STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Petitioner,

vs. Case No. 12-4008EF

MARK F. GERMAIN, LEESBURG'S OLDEST FILLING STATION, INC., AND JOHN DOE 1-5,

Respondents.
_____/

FINAL ORDER

The final hearing in this case was held on December 3 and 4, 2013, in Tavares, Florida, before Bram D. E. Canter, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Bonnie A. Malloy, Esquire
Janet Tashner, Esquire
Department of Environmental Protection
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

For Respondents: Mark F. Germain, Esquire
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STATEMENT OF THE ISSUES

The issues to be determined in this case are whether Respondents should pay the administrative penalty, investigative

costs, and attorney's fees and undertake the corrective actions that are demanded by the Florida Department of Environmental Protection (the "Department") as set forth in the Final Amended Notice of Violation, Orders for Corrective Action, and Administrative Penalty Assessment.

PRELIMINARY STATEMENT

On September 19, 2012, the Department issued a Notice of Violation, Orders for Corrective Action, and Administrative Penalty Assessment ("NOV"), which included two counts against Respondent Mark F. Germain ("Germain"). Germain timely filed a request for an administrative hearing to contest the charges. The Department referred the matter to DOAH to conduct an evidentiary hearing and to issue a final order. The Department was subsequently granted leave to amend the NOV twice: first to add Leesburg's Oldest Filling Station, Inc. ("Leesburg's"), as the new property owner and John Doe 1-5, and later to add Germain individually as the corporate officer ("Final NOV"). The Final NOV contains two counts against Germain and Leesburg's: Count I for failing to initiate a site assessment and Count II for the recovery of the Department's investigative costs.

On February 5, 2013, Germain filed a Notice of Violation, Orders for Corrective Action and Administrative Penalty Assessment seeking to implead the former owner of the subject

property. The Department's motion to strike the pleading was granted.

On April 8, 2013, Germain filed a Motion to Dismiss, which was denied.

On November 27, 2013, the Department filed a motion in limine to strike the Respondents' "common-law defenses," which was granted at the final hearing.

At the final hearing, the Department presented the testimony of Robert Cilek, Bret LeRoux, and Carolyn Schultz. The Department's Exhibits 1, 2, 4 through 10, 13, and 18 through 21 were admitted into evidence. Germain testified on behalf of Respondents. Respondents also presented the testimony of Gustavo Garcia and Charles Griner. Respondents' Exhibits A, C through H, W, and AAAA were admitted into evidence.

The two-volume Transcript of the final hearing was filed with DOAH. The parties submitted proposed orders that were considered by the Administrative Law Judge in the preparation of this Final Order.

FINDINGS OF FACT

The Parties

1. The Department is the administrative agency of the state of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of

chapters 376 and 403, Florida Statutes, and the rules promulgated thereunder in Florida Administrative Code Title 62.

2. Germain is a licensed Florida attorney. From May 2006 to January 2013, Germain was the record owner of the real property at 1120 West Main Street, Leesburg, Lake County, Florida (the "Germain property").

3. Leesburg's is an active Florida corporation that was incorporated in January 2013 by Germain. Germain is Leesburg's sole corporate officer and sole shareholder and has managerial authority over the Germain property.

4. John Doe 1-5 is a placeholder designation used by the Department for the purpose of covering all potential entities to which Germain might transfer the property. No other such entity materialized.

Background

5. A gas station was operated on the Germain property continually from the 1920s through the late 1980s. During the 1980s and perhaps for a longer period, C.E. Griner operated the gas station under the name Griner's Service Station.

6. Griner's Service Station had at least three underground storage tanks ("USTs") used to store leaded and unleaded gasoline.

7. In 1989 or 1990, Griner ceased operation of the gas station and the USTs were filled with concrete and abandoned in

place. The Germain property has not been used as a gas station since that time.

8. In 1990, the Department inspected the Germain property and prepared a report. The inspection report noted that the USTs at the Germain property "were not cleaned properly prior to filling with concrete." The report also noted that the tanks were not properly abandoned in place. No evidence was presented to explain in what way the tanks were not properly abandoned, or to indicate whether the Department took any enforcement action based on this report.

