

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **DIRECT TESTIMONY AND EXHIBITS**

3 **OF WILLIAM L. PENCE**

4 **ON BEHALF OF THE FLORIDA DIVISION OF**

5 **CHESAPEAKE UTILITIES CORPORATION**

6 **DOCKET NO. 090125-GU**

7

8 **Q. PLEASE STATE YOUR NAME AND PRESENT PLACE OF EMPLOYMENT.**

9 A. My name is William L. Pence. I am a member of the Florida Bar and a partner in the law
10 firm of Baker & Hostetler, LLP, 2300 SunTrust Center, 200 South Orange Avenue, Orlando,
11 Florida 32801-3432.

12 **Q. WHAT IS YOUR CONNECTION WITH THE FLORIDA DIVISION OF**
13 **CHESAPEAKE UTILITIES CORPORATION IN THIS PROCEEDING?**

14 A. I serve as special environmental counsel for the Florida Division of Chesapeake Utilities
15 Corporation (the "Company"). Specifically, I have been retained to provide counsel to the
16 Company in connection with the investigation and remediation of environmental impacts at a
17 certain former manufactured gas plant ("MGP") site located in Winter Haven, Florida.

18 **Q. CAN YOU PLEASE PROVIDE US WITH A BRIEF DESCRIPTION OF YOUR**
19 **EXPERIENCE AS AN ENVIRONMENTAL ATTORNEY AND YOUR SPECIFIC**
20 **EXPERIENCE WITH ENVIRONMENTAL ISSUES ASSOCIATED WITH FORMER**
21 **MGP SITES?**

22 A. I have been a practicing attorney for approximately twenty-seven years, having received my
23 law degree in 1979 from Syracuse University College of Law. A copy of my current resume

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1 is attached as Exhibit "A." For the past approximately twenty-three years, my practice has
2 been exclusively in the environmental field. I represent private industry, utilities, municipal
3 corporations and individuals in environmental regulatory matters related to assessment and
4 remediation of contaminated sites; management of hazardous wastes; defense of state and
5 federal environmental enforcement actions under the Comprehensive Environmental
6 Response, Compensation and Liability Act of 1980, the Resource Conservation Recovery
7 Act, the Clean Water Act, the Emergency Planning and Community Right to Know Act, and
8 similar state laws. My practice also includes environmental risk management in connection
9 with corporate and real estate acquisitions and divestitures. I currently represent three
10 regulated utilities and three municipalities in connection with the management of
11 environmental liabilities at approximately 15 former MGP sites throughout Florida. My
12 work at these sites includes interviewing and contracting with environmental consulting
13 firms for assessment and remediation tasks, negotiation of consent orders and consent
14 decrees with the Florida Department of Environmental Protection ("FDEP") and United
15 States Environmental Protection Agency ("USEPA"), review of reports prepared by the
16 consultants for transmittal to regulatory bodies, negotiation of cleanup orders with FDEP
17 and USEPA, negotiation of insurance claims with insurance carriers, pursuit and defense of
18 third parties claims, and interviewing and contracting with construction firms for site
19 remediation tasks. Approximately forty percent (40%) of my practice today is devoted to
20 former MGP sites.

21 **Q. HAVE YOU EVER PROVIDED WRITTEN TESTIMONY BEFORE THE FLORIDA**
22 **PUBLIC SERVICE COMMISSION ON BEHALF OF A REGULATED UTILITY IN**
23 **CONNECTION WITH A RATE CASE?**

1 A. Yes. I provided written testimony before the Florida Public Service Commission (the
2 “Commission”) on behalf of West Florida Natural Gas Company ("WFNG") in its rate case,
3 Docket No. 871255-GU; Florida Public Utilities Company ("FPUC") in its rate case, Docket
4 No. 940620-GU; and The Florida Division of Chesapeake Utilities Corporation in its rate
5 case, Docket No. 000108-GU.

6 **Q. WHAT WAS THE GENERAL PURPOSE OF YOUR TESTIMONY IN THOSE**
7 **CASES?**

8 A. The purpose of my testimony in each was to provide a brief history of the regulatory status of
9 former MGPs in general. Specifically, for WFNG, I described the nature and extent of work
10 required to be performed by WFNG in connection with the former MGP located on property
11 then owned by WFNG in Ocala, Florida. For FPUC, I described the nature of the work
12 required to be performed by FPUC in connection with the former MGPs owned or operated
13 by FPUC in Pensacola, Sanford, West Palm Beach and Key West, Florida. For the Florida
14 Division of Chesapeake Utilities Corporation, I described the nature of the work required to
15 be performed by the Company in connection with the former MGP located on property
16 owned by the Company in Winter Haven, Florida.

17 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

18 A. I am here to provide the Commission with a brief history of the gas manufacturing operations
19 conducted at the Winter Haven former MGP site, to review certain legal aspects of those
20 operations insofar as they relate to environmental conditions at the site, to describe the
21 Company’s actions to date, to identify the Company’s proposed future responses to the
22 presence of environmental impacts resulting from the former MGP operations, and to provide
23 a current estimate of remediation costs at the site.

1 **Q. WHAT IS THE CONNECTION OF THE COMPANY WITH THE FORMER MGP**
2 **SITE REFERENCED ABOVE?**

3 A. The Company is the current owner of the site and is the former owner/operator of the MGP.
4 The site is located at 1705 Seventh Street, S.W., Winter Haven, Florida. An MGP was
5 operated by the Company at the site from approximately 1928 to 1953.

6 **Q. CAN YOU PLEASE PROVIDE US WITH A GENERAL DESCRIPTION OF THE**
7 **NATURE OF MGP OPERATIONS?**

8 A. Prior to the availability of natural gas in Florida, gas used to light streets and houses was
9 primarily made at MGPs. The manufacturing process for "carbureted water gas," the most
10 common form of gas manufacturing in the 1900s and the method employed at the Winter
11 Haven site, included passing steam over a bed of hot coals to produce "blue gas." The blue
12 gas was then sprayed with hydrocarbons such as fuel oil and passed through a superheated
13 chamber to thermally crack the hydrocarbons and produce energy-rich gases. The gas was
14 then passed through wood shaving filled scrubbers and over iron oxide in purifier boxes prior
15 to collection in a central holding tank for distribution. Common by-products of this process
16 included tar, spent fuel oils and sludges, waste scrubber shavings and purifier box wastes.
17 These by-products typically contain polycyclic aromatic hydrocarbons ("PAHs"), benzene,
18 toluene, ethylbenzene, xylenes, phenols and cyanide.

19 **Q. WHAT ENVIRONMENTAL IMPACTS ARE NORMALLY FOUND IN**
20 **CONNECTION WITH FORMER MGP OPERATIONS?**

21 A. Investigations at MGP sites have typically found coke, coal and clinkers in surface soils; tars
22 and oily wastes in the bottom of gas holders, in tar tanks or in soils on site; wood shavings
23 from the scrubbers; purifier box wastes; and fuel oil or light oils from tars in pits or former

1 petroleum storage tanks located on site. Soil and groundwater impacts detected at many
2 MGP sites in Florida include concentrations of PAHs, benzene, toluene, ethylbenzene,
3 xylenes and cyanide in excess of current regulatory standards.

4 **Q. WHAT IS THE SOURCE OF THESE ENVIRONMENTAL IMPACTS?**

5 A. Most are the result of routine operations at the MGPs. Inadvertent or accidental releases may
6 have occurred at several of the process areas, including at the tar tanks, gas holders and
7 associated piping, purifiers and petroleum storage areas.

8 **Q. WERE SPILLS OR RELEASES OF MGP WASTE MATERIALS IN VIOLATION**
9 **OF ANY LAWS DURING THE OPERATION OF THE FORMER MGPS?**

10 A. Generally, no. Evidence of such releases have been detected at many of the former MGP
11 sites located throughout the United States and the rest of the world, indicating a state of
12 industrial practice at the time that the MGPs were in operation that was deemed normal and
13 acceptable. It was not until the enactment of the Comprehensive Environmental Response,
14 Compensation and Liability Act ("CERCLA") in 1980, with subsequent amendments in 1984
15 and 2002, that the Federal government began regulating such releases. Florida enacted
16 legislation similar to CERCLA in 1983.

17 **Q. HOW DID SUCH LAWS IMPOSE LIABILITY FOR RELEASES FROM**
18 **PRIOR MANUFACTURING OPERATIONS?**

19 A. With the passage of CERCLA in 1980, the federal government imposed retroactive
20 liability for remediating contaminated properties on certain classes of persons, including the
21 owner or operator of the facility at the time of the release and the current owner or operator
22 of the facility. Liability under CERCLA is strict, and, in most cases, joint and several. Thus,
23 to succeed in a claim under CERCLA to compel remediation of a site, all the state and/or

1 federal government need to show is that the property is contaminated and that the defendant
2 is within the class of persons deemed responsible under the Act, as described above. The
3 state of Florida has a similar statutory liability scheme under Chapters 376 and 403, Florida
4 Statutes.

