STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF ENVIRONMENTAL PROTECTION, Petitioner, vs. P & L SALVAGE, INC. and MARLENE J. BALLARD, Respondents.	)	Case No. 07-1337EF

FINAL ORDER

The final hearing in this case was held on June 10 and 11, 2008, in West Palm Beach, Florida, before Bram D. E. Canter, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner Department of Environmental Protection:

Lisa G. London, Esquire
Department of Environmental Protection
3900 Commonwealth Boulevard
The Douglas Building, Mail Station 35
Tallahassee, Florida 32399-3000

For Respondents P & L Salvage, Inc. and Marlene J. Ballard:

Mark W. Klingensmith, Esquire
Sonneborn Rutter Cooney & Klingensmith, P.A.
1545 Centrepark Drive North
West Palm Beach, Florida 33401-7414

PRELIMINARY STATEMENT

On or about December 15, 2006, the Petitioner Department of Environmental Protection (Department) issued a six-count Notice of Violation, Orders for Corrective Action and Administrative Penalty Assessment (NOV) against P & L Salvage, Inc. On or about January 16, 2008, the Department issued an amended NOV against P & L Salvage, Inc., Marlene J. Ballard, and Thomas E. Ballard. Respondents P & L Salvage and Marlene Ballard timely petitioned for an administrative hearing. Thomas Ballard did not respond to the amended NOV and, therefore, DOAH did not obtain jurisdiction over him.

The Department presented the testimony of Karen Misbach, Bridget Armstrong, Paul Wierzbicki, Kathy Winston, Joe Lurix, Geetha Selvendran, Edna Arant (through her deposition transcript), and Nicholas Marangi (through his deposition transcript). The Department's Exhibits 2 through 15, 17, 18, and 30 through 32 were admitted into evidence. At the request of the Department, official recognition was taken of Title 42, United States Code, Sections 9601(14) and 9602; Title 40, Code of Federal Regulations, Section 302.4; and Public Law Nos. 96-510 and 99-499. Respondents presented the testimony of Thomas Ballard and Marlene Ballard. Respondents' Exhibit 1 was admitted into evidence.

The three-volume Transcript of the hearing was prepared and filed with DOAH. The parties filed Proposed Final Orders that were carefully considered in the preparation of this Final Order.

STATEMENT OF THE ISSUES

The issues presented in the case are whether Respondents P & L Salvage and Marlene Ballard are liable for violations of state statutes and rules, as alleged in the amended NOV, and, if so, whether the proposed corrective action is appropriate, and whether the proposed civil penalties and costs should be paid by Respondents.

FINDINGS OF FACT

The Parties

1. The Department is the state agency charged with the power and duty to administer and enforce the provisions of Chapters 376 and 403, Florida Statutes, and the rules promulgated in Florida Administrative Code Title 62.

2. Respondent P & L Salvage, Inc., is a Florida corporation. P & L Salvage owned and operated an automobile salvage yard at 4535 and 4537 West 45th Street in West Palm Beach, Florida (the “property,” “facility,” or “site”). The property comprises less than two acres.

3. Respondent Marlene Ballard is a Florida resident and the president, treasurer, secretary, and director of P & L Salvage, Inc.

Historical Use of the Site

4. Beginning in the 1960s, the site was used as an auto salvage yard, first under the name Johnny's Junkyard and later as General Truck Parts.

5. In 1981, the owner of the salvage yard, Marie Arant, sold the facility. The record is not clear about the exact identity of the purchaser. The Alliance report, referred to later, states that the property was purchased by "the Ballard family." The record evidence is insufficient to prove that Marlene Ballard ever owned the salvage yard.

6. The parties agree that the salvage yard was operated for a time as P & L Salvage, which was unincorporated. Then, in January 1990, the site was purchased by Respondent P & L Salvage, Inc., which owned the site continuously until January 2007.