9. In 1996, Gustavo Garcia purchased the Germain property from Griner. In May 2006, Germain purchased the property from Garcia.

10. Another gas station, operating for many years under several names (now "Sunoco"), is located at 1200 West Main Street, across a side street and west of the Germain property. Since 1990, one or more discharges of petroleum contaminants occurred on the Sunoco property.

11. There were also gas stations at the other two corners of the Main Street intersection, but no evidence was presented about their operations or conditions.

12. In March 2003, apparently as part of a pre-purchase investigation, testing was conducted at the Sunoco property that revealed petroleum contamination in the groundwater. Soil

contamination was not reported. S&ME, Inc. ("S&ME"), an environmental consulting firm, subsequently submitted a discharge report to the Department's Central District Office in Orlando.

13. Later in 2003, S&ME conducted an initial site assessment for the Sunoco property. In the report it produced, S&ME noted that it found concentrations of petroleum contaminants in the groundwater that were above the Department's Groundwater Cleanup Target Levels ("GCTLs"). The concentrations exceeding GCTLs were in samples taken from the eastern side of the Sunoco property, closest to the Germain property.

14. In 2004, S&ME completed a Templated Site Assessment Report for the Sunoco property. Groundwater samples from the eastern portion of the Sunoco property again revealed petroleum contamination exceeding GCTLs.

15. Garcia, who owned the Germain property at the time, allowed S&ME to conduct soil testing on the Germain property. The soil samples were taken by direct push methods and were tested with an organic vapor analyzer ("OVA"), which revealed toluene, ethylbenzene, total xylenes, naphthalene, 1-methyl naphthalene, and total recoverable petroleum hydrocarbons exceeding the Department's Soil Cleanup Target Levels ("SCTLs").

16. In 2005, another private environmental consulting firm, ATC Associates, Inc. ("ATC"), performed a Supplemental Site Assessment on the Sunoco property and produced a report. As part

of its assessment, ATC installed three monitoring wells on the Germain property and collected groundwater samples. These groundwater samples revealed petroleum constituent concentrations that exceeded GCTLs and were higher than concentrations found in groundwater samples taken under the Sunoco property.

17. Both the 2004 and 2005 site assessment reports concluded that the groundwater in the area flowed from the southeast to the northwest; that is, from the Germain property toward the Sunoco property. Germain referred to a figure in S&ME's 2004 report that he claimed indicated a southeasterly flow of groundwater from Sunoco toward the Germain property. However, a preponderance of the evidence establishes that groundwater flow in the area is generally northwesterly from the Germain property toward the Sunoco property.

18. Based on the results of its testing, ATC concluded in its site assessment report that the groundwater contamination on the eastern portion of the Sunoco property had migrated from the Germain property.

19. ATC also took soil samples from the Germain property. It screened the soil samples with an OVA and reported petroleum contamination exceeding the Department's SCTLs.

20. Petroleum contamination in soil typically does not travel far horizontally. It remains in the vicinity of the

source. Therefore, the soil contamination found on the Germain property indicates an onsite source of the contamination.

21. All of the assessment reports were filed with Seminole County, presumably with the Department of Public Safety, Emergency Management Division, which is the local entity with which the Department contracted to inspect and manage petroleum facilities in the area. These reports were public records before Germain purchased his property.

22. A June 2005 Memorandum from Seminole County informed Bret LeRoux at the Department's Central District Office that ATC's 2005 site assessment report indicated the Germain property was the source of petroleum contamination. The Memorandum recommended that the Department contact the owner of the property about the contamination. The Memorandum was filed at the Department.

23. After the Department received the Memorandum, it requested and received the site assessment reports from Seminole County.

24. The Department did not notify Garcia or the public about the contamination in 2005. The Department did not notify Germain about the contamination until August 2007.

All Appropriate Inquiry

25. The principal factual dispute in this case is whether Germain undertook "all appropriate inquiry into the previous ownership and use of" the Germain property before purchasing it, as required by section 376.308(1)(c)[1/]:

> [A person acquiring title to petroleum-contaminated property after July 1992] must also establish by a preponderance of the evidence that he or she undertook, at the time of acquisition, all appropriate inquiry into the previous ownership and use of the property consistent with good commercial or customary practice in an effort to minimize liability.