5 **Q. PLEASE DESCRIBE THE HISTORY OF STATE AND FEDERAL REGULATORY**
6 **INTERESTS IN THE ENVIRONMENTAL IMPACTS ASSOCIATED**
7 **SPECIFICALLY WITH FORMER MGP SITES.**

8 A. MGP sites first became the subject of national attention in 1984. At that time, many former
9 MGP sites, including the Winter Haven site, were identified in a study performed for USEPA
10 entitled "Survey of Tar Waste Disposal and Locations of Town Gas Producers" ("EPA
11 Survey"), first published in August 1984. Relevant excerpts of the EPA Survey are attached
12 as Exhibit "B." The EPA Survey constituted USEPA's "first step of a preliminary study to
13 investigate the fate and potential environmental impact of by-products (such as tar) from the
14 manufactured gas industry." The purpose of the EPA Survey was to identify the locations of
15 former MGP facilities so that authorities might become aware of potential sites where
16 environmental impacts may have resulted from prior gas manufacturing operations and
17 practices.

18 In cooperation with state and federal environmental officials, the Commission
19 notified gas utilities in June 1985 of concerns raised by regulatory bodies related to possible
20 environmental impacts of the gas manufacturing operations of former MGPs. The
21 Commission advised gas utilities in Florida that it was interested in identifying former MGP
22 sites in Florida and requested that the utilities provide certain information with respect to the
23 known prior gas manufacturing operations conducted by the respective utilities.

1 Q. DID THE COMPANY RESPOND TO THE COMMISSION'S JUNE 1985 LETTER
2 OF INQUIRY?

3 A. Yes. In its response, the Company identified the location of the Winter Haven MGP site.

4 Q. DID OWNERS OF OTHER FORMER GAS MANUFACTURING FACILITIES IN
5 FLORIDA RECEIVE A SIMILAR LETTER FROM THE COMMISSION WITH
6 RESPECT TO GAS MANUFACTURING OPERATIONS?

7 A. Yes. The Commission's June 1985 letter of inquiry was sent to all natural gas distributors in
8 the state of Florida with known or suspected prior gas manufacturing operations.

9 Q. WAS THE INFORMATION RECEIVED BY THE COMMISSION IN RESPONSE
10 TO ITS INQUIRY EVER PROVIDED TO OTHER REGULATORY BODIES?

11 A. The responses to the letter of inquiry received by the Commission were later shared with the
12 Florida Department of Environmental Regulation, now known as the FDEP, the
13 administrative agency charged with administering and enforcing the environmental laws and
14 regulations of the State of Florida.

15 Q. WHAT WAS FDEP'S RESPONSE TO THE DISCOVERY OF FORMER MGP SITES
16 IN FLORIDA?

17 A. In September 1985, FDEP notified each of its District Managers of the locations of former
18 MGPs within their Districts. Each FDEP District Manager was directed to conduct an
19 investigation into the potential environmental impacts of such operations within their
20 respective Districts. By letter dated March 25, 1986, a copy of which is attached as Exhibit
21 "C," FDEP advised the Commission that, due to experiences with a South Florida site, FDEP
22 had discovered that a "walkover" inspection of former MGP sites in Florida was not useful in
23 identifying potential environmental impacts arising from the former gas manufacturing

1 operations. In the March 25, 1986, letter, FDEP stated that the assessment of subsurface
2 conditions at the South Florida site disclosed the presence of organic compounds in soil,
3 sediment, and groundwater, and concluded that:

4 a preliminary contamination assessment will need to
5 be completed for each site. We recommend that each
6 property owner prepare a Preliminary Contamination
7 Assessment Plan (PCAP) to sample site soil,
8 groundwater, and surface water in accordance with the
9 attached guidance. This should be coordinated with
10 [FDEP] in Tallahassee.

11
12 **Q. HOW HAS THE COMPANY RESPONDED TO THE DISCOVERY OF THE**
13 **FORMER MGP OPERATIONS AT THE WINTER HAVEN SITE?**

14 A. I was retained as special environmental counsel in the mid 1980s to assist the Company in its
15 investigation of potential environmental liabilities associated with the Winter Haven site.
16 The Company's initial response was to dismantle and properly dispose of the former gas
17 holder and its contents that was still present at the Winter Haven site in the mid 1980s.
18 Following this effort, the Company executed a Consent Order with FDEP in February 1990.
19 A copy of the Consent Order is attached as Exhibit "D." Pursuant to the terms and
20 conditions of the Consent Order, the Company is obligated to investigate and remediate
21 environmental impacts attributable to releases from the former MGP operations.

22 **Q. AT PRESENT, IS THE COMPANY IN COMPLIANCE WITH ITS OBLIGATIONS**
23 **UNDER THE CONSENT ORDER?**

24 A. Yes.

25 **Q. WHAT SITE INVESTIGATION ACTIVITIES HAS THE COMPANY**
26 **UNDERTAKEN SINCE EXECUTION OF THE CONSENT ORDER?**

1 A. Field work at the site has included extensive soil, sediment, groundwater and surface water
2 sampling. The results of these investigations are included in formal reports transmitted to
3 FDEP for review and comment, the most recent of which include the Monitor Well
4 Installation and Comprehensive Groundwater Sampling Event Report, October-November
5 2003, dated December 31, 2003; the Report of Additional Delineation within Impacted
6 Areas, dated August 31, 2006; and the Report of Additional Assessment Work, dated
7 December 22, 2006. In addition, the Company performed an assessment of petroleum
8 impacts on site associated with a release of petroleum product from an underground storage
9 tank system previously located on site. The results of this investigation are presented in a
10 Summary of Site Assessment Activities Report, dated July 17, 2007, and Delineation of
11 Petroleum Impacts from Former Operations Report, dated April 25, 2007.

12 **Q. HAS THE COMPANY IMPLEMENTED REMEDIATION AT THE SITE?**

13 A. Yes. On May 19, 2001, FDEP approved the Company's proposal to implement air
14 sparge/soil vapor extraction ("AS/SVE") as a remedy for MGP-hydrocarbon impacts present
15 in soil and groundwater in the northern and central portions of the site. The Company
16 completed construction of the AS/SVE remedial system in October 2002. AS/SVE is a form
17 of *in situ* remedy that provides for soil and groundwater remediation "in ground" by
18 introduction of forced air into the groundwater and extraction of vapors from the overlying
19 soils. AS/SVE does not create a material disruption to the ongoing use of the site during
20 implementation, which makes it an attractive remedy at sites, such as the Winter Haven site,
21 where the property is continuing to be used on a daily basis. The AS/SVE remedial system
22 has been in continual operation since October 2002. In addition, FDEP directed that
23 impacted soils and groundwater located in the southwest portion of the site be addressed in a

1 separate remedial action plan. The Company anticipates that this area will be remediated
2 following FDEP's review and approval of the December 22, 2006 Report of Additional
3 Assessment Work.

4 **Q. WHAT ADDITIONAL WORK HAVE ENVIRONMENTAL REGULATORY**
5 **AUTHORITIES REQUIRED TO BE PERFORMED AT THE SITE?**

6 A. FDEP directed that additional soil and sediment sampling be conducted off-site for the
7 purpose of evaluating human and ecological risks associated with the off-site site soils and
8 sediments. The Company's consultants report that off-site soil and sediment assessment is
9 now complete, as delineated in the December 22, 2006 Report of Additional Assessment
10 Work, and that the limited sediment impacts detected off-shore do not warrant remediation.
11 In addition, excavation and off-site treatment of petroleum-impacted soils related to the
12 former underground petroleum storage tank system was performed at the site in April/May
13 2008. A Source Removal Report confirming the removal of the petroleum contaminated
14 soils was submitted to Polk County in early July 2008 and was approved by Polk County on
15 July 8, 2008. The Company recently completed four post removal quarterly groundwater
16 sampling events to confirm that the excavation and off-site treatment of the petroleum-
17 impacted soils was successful. On June 10, 2009, Polk County notified the Company that a
18 minimum of two additional quarterly sampling events would be required for one of the wells
19 to complete the Company's post-active remediation monitoring obligation for the petroleum
20 impacts.

21 **Q. WHAT ADDITIONAL WORK IS LEFT TO BE DONE AT THE WINTER HAVEN**
22 **SITE?**

1 A. The Company believes that contamination assessment activities have been completed at the
2 site. By letter dated May 8, 2009, FDEP indicated that additional assessment may be
3 warranted at several limited locations. The Company disagrees with FDEP on this issue and
4 is currently planning to meet with FDEP to discuss this matter further. On the remediation
5 side, in addition to the continued operation of the AS/SVE treatment system, the Company
6 will be required to remediate soil and groundwater present in the southwest portion of the
7 site and may be required to address, in some manner, off-site soils and sediments.

8 **Q. HOW LONG WILL IT BE BEFORE REMEDIATION ACTIVITIES ARE**
9 **COMPLETED AT THE SITE?**

10 A. The AS/SVE treatment system is currently projected to operate for a minimum of three
11 additional years. It is anticipated that the impacted soil and groundwater present in the
12 southwest portion of the site can be remediated within one to two years of FDEP's approval
13 of a remedial action plan for this area. The Company does not believe that remediation of
14 off-site soils and sediments is warranted and will continue to contest any attempt by FDEP to
15 require such action. Treatment of impacted groundwater immediately downgradient of the
16 removal action performed in connection with remediation of impacts attributed to the former
17 underground petroleum storage tank system may be required based on current groundwater
18 data. Such treatment, if required, is not currently anticipated to require more than three years
19 for completion.

