



# 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

September 25, 2024

Scott Moon, Manager  
Florida Commercial Properties, LLC  
1255 Lakes Parkway, Suite 180  
Lawrenceville, Georgia 30043  
[ustcompliance@majorsmgmt.com](mailto:ustcompliance@majorsmgmt.com)

RE: Executed Consent Order; DEP vs. Florida Commercial Properties, LLC; Texaco Food Store #4084; Facility ID 8630244; OGC File No 24-2529; Okaloosa County

Dear Mr. Moon:

Enclosed is the executed Consent Order (Order), which addresses storage tank violations cited on March 14, 2024, at Texaco Food Store #4084, 226 Hollywood Boulevard, Fort Walton Beach, by the Florida Department of Health in Escambia County, on behalf of the Department.

The following violations are addressed in the Order:

- Failure to remove stormwater and petroleum contact water from containment devices.
- Failure to position the sensor in the non-ethanol STP sump such that it is no more than one inch above the bottom of the sump to detect the presence of water or product.
- Failure to perform an annual containment integrity test of the regular product STP sump.
- Failure to investigate the failed integrity tests conducted on February 27, 2024, of dispensers 1/2 and 3/4.
- Failure to repair the Veeder Root ATG system than had a nonworking alarm at the time of the inspection.

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

DEP vs. Florida Commercial Properties, LLC; OGC No. #24-2529

Facility: Texaco Food Sore #4084, Facility ID No. 8630244

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Your cooperation in resolving this matter is greatly appreciated. If you have any questions, please contact Mark Gillman at (850) 595-0586 or by email at [Mark.Gillman@FloridaDEP.gov](mailto:Mark.Gillman@FloridaDEP.gov).

Sincerely,



*on behalf of*

Elizabeth Mullins Orr

Director

Northwest District

EMO/mg

Enclosures: Executed Consent Order

cc: Lea Crandall, [Lea.Crandall@dep.state.fl.us](mailto:Lea.Crandall@dep.state.fl.us)  
Brad Hall, [bhall@majorsmgmt.com](mailto:bhall@majorsmgmt.com)  
Juan Valencia, [jvalencia@majorsmgmt.com](mailto:jvalencia@majorsmgmt.com)

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. 24-2529
	)	
FLORIDA COMMERCIAL	)	
PROPERTIES, LLC	)	
_____	)	

**CONSENT ORDER**

This Consent Order (“Order”) is entered into between the State of Florida Department of Environmental Protection (“Department”) and Florida Commercial Properties, 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 corporation and is a “person” within the meaning of Sections 376.301(29) and 403.031(9), F.S.
3. Since February 26, 2003, Respondent has owned non-residential property containing underground storage tank systems (“Property”). The Property is located at 226 Hollywood Boulevard, Fort Walton Beach, Florida in Okaloosa County, Florida. The Department has assigned Facility Identification Number 8630244 to the Property.
4. Respondent is the owner and operator of an underground storage tank system located at the Property.

5. The Property contains one underground storage tank system ("System"), consisting of an underground storage tank and its associated piping and dispenser. Since on or about February 6, 2007, Respondent has owned and operated the current System. The 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 tank, which is constructed of double-walled, fiberglass, was installed at the Property on or about February 6, 2007.

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

7. The Department finds that the following violations occurred:

a) Failure to remove stormwater and petroleum contact water from the regular product spill bucket, the non-ethanol product STP sump, and the regular product STP sump, as required by Rule 62-761.700(3)(b), F.A.C.

b) Failure to position the release detection sensor in the non-ethanol product STP sump to detect the presence of water or product in the sump, as required by Rule 62-761.500(1)(e), F.A.C.

c) Failure to perform an annual containment integrity test of the regular product STP sump, as required by Rule 62-761.700(3)(a)1.b., F.A.C.

d) Failure to investigate the failed integrity test conducted on February 27, 2024, of dispensers designated as 1/2 and 3/4, as required by Rule 62-761.430(4), F.A.C.

e) Failure to repair the Veeder Root automatic tank gauge system that had a nonworking alarm during the inspection, as required by Rule 62-761.600(1)(f)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 30 days of the effective date of this Order, Respondent shall remove stormwater and petroleum contact water from the regular product spill bucket, the non-ethanol product STP sump, and the regular product STP sump, and dispose properly.

b) Within 30 days of the effective date of this Order, Respondent shall reposition the sensor inside the non-ethanol STP sump such that it is no more than 1 inch above the bottom of the sump.

c) Within 30 days of the effective date of this Order, Respondent shall perform a containment integrity test of the regular product STP sump in accordance with PEI/RP1200-19, Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment as UST Facilities.

d) Within 30 days of the effective date of this Order, Respondent shall investigate the failed integrity tests conducted on February 7, 2024, of the dispensers designated as 1/2 and 3/4 by conducting closure sampling, in accordance with the Instructions for Conducting Sampling During Underground Storage Tank Closure, July 2019.

e) Within 30 days of the effective date of this Order, Respondent shall have the Veeder Root automatic tank gauge system repaired to restore operation of the audible alarm.

9. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$ 11,000.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$ 10,500.00 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 penalties are apportioned as follows: \$1,500.00 for violation of Rule 62-761.700(3)(b), F.A.C.; \$1,500.00 for violation of Rule 62-761.500(1)(e), F.A.C.; \$3,000.00 for violation of Rule 62-761.700(3)(a)1.b., F.A.C.; \$3,000.00 for violation of Rule 62-761.430(4), F.A.C.; and \$1,500.00 for violation of Rule 62-761.60(1)(f)1., F.A.C.

10. 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 (OGC No.

24-2529) 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.

11. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Mark Gillman, Environmental Consultant, Department of Environmental Protection, Northwest District, at 160 West Government Street, Pensacola, Florida 32502.

12. 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.

13. 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.

14. 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

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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 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

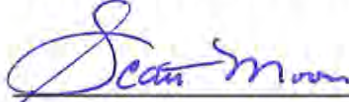


- petitioner contends warrant reversal or modification of the agency's proposed action;
- f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific 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](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 Department of Environmental Protection, Northwest District, at 160 West Government Street, 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.

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

FOR THE RESPONDENT:



\_\_\_\_\_  
Scott Moon  
Manager

9/24/2024  
Date

DONE AND ORDERED this 25th day of September, 2024, in Escambia,  
Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



*on behalf of*

\_\_\_\_\_  
Elizabeth Mullins Orr  
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

September 25, 2024

\_\_\_\_\_  
Date

Copies furnished to:

Lea Crandall, Agency Clerk  
Mail Station 35