26. Before he purchased the Germain property in 2006, Germain knew that it had been a gas station for a number of years. Garcia told Germain that the USTs had been filled with concrete and were "within the law."

27. Germain was also aware that the Sunoco USTs had recently been excavated and that there was a problem with the tanks and possible contamination there.

28. Germain said he spoke with neighbors about the property, but he did not say what he learned from them.

29. Before the purchase, Germain conducted a visual inspection of the property and saw "several little metal plates" in the parking lot. Germain claimed it was only later that he learned that some of the plates were covers for groundwater monitoring wells.

30. Germain said he visited and reviewed files at a Lake County office, but he was not specific about which county offices he visited. He also went to the Leesburg Historic Board to review property records. Germain's testimony was not clear about what records he saw on these visits.

31. Germain did not go to the office of the Seminole County Department of Public Safety, Emergency Management Division, to view records pertaining to the Germain property. He did not claim to have gone to the Department's Central District Office in Orlando. In other words, Germain did not go to the offices of the agencies responsible for regulating petroleum USTs. Nor did Germain say that he talked to any knowledgeable employee of these agencies by telephone about possible contamination issues on the Germain property.

32. While at a Lake County office, Germain searched the DEP website and saw two documents that indicated the USTs on the Germain property had been closed in place. One of the documents indicated a cleanup status of "no contamination." Germain claimed that he relied on these documents to conclude that the property was clean.

33. The Department explained that the phrase "no contamination" is used in its database as a default where no contamination has been reported and no discharge form has been filed. It is not a determination based on a site investigation

that the site is free of contamination. However, the Department had received information that the Germain property was contaminated, so its explanation of the "no contamination" status for the Germain property was unsatisfactory.

34. Germain does not practice environmental law. He neither claimed nor demonstrated knowledge or experience with the legal or factual issues associated with petroleum contamination.

35. Germain did not present evidence to establish that he followed "good commercial or customary practice" in his investigation of the property as required by section 376.308(1)(c).

36. Good commercial practice in the purchase of property upon which potentially contaminating activities have occurred entails consultation with a person with appropriate knowledge and experience.

37. Germain did not consult with an environmental attorney or environmental consultant regarding the potential liability associated with property used as a gas station.

38. If Germain had hired an environmental consultant to assist him, the consultant would have known where to find public records about the gas station, including any soil and groundwater analyses. An environmental consultant would have seen the site assessment reports and other public records that indicated petroleum contamination on the Germain property.

39. A consultant would likely have recommended a Phase I environmental site assessment ("ESA"). A Phase I ESA entails, generally, determining past uses of a property, inspecting the property for visible indications of potential contamination, and reviewing aerial photographs, historical documents, and public records related to the property and its surroundings. A Phase II ESA would follow if potential contamination is discovered and usually includes taking soil and groundwater samples.

40. In considering whether all appropriate inquiry was undertaken by a purchaser of contaminated property, section 376.308(1)(c) directs the court or administrative law judge to take into account:

> any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

41. Germain did not have specialized knowledge regarding the regulation of petroleum USTs. However, as a lawyer, he was familiar with the practice of employing or working with professionals with specialized knowledge in order to achieve the objectives or solve the problems of his clients. If Germain's legal assistance had been sought by a client to solve an environmental problem, Germain would have declined to proceed

because he did not possess the requisite knowledge or he would have sought the assistance of an environmental lawyer or environmental consultant. In purchasing the Germain property, Germain did not undertake the reasonable steps a lawyer must take for a client.

42. No evidence was presented about the relationship of the purchase price to the value of the Germain property.

43. Germain did not show that the site assessment reports and other documents discussed above were not "reasonably ascertainable information."

44. Although a visual inspection by a lay person would not have disclosed the presence of contamination at the property, an environmental consultant would have recognized the groundwater monitor wells and would have known to seek information about the reason for their installation and the groundwater sampling results.

45. Taking all relevant considerations into account, Germain failed to show that he made all appropriate inquiry before he purchased the Germain property.

46. Germain transferred the property to Leesburg's in January 2013 in part to limit his potential personal liability for petroleum contamination. The Germain property is Leesburg's primary asset.