7. Marlene Ballard lived in a house on the site from the 1980s until the property was sold in 2007. A separate building at the site was used as P & L Salvage's office.

8. The general operation of the salvage yard was to bring junk cars and trucks to the site, remove fluids from the vehicles, remove parts for sale, and then crush the dismantled

vehicles in a hydraulic crusher to prepare them for transport and sale as scrap metal. The automotive fluids removed from the junked cars were stored on the site in 55-gallon drums for later disposal.

9. Respondents presented evidence to show that the person who had the most knowledge of and managed the day-to-day operations in the salvage yard was an employee named John Boyd. When John Boyd ceased employment at the salvage yard, Marlene Ballard's son, Thomas Ballard, took over the management of the yard.

10. Respondents contend that no evidence was presented that Marlene Ballard conducted or participated in any activities that resulted in contamination, or that she had authority to prevent any potential contamination that might have occurred. However, Ms. Ballard was familiar with the activities in the yard, having worked and lived on the site for many years. She did the bookkeeping and signed payroll checks. All employees answered to Ms. Ballard. She contracted for environmental assessment and remediation work, and signed the hazardous waste manifests. She was acquainted with the contamination that could and did occur at the salvage yard.

11. Eagle Sanitation, Inc., which operated a roll-off container business, leased the site from September 2005 until

January 2007. Eagle Sanitation also obtained an option to purchase the property.

12. At first, Eagle Sanitation only leased about a quarter of the site because there were many junk autos, tires, and other salvage debris still on the site in September 2005. For several months, Thomas Ballard continued to sell auto parts and scrap from the site, and to clear the site. Eagle Sanitation did not have complete use of the site until early in 2006.

13. Eagle Sanitation's business consisted of delivering roll-off containers for a fee to contractors and others for the disposal of construction debris and other solid waste, and then picking up the containers and arranging for disposal at the county landfill or, in some cases, recycling of the materials. Roll-off containers at the site were usually empty, but sometimes trucks with full containers would be parked at the site overnight or over the weekend.

14. During its lease of the site, Eagle Sanitation did not collect used oil or gasoline and did not provide roll-off containers to automotive businesses. No claim was made that Eagle Sanitation caused any contamination found at the site.

Contamination at the Site

15. In 1989, Marlene Ballard contracted with Goldcoast Engineering & Testing Company (Goldcoast) to perform a "Phase

II" environmental audit. Goldcoast collected and analyzed groundwater and soil samples and produced a report.

16. Cadmium, chromium, and lead were found in the soil samples collected by Goldcoast. Some petroleum contamination was also detected in soils. These pollutants are all associated with automotive fluids.

17. The Goldcoast report states that groundwater samples did not indicate the presence of pollutants in concentrations above any state standard.

18. The Goldcoast report did not address the timing of discharges of contaminating substances that occurred at the site, except that such discharges had to have occurred before the report was issued in 1989. That is before the property was purchased by P & L Salvage, Inc.

19. During an unannounced inspection of the salvage yard by two Department employees on August 15, 1997, oil and other automotive fluids were observed on the ground at the site in the "disassembly area" and around the crusher. There were also stains on the ground that appeared to have been made by automotive fluids. No samples of the fluids were taken or analyzed at the time of the inspection.

20. The Department inspectors told Marlene Ballard to cease discharging fluids onto the ground, but no enforcement action was initiated by the Department. Ms. Ballard was also

told that she should consider removing the soil where the discharged fluids and staining were observed.

21. In early 1998, RS Environmental was hired to excavate and remove soils from the site. This evidence was presumably presented by Respondents to indicate that they remediated the contaminated soils observed by the Department inspectors, but no details were offered about the area excavated to make this clear.

22. In 2004, in conjunction with a proposed sale of the site, another Phase II investigation of the site was done by Professional Services Industries, Inc. (PSI), and a report was issued by PSI in May 2004. The PSI report is hearsay and, as such, cannot support a finding of fact regarding the matters stated in the report.

