



Department of Environmental Protection

Lawton Chiles
Governor

Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

Virginia B. Wetherell
Secretary

July 17, 1997

CERTIFIED MAIL
P 337 151 146

North Florida Oil
Post Office Box 157
Astor, Florida 32102

OCD-HW/E-C-97-0374

Attention: Robert Simmons, owner

Lake County - HW
North Florida Oil
Consent Order

Dear Mr. Simmons:

Enclosed is the Consent Order drafted according to discussions held at the Central District office on July 7, 1997. If the Consent Order is acceptable, please sign where indicated and return the document to the Central District office address above. If the Consent Order is not acceptable, return the document with your comments. The signed Consent Order, or appropriate comments, must be received by the Department **within 10 days of your receipt of this letter.**

Sincerely,

Vivian F. Garfein
Director of District Management

RTS
VFG/RTS/lb

Enclosure

cc: FDEP Tallahassee

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

IN THE OFFICE OF THE
CENTRAL DISTRICT

Complainant,

OGC FILE NO. 97-1212
EPA ID. NO. FLD101828689

vs.

North Florida Oil / Leisure Oil

Respondent.

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department"), and North Florida Oil / Leisure Oil ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

For the purposes of this Consent Order, The Department finds and the Respondent admits the following:

1. The Department is the administrative agency of the State of Florida charged with the duty to administer and enforce the provisions of the Florida Resource Recovery and Management Act, Sections 403.702, et seq., Florida Statutes, and the rules promulgated thereunder, Florida Administrative Code, Chapter 62. The Department has jurisdiction over the matters addressed in this Consent Order.
2. Respondent is a person within the meaning of Section 403.703(4), Florida Statutes.
3. Respondent owns and operates a business ("facility") located at 24133 State Road 40, Astor, Lake County, Florida ("property"). North Florida Oil is the facility property owner.
4. Respondent owns and operates a "Used Oil Processing Facility" as defined on 40 CFR 279.1 and previously maintained a General Permit, identification number SO35-268228, due to expire on April 28, 2000.
5. Amendments to Florida Administrative Code (F.A.C.), Chapter 62-710.800, effective March 25, 1997, require used oil processing facilities with a current general permit to submit an application for a facility specific "Used Oil Processing Permit" no later than June 23, 1997. The permit is to be filed pursuant to 62-710.901, Used Oil Processing Permit Application and Instructions.

6. On April 1, 1997, a meeting was held at the facility between Department staff and Respondent to discuss specific issues required by the amended regulation and subsequent permit application. The application deadline of June 23, 1997 was discussed.
7. Respondent failed to submit a completed "Used Oil Processing Permit" pursuant to F.A.C., Chapter 62-710.800, as outlined in 62-710.910 by the required deadline of June 23, 1997.
8. On June 27, 1997, Department staff and Respondent discussed the permit application at the Volusia County Administrative offices, located at 123 West Indiana Avenue, Deland, Florida.
9. On July 7, 1997, an informal conference was held at Department district offices to discuss the delinquent permit application. Present at the meeting were Department staff, Respondent, and the respondent's consulting engineer.

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

ORDERED:

10. Respondent shall submit a completed application pursuant to F.A.C., Chapter 62-710.901 no later than August 15, 1997.
11. The Respondent shall be notified of any deficiencies in the permit application through the issuance of a "Notice of Deficiency" (N.O.D).
12. Respondent shall correct all deficiencies in writing to the Department within 20 days from Respondent's receipt of said N.O.D.
13. In the event that the additional information submitted does not adequately address the incompleteness or technical deficiencies as outlined by the Department to Respondent in the N.O.D., or if the additional information raises new questions, the Department may do any or all of the following: (a) notify Respondent of the failure and furnish Respondent with a second N.O.D., to which the Respondent shall respond fully in writing within 20 days of Respondent's receipt; (b) issue the Permit with specific conditions supplied by the Department to correct the deficiencies; (c) deny the Permit; (d) notify Respondent that specific penalty amounts are due as calculated pursuant to paragraph 14 of this Consent Order; or (e) file suit in circuit court to obtain any available relief, including but not limited to the following relief: an injunction to enforce compliance with this Consent Order; an injunction requiring Respondent to cease operations; or civil penalties for violation of this Consent Order and for failure to apply for a Permit prior to the June 23, 1997 deadline.
14. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to comply with any of the requirements of paragraphs 10 and 11 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Consent Order. Within 30 days of written demand from the

Department, Respondent shall make payment of the appropriate stipulated penalties to "The Department of Environmental Protection" by cashiers check or money order and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management Restoration Trust Fund." Payment shall be sent to the Department of Environmental Protection, Central District, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767. The Department may make demands for payment at any time after violations occur. 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 Consent Order in an amount greater than the stipulated penalties due under this paragraph.

15. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Order, and except as provided in paragraph 12 above, hereby waives its right to seek judicial imposition of damages or civil penalties for the alleged violations outlined in this Consent Order. Respondent waives its rights to an administrative hearing concerning the terms of this Consent Order, pursuant to Sections 120.569 and 120.57, Florida Statutes, on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of the Consent Order pursuant to Section 120.68, Florida Statutes, but waives that right upon signing this Consent Order.
16. If any event occurs which causes delay, or the reasonable likelihood of delay, in complying with the requirements or deadlines of this Consent Order, Respondent shall have the burden of proving that the delay was, or will be, caused by the circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall 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 be a cause 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 promptly notify the Department orally within 24 hours or the next working day and shall, within seven (7) days of oral notification to the Department, 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 for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice

requirements of this paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements or deadlines of this Consent Order.

17. Respondent shall allow all authorized representatives of the Department access to the facility at reasonable times for purposes of determining compliance with this Consent Order and the rules of the Department.
18. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.
19. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Florida Statutes. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.727(1), Florida Statutes.
20. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties of up to \$10,000 per offense and criminal penalties.
21. Respondent shall publish the following notice in a newspaper of daily circulation in Lake County, Florida. The notice shall be published one time only within 21 days after execution of the Consent Order by the Department. Proof of publication shall be provided to the Department within 14 days of publication.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF CONSENT ORDER

The Department of Environmental Protection gives notice of agency action of entering into a Consent Order with North Florida Oil., pursuant to Section 120.57(4), Florida Statutes. The Consent Order addresses the alleged violations set forth in paragraph 7 of this Consent Order at 24133 State Road 40, Astor, Lake County, Florida. The Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, 3319 Maguire Boulevard, Suite 232, Orlando Florida 32803-3767.

Persons whose substantial interests are affected by this Consent Order have a right to petition for an administrative hearing on the Consent Order. The Petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35 Tallahassee, Florida 32399-3000, 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 named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S.

The petition shall contain the following information:

- (a) The name, address, and telephone number of each petitioner; the Department's identification number for the Consent Order and the county in which the subject matter or activity is located;
- (b) A statement of how and when each petitioner received notice of the Consent Order;
- (c) A statement of how each petitioner's substantial interests are affected by the Consent Order;
- (d) A statement of the material facts disputed by petitioner, if any;
- (e) A statement of facts which petitioner contends warrant reversal or modification of the Consent Order;
- (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order;
- (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 60Q-2.010, F.A.C.

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under Section 120.573 before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, by the same deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;

(f) The name of each party's representative who shall have authority to settle or recommend settlement; and

(g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference.

(h) The signatures of all parties or their authorized representatives.

As provided in section 120.573 of the Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by sections 120.569 and 120.57 for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57 remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

20. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the terms of this Consent Order. Respondent reserves all rights that it may have under law in the event that the Department chooses to exercise any rights reserved pursuant to this paragraph, and the Department acknowledges that, by execution of this Consent Order, Respondent has not waived any right or defenses that it may otherwise have in such proceeding.
21. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both Respondent and the Department.
22. The provisions of this Consent Order shall apply to and be binding upon the parties, their successors, and assigns.
23. If all of the requirements of this Consent Order have not been fully satisfied, Respondent shall not sell or convey the above-described facility without, at least 14 days prior to such sale or conveyance, (1) notifying the Department of such sale or conveyance, and (2) providing a copy of this Consent Order with all attachments to the new owner.

24. This Consent Order is a final order of the Department pursuant to Section 120.52(7), Florida Statutes, 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, Florida Statutes. Upon timely filing of a petition this Consent Order will not be effective until further order of the Department.

FOR THE RESPONDENT:
North Florida Oil

Robert Simmons, owner
North Florida Oil

Brenda Simmons, owner
North Florida Oil

Date

DONE AND ORDERED this _____ day of _____, 199__, in _____,
Florida.

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Director of District Management

FILING AND ACKNOWLEDGMENT FILED, on this date, pursuant to 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

CLERK

Date

cc: FDEP Tallahassee