20 **Q. HAS THE COMPANY MADE AN EFFORT TO CALCULATE ESTIMATED COSTS**
21 **TO COMPLETE REMEDIATION AT THE SITE, AND, IF SO WHAT ARE THESE**
22 **COSTS?**

1 A. Yes. Based upon currently known conditions at the site, the Company has calculated the cost
2 to complete soil and groundwater remediation utilizing certain assumptions. The
3 assumptions have been discussed with the environmental consultant performing work at the
4 Winter Haven MGP site and are believed to be reasonable in light of work that is being
5 conducted at similar sites throughout Florida and the rest of the country. These assumptions
6 include identification of: (i) estimated volume of impacted soils to be remediated; (ii) most
7 likely soil remediation alternatives; (iii) capital costs for construction of groundwater
8 treatment systems;(iv) projected operation and maintenance costs of the groundwater
9 treatment systems for the life of the remediation projects; and (v) performance monitoring
10 costs. Based on this analysis, the estimated cost to complete remediation of impacted soils
11 and groundwater being treated by the AS/SVE treatment system is projected to be
12 approximately \$150,000. The estimated cost to complete an assessment of the southwest
13 portion of the site and to remediate the impacted soils present at that location is projected to
14 be approximately \$270,000. Total costs to address all remaining environmental impacts at
15 the site attributable to the former MGP (excluding off-site soils and sediments, but including
16 legal fees and other consulting fees) are currently estimated to be approximately
17 \$600,000.00.

18 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

19 A. Yes, it does.

EXHIBIT _____ (WLP-1)

	<u>Pages</u>
Exhibit "A" - Current Resume of William L. Pence	A1-A2
Exhibit "B" - Excerpts of EPA Survey	B1-B9
Exhibit "C" - March 25, 1986, FDEP Letter to Public Service Commission	C1 C-3
Exhibit "D" - Consent Order dated February 5, 1990	D1-D34

helping you achieve, maintain and
attend a leadership position.

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BAR ADMISSIONS

- U.S. Court of Appeals, Federal Circuit
- U.S. Court of Appeals, Eleventh Circuit
- U.S. District Court, Middle District of Florida
- Florida, 1980

EDUCATION

- LL.M., Landon School of Economics and Political Science, 1983
- J.D., Syracuse University, College of Law, 1979, magna cum laude
- B.A., Berry College, 1976, cum laude

William Pence represents utilities, municipalities, manufacturing facilities, bulk fuel pipeline and terminal facilities, developers and property owners in connection with the management of environmental risks and liabilities associated with contaminated properties. He also provides counsel on compliance with a broad range of environmental regulatory programs. Mr. Pence has significant experience managing the investigation and remediation of former manufactured gas plants; prosecution and defense of private party cost recovery actions under state and federal laws; and defense of enforcement actions under CERCLA, RCRA, CWA and similar state regulatory programs, including those regulating current and former landfills. He also regularly counsels bulk fuel pipeline, storage and terminal facilities in connection with compliance with federal and state regulatory programs; including Coast Guard, PHMSA and USEPA regulations governing such facilities. He has also represented municipalities and developers in their efforts to redevelop environmentally impacted properties under state and federal Brownfield programs.

Mr. Pence has been listed in *The Best Lawyers in America* (2007-2009, listed in Florida for Environmental Law), *Chambers USA* (2007-2008, ranked in Florida for Environment), *The International Who's Who of Business Lawyers* (2008, recommended for Environment) and *Guide to Leading American Attorneys* (ranked in Florida).

Representative matters from throughout Mr. Pence's legal career include:

- Representation of a municipality in connection with a \$13 million assessment and remediation of waterfront property impacted by former operations of a manufactured gas plant under streamlined USEPA EE/CA process, resulting in one of the fastest site cleanups in USEPA Region 4. Representation included identification of former owner/operator and negotiation of cost sharing agreement with former owner/operator resulting in reduction of client's share (as current owner) for costs of cleanup to less than 10 percent.
- Representation of numerous utilities, municipalities and current property owners in connection with the investigation and remediation of over 20 former manufactured gas plant sites. This work has included negotiation of scope of investigation and remedial design with USEPA and state and local environmental regulatory bodies; negotiation of administrative orders and consent decrees with such regulatory bodies; negotiation of applicable clean up criteria; solicitation and management of environmental consulting and construction firms; identification of other potentially responsible parties; negotiation of cost allocation agreements with such parties and, on occasion, litigation with such parties on allocation and access issues; and assistance with the redevelopment of such sites following, or in connection with, remedial action at the sites.
- Representation of numerous aerospace and high technology industries in connection with solid and hazardous waste compliance issues, RCRA closure and Superfund cleanups with emphasis on chlorinated hydrocarbon contamination. Representation includes mitigation of penalties exceeding millions of dollars in RCRA solid and hazardous waste enforcement actions. Such representation has also included negotiation of consent orders with USEPA and state regulatory bodies providing for closure of hazardous waste management units, as well as selection and

PRACTICE STRENGTHS:

- Regulated
- Development and Land Use
- Utilities
- Environmental and Energy

management of consultants contracted to design and implement the final remedy.

- Representation of Florida manufacturing facility in connection with corrective action under RCRA to address presence of Dense Non-Aqueous Phase Liquid (DNAPL) associated with chlorinated solvent spill. Representation included obtaining clean closure at one of the very few DNAPL sites ever successfully remediated in the United States.
- Representation of a large pharmaceutical firm in defense of RCRA enforcement action for hazardous waste management in which the Florida Department of Environmental Protection sought penalties in excess of \$2 million. The case was settled for less than \$30,000 in penalties.
- Representation of municipalities and private parties in Brownfield redevelopment projects, prosecution and defense of cost recovery actions under Superfund and prosecution and defense of property damage lawsuits.
- Representation of bulk petroleum terminal, storage and pipeline facilities in connection with regulatory compliance matters, applications to PHMSA for special permits, and management of assessment and remediation of petroleum contamination at such facilities. Representation includes assistance with preparation of Facility Response Plans, SPCC Plans, Terminal Facility Operations Manuals, Pipeline Facility Operations Manuals, Integrity Management Plans, and Operator Qualification Plans, including representation of such facilities during federal and state inspections.
- Representation of numerous entities identified as potentially responsible parties under Superfund and similar state programs. Representation has included serving on Superfund Steering Committees and negotiation of allocation agreements with other responsible parties.

Mr. Pence is a frequent speaker on environmental topics at national and international conferences. He is a member of the American (Environment, Energy and Resources Law Section), Florida (Environmental and Land Use Law Section) and Orange County Bar Associations. He is a member of the Florida Natural Gas Association and a former member of the Governor's Transition Task Force on the Environment. From 1979-82, Mr. Pence served as Law Clerk to the Honorable George C. Young, Chief Judge, United States District Court for the Middle District of Florida.

August 1984

DRAFT

SURVEY OF TAR WASTE DISPOSAL AND
LOCATIONS OF TOWN GAS PRODUCERS

B1

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August 1984

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within EPA and is for internal use/distribution only"

**SURVEY OF TAR WASTE DISPOSAL AND
LOCATIONS OF TOWN GAS PRODUCERS**

**Radian Corporation
7655 Old Springhouse Road
McLean, Virginia 22102**

Contract No. 68-02-3137

EPA Project Officer: William J. Rhodes

**Advanced Processes Branch
Industrial Environmental Research Laboratory
Research Triangle Park, NC 27711**

Prepared for:

**Office of Environmental Engineering & Technology
Office of Research and Development
U. S. Environmental Protection Agency
Washington, D.C. 20450**

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ABSTRACT

This report presents data compiled from available literature identifying plants that manufactured town gas from fossil fuels (e.g., coal, oil) and which existed in the U.S. during the 1890 to 1950 time period. The results are the first step of a preliminary study to investigate the fate and potential environmental impact of by-products (such as tar) from the manufactured gas industry. A list of gas manufacturing sites and company names was compiled by reviewing published gas statistics. It is estimated that more than 1,500 manufactured gas facilities existed between the years 1890 and 1950. In addition, available gas and by-product production data and gasifier/process information are reported.

Based on these data, a rough estimate for the total production of tar by the U.S. manufactured gas industry was developed. It is estimated that approximately 15 trillion cubic feet of gas was manufactured in the United States between the years 1881 and 1950, resulting in the production of 11 billion gallons of tar as a by-product. Of this total tar production, 8.4 billion gallons (76 percent) were estimated to be sold and the remainder, 2.6 billion gallons (24 percent), were assumed to be consumed at the plant site, sold (without reporting of sales to ongoing surveys), or discarded. The explanations and assumptions used in compiling the data as well as those used in developing the tar estimates are also discussed in this report. Excess quantities of other by-products, such as coke and ammonia, may have been disposed of also. However, this study focused on tar because it is considered the more potentially significant waste disposal problem.