47. Because Leesburg's took title to the Germain property after the NOV was issued, it had full knowledge of the contamination and cannot claim to be an innocent purchaser.

Post-Purchase Investigation

48. In August 2007, the Department sent Germain a letter informing him that the Department had reason to believe his property was contaminated with petroleum and requiring him to conduct a site assessment pursuant to rule 62-770.600(1).[2/]

49. In September 2007, the Department sent Germain the 2004 and 2005 site assessment reports.

50. Germain did not conduct a site assessment.

51. At the final hearing, the Department did not state whether it had made any effort to take enforcement action against Griner, whom the record evidence indicates was the owner of the gas station when the discharge occurred.

52. In 2012, the Department issued Germain a notice of violation for failing to conduct a site assessment and remediation. After Germain transferred the property to Leesburg's, the Department issued the Final NOV to add Leesburg's as a Respondent.

53. The Final NOV seeks penalties of $10,000 against Germain, and $10,000 against Leesburg's.

54. While investigating this matter, the Department incurred expenses of $11,380.37 in investigative costs.

Confirmation of On-site Contamination

55. Despite the site assessment reports that documented contamination on the Germain property, Germain disputed the Department's claim that the property was contaminated.

56. The Department conducted testing and completed a Site Investigation Report in 2010. Because Germain would not allow the Department onto his property, the Department installed groundwater monitoring wells adjacent to the Germain property to the west and south, and collected groundwater samples.

57. The Department confirmed the northwesterly flow of groundwater documented in previous reports and found elevated levels of petroleum contaminants above GCTLs, including benzene, ethylbenzene, toluene, xylene, total lead, EDB, and total recoverable petroleum hydrocarbons. Monitoring wells west of, or downgradient of, the Germain property showed high levels of groundwater contamination, while monitoring wells to the south and southeast, or upgradient of the property showed no signs of contamination, indicating that the source of the groundwater contamination was on the Germain property.

58. Based on the site assessments and its own investigation, the Department determined that the Germain property is the source of petroleum contamination detected along the eastern portion of the Sunoco property.

59. Germain and Leesburg's did not present any expert testimony to support their claim that the Germain property is not contaminated or that the contamination migrated to the Germain property from offsite.

60. A preponderance of the record evidence shows that the Germain property is the source of the petroleum contamination found in the onsite soil and groundwater, as well as in groundwater on the eastern portion of the Sunoco property.

CONCLUSIONS OF LAW

61. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding under sections 120.569, 120.57(1), and 403.121.

62. If the Department has reason to believe a violation has occurred, it may institute an administrative proceeding to establish liability, to recover damages, to seek administrative penalties that do not exceed $10,000, and to order the prevention, abatement, or control of the conditions creating the violation. See § 403.121(2)(a) and (b), Fla. Stat.

63. The Department's Final NOV charges Respondents with a violation of a rule that implements the provisions of chapters 376 and 403. The Department may enforce the provisions of chapters 376 and 403 using the procedures in section 403.121(2). See § 376.302(2), Fla. Stat.

64. Because the Department seeks to impose administrative penalties, the Administrative Law Judge is to issue a final order on all matters. See § 403.121(2)(d), Fla. Stat.

65. The Department has the burden to prove by a preponderance of the evidence that Respondents violated the law as alleged in the Final NOV. See § 403.121(2)(d), Fla. Stat.

66. Germain contends that the site assessment reports from 2003, 2004, and 2005 are not admissible evidence of contamination because they are hearsay. To the extent the assessment reports are offered, not for the truth of the matter asserted, but rather as evidence of information available to a person undertaking all appropriate inquiry, they are not hearsay. See § 90.801(1)(c), Fla. Stat.

67. Even as hearsay, the assessment reports are admissible to supplement and explain non-hearsay evidence. See § 120.57(1)(c), Fla. Stat. The 2004 and 2005 site assessment reports supplement the non-hearsay evidence of contamination on the Germain property presented by the Department based on its 2010 site investigation.

68. Moreover, expert witnesses may rely on hearsay in formulating their opinions. See § 90.704, Fla. Stat. An expert's opinion is not rendered less persuasive simply because he or she relied in part on hearsay in forming opinions.

