway Quick Mart Inc. (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 neither admits nor denies 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, i.e., 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, i.e. Chapter 62-761, Florida Administrative Code (F.A.C.), and the implementation of site rehabilitation requirements for sites contaminated with petroleum products pursuant to Chapter 62-780, F.A.C.
2. The Respondent is an active registered corporation in the State of Florida and is deemed a person within the meaning of the EPC Act and Chapter 403, F.S.
3. The Respondent formerly operated a retail fuel facility (Facility), operated as Broadway Quick Mart Inc., Florida Department of Environmental Protection (FDEP) Identification Number 29/8625170, located at 6925 East Broadway Avenue, Tampa, Florida, (folio #159720-0500), in Hillsborough County, Florida. The property is owned by JOSE LUIS RAMOS, Trustee of THE RAMOS SEPARATE PROPERTY TRUST DATED DECEMBER 30, 2002. The Respondent has operated the Facility since at least November 18, 2019. The Respondent's former petroleum product storage operations are subject to the prohibitions of the EPC Act and rules promulgated thereunder, Chapters 376 and 403, F.S.,

and the Florida Administrative Code (F.A.C.).

4. The facility includes four (4) underground petroleum containing storage tanks (USTs) on the site. Inspections of the Property on November 1, 2022 and August 3, 2023, revealed several violations of applicable UST rules under which the EPC has contracted authority.
5. The EPC finds that the following violation(s) occurred:
 - a) **Section 62-761.420(2), F.A.C. – Failure to maintain current financial responsibility for the storage tank systems. Per F.A.C. 62-761.801, storage tank systems with a lapse in financial responsibility for a period of 90 days or more are required to be properly closed.**
 - b) **Section 62-761.600(4), F.A.C. – Failure to meet release detection standards.**
 - c) **Section 62-761.700(1), F.A.C. – Failure to repair or isolate a component or piping that has caused a discharge or release.**
 - d) **Section 62-761.500(7), F.A.C. - Failure to submit required annual operability testing of the overfill protection devices for 2023.**
 - e) **Section 62-761.500(4)(b), F.A.C. - Failure to maintain fill box covers according to requirements.**
 - f) **Section 62-761.600(1)(f), F.A.C. - Failure to maintain release detection per manufacturer’s instructions or standards.**
 - g) **Section 62-761.430, F.A.C. - Failure to perform investigation into the presence of fuel in the diesel tank interstice within 14 days.**
 - h) **Section 62-761.700(3), F.A.C. -- Failure to perform periodic integrity testing of the secondary containment within required timeframes.**
 - i) **Section 62-761.600(1)f, F.A.C. - Failure to install, maintain and operate the release detection device per manufacturer’s standards.**
 - j) **Section 62-761.440(6)(b), F.A.C. - Failure to immediately take action to contain, remove and abate the discharge.**
 - k) **Section 62-761.440(6)(c), F.A.C. - Failure to perform integrity testing of each component of the storage tank system within three days of a discharge unless the storage tank system has been properly placed out of service.**
 - l) **Section 62-761.800(2)(a)1, F.A.C. – Failure to meet Storage Tank System Requirements for Rule 62-761.500, F.A.C. for greater than 90 days since discovery.**

- m) **Section 62-761.405(3), F.A.C. – Failure to submit required Incident Notification Form for the positive responses of the release detection system.**
 - n) **Section 62-761.700(3)(b), F.A.C. – Failure to properly remove petroleum contact water from components.**
 - o) **Section 62-780, F.A.C. – Failure to timely submit a Site Assessment Report.**
6. As the operator of the facility, the Respondent is responsible for the UST violations.
 7. On August 3, 2023, a discharge of petroleum product occurred at the Facility and subsequently a Discharge Report Form was filed on August 4, 2023, which requires the completion of a Site Assessment and subsequent submittal of a Site Assessment Report (SAR).
 8. This Consent Order is not intended to address any discharges of petroleum products that have occurred prior to the Respondent’s operation at the property and Facility on November 18, 2019.

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

9. Within 60 days of the relocation of the on-site remediation system trailer and issuance of an NPDES Permit by the Florida Department of Environmental Protection, or no later than 120 days from execution of this Consent Order, whichever comes first, the Respondent shall properly close the UST system located on the Facility in accordance with Section 62-761.800, F.A.C. specifically by removing the storage tank systems, including tanks, all integral piping, remote fills and dispenser liners.
10. Within 30 days of the Execution Date of this Consent Order the Respondent shall remove all petroleum product from the USTs at the Facility.
11. The Respondent shall continue to perform free product recovery at the site due to the discharge of petroleum product. No later than 120 days from execution of this Order, the underground storage tank system shall be closed and removed from the tank area, as identified in paragraph 9, to provide access to the free product source area. After the removal of the tank systems, the contaminated soils and free product shall be excavated and removed from the site within ten (10) days and soil containing free product and recovered and excavated free product shall be properly treated and/or disposed in accordance with applicable laws and rules. Dewatering during the storage tank removal shall be performed to the extent practicable during the excavation process to lower the water table, so that free product and soil containing free product is exposed for excavation and removal purposes. Wastewater from the dewatering process shall be properly treated and/or disposed in accordance with applicable rules and laws. In addition, within 60 days of the source and tank removal provide a UST Closure Report and an updated Interim Source Removal (ISR) Report addressing the newly performed soil and free product recovery and disposal.