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TABLE B-1: IDENTIFICATION OF TOWN GAS MANUFACTURING SITES - ALL PLANTS (1890-1950)

STATE: FLORIDA

NO.	CITY	OWNER	YEAR	STATUS	GAS TYPE	GAS PRODUCTION RATE (MM cu. ft./YR)					GASIFIER/ PROCESS	*****BY-PRODUCTS*****				MISCELLANEOUS INFORMATION	
						Coal	Water	Oil	Coke	Total		Coke	Tar	Ammonia	Other		
1	Gainesville	GEL Co	1890	*	C	5					5						
			1900	*	C	3					3						
			1910	*	M		4					4	Su				
			1920	*	M		10					10					
			1930	*	M		28					28					
			1940	*	CM		30					30					
			1950	*	CM		136					136					
			AVERAGES:		4	42				31							
2	Jacksonville	GAE Co	1890	*	M		20				20						
			1900	*	M		22				22						
			1910	*	M		130					130					
			1920	*	C,W	352	97					449		123	350	295	
			1930	*	C,W	236	367					603		12	210		
			1940	*	CM		476					476			904		
			1950	*	CM		925					925		1,076			
			AVERAGES:		294	291				375		544	491	295			
3	Key West	GEL Co	1890	*	O				(10)								
			1900	O													
			1910	O													
			1920	*	M		71					71			(17)		
			1930	*	M		56					56					
			1940	*	CM		46					46					
			1950	M													
			AVERAGES:			50				50							
4	Orlando	So Florida G Co	1890	*	M		(61)										
			1900	*	M		4				4						
			1910	*	C,W	3	3					6					
			1920	*	M		17					17					
			1930	*	M		169					169					
			1940	*	CM		230					230					
			1950	*	CM		492					492			500		
			AVERAGES:		3	153				153			500				

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TABLE B-1 IDENTIFICATION OF TOWN GAS MANUFACTURING SITES - ALL PLANTS (1898-1950)

STATE: FLORIDA

NO.	CITY	COMPANY	YEAR	STATUS	GAS TYPE	GAS PRODUCTION RATE (MM cu. ft./YR)				GASIFIER/ PROCESS	*****BY-PRODUCTS*****				MISCELLANEOUS INFORMATION	
						Coal	Water	D11	Coke		Total	Coke	Tar	Ammonia		Other
5	Palatka	* BLIFuel Co	1898	*	C		4			4						
			1908	*	C		3			3						
			1918	*	W			3			3	Low				
			1924	*	W			7			7	"				
			1938	*	W			11			11	"				
			1948	O												
			1958	O												
AVERAGES:						4	7		6							
6	Panama	* B Co	1898	*	W		(15)									
			1908	*	W					17						
			1918	*	W					45						
			1928	*	W					86				19		
			1938	*	W					108				86		
			1948	N												
			1958	N												
AVERAGES:							62		62			53				
7	Sanford	* BLIFuel Co	1898	*	W			3		3						
			1908	*	W			3		3						
			1918	*	W				9		9					
			1928	*	W				7		7					
			1938	*	W				(10)							
			1948	*	CM				58		58					
			1958	*	CM				93		93					
AVERAGES:							29		29							
8	St Augustine	* GUEL Co	1898	*	W			12		12						
			1908	*	W			17		17						
			1918	*	W				38		38					
			1928	*	W				45		45			13		
			1938	*	W				77		77					
			1948	*	CM				58		58					
			1958	*	CM				93		93					
AVERAGES:							47		47			13				

B6

TABLE B-1: IDENTIFICATION OF TOWN GAS MANUFACTURING SITES - ALL PLANTS (1890-1950)

STATE: FLORIDA

NO.	CITY	COMPANY	YEAR	STATUS	GAS TYPE	GAS PRODUCTION RATE (MM cu. ft. /YR)				GASIFIER/ PROCESS	*****BY-PRODUCTS*****				MISCELLANEOUS INFORMATION	
						Coal	Water	Dil	Coke		Total	Coke	Tar	Ammonia		Other
9	Tallahassee	* RIEL Co	1890	*	C		(5)									
			1900	*	C		6			6						
			1910	N												
			1920	*	N				6		6					
			1930	*	N				240		240					
			1940	*	N				52		52					
			1950	*	N				104		104					
			AVERAGES:			6	101		82							
10	Ocala BS	Citizen's GNL Co	1890	*												
			1900	*	N			2		2						
			1910	*	N			8		8						
			1920	*	N			7		7						
			1930	*	N			15		15						
			1940	*	CM			(21)								
			1950	*	N			31			31	Sweet Solvay				
			AVERAGES:				13		13							
11	Tampa	* B Co	1890	*												
			1900	*	N			11		11	Low					
			1910	*	N			49		49	"					
			1920	*	N			246		246	"					
			1930	*	N			625		625	"		263			
			1940	*	CM			539		539	"		433			
			1950	*	CM			1,098		1,098	"		532			
			AVERAGES:			420		420								
12	De Land	Citizen's Mfg Co	1890	*												
			1900	*												
			1910	*	CM			(3)			Low					
			1920	*	CM			(3)			"					
			1930	O												
			1940	O												
			1950	N	Prepare											
			AVERAGES:													

TABLE B-1: IDENTIFICATION OF TOWN GAS MANUFACTURING SITES - ALL PLANTS (1898-1950)

STATE: FLORIDA

NO.	CITY	COMPANY	YEAR	STATUS	GAS TYPE	GAS PRODUCTION RATE (M cu.ft./YR)				GASIFIER/ PROCESS	*****BY-PRODUCTS*****				MISCELLANEOUS INFORMATION	
						Coal	Water	Oil	Coke		Total	Coke	Tar	Ammonia		Other
13	Miami	" B Co	1898													
			1900													
			1910	"	O				15		15	J-L				
			1920	"	O				80		80	"				
			1930	"	M				386		386					
			1940	"	M				540		540					
			1950	"	M				1,162		1,162					
			AVERAGES:				696	48	437							
14	Daytona	" Public Serv Co	1898													
			1900													
			1910													
			1920	"	M				26		26	Low				
			1930	"	O											
			1940	"	O											
			1950	"	O											
			AVERAGES:				26		26							
15	Lakeland	" B Co	1898													
			1900													
			1910													
			1920	"	M				13		13	Low				
			1930	"	M				64		64	"				
			1940	"	O											
			1950	"	O											
			AVERAGES:				39		39							
16	St Petersburg	" Municipal B Plant	1898													
			1900													
			1910													
			1920	"	M				55		55	Low		30		
			1930	"	M				277		277	"		150		
			1940	"	CM				376		376	"				
			1950	"	CM				786		786	"				
			AVERAGES:				374		374			90				

B7

TABLE B-1: IDENTIFICATION OF TOWN GAS MANUFACTURING SITES - ALL PLANTS (1890-1950)

NO.	CITY	STATE: FLORIDA	YEAR	STATUS	GAS TYPE	GAS PRODUCTION RATE (PM cu.ft./YR)				GASIFIER/ PROCESS	*****BY-PRODUCTS*****				MISCELLANEOUS INFORMATION	
						Coal	Water	Oil	Coke		Total	Coke	Tar	Ammonia		Other
17	Bradenton	Southern GIE Corp	1890													
			1900													
			1910													
			1920													
			1930	"	W			42			42					
			1940	"	CH			65			65					
			1950	"	W			77			77					
			AVERAGES:					61		61						
18	Clearwater BS	Municipal G Dept	1890													
			1900													
			1910													
			1920													
			1930	"	W			(11)			90		Tenney			
			1940	"	CH			90			180					
			1950	"	W			135			135					
			AVERAGES:					135		135						
19	Fort Lauderdale	G Co	1890													
			1900													
			1910													
			1920													
			1930	"	W			0			0					
			1940	0												
			1950	0												
			AVERAGES:					0		0						
20	Fort Myers	Commission of City of	1890													
			1900													
			1910													
			1920													
			1930	"	W			(10)			40					
			1940	"	W			40			90					
			1950	"	W			90			65					
			AVERAGES:					65		65						

TABLE B-1: IDENTIFICATION OF TOWN GAS MANUFACTURING SITES - ALL PLANTS (1898-1958)

STATE: FLORIDA

NL	CITY	YEAR	STATUS	GAS TYPE	GAS PRODUCTION RATE (MM cu. ft./YR)				GASIFIER/ PROCESS	*****BY-PRODUCTS*****				MISCELLANEOUS INFORMATION	
					Coal	Water	Dil	Coke		Total	Coke	Tar	Ammonia		Other
21	Miami Beach	G Co of "	1898												
			1900												
			1910												
			1920												
			1930	"	W				(15)						
			1940	"	CM				389						
			1950	"	CM				1,372						
AVERAGES:						881									
22	West Palm Beach	Florida Public Util Co	1898												
			1900												
			1910												
			1920												
			1930	"	W				177						
			1940	"	W				264					50	
			1950	"	W				535						
AVERAGES:						325					50				
23	Winter Haven	" GL Co	1898												
			1900												
			1910												
			1920												
			1930	P											
			1940	"	CM				49						
			1950	"	CM				120						
AVERAGES:						85									

*discuss
with GUS*

JAS

RECEIVED

SEP 20 1987

NORTH FLORIDA DISTRICT
GAINESVILLE BRANCH

March 25, 1986

Mrs. Lee Romig
Electric Gas Department
101 East Gaines Street
Tallahassee, FL 32301-8153

Dear Lee:

Attached is a list showing the current assessment status of Town Gas sites in Florida.

We initially thought that a walkover inspection would be sufficient to identify those sites needing contamination assessment. However, work at the Ft. Lauderdale site indicated ground water impact without a visual presence of coal tar or its constituents. As a result, a preliminary contamination assessment will need to be completed for each site. We recommend that each property owner prepare a Preliminary Contamination Assessment Plan (PCAP) to sample site soil, ground water and surface water in accordance with the attached guidance. This should be coordinated with DER in Tallahassee.

