



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

April 25, 2023

David Miller, Operations Director
Theta America Group, LLC
5551 W. Ponkan Road
Apopka, Florida 32712
operations@thetaamerica.com

Re: Theta America Group LLC
HW Facility ID #FLR000220202
OGC Case #23-0064

Dear Mr. Miller:

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 Michael Eckoff at 407-897-4308 or via e-mail at michael.eckoff@floridadep.gov.

Your cooperation in this matter will be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "AW 7/2".

On behalf of:

Aaron Watkins
Director, Central District

Enclosure

cc: FDEP: Lea Crandall, Daun Festa
Laurel Lockett, Carlton Fields, llockett@carltonfields.com

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)
OF ENVIRONMENTAL PROTECTION)
)
v.)
)
THETA AMERICA GROUP, LLC)
_____)

IN THE OFFICE OF THE
CENTRAL DISTRICT

OGC FILE NO. 23-0064
EPA ID NO. FLR000220202

CONSENT ORDER

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department") and Theta America Group, 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 administer and enforce the provisions of the Florida Resource Recovery and Management Act, Sections 403.702, et seq., Florida Statutes ("F.S."), and the rules promulgated in Chapter 62-710, Florida Administrative Code ("F.A.C."). The Department has jurisdiction over the matters addressed in this Order.

2. Respondent is a "person" within the meaning of Sections 403.031(5) and 403.703(23), F.S.

3. Respondent is a foreign limited liability company registered with the Department as a Used Oil Transporter for Hire and Used Oil Transfer Facility and which operated a used oil processing facility that utilized a centrifuge to separate water from used oil to re-sell the separated used oil as a product on real property located at 5551 W. Ponkan Rd., Apopka, Florida 32712 ("Facility"). Respondent is the operator of the Facility as defined in Rule 62-701.200(82), F.A.C.

4. The Department finds that the following violation(s) occurred:

- a) Respondent released used oil at the Facility in violation of Rule 62-710.401(2), F.A.C.;

- b) Respondent failed to label seven tanks of used oil with the words "Used Oil" in violation of Rule 62-710.401(6), F.A.C; and,
- c) Respondent failed to apply for and obtain a used oil processing permit in violation of Rule 62-710.800(3), F.A.C.

5. On September 20, 2022, Respondent provided documentation that the seven tanks of used oil have been labeled with the words "Used Oil".

6. On or about October 14, 2022, Respondent began emptying, decontaminating and decommissioning/removing frac tanks from the Facility as part of its permanent shutdown. On or about November 28, 2022, Respondent ceased all used oil handling operations at the Facility.

7. The used oil tanks and all associated equipment and components were decontaminated and removed from the Facility from October 14 through December 4, 2022. On December 13, 2022, in a meeting with the Department, the Respondent stated the tanks at the Facility had been removed and no further processing will occur. On January 13, 2023, Respondent emailed photographs to the Department documenting removal of the tanks from the Facility.

8. On March 1, 2023, Respondent submitted a Closure Plan to the Department. The Closure Plan was approved by the Department on March 20, 2023.

9. Respondent initiated closure activities pursuant to the approved Closure Plan on March 21, 2023.

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

ORDERED:

10. Effective immediately, Respondent shall comply with all Department rules regarding used oil management. Respondent shall correct and redress all violations within the time periods stated below and shall comply with all applicable sections in Chapter 62-710, F.A.C. All time periods shall run from the effective date of this Order.

- a) The Respondent shall complete closure of the Facility in a manner that minimizes or eliminates, to the extent necessary to protect human health and the environment, escape of hazardous waste, hazardous waste constituents, hazardous waste decomposition products, contaminated leachate or run-off to the groundwater, surface waters, or to the atmosphere.
- b) Since the Facility has been decommissioned and vacated, the Closure Plan cannot be kept at the Facility. The Closure Plan must be in possession of the responsible Operator of the Facility until closure is completed and approved by the Department.
- c) Within 30 days, the Respondent shall prepare and submit a Closure Activities Report. Refer to Exhibit A for the minimum requirements for the Closure Activities Report.
- d) Within 120 days, the Respondent shall complete closure activities. Any changes in the time allowed for closure activities or reporting requirements shall require prior written Department approval.
- e) Within 60 days of the completion of closure, the Respondent shall submit to the Department, a Closure Report. Refer to Exhibit B for minimum requirements of the Closure Report.

11. Notwithstanding the time periods described in the Paragraphs above, Respondent shall complete all corrective actions required by the approved Closure Plan within 240 days of the effective date of this Order and be in full compliance with Rule 62-710, F.A.C., regardless of any intervening events or alternative time frames imposed in this Order, other than those excused delays agreed to by the Department, as described in Paragraph 19 of this Order.

12. Sampling in accordance with the approved Closure Plan shall be conducted prior to beginning soil clean-up and prior to site restoration. The initial and post-cleanup results shall be submitted to the Department as part of the Closure Report, as described in Paragraph 10.e) of this Order.

- a) Initial sampling shall be conducted at the point believed to be most contaminated from used oil discharges. Visually contaminated soil shall be excavated and analyzed for all parameters specified for used oil in Table D of Chapter 62-780, F.A.C. Composite samples will not be used.
- b) All areas of contamination, as identified in the approved Closure Plan, shall be excavated using either visual examination or a handheld VOC analyzer. A sample shall be collected from the bottom of each excavation if the water table was not reached and at least one wall sample at an equivalent depth of the soil visually stained or saturated with used oil that was removed. The floor and wall samples shall be analyzed for those contaminants referred to in the sample from Paragraph 10. a) of this Order.
- c) If groundwater is encountered samples shall be collected and analyzed for all parameters specified in Table D of Chapter 62-780, F.A.C.

13. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$ 7,000.00 in settlement of the matters addressed in this Order. This amount includes \$ 500 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: \$ 1,000.00 for violation of Rule 62-710.401(2), F.A.C.; \$ 1,000.00 for violation of Rule 62-710.401(6), F.A.C.; and \$ 4,500.00 for violation of Rule 62-710.800(3), F.A.C.

14. Respondent agrees to pay the Department stipulated penalties in the amount of \$500.00 per day for each and every day Respondent fails to timely comply with any of the requirements of Paragraph(s) 10, 11, and 12 of this Order. A separate stipulated penalty shall be assessed for each violation of this Order, and 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 15, 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 13 of this Order. If the Department is required to file a lawsuit to recover stipulated penalties under this Paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Order in an amount greater than the stipulated penalties due under this Paragraph.

15. 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 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.

16. Except as otherwise provided, all submittals and payments required by this Order shall be sent to DEP_CD@FloridaDEP.gov, Department of Environmental Protection, 3319 Maguire Blvd., Suite 232, Orlando, FL 32803.

17. 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.

18. Respondent shall use all reasonable efforts to obtain any necessary access to implement the terms of this Order. If necessary access cannot be obtained, or if obtained, is revoked by owners or entities controlling access to the properties to which access is necessary, Respondent shall notify the Department within five business days of such refusal or revocation. The Department may at any time seek to obtain access as is necessary to implement the terms of this Order. Respondent shall reimburse the Department for any damages, costs, or expenses, including expert and attorney fees, that the Department is ordered to pay, or that the Department incurs in connection with its efforts to obtain access that is necessary to implement the terms of this Order. Respondent shall pay these sums to the

Department or arrange a payment schedule with the Department within 30 days of written demand by the Department.

19. 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 (unless the cause of the contractor's late performance was also beyond the contractor's control) shall be considered circumstances beyond the control of Respondent. 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 the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay, and 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 describe 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.

20. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for violations outlined in this Order. This waiver is conditioned upon (a) Respondent's complete compliance with all

of the terms of this Order, and (b) the remediation of contaminated areas to the applicable site rehabilitation levels. The Department's cause of action for damages accrues when the Department concludes that remediation of contaminated areas to the applicable site rehabilitation levels is not feasible or that the Respondent failed to completely implement the Department-approved remedial or corrective action plan (however designated). If the Department and Respondent fail to reach agreement on the payment of the damages, the Department may initiate appropriate legal action to recover the damages as provided by law.

21. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or the rules administered by the Department that are not specifically resolved by this Order. Nothing herein shall be construed to limit the Department's authority to take any action against Respondent in response to or to recover the costs of responding to conditions at or from the Facility that require Department action to abate an imminent hazard to the public health, welfare, or the environment.

22. 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.

23. 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.

24. 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 shall be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

25. 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 shall constitute a violation of Section 403.161(1)(b), F.S.

26. 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 Order will not be effective until further order of the Department.

27. Persons who are not parties to this 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 Order means that the Department's final action may be different from the position it has taken in the 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

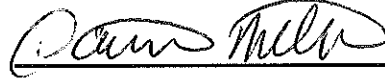
- g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

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 the address indicated in Paragraph 16, above. 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 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 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.

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

FOR THE RESPONDENT:

Theta America Group, LLC



4-19-23

DATE

Print Name

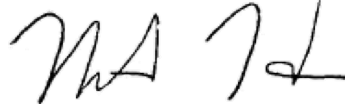
David Miller

Print Title

Manager

DONE AND ORDERED this 25 day of April, 2023, 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

April 25, 2023
Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35

Exhibit A: Closure Activities Report Minimum Requirements

1. The Closure Activities Report will be in columnar format (i.e. a table or spreadsheet) with columns for "closure activity," "schedule date," and "completed date."
2. The Closure Activities Report shall be maintained and updated by the Respondent throughout the closure period, with copies submitted monthly to the Department, unless an alternate submittal schedule is approved by the Department in writing. Each report must be submitted to the Department by the tenth day of each month for the preceding month until the acceptance of physical closure by the Department. These reports can be submitted electronically.
3. Any deviation from the schedule or described tasks shall be fully documented in the Closure Activities Report.
4. The Respondent shall provide documentation of decontamination or disposal of all equipment, structures, and residues used during or resulting from the closure activities f).

Exhibit B: Closure Report Minimum Requirements

1. Environmental sampling data to verify closure activities as described in the approved Closure Plan
2. Decontamination data as described in the approved Closure Plan
3. Copies of manifests or other appropriate shipping documents for removal of all hazardous wastes and all contaminated residues.
4. A description of final closure activities.
5. A final Closure Activities Report that documents:
 - a) The weight of #1 heavy metal scrap sold.
 - b) The weight of other scrap sold, by classification.
 - c) The weight of scrap disposed and a description of the method of disposal
 - d) An inventory of the valves and fittings that were retained for future application.
 - e) A statement verifying that the tanks and piping have been completely removed and that everything removed is included in the above listing.