12. The Respondent shall provide to the EPC a professionally certified SAR in accordance with the requirements of Chapter 62-780, F.A.C., for the petroleum discharge dated August 3, 2023, within one hundred twenty (120) days of the date of execution of this Order. The SAR shall include full delineation of the horizontal and vertical extent of free product. The SAR shall identify areas of free product remaining at the Facility. The free product delineation may be performed after completion of the tank system removal and closure, but only if the system removal does not supersede the timely submittal of the fully completed SAR.
13. The SAR shall include a recommendation for site rehabilitation that meets the requirements of Chapter 62-780, F.A.C.. Upon the receipt of recommendation that meets the requirements of Chapter 62-780, F.A.C., and upon EPC staff's review and approval of the licensed engineer's or geologist's recommendation, the Respondent shall complete all recommended actions in accordance with the requirements of Chapter 62-780, F.A.C. and in accordance with the time schedules outlined therein. The Respondent shall also provide notice(s) of field activities, as required by Rule 62-780.220(1), F.A.C. to the EPC.
14. Any request for additional information required by EPC staff to complete the review of all required reports and documents shall be submitted by the Respondent within 60 days of EPC's written request; or the timeframes set forth in Chapter 62-780, F.A.C., whichever time period is longer.
15. The Respondent shall timely perform all necessary site rehabilitation until the FDEP issues a Site Rehabilitation Completion Order with or without Conditions for the August 3, 2022 discharge.
16. The Respondent shall pay the EPC a total of \$10,000.00 in settlement of the matters addressed in this Consent Order. This amount includes \$6,280.00 for civil penalties and \$3,720.00 for costs and expenses incurred by the EPC during the investigation of this matter and the preparation and tracking of this Consent Order. The EPC has agreed to substantially reduce the final penalty as a financial incentive to require removal of the UST system, including tanks, integral piping, remote fills, dispenser liners, and surrounding contaminated soils and free product encountered during the tank removal from the Facility.

The Respondent shall make payment to the EPC for the alleged violations referenced above in the amount of **\$10,000.00**, in the following payment plan: within 30 days of execution of this Order, the Respondent shall submit payment to the Executive Director of the EPC in the amount of \$2,500.00. The Respondent then shall submit three (3) additional payments of \$2,500.00 due on the first day of October 2024; January 2025, and April 2025 respectively. In the event a monthly payment for penalties referenced above is not timely received on the first day of the corresponding month, the entire remaining balance shall become due in full on that date. 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. This reflects appropriate settlement amounts ascribed to the above incidents.

17. Notwithstanding the above, the Respondent shall pay an agreed stipulated penalty:
- a) The amount of \$100.00 each day that constitutes a violation of any condition in paragraphs 9 through 15 of this Consent Order. A separate penalty shall be assessed for each violation.

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 16 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.

18. 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.
19. 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.

20. 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.
21. 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.
22. 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.
23. 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.
24. 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 \$10,000.00 per day per violation, costs and expenses of litigation, and criminal penalties.
25. 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.
26. 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.

27. 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. The Respondent reserves its rights to challenge or appeal agency actions or decisions made by the EPC after the effective date of this Consent Order.
28. 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.
29. 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.
30. 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.
31. 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.
32. 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.
33. 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:

Broadway Quick Mart Inc.

07152024

Date

By:

Name:



Nassir Irshaid, President

DONE and ORDERED this 17th day of July, 2024.

For the Environmental Protection
Commission of Hillsborough County

Janet D. Lorton

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 Legal Department via electronic mail at 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, e-mail, and telephone number of the Appellant; the name, address, e-mail, 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 for Extension of Time must be sent to and received by the EPC Legal Department at the e-mail 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 Consent Order is FINAL unless the party timely files, pursuant to Chapter 1-2, Part IV, Rules of the EPC, "Notice of Appeal" or files "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 Consent 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 Commission. Pursuant to Section 1-2.35, Rules of the EPC, the EPC Commission 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 Commission, which affirms, reverses or modifies the hearing officer's decision. Should this final administrative decision still not be in your favor, you may seek judicial 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 Consent Order becoming an Order of the Commission. Please, note that this District Court appeal differs from the Section 9 Appeal.

Copies of EPC rules referenced in this Consent 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.