Sincerely,

Joe P. Kulatowski
Bureau of Operations

EPR/ES

Attachment

cc: Bill Suzick
Send copies to District Managers
w/ attachment

CI

CI

ASSESSMENT STATUS OF FLORIDA OWN GAS SITES

RECEIVED

DER DISTRICT OFFICE

SEP 28 1987

<u>Location</u>	<u>Walk-over Insp.</u>	<u>(PCAP)</u>	<u>Comments</u>
<u>NW DISTRICT</u>			
Pensacola (Municipal)	Yes	NO	No visible problem
Tallahassee (Municipal)	Yes	NO	No visible problem; known as Cascades Park
<u>NE DISTRICT</u>			
Jacksonville (Peoples/ Container Corp.)	Yes	Yes	Coal tar present onsite CAP's being prepared
Gainesville (Gainesville Gas Co./Poole Roofing Co.)	NO	NO	
Palatka (Municipal)	NO	NO	Location not known
St. Augustine (Municipal)	NO	NO	Location not known
<u>SW DISTRICT</u>			
Tampa (Peoples)	NO	NO	Coal tar was snipped offsite
Lakeland (Peoples)	NO	NO	Field & parking lot
St. Petersburg (Peoples- site owned by City)	NO	NO	Coal tar may have been barge offsite; static constructed on site
Bradenton (Southern Co.)	NO	NO	
Clearwater (Municipal)	NO	NO	Coal tar sold & decom- posed by bacteria. A at parking lot
Winter Haven (Central Florida Gas)	NO	NO	Adjacent to lake

02

ST. JOHNS RIVER DISTRICT

Olando (Peoples)	no	No	
Sanford (FL Public Utilities)	No	No	Office & parking lot
Deale (Gulf Natural Gas Corp.)	No	No	Up for sale
Deland (FL Public Utilities)	No	No	
Daytona Power & Light	No	No	

SOUTH FLORIDA DISTRICT

Key West	No	No	Location not known
Ft. Myers (Municipal)	Yes	No	No visible problem

SE FLORIDA DISTRICT

Miami (Peoples)	No	No	
Ft. Lauderdale (Peoples)	Yes	Yes	Soil & groundwater sampling by ERM; no visible problem, low concentrations of soil tar constituents in groundwater.
Miami Beach (Peoples)	Yes	Yes	CAP has been prepared, has not been approved by DER and DERM
West Palm Beach (FL Public Utilities)	No	No	Office & parking lot

*PCAP - Preliminary Contamination Assessment Plan

DER CERTIFIED MAIL NO. _____

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION.)	IN THE OFFICE OF THE SOUTHWEST DISTRICT
Complainant,)	
vs.)	
CENTRAL FLORIDA GAS COMPANY, a division of Chesapeake Utilities Corporation)	OGC CASE NO: 88-1292
AND)	
JAMES R. LOWE)	
Respondents.)	

CONSENT ORDER

This Consent Order is made and entered into between the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION ("Department"), CENTRAL FLORIDA GAS COMPANY, a division of Chesapeake Utilities Corporation, and JAMES R. LOWE ("Respondents"). The Department finds and the parties agree:

1. The Department is the administrative agency of the State of Florida which has the authority to administer and enforce the provisions of Chapter 403, Florida Statutes ("F.S."), and rules promulgated thereunder, Florida Administrative Code ("F.A.C.") Chapter 17. The Department has jurisdiction over the matters addressed in this Consent Order.

D1

D1

2. Respondent, Central Florida Gas Company, is a division of Chesapeake Utilities Corporation, a Delaware corporation, and is a person within the meaning of Sections 403.031(5) and 403.703(3), F.S.

3. Respondent, James R. Lowe, is a resident of Winter Haven, Florida, and is a person within the meaning of Sections 403.031(5) and 403.703(3), F.S. James R. Lowe is a party to this Consent Order for the limited purpose of providing Respondent, Central Florida Gas Company, access to the Lowe Parcel (as described below) for the purpose of complying with Central Florida Gas Company's obligations hereunder, and to receive the benefit of the release provided by Paragraph 22 below.

4. Respondent, Central Florida Gas Company, is the owner of a parcel of real estate located at 1705 Seventh Street, S.W., Winter Haven, Florida ("CFG Parcel"). Respondent, James R. Lowe, is the owner of a parcel of real estate located adjacent to the CFG Parcel, which at one time was owned by Respondent, Central Florida Gas Company ("Lowe Parcel"). The CFG Parcel and Lowe Parcel are hereinafter jointly referred to as the Facility. The Facility is further described as located in Section 32, Township 28 South, Range 26 East.

5. Prior to 1953, Respondent, Central Florida Gas Company, conducted a coal gas manufacturing operation at the Facility. The coal gas manufacturing process was ceased in 1953. Aboveground holding tanks were dismantled in 1986.

6. Coal tar by-products were generated by Respondent, Central Florida Gas Company, through its past coal gas manufacturing operations. Respondent, Central Florida Gas Company, maintains that its past coal gas manufacturing operation was not a coking operation. The parties agree that wastes generated by Respondent, Central Florida Gas Company, if they were not generated by a coking operation, are not listed hazardous wastes, specifically K087 ("decanter tank tar sludge from coking operations"), pursuant to Chapter 40, Code of Federal Regulations Part 261 (40 CFR 261).

7. The major constituents of concern with respect to coal tar by-products, as evidenced by results of studies conducted at other former coal gas manufacturing sites throughout the country, include, but are not limited to, polynuclear aromatic hydrocarbons, phenolic compounds, heavy metals, and cyanide.

8. Respondents deny that any actual or threatened releases requiring removal or remedial action are occurring or have occurred at the Facility, and deny any liability for any activities at, or circumstances presented at or by, conditions at the Facility. However, in order to avoid difficult, prolonged, and complicated litigation regarding these issues, the parties recognize that the public interest is best served by this voluntary agreement to determine whether soil or groundwater quality impacts have occurred at the Facility as a result of the prior coal gas manufacturing operations.

9. This Consent Order shall not be considered an admission by Respondents of any violation of or liability under any applicable federal, state or local laws and regulations or under any federal or state common law, nor shall it be used as evidence in any administrative proceeding or proceeding at law, except an action involving the terms or implementation of this Order, or as otherwise provided herein.

10. Respondents submitted a Contamination Assessment Plan ("CAP") to the Department on December 6, 1988, for review and approval.

11. A site specific Quality Assurance Project Plan ("QAPP") was submitted to the Department on December 6, 1988, for review and approval.

12. The Department has reviewed the QAPP, and finds that it adequately meets the necessary objectives of a quality assurance project plan. Department approval of the QAPP was issued on August 31, 1989.

THEREFORE, having reached a resolution of this matter pursuant to F.A.C. Rule 17-103.110(3), Respondents and the Department mutually agree and it is

ORDERED:

13. Respondent, Central Florida Gas Company, shall implement the corrective actions as set forth in the document entitled "Corrective Actions for Ground Water Contamination Cases," attached hereto as Exhibit I, within the time frames set forth therein.

14. Respondent Central Florida Gas Company's obligation to implement the corrective actions set forth in Exhibit I shall be limited to conditions present on or under the CFG Parcel and to off-site conditions resulting solely from the acts of Respondent Central Florida Gas Company as a result of its ownership or use of the CFG Parcel. Respondent shall have the burden of establishing that the off-site conditions do not result solely from the acts of Respondent Central Florida Gas Company.

15. Respondents waive their right to an administrative hearing on the terms and conditions of this Consent Order under Section 120.57, F.S., and their right to appeal this Consent Order pursuant to Section 120.68, F.S., except as herein provided.

16. With regard to any final agency action made or taken by the Department pursuant to this Consent Order, Respondents may request an informal conference to resolve the disputed final agency action within ten (10) days from the final agency action. The Department may grant or deny such request. No agency action will be final for the purposes of invoking the jurisdiction of Section 120.57, F.S., until such time as the Department notifies the Respondents in writing that the informal conference has been completed or that the request for informal conference has been denied. If the parties cannot resolve the disputed final agency action in this manner, Respondents may file a petition for a formal or informal administrative proceeding if they contest the aforementioned determination, pursuant to Section 120.57, F.S.,

and F.A.C. Chapters 17-103 and 28-5. The petition must conform with the requirements of F.A.C. Rule 28-5.201, and must be received by the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within fourteen (14) days of receipt of the notice. Failure to file a petition within this time period shall constitute a waiver by Respondents of their right to request an administrative proceeding under Section 120.57, F.S. The Department's determination, upon expiration of the fourteen (14) day time period if no petition is filed, or the Department's Final Order as a result of the filing of a petition, shall be incorporated by reference into this Consent Order and made a part of it. All other aspects of the Consent Order shall remain in full force and effect at all times. If Respondents seek an administrative proceeding pursuant to this paragraph, the Department may file suit against Respondents in lieu of or in addition to holding the administrative proceeding to obtain judicial resolution of all the issues unresolved at the time of the request for administrative proceeding. In the event that the Department files such suit pursuant to this paragraph, Respondents reserve all of their rights and defenses to challenge or respond to such suit as is appropriate.

17. Respondent, Central Florida Gas Company, shall publish, at its expense, the following notice within fourteen (14) days of the effective date of this Consent Order, in the legal advertising section of a newspaper of general circulation in Polk

County. Respondent, Central Florida Gas Company, shall provide proof of publication to the Department within twenty-one (21) days of the effective date of this Consent Order.