Count I

69. Count 1 of the Final NOV charges the Respondents with a violation of rule 62-770.600(1), which requires responsible parties to initiate a site assessment within 30 days of discovering petroleum contamination.

70. The Germain property is "contaminated" as defined in rule 62-770.200(9).

71. Germain and Leesburg's are each a "person responsible for site rehabilitation" as defined in rule 62-770.200(38).

72. Germain and Leesburg's are each a "responsible party," defined in rule 62-770.200(50) as "the real property owner, the facility owner, the facility operator, or the discharger, or other person or entity responsible for site rehabilitation unless that entity is the Department."

73. Section 376.308 imposes strict liability on the owners of petroleum-contaminated properties. See § 376.308(1), Fla. Stat.; see also FT Invs., Inc. v. State Dep't of Envtl. Prot., 93 So. 3d 369, 370–71 (Fla. 1st DCA 2012). To establish liability, the Department need only plead and prove that a discharge or other polluting condition has occurred. See § 376.308(1), Fla. Stat.

74. Although the statute provides for broad liability as a means to effectuate the cleanup of contaminated properties, nothing in the statute suggests that the Department should adopt

a practice of targeting current owners for prosecution rather than past owners who caused the contamination.

75. Section 376.313(3) provides that a party liable under section 376.308 may seek contribution from other parties jointly liable under the statute.

76. Germain contends that he is not liable because he is no longer the owner of the property and was not the person who caused the contamination. The statute would lose all effectiveness if an owner could escape liability by simply transferring his property after the commencement of an enforcement action. The legislature mandated a liberal construction of the statute to protect the surface and ground waters of Florida from pollution discharges. See § 376.315, Fla. Stat. Because Germain owned the property at the time the Department issued the first NOV, he is a responsible party regardless of his transfer of the property to Leesburg's.

77. Germain can only avoid liability under section 376.308 if he can prove that he qualifies for one of the affirmative defenses contained in paragraphs (1)(c) or (2)(d) of the section, known as the "innocent purchaser" and "third party" defenses, respectively. Germain has the burden to prove by a preponderance of the evidence his qualification for an affirmative defense.

78. The innocent purchaser defense allows a purchaser of contaminated property to escape liability if the purchaser can

show that he or she: (1) acquired title to property contaminated by the activities of a previous owner or operator or other third party; (2) did not cause or contribute to the discharge; (3) did not know of the polluting condition at the time the owner acquired title; and (4) if title was acquired after July 1, 1992, undertook, at the time of acquisition, all appropriate inquiry into the previous ownership and use of the property consistent with good commercial or customary practice in an effort to minimize liability. See § 376.308(1)(c), Fla. Stat.

79. Germain failed as a matter of law to conduct all appropriate inquiry based on the findings made herein. To qualify for the innocent purchaser defense requires more than the inefficient and incomplete investigations of a person without specialized knowledge. In this case, Germain's failure to obtain the assistance of a person with specialized knowledge before purchasing a former gas station was fatal to his claim of being an innocent purchaser.

80. This conclusion is supported by the Environmental Protection Agency's ("EPA") regulatory definition of "all appropriate inquiries" for the innocent purchaser defense under the Comprehensive Environmental Response, Compensation, and Liability Act. In EPA's regulations, an "all appropriate inquiries" defense requires that an environmental professional be employed to conduct the investigation. See Voggenthaler v. Md.

Square LLC, 724 F.3d 1050, 1062 (9th Cir. 2013)(citing 40 C.F.R. 312.20).

81. In their proposed orders, the Department and Germain address at length the third party defense under section 376.308(2)(d), which was unnecessary because the third party defense cannot be used to circumvent the requirements of the innocent purchaser defense. In FT Invs., the court stated:

> When it amended section 376.308 to explicitly provide an innocent purchaser defense, the legislature expressed the clear intent that a purchaser of property must establish he or she did not have knowledge of the petroleum contamination after making an appropriate inquiry, essentially adopting Judge Ervin's position in his dissenting opinion in [Sunshine Jr. Stores, Inc. v. Dep't of Envtl. Regulation, 556 So. 2d 1177, 1184 (Fla. 1st DCA 1990).] This requirement would be rendered superfluous if a purchaser could simply circumvent it by asserting a third party defense.