23. Presumably as a result of its knowledge of the PSI report, the Department issued a certified letter to Ms. Ballard on June 24, 2005, informing her that the Department was aware of methyl tert-butyl ethylene (MTBE) contamination at the facility. MTBE is an octane enhancer added to gasoline.

24. The Department's June 2005 letter advised Ms. Ballard that Florida Administrative Code Chapter 62-780 required "responsible parties" to file a site assessment report (SAR) within 270 days of becoming aware of such contamination. The letter also informed Ms. Ballard of the proximity of the City of

Riviera Beach's wellfield and the threat that represented to public drinking water.

25. The June 2005 letter was returned to the Department unsigned.

26. In October 2005, the Department arranged to have the letter to Marlene Ballard served by the Palm Beach County Sheriff's Office. The Department received a confirmation of service document that shows the letter was served by a deputy on October 14, 2005, but this document is hearsay and does not support a finding that Ms. Ballard had knowledge of the contents of the letter.

27. The Department did not receive an SAR within 270 days, but no enforcement action was immediately initiated.

28. On December 15, 2006, the Department issued a six-count NOV to P & L. Salvage, Inc. P & L Salvage requested a hearing and the matter was referred to DOAH.

29. In January 2007, in conjunction with Eagle Sanitation's proposed sale of its purchase option to Prime Realty Capital, LLC, Alliance Consulting & Environmental Services, Inc., (Alliance) conducted a site assessment at the site and produced an SAR in April 2007. At that time, as indicated above, P & L Salvage had ceased operations at the site and Eagle Sanitation was operating its roll-off container business there.

30. The SAR states that in January 2007, "[a]pproximately 80 yards of black stained oily-solidified shallow sands were excavated [by Eagle Sanitation] from the central and northeastern portions of the site, where car crushing, fluid draining and battery removal were historically conducted." The soil contained lead, iron, chromium, cadmium, and arsenic, but testing did not show the excavated soils constituted hazardous materials and, therefore, the soils were disposed at the county landfill.

31. The area of soils where the Department inspectors in 1997 observed automotive fluids and staining appears to have been included in the soils that were excavated and removed in 2007. The Department presented no evidence to the contrary.

32. Testing by Alliance of other soils at the site showed "no significant petroleum metals concentrations" and Alliance did not recommend the removal of other soils.

33. The presence of an MTBE "plume" of approximately 30,000 square feet (horizontal dimension) was also described in the SAR. The plume is in the area where the crusher was located. Several groundwater samples from the site showed MTBE in concentrations above the target cleanup limit.

34. The City of Riviera Beach operates a public water supply wellfield near the site. The closest water well is approximately 250 feet from the site. The SAR concludes that

"the potential exists for the MTBE plume to be pulled downward" toward the well, and recommends that a risk assessment be performed.

35. Alliance recommended in the SAR that the MTBE contamination be remediated with "in-situ bioremediation" with oxygen enhancement. No remediation has occurred on the site since the date of the Alliance report.

36. The Alliance report did not address the timing of contaminating discharges that occurred at the site. To the extent that Alliance reported contamination in 2007 that was not reported in the 1989 Goldcoast report, that is not sufficient, standing alone, to meet the Department's burden of proof to show that P & L Salvage, Inc., caused "new" contamination after 1989. Competent evidence was not presented that the Alliance report describes "new" contamination. The authors of the reports were not called as witnesses. No expert testimony was presented on whether the data in the reports can establish the timing of contaminating discharges. It is not the role of the Administrative Law Judge, nor does he have the requisite expertise, to compare the environmental assessments conducted by Goldcoast and Alliance and make judgments about whether some of the contamination reported by Alliance had to have occurred after 1989.