State of Florida Department of Environmental Regulation
Notice of Proposed Agency Action

The Department of Environmental Regulation gives notice of agency action of entering into a Consent Order with Central Florida Gas Company ("Company"), 1015 Sixth Street, NW, Winter Haven, Florida, pursuant to Rule 17-103.110(3), Florida Administrative Code. The Consent Order provides for the performance of a contamination assessment to determine whether environmental impacts have resulted from the Company's prior operation of a coal gas manufacturing plant in Winter Haven, 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 Regulation, 4520 Oak Fair Blvd., Tampa, Florida 33610-7347.

Persons whose substantial interests are affected by the above proposed agency action have a right, pursuant to Section 120.57, Florida Statutes, to petition for an administrative determination (hearing) on the proposed action. The petition must conform to the requirements of Chapters 17-103 and 28-5, Florida Administrative Code, and must be filed (received) with the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399, within fourteen (14) days of publication of this notice. Failure to file a petition within the fourteen (14) days constitutes a waiver of any right such person has to an administrative determination (hearing) pursuant to Section 120.57, Florida Statutes.

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 proposed agency action. Persons whose substantial interests will be affected by any decision of the Department have the right to intervene in the proceeding. A petition for intervention must be filed pursuant to Model Rule 28-5.207, Florida Administrative Code, at least five (5) days before the final hearing and be filed with the Hearing Officer if

one has been assigned at the Division of Administrative Hearings, Department of Administration, 2009 Apalachee Parkway, Tallahassee, Florida 32399-1550. If no Hearing Officer has been assigned, the petition is to be filed with the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such person has to an administrative determination (hearing) under Section 120.57, Florida Statutes.

18. Respondent, James R. Lowe, shall allow authorized representatives of Respondent, Central Florida Gas Company, access to the Lowe Parcel for the purpose of conducting the scope of work specified in the CAP, and for otherwise enabling Respondent, Central Florida Gas Company, to perform its obligations under this Consent Order.

19. Respondent, James R. Lowe, shall allow authorized representatives of the Department access to the Lowe Parcel at reasonable times for the purpose of determining compliance with this Consent Order, and the rules and regulations of the Department.

20. Entry of this Consent Order does not relieve Respondents of the obligation to comply with applicable federal, state or local laws, regulations or ordinances.

21. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit future violations of applicable statutes, or the rules promulgated thereunder not covered by the terms of this Consent Order.

22. The Department, for and in consideration of the complete and timely performance by Respondents of the obligations agreed

to in this Consent Order, hereby waives its right to seek judicial imposition of damages, civil or criminal penalties, as well as its right to recover legal and/or administrative costs incurred by the State of Florida concerning the issues involved in this Consent Order.

23. Nothing contained herein shall affect any right, claim or course of action that Respondents may have against each other or against parties not subject to this Consent Order.

24. 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, F.S.

25. Nothing herein shall be construed to limit the authority of the Department to undertake any action against the Respondents in response to or to recover the costs of responding to conditions at or from the site which may present an imminent hazard to public health, welfare, or the environment if:

A. The conditions were previously unknown to or undetected by the Department;

B. The conditions result from the implementation of the requirements of this Consent Order;

C. Other previously unknown facts arise or are discovered after entry of this Consent Order.

26 All reports, plans, and data required by this Consent Order are to be submitted in triplicate to the Department and should be sent to the Enforcement Manager, Department of Environmental Regulation, 4520 Oak Fair Blvd., Tampa, Florida 33610-7347.

27. All written determinations or other submittals required by this Consent Order to be submitted by the Department to Respondents shall be sent to William L. Pence, Akerman, Senterfitt & Eidson, P. O. Box 231, Orlando, Florida 32802-0231, Counsel for Respondents.

28. No modification of the terms and conditions of this Consent Order shall be effective until reduced to writing and executed by both Respondents and the Department.


29. This Consent Order is the final agency action of the Department pursuant to Section 120.69, F.S., and F.A.C. Rule 17-103.110(3), 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.

FOR THE RESPONDENTS:

CENTRAL FLORIDA GAS COMPANY

By: 

JAMES R. LOWE

By: 
JAMES R. LOWE

1/8/90
Date

1/9/90
Date

-10-
D10

D10

DONE AND ORDERED, this 5 day of Feb., 1990, at
Tampa, Hillsborough County, Florida

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION

Richard D. Garrity
Richard D. Garrity, Ph.D.
Deputy Assistant Secretary
Southwest Florida District
4520 Oak Fair Boulevard
Tampa, Florida 33610-7347

FILING AND ACKNOWLEDGEMENT

FILED, on this date, pursuant to §120.52,
Florida Statutes, with the designated Depart-
ment Clerk, receipt of which is hereby
acknowledged.

Betty Rodriguez *Feb. 5, 1990*
CLERK DATE

Copies Furnished to:

Office of General Counsel
Department of Environmental Regulation
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32301

William L. Pence, Esq.
Akerman, Senterfitt & Eidson
Post Office Box 231
Orlando, Florida 32802-0231

D11

D11

Exhibit I

CORRECTIVE ACTIONS FOR GROUND WATER CONTAMINATION CASES

1. Within 60 days of the effective date of the Order incorporating these contamination assessment actions, Respondent shall submit to the Department a detailed written Contamination Assessment Plan ("CAP"). If the Respondent has conducted a Preliminary Contamination Assessment, the Respondent shall submit to the Department a detailed written CAP within 60 days of receipt of notice from the Department that a CAP is required. The purpose of the CAP shall be to propose methods for collection of information necessary to meet the objectives of the contamination assessment.

A. The objectives of the Contamination Assessment shall be to:

- (1) Establish the aerial and vertical extent of soil, sediment, surface water and ground water contamination;
- (2) Determine or confirm the contaminant source(s); mechanisms of contaminant transport; rate and direction of contaminant movement in the air, soils, surface water and ground water; and rate and direction of ground water flow;
- (3) Provide a complete characterization of the contamination plume(s);
- (4) Determine whether interim remedial measures are necessary to abate any imminent hazard;

D12

D12

(5) Determine the amount of product lost, and the time period over which it was lost (if applicable);

(6) If leaking storage tanks may be the source of the contamination, determine the structural integrity of all aboveground and underground storage systems (including integral piping) which exist at the site (if applicable);

(7) Establish the vertical and horizontal extent of free product (if applicable);

(8) Describe pertinent geologic and hydrogeologic characteristics of affected and potentially affected hydrogeologic zones;

(9) Describe geologic and hydrogeologic characteristics of the site which influence migration and transport of contaminants; and

(10) Provide a site history including description of facility operations, as applicable.

B. The CAP shall specify tasks, which are necessary to achieve the objectives described in subparagraph 1.A. above. The CAP shall include a reasonable time schedule for completing each task. The tasks may include, but are not limited to the following:

(1) Use of piezometers or wells to determine the horizontal and vertical directions of the ground water flow;

(2) Use of electromagnetic conductivity (EM) and other geophysical methods or vapor analyzers to trace extent of ground water contamination;

(3) Use of fracture trace analysis to discover linear zones in which discrete flow could take place;

(4) Use of well points or monitoring wells to sample ground water in affected areas and to determine the vertical and horizontal extent of the ground water plume;

(5) Sampling of public and private wells;

(6) Sampling of surface water and sediments;

(7) Sampling of air for airborne contaminants;

(8) Analysis of soils and drum and tank residues for hazardous waste determination and contaminant characterization;

(9) Use of geophysical equipment such as vapor analyzers, magnetometers, ground penetrating radar, or metal detectors to detect tanks, lines, etc;

(10) Determination of the horizontal and vertical extent of soil contamination;

(11) Use of soil and well borings to determine pertinent site-specific geologic and hydrogeologic characteristics of affected and potentially affected hydrogeologic zones such as aquifers, confining beds, and unsaturated zones; and

(12) Use of geophysical methods, pump tests and slug tests to determine geologic and hydrogeologic characteristics of affected and potentially affected hydrogeologic zones.

C. The CAP shall provide detailed information as to how proposed tasks are to be carried out. The CAP shall include, as applicable, the following information:

- (1) Proposed sampling locations and rationale for their placement;
- (2) A description of methods and equipment to be used to identify and quantify soil or sediment contamination;
- (3) A description of water sampling methods;
- (4) Parameters to be analyzed for analytical methods to be used, and detection limits of these methods;
- (5) Proposed piezometers and well construction details including methods and materials, well installation depths and screened intervals, well development procedures;
- (6) A description of methods proposed to determine aquifer properties (e.g., pump tests, slug tests, permeability tests, computer modeling);
- (7) A description of geophysical methods proposed for the project;
- (8) Details of any other assessment methodology proposed for the site;
- (9) A description of any survey to identify and sample public or private wells which are or may be affected by the contaminant plume;
- (10) A description of the regional geology and hydrogeology of the area surrounding the site;

(11) A description of site features (both natural and man-made) pertinent to the assessment;

(12) A description of methods and equipment to be used to determine the site specific geology and hydrogeology; and

(13) Details, including disposal or treatment methods, of any immediate remedial actions proposed for the site such as product recovery, soil removal or treatment.

D. The CAP shall contain as a separate document a Quality Assurance Project Plan ("QAPP") which shall apply to all sampling and analysis required by this Consent Order. The QAPP shall be prepared in accordance with the requirements set forth in the document titled "DER Guidelines for Preparing Quality Assurance Plans, DER-QA-001/85, January 30, 1986." A copy of the document is available upon request from the Department. A QAPP is required for all persons collecting or analyzing samples. The Department reserves the right to reject all results generated by Respondent prior to QAPP approval or which are not in accordance with the Department approved QAPP.