It is not enough for Germain to demonstrate that he did not cause or know about the contamination. He still must have undertaken all appropriate inquiry before purchasing the property.

82. Section 403.121(3)(g) provides that for failure to timely assess or remediate petroleum contamination, the Department shall assess a penalty of $2,000.

83. Pursuant to section 403.121(6), the Department may assess an additional penalty of $2,000 per day for each day during which the violation occurred. Because the Department may

only assess administrative penalties totaling $10,000 in an administrative action, the Department assesses the penalty for five days.

84. The Administrative Law Judge may reduce a penalty up to 50 percent for mitigating factors. § 403.121(10), Fla. Stat.

85. Here, a 50 percent reduction in the penalty assessed to Germain is appropriate because the Department failed to notify Garcia of the contamination in 2005 as required by section 376.30702(3). If Garcia had been notified, Germain may not have purchased the property. Accordingly, Germain will be assessed a penalty of $5,000.

86. The affirmative defenses of section 376.308 do not apply to Leesburg's as it had full knowledge of the contamination before acquiring the property.

87. Germain contends that section 376.30715 would extend a successful innocent purchaser defense to Leesburg's. Section 376.30715 pertains to eligibility for financial assistance and is inapplicable.

88. The Department correctly contends that Germain's transfer to Leesburg's was ineffective to avoid his liability and Germain is the appropriate respondent. Therefore, Leesburg's, although also liable, will not be assessed a separate $10,000 administrative penalty. If Germain does not pay the penalties

and investigative costs as ordered herein the Department may look to the assets of Leesburg's.

Count II

89. In Count II of the Final NOV, the Department seeks to recover its investigative costs. Section 403.141 allows for recovery of the "reasonable costs and expenses of the state in tracing the source of the discharge." The Department is entitled to recover $11,380.37 from Germain for the Department's investigative costs.

Attorney's Fees

90. The Department is seeking attorney's fees. Section 120.595 provides that a final order in a proceeding pursuant to section 120.57(1) shall award reasonable costs and a reasonable attorney's fee to the prevailing party only where the nonprevailing adverse party has been determined by the administrative law judge to have participated in the proceeding for an improper purpose. The facts do not support an award of attorney's fees.

DISPOSITION

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

A. Within 30 days of this Order, Respondents shall initiate a site assessment and submit a site assessment report in accordance with rule 62-780.600. Respondents shall assess and

clean up all petroleum contamination at the property in accordance with chapter 62-780 and the timeframes therein.

B. Any non-petroleum contamination discovered during activities undertaken in the paragraph above shall be addressed in accordance with chapters 376 and 403 and all applicable Department rules promulgated thereunder.

C. Within 30 days of the effective date of this Order, Germain shall pay $5,000.00 to the Department for the administrative penalties imposed above. 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 notations "OGC Case No. 12-0727" and "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the State of Florida Department of Environmental Protection, Central District, 3319 Maguire Boulevard, Suite 232, Orlando, Florida, 32803.

D. In addition to the administrative penalties, within 90 days of the effective date of this Order, Germain shall pay $11,380.37 to the Department for costs and expenses. 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 notations "OGC Case No. 12-0727" and "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the State of Florida Department of Environmental

Protection, Central District, 3319 Maguire Boulevard, Suite 232, Orlando, Florida, 32803.

DONE AND ORDERED this 14th day of February, 2014, in Tallahassee, Leon County, Florida.

BRAM D. E. CANTER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of February, 2014.

ENDNOTES

[1/] All references to the Florida Statutes are to the 2013 codification.

[2/] Some of the rules cited herein refer to rules in place at the time the first NOV was issued, but that have since been repealed and replaced. The outcome of this case would not be different under the new rules. For example, rule 62-770.600(1) required a responsible party to initiate a site assessment within 30 days of discovering petroleum contamination, while new rule 62-780.600 requires a person responsible for site rehabilitation, which includes responsible parties, to commence a site assessment within 60 days of discovering a discharge. Germain did not comply with either time frame.

COPIES FURNISHED:

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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 administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.