37. Although the Department's expert, Paul Wierzbicki, testified that it was his opinion that the contamination was

attributable to the “operations of the P & L Salvage yard facility,” he was answering a question about “what caused the contamination” and, in context, his testimony only confirmed that the type of contamination shown in the photographs and reported in the site assessment reports was the type of contamination associated with auto salvage yards.

38. Mr. Wiezbicki’s testimony is not evidence which can support a finding that the contamination at the site, other than the automotive fluids and stained soils observed by the Department inspectors in 1997, was caused by P & L Salvage, Inc.[1]

39. On June 12, 2007, after reviewing the Site Assessment Report, the Department issued a letter to Marlene Ballard, requesting additional data and analysis. At the hearing, the Department presented a responding letter from Alliance dated June 21, 2007. It was disputed whether the Alliance letter is evidence of Ms. Ballard’s receipt and knowledge of the Department’s June 12, letter. However, even if Ms. Ballard did not know about the Department’s letter in June 2007, she certainly became aware of the letter in the course of this proceeding. The amended NOV issued in January 2008 mentions the letter, and the letter was listed as an exhibit in the parties’ June 4, 2008 Pre-hearing Stipulation.

40. On January 24, 2008, the Department issued an amended NOV which dropped three counts from the original NOV and added

two new counts. Most significantly, the amended NOV added Marlene Ballard and Thomas Ballard as Respondents.

41. P & L Salvage and Marlene Ballard responded to the amended NOV with petitions for hearing. Thomas Ballard did not respond.

42. At the hearing, the Department presented testimony of employees that were involved in this enforcement action regarding the value of their time expended on various tasks associated with this case. Bridget Armstrong spent eight hours inspecting the site of the contamination, eight hours drafting the NOV and consent order, approximately 30 hours reviewing technical documents, and 15 hours corresponding with Respondents. Ms. Armstrong's salary at the time was about $20.00 per hour. Paul Wierzbicki spent 16 hours investigating facilities in the area, reviewing the contamination assessment reports, and overseeing the enforcement activity of his subordinates. Mr. Wierzbicki was paid $33.00 per hour. Kathleen Winston spent 10 hours reviewing a site assessment report and drafting correspondence. Ms. Winston's salary at the time was $23.56 per hour. Geetha Selvendren spent 4-to-5 hours reviewing the site assessment report. She was paid $19.00 per hour at the time. Finally, Joseph Lurix spent three hours reviewing documents. His salary at the time was $34.97 per hour.

CONCLUSIONS OF LAW

43. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in this case under Sections 120.569, 120.57(1), and 403.121(2), Florida Statutes (2007).[2]

44. If the Department has reason to believe a violation has occurred, it may institute an administrative proceeding to establish liability, to recover damages, and to order the prevention, abatement, or control of the conditions creating the violation. See § 403.121(2)(a)-(b), Fla. Stat.

45. The Department has the burden of proving by a preponderance of the evidence that Respondent are responsible for the violations alleged in the Department's amended NOV. See § 403.121(2)(d), Fla. Stat.

46. Hearsay evidence is not sufficient in itself to support a finding unless it would be admissible over objection in civil actions. § 120.57(1)(c), Fla. Stat. Hearsay is a statement, other than one made by the declarant while testifying at the hearing, which is offered for the truth of the matter asserted. See § 90.801(1)(c), Fla. Stat.

47. The Administrative Law Judge is to issue a final order on all matters, including the imposition of administrative penalties. See § 403.121(2)(d), Fla. Stat.

48. Section 403.121(3), Florida Statutes, provides a range of penalties that "must be calculated" for various types of violations. Section 403.121(4), Florida Statutes, provides a range of penalties that the Department "shall assess" for other types of violations. Section 403.121(5), Florida Statutes, provides that the Department "may assess" a penalty of $500.00 for failure to comply with any Departmental statute or rule not otherwise identified.

49. The penalties "may be assessed" for each additional day during which a violation occurs. See § 403.121(6), Fla. Stat.