2. The Department shall review the CAP and provide the Respondent with a written response to the proposal. Any action taken by Respondent with regard to the implementation of the CAP prior to the Respondent receiving written notification from the Department that the CAP has been approved shall be at Respondent's risk.

3. In the event that additional information is necessary for the Department to evaluate the CAP, the Department shall make a written request to the Respondent for the information, and within 20 days from receipt of said request, Respondent shall provide all requested information in writing to the Department unless the requested information requires additional field work in which case the Respondent shall submit to the Department within 14 days of receipt of said request, a written schedule for completing the field work needed to provide the requested information.

4. In the event that the Department determines that the CAP submitted by Respondent does not adequately address the objectives of the Contamination Assessment as set forth in subparagraph 1.A. above, the Department will notify the Respondent in writing of the CAP's deficiencies. Respondent shall then have 30 days from the Department's notification to submit a modified CAP addressing the deficiencies noted by the Department.

5. If the Department determines upon review of the resubmitted CAP that the CAP still does not adequately address the objectives of the CAP as set forth in subparagraph 1.A. above, the Department, at its option, may choose either to:

A. Draft specific modifications to the CAP and notify Respondent in writing that the Department's modification shall be incorporated in the CAP; or

8. Notify Respondent in writing that Respondent has failed to comply with paragraph four above, in which case the Department may do any or all of the following: take legal action to enforce compliance with the Order, file suit to recover damages and civil penalties, or complete the corrective actions outlined herein and recover the costs of completion from Respondent.

6. Once a CAP has been approved by the Department, it shall become effective and made a part of this Order and shall be implemented within ten days of the Department's written notification to Respondent that the CAP has been approved. The CAP shall incorporate all required modifications to the proposed CAP identified by the Department. Within 10 working days of completion of the CAP tasks, Respondent shall provide written notice to the Department that the CAP tasks have been completed.

7. Within 45 days of completion of the tasks in the CAP, Respondent shall submit a written Contamination Assessment Report ("CAR") to the Department. The CAR shall:

A. Summarize all tasks which were implemented pursuant to the CAP; and

B. Specify results and conclusions regarding the Contamination Assessment objectives outlined in subparagraph 1.A.

8. The Department shall review the CAR and determine whether it has adequately met the objectives specified in subparagraph 1.A. In the event that additional information is

necessary to evaluate the CAR, the Department shall make a written request to the Respondent for the information. Within 20 days of receipt of said request, Respondent shall provide all requested information unless the requested information requires additional field work in which case the Respondent shall submit, within 14 days of said request, to the Department a reasonable written schedule for completing the field work needed to provide the requested information. The Department shall provide written approval of the CAR once all of the CAP objectives and tasks have been satisfactorily completed.

9. The Department, at its option, may determine from review of the CAR and other relevant information, the Site Rehabilitation Levels (SRLs) to which the contamination shall be remediated or may require the Respondent to implement the risk assessment process to develop such SRLs for the site. The SRLs for water as determined by the Department shall be based on Chapter 17-3, F.A.C. standards and the Department's numerical interpretation of the Chapter 17-3, F.A.C. minimum criteria. The Department may also require that a risk assessment be completed to define SRLs for soils or sediments that are sufficiently contaminated to present a risk to the public health, the environment or the public welfare. If the Department does choose to provide SRLs to the Respondent and does not choose to require a risk assessment and the Respondent agrees to remediate the site to those SRLs, the Respondent shall implement the feasibility.

study, if required by the Department as set forth in paragraph 13, or submit the Remedial Action Plan (RAP) as set forth in paragraph 18.

10. After completion and Department approval of the CAR, the Respondent shall prepare and submit to the Department a Risk Assessment/Justification (RAJ) if the Department requires the task, or if the Respondent wishes to develop SRLs other than those determined by the Department or if the Respondent intends to justify a no-action proposal for the site. The RAJ which includes a risk assessment and a detailed justification of any alternative SRLs or no action proposal shall be submitted within 90 days from receipt of the Department's written approval of the CAR and determination of the SRLs for the site, or within 90 days of the Department's written approval of the CAR and notice that a RAJ is required, or within 90 days of the Department's written approval of the CAR. Unless otherwise approved by the Department, the subject document shall address the following task elements, divided into the following five major headings:

A. Exposure Assessment - The purpose of the Exposure Assessment is to identify routes by which receptors may be exposed to contaminants and to determine contaminant levels to which receptors may be exposed. The Exposure Agreement should:

(1) Identify the contaminants found at the site and their concentrations as well as their extent and locations;

- (2) Identify possible transport pathways;
- (3) Identify potential exposure routes.
- (4) Identify potential receptors for each exposure route; and
- (5) Estimate or calculate expected contaminant levels to which actual or potential receptors may be exposed.

B. Toxicity Assessment - The purpose of the Toxicity Assessment is to define the applicable human health and environmental criteria for contaminants found at the site. The criteria should be defined for all potential exposure routes identified in the Exposure Assessment. DER standards shall be the criteria for consultants and exposure routes to which the standards apply. Criteria for constituents and exposure routes for which DER standards are not established shall be based upon criteria such as Recommended Maximum Contaminant Levels (RMCLs), Maximum Contaminant Levels, Average Daily Intake values (ADIs), Unit Cancer Risk values (UCRs), organoleptic threshold levels, Ambient Water Quality Criteria for Protection of Human Health and for Protection of Aquatic Life, and other relevant criteria as applicable. If there are no appropriate criteria available for the contaminants and exposure routes of concern, or the criteria are in an inappropriate format, the Respondent shall develop the criteria using equations and current scientific literature acceptable to toxicological experts. Criteria for the following exposure routes shall be defined or developed as applicable:

(1) Potable water exposure route - develop criteria for ingestion, dermal contact, inhalation of vapors and mists, utilizing applicable health criteria such as Recommended Maximum Contaminant Level (RMCLs), Maximum levels, Average Daily Intake values (ADIs), Unit center Risk values (UCRs), organoleptic threshold levels, and other relevant criteria as applicable.

(2) Non-potable domestic water usage exposure route - develop criteria for dermal contact, inhalation of vapors and mists, ingestion of food crops irrigated with such water, lawn watering, ingestion by pets and livestock, and other related exposure.

(3) Soil exposure route - develop criteria for ingestion, dermal contact, inhalation, ingestion by humans or animals of food crops grown in contaminated soils.

(4) Non potable surface water exposure - develop criteria for prevention of adverse effects on human health (e.g. dermal contact effects on humans utilizing the resource for recreational purposes) or the environment (e.g. toxic effects of the contaminants on aquatic or marine biota, bio-accumulative effects in the food chain, other adverse effects that may affect the designated use of the resource as well as the associated biota).

(5) Air exposure route - develop criteria for exposure to the contaminants in their unaffected state.

C. Risk Characterization - The purpose of the Risk Characterization is to utilize the results of the Exposure Assessment and the Toxicity Assessment to characterize cumulative risks to the affected population and the environment from contaminants found at the site. Based on contaminant levels presently found at the site, a risk and impact evaluation will be performed which considers, but is not limited to:

(1) Risks to human health and safety from the contamination including:

- (a) carcinogenic risk, and
- (b) non-carcinogenic risk.

(2) Effects on the public welfare of exposure to the contamination which may include but not be limited to adverse affects on actually and potentially used water resources.

(3) Environmental risks in areas which are or will be ultimately affected by the contamination including:

- (a) other aquifers;
- (b) surface waters;
- (c) wetlands;
- (d) sensitive wildlife habitats; and
- (e) sensitive areas including, but not limited to, National Parks, National Wildlife Refuges, National Forests, State Parks, State Recreation Areas, State Preserves.

D. Justification for alternative Site Rehabilitation Levels (SRLs) or no action proposal. The purpose of this section

is to provide justification on a case-by-case basis for a no action proposal or for alternative SRLs that vary from Chapter 17-3, F.A.C. standards and minimum criteria for from any SRLs determined by the Department at which remedial action shall be deemed completed. Factors to be evaluated shall be, at a minimum:

(1) The present and future uses of the affected aquifer and adjacent surface waters with particular consideration of the probability that the contamination is substantially affecting or will migrate to and substantially affect a public or private source of potable water;

(2) Potential for further degradation of the affected aquifer or degradation of other connected aquifers;

(3) The technical feasibility of achieving the SRLs based on a review of reasonably available technology;

(4) Individual site characteristics, including natural rehabilitative processes; and

(5) The results of the risk assessment. Applicable contaminant transport models must be employed to document that human health and environment risks from alternative and less stringent SRLs are acceptable.

11. The Department shall review the Risk Assessment/Justification document and determine whether it has adequately addressed the risk assessment task elements. the Department shall review the justification section and determine whether the Department approves or disapproves the alternative SRLs or the no action proposal.

12. In the event that additional information is necessary to evaluate any portion of the Risk Assessment/Justification document, the Department shall make a written request and Respondent shall provide all requested information within 20 days of receipt of said request. If the Department does not approve the no action proposal of the alternative SRLs, the Respondent shall use the SRLs as determined by the Department. If the Department and Respondent agree to the remediation levels, either the SRLs determined by the Department or the alternative SRLs, the Respondent shall implement the Feasibility Study, if required by the Department as set forth in paragraph 13, or submit the Remedial Action Plan (RAP) as set forth in paragraph 18.