50. Evidence may be received in mitigation and may reduce a penalty up to 50 percent for mitigating factors, including good faith efforts to comply prior to or after discovery of the violations by the Department. § 403.121(10), Fla. Stat. The Administrative Law Judge may further reduce the penalty upon an affirmative finding that the violation was caused by circumstances beyond the reasonable control of a respondent and could not have been prevented by due diligence. Id.

51. The Department is seeking to establish individual liability against Marlene Ballard as the person who operated the facility at the time contaminating discharges, pursuant to Sections 376.308 and 403.727, Florida Statutes. These statutes make "any person" liable for the specified offenses. The

Department acknowledges that there is "scant" Florida case law on the subject, but urges a construction of the state statutes that makes a person liable who manages, directs, or conducts operations related to the pollution that occurred, or makes decisions related to compliance with environmental regulations.

52. Liability under Sections 376.308 and 403.727, Florida Statutes, is not limited to the person whose hand tipped the bucket. Marlene Ballard is liable for any of the specified offenses for which the Department proved Ms. Ballard had some individual culpability, through her own misdeeds or through her direct control over the misdeeds of others. See Department of Environmental Protection v. Harbor Utilities Company, Inc., 684 So. 2d 301 (Fla. 2d DCA 1996).

Count I

53. Count I of the amended NOV alleges that "Respondents are the former owners and operators of the Facility at which hazardous substances have been released, including MTBE, lead, arsenic, barium, cadmium, and chromium." The Department asserts this is a violation of Section 403.727(4), Florida Statutes.

54. Section 403.727(4), Florida Statutes, makes the owner or operator of a hazardous waste facility, and "any person who at the time of disposal of any hazardous substance owned or operated any facility," liable for the costs of remedial action incurred by the Department and damages for injury to natural

resources. MTBE, lead, arsenic, cadmium, and chromium are hazardous substances pursuant to Sections 376.301(21) and 403.703(12), Florida Statutes.

55. No evidence was presented that the Department incurred costs for remedial action. Therefore, the relevant charge in Count I is for damages for injury to natural resources.

56. P & L Salvage, Inc., is no longer the owner or operator of the site and, therefore, is only subject to liability for contamination it caused during its ownership and operation, which was from 1990 to 2007. The only contamination for which the Department established a time of occurrence was the release of automotive fluids in August 1997, observed by Department inspectors. The Department did not prove that the release of automotive fluids observed in August 1997 was a release of MTBE, lead, arsenic, cadmium, and chromium (hazardous substances), nor that the observed release caused the groundwater contamination that was reported.

57. Even if the observation of automotive fluids on the ground in 1997 was sufficient to prove a release of MTBE, lead, arsenic, cadmium, and chromium, no penalty is warranted against P & L Salvage or Marlene Ballard because those contaminated soils were remediated.

Count II

58. In Count II of the amended NOV, the Department alleges that "Respondents have discharged a pollutant or hazardous substances into or upon the surface or ground waters of the state, which violates any Department standard, as defined at Section 403.803(13), Fla. Stat." The definition of "standard" includes any rule of the Department relating to air and water quality.

59. The Department asserts that the charge in Count II is a violation of Sections 376.302(1)(a) and 376.305(1), Florida Statutes. Section 376.302(1)(a), Florida Statutes, is nearly identical to the wording in Count II. On the other hand, Section 376.305(1), Florida Statutes, requires any person discharging a pollutant (as prohibited) to "immediately undertake to contain, remove, and abate the discharge to the satisfaction of the department."

60. The Department has incorrectly cited Section 376.305(1), Florida Statutes, as violated by the charge in Count II. Count II does not charge Respondent's with failing to contain, remove, and abate a discharge.

61. The only contamination for which the Department established a time of occurrence was the release of automotive fluids in August 1997, observed by Department inspectors. The Department did not prove by empirical evidence or opinion testimony that any of the reported groundwater contamination was

caused by discharges of pollutants or hazardous substances that occurred during the period from 1989 to 2007. The contaminated soils observed in 1997 were remediated.

62. P & L Salvage, Inc., was the corporate owner and operator of the salvage yard when the unlawful discharge occurred in 1997. Marlene Ballard was not shown to have had direct control over or other culpability in the particular discharge or discharges that resulted in the contamination that was observed in 1997.

63. The Department is seeking a penalty of $500. In all the counts of the amended NOV, the Department seeks damages from "Respondents," without specifying a division of the penalty between the Respondents.

64. For the unlawful discharge of automotive fluids, the results of which were observed in 1997, a penalty of $500 shall be imposed against P & L Salvage, Inc.

Count III

65. The Department alleged in Count III that "Respondents' discharges of 'hazardous substances' and 'pollutants' at the Property have resulted in groundwater contamination at the Property." The Department asserts that this Count states a violation of Section 403.727(1)(d), Florida Statutes.

66. Section 403.727(1)(d), Florida Statutes, makes it unlawful for a hazardous waste generator, transporter, or

facility owner or operator to create an imminent hazard. An "imminent hazard" exists if any hazardous substance creates an immediate and substantial danger to human health, safety, or welfare or to the environment. See § 403.726(3), Fla. Stat. Because of the proximity of the reported groundwater contamination to the City of Riviera Beach's wellfield, an imminent hazard was shown to exist.

67. However, the only contamination for which the Department established a time of occurrence was the release of automotive fluids in August 1997, observed by Department inspectors, which the record shows was remediated by removal of the soils in the area. The Department did not prove that the release of automotive fluids observed in August 1997 caused the groundwater contamination that was later reported. The Department did not prove by empirical evidence or opinion testimony that any of the reported groundwater contamination which creates the imminent hazard was caused by discharges of pollutants or hazardous substances that occurred during the period that P & L Salvage, Inc., owned and operated the salvage yard.

68. No penalty is warranted under Count III because the Department failed to prove that P & L Salvage, Inc., or Marlene Ballard created an imminent hazard.

Count IV

69. In Count IV, the Department alleges that "Respondents failed to submit a Site Assessment Report Addendum within 60 days of receipt of the notice of deficiencies in the submitted Site Assessment Report, as required by Fla. Admin. Code R. 62-780.600(10)."

70. Florida Administrative Code Rule 62-780.600(10) provides in relevant part:

> [I]f the Site Assessment Report is incomplete in any respect, or is insufficient to satisfy the objectives of subsection 62-780.600(3), F.A.C., the Department shall inform the PRSR pursuant to paragraph 62-780.600(9)(b), F.A.C., and the PRSR shall submit to the Department for review two copies of a Site Assessment Report Addendum that addresses the deficiencies within 60 days after receipt of the notice.

71. The Department requested additional site assessment in a June 12, 2007, letter to Marlene Ballard, but additional data has not been submitted to date. Even if June 4, 2008, the date of the parties' Pre-hearing Stipulation, was the first time that Respondents became aware of the Department's request for additional information, more than 60 days have passed without a response. Respondents did not challenge the Department's action determining that the Site Assessment Report was deficient.

72. P & L Salvage, Inc., was the corporate owner and operator of the salvage yard about which the information was requested. Marlene Ballard had direct control over the decision

whether to respond to the Department's request for additional information.

73. The Department is seeking a penalty of $8,500, which represents 17 days of non-compliance at $500 per day. The assessment of a penalty for each day of non-compliance is not mandatory. A penalty of $1,000 under Count IV is reasonable under the circumstances and shall be imposed jointly against Respondents.

Count V

74. Count V of the amended NOV alleges that "The Department incurred expenses to date while investigating this matter in the amount of $2,500.00."

75. Section 403.141(1), Florida Statutes, provides that a person who causes pollution or other offense specified in Section 403.161(1), Florida Statutes, is liable to the state for the Department's reasonable costs and expenses in tracing the source of the discharge, controlling and abating the source of the pollutants, and in restoring the air and waters to their former condition.