13. The Department shall also determine from review of the CAR and other relevant information whether the Respondent should prepare and submit a Feasibility Study (FS) to the Department. The FS will be required in complex cases to evaluate technologies and remedial alternatives, particularly if multiple contaminant classes are represented or multiple media are contaminated. The purpose of the FS is to evaluate remedial technologies and remedial alternatives in order to identify the most environmentally sound and effective remedial action to achieve clean up of the site to SRLs or alternative SRLs (if approved). The FS shall be completed within 60 days of written notice that a FS is required, unless the Respondent plans to submit a RAJ pursuant to paragraph 10. The FS shall include the following tasks:

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(A) Identify and review pertinent treatment, contaminant, removal and disposal technologies;

(B) Screen technologies to determine the most appropriate technologies;

(C) Review and select potential remedial alternatives using the following criteria:

- (1) long and short term environmental effects;
- (2) implementability;
- (3) capital costs;
- (4) operation and maintenance costs;
- (5) operation and maintenance requirements;
- (6) reliability;
- (7) feasibility;
- (8) time required to achieve clean-up; and
- (9) potential legal barriers to implementation of any of the alternatives.

(D) Identify the need for and conduct pilot tests or bench tests to evaluate alternatives, if necessary;

(E) Select the most appropriate remedial alternative;

(F) Develop soil cleanup criteria such that the contaminated soils will not produce a leachate which contains contaminants in excess of the SRLs or alternative SRLs (if approved).

14. Within 45 days of completing the FS, Respondent shall submit an FS Report to the Department. The FS Report shall:

- A. Summarize all FS task results; and
- B. Propose a conceptual remedial action plan based on the selection process carried out in the FS.

15. The Department shall review the FS Report for adequacy and shall determine whether the Department agrees with the proposed remedial action. In the event that additional information is necessary to evaluate the FS report, the Department shall make a written request and Respondent shall provide all requested information within 20 days of receipt of said request.

16. If the Department does not approve of the proposed remedial action, the Department will notify the Respondent in writing of the determination. The Respondent shall then have 20 days from the Department's notification to resubmit a proposed alternate remedial action.

17. If the Department determines upon review of the resubmitted remedial action proposal that it does not agree with the proposal, the Department at its option, may choose to either:

- A. Choose a remedial action alternative for the Respondent to carry out; or

- B. Notify the Respondent that Respondent has failed to comply with paragraph 15 above, in which case the Department may do any or all of the following: take legal action to enforce compliance with the Order, file suit to recover damages and civil penalties, or complete the corrective actions outlined herein and recover the costs of completion from Respondent.

18. Within 45 days of receipt of written notice from the Department, Respondent shall submit to the Department a detailed Remedial Action Plan ("RAP"). The RAP shall be signed and sealed by a registered professional engineer in accordance with Chapter 471, Florida Statutes. The objective of the remedial action shall be to achieve the clean up of the contaminated areas to the SRLs or the approved alternative SRLs. The RAP shall include:

A. Rationale for the remedial action proposed which shall include at a minimum:

- (1) Results from any pilot studies or bench tests;
- (2) Evaluation results for the proposed remedial

alternative based on the following criteria:

- a. long and short term environmental impacts;
- b. implementability, which may include, but not be limited to, ease of construction, site access, and necessity for permits;
- c. operation and maintenance requirements;
- d. reliability;
- e. feasibility; and
- f. costs.

(3) Soil cleanup criteria such that the contaminated soils will not produce a leachate which contains contaminants in excess of State Water Quality Standards or minimum criteria established in 17-3, F.A.C. Subparagraph A requirements can be omitted if a Feasibility Study was required and approved by the Department.

B. Design and construction details and specifications for the remedial alternative selected;

C. Operational details of the remedial action including the disposition of any effluent, expected contaminant concentrations in the effluent, an effluent sampling schedule if treated ground water is being discharged to ground water or to surface waters, and the expected concentrations and quantities of any contaminants discharged into the air as a result of remedial action;

D. A separate QAPP document;

E. Details of the treatment or disposition of any contaminated soils or sediments;

F. Proposed methodology including post remedial action ground water monitoring as applicable for evaluation of the site status after the remedial action is complete to verify accomplishment of the objective of the RAP; and

G. Schedule for the completion of the remedial action.

19. The Department shall review the proposed RAP and provide Respondent with a written response to the proposal. Respondent shall not implement the RAP until Respondent receives written notification from the Department that the RAP has been approved.

20. In the event that additional information is necessary for the Department to evaluate the RAP, the Department shall make a written request to Respondent for the information, and Respondent shall provide all requested information in writing to

the Department within 20 days from receipt of said request unless the requested information requires additional field work in which case the Respondent shall submit in writing to the Department a reasonable schedule for completing the field work needed to provide the requested information.

21. In the event that the Department determines that the RAP submitted by the Respondent does not adequately address the objectives set forth in paragraph 18, the Department will notify the Respondent in writing of the RAP's deficiencies. The Respondent shall then have 20 days from the Department's notification to submit a modified RAP addressing the deficiencies noted by the Department.

22. If the Department determines upon review of the resubmitted RAP that the RAP still does not adequately address the objectives of the RAP, the Department, at its option, may choose to either:

A. Draft specific modifications to the RAP and notify the Respondent in writing that the Department's modifications shall be incorporated in the RAP; or

B. Notify the Respondent that Respondent has failed to comply with the paragraph 21 above, in which case the Department may do any or all of the following: take legal action to enforce compliance with the Order, file suit to recover damages and civil penalties, or complete the corrective actions outlined herein and recover the costs of completion from Respondent.

23. Once a RAP has been approved by the Department, it shall become effective and made a part of this Order and shall be implemented within ten days from receipt of the Department's notification to the respondent that the RAP has been approved. The RAP shall incorporate all required modifications to the proposed RAP identified by the Department.

24. Following termination of remedial action (clean up of the Contaminated area to the SRLs or the approved alternative SRLs), designated monitoring wells shall be sampled on a schedule determined by the Department.

25. Following completion of the remedial action and post-remedial action monitoring, the Respondent shall submit a Site Rehabilitation Completion Report (SRCR) to the Department for approval. The SRCR shall be signed and sealed by a registered Professional Engineer in accordance with Chapter 471, F.S., unless "no further action" or "monitoring-only" was proposed and was approved by the Department. The SRCR shall contain a demonstration, with supporting documentation, that site cleanup objectives have been achieved.

26. Within sixty (60) days of receipt of the SRCR, the Department shall approve the SRCR or make a determination that the SRCR does not contain sufficient information to support the demonstration that cleanup objectives have been achieved.

27. If the Department determines that the SRCR is not adequate based upon information provided, the Department will

notify the Respondent in writing. Site rehabilitation activities shall not be deemed completed until such time as the Department provides the Respondent with written notice that the SRCR is approved.

28. On the first working day of each month, after beginning implementation of a CAP or RAP, Respondent shall submit written progress reports to the Department. These progress reports shall describe the status of each required CAP and RAP task. The reports shall be submitted until planned tasks have been completed to the satisfaction of the Department.

29. Respondent shall provide written notification to the Department at least ten days prior to installing monitoring or recovery wells, and shall allow Department personnel the opportunity to observe the location and installation of the wells. All necessary approvals must be obtained from the water management district before Respondent installs the wells.

30. Respondent shall provide written notification to the Department at least ten (10) days prior to any sampling, and shall allow Department personnel the opportunity to observe sampling or to take split samples. Raw data shall be exchanged between the Respondent and the Department as soon as the data is available.

31. The Respondent is required to comply with all applicable local, state and federal regulations and to obtain any necessary approvals from local, state and federal authorities in carrying out these corrective actions.

32. If any event occurs which causes delay or the reasonable likelihood of delay in the achievement of the requirements of these Corrective Actions, Respondent shall have the burden of proving that 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 due diligence. Upon occurrence of the event Respondent shall promptly notify the Department orally and shall, within seven (7) calendar days, notify the Department in writing of the anticipated length and cause of 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 delay resulting from such circumstances. Such agreement shall be confirmed by letter from the Department accepting or if necessary modifying the extension request. Respondent shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this paragraph shall constitute a waiver of Respondent's right to request an extension of time to complete the requirements of these corrective Actions. Increased costs of performance of any of the activities set forth in these Corrective Actions or changed economic circumstances shall not be considered circumstances beyond the control of Respondent.

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33. Respondent shall immediately notify the Department of any problems encountered by Respondent which require modification of any task in the approved CAP or RAP, and obtain Department approval prior to implementing any such modified tasks.

34. Should the Department conclude that cleanup of the contaminated area to SRLs or approved alternative SRLs is not feasible; or should Respondent not completely implement the RAP as approved by the Department; the Department may seek restitution from Respondent for environmental damages resulting from pollution as a result of Respondent's actions. Within twenty (20) days of receipt of Department written notification of its intent to seek said restitution, Respondent may pay the amount of the damages or may, if it so chooses, initiate negotiations with the Department regarding the monetary terms of restitution to the state. Respondent is aware that should a negotiated sum or other compensation for environmental damages not be agreed to by the Department and Respondent within twenty (20) days of receipt of Department written notification of its intent to seek restitution, the Department may institute appropriate action, either administrative, through a notice of violation, or judicial, in a court of competent jurisdiction through a civil complaint, to seek to recover Department-assessed environmental damages pursuant to Section 403.141, Florida Statutes.