76. Section 403.121(2)(f), Florida Statutes, provides that the Department can also recover all of its legal costs and charges described in Sections 57.041 and 57.071, Florida Statutes, plus its attorney's fees. The Department did not seek recovery of its legal costs and charges or its attorney's fees.

79. The Department is seeking to recover $2,500 in enforcement expenses, but this amount should be reduced because there was considerable redundancy in the review of contamination assessment reports, the evidence did not demonstrate that all of the Department's expenses were directly involved in tracing and controlling the source of the discharge, and some of the enforcement effort was ineffectual. An award of $1,000 under Count V is reasonable under the circumstances.

DISPOSITION

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

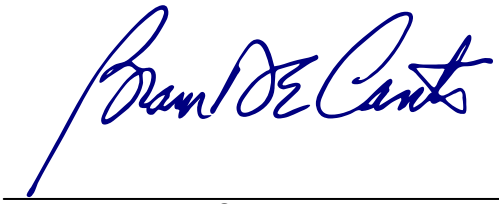
1. Within 60 days of this Final Order, Respondents shall submit a Site Assessment Report Addendum to the Department that complies with Florida Administrative Code 62-780.600.

2. Within 30 days of this Final Order, Respondent P & L Salvage, Inc., shall pay $500 to the Department for the administrative penalty assessed under Count II. Payment shall be made by cashier's check or money order payable to the "State of Florida Department of Environmental Protection" and shall include thereon the OGC Case No.: 06-2335 and notation "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the Department of Environmental Protection, Southeast District Office, 400 North Congress Avenue, Suite 200, West Palm Beach, Florida 33401.

3. Within 30 days of this Final Order, Respondents shall pay $1,000 to the Department for the administrative penalty assessed under Count IV. Payment shall be made by cashier's check or money order payable to the "State of Florida Department of Environmental Protection" and shall include thereon the OGC Case No.: 06-2335 and notation "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the Department of Environmental Protection, Southeast District Office, 400 North Congress Avenue, Suite 200, West Palm Beach, Florida 33401.

4. Within 30 days of this Final Order, Respondent P & L Salvage, Inc., shall pay $1,000 to the Department for its enforcement costs and expenses assessed under Count V. Payment shall be made by cashiers check or money order payable to "State of Florida Department of Environmental Protection" and shall include OGC Case No. 06-2335 thereon with the notation "Ecosystem Management and Restoration Fund." The payment shall be sent to the Department of Environmental Protection, Southeast District Office, 400 North Congress Avenue, Suite 200, West Palm Beach, Florida 33401.

DONE AND ORDERED this 4th day of September, 2008, in Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of September, 2008.

ENDNOTES

[1]/ A lack of foundation objection was raised by opposing counsel, and no foundation was laid for an opinion by Mr. Wierzbicki about the timing of contaminating discharges at the site, except with regard to the automotive fluids and stained soils shown in the 1997 photos.

[2]/ All references to the Florida Statutes are to the 2007 codification.

COPIES FURNISHED:

Lea Crandall, Agency Clerk
Department of Environmental Protection
Douglas Building, Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Tom Beason, General Counsel
Department of Environmental Protection
Douglas Building, Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Michael W. Sole, Secretary
Department of Environmental Protection
Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Mark W. Klingensmith, Esquire
Sonneborn, Rutter, Cooney &
  Klingensmith, P.A.
1545 Centrepark Drive North
West Palm Beach, Florida 33401

Dawn Margaret Cinquino, Esquire
Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399

Lisa G. London, Esquire
Department of Environmental Protection
The Douglas Building, Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Jeffery C. Close, Esquire
Department of Environmental Protection
3900 Commonwealth Boulevard, Mail Stop 35
Tallahassee, Florida 32399-3000

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of appeal with the Clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.