Consent Order attached

000822..

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

This Brownfield Site Rehabilitation Agreement is made and entered into between the State of Florida Department of Environmental Protection ("Department") and the City of Gainesville, Florida ("City").

WHEREAS, the Brownfields Redevelopment Act was enacted to reduce public health and environmental hazards on existing commercial and industrial sites by offering incentives to encourage responsible persons to voluntarily develop and implement cleanup plans; and

WHEREAS, the Department is the administrative agency of the State of Florida having the power and duty to protect Florida's environment and to administer and enforce the provisions of Chapters 403 and 376, Florida Statutes ("F.S."), and the rules promulgated thereunder, Florida Administrative Code ("F.A.C.") Rules, Chapters 62-777 and 62-785; and

WHEREAS, the Department has jurisdiction over the matters addressed in this Brownfield Site Rehabilitation Agreement; and

WHEREAS, the Department, has the authority, pursuant to Chapter 376.81, F.S., to establish by rule, criteria for determining the rehabilitation program tasks that comprise a site rehabilitation program and the level at which a rehabilitation program task and a site rehabilitation program may be completed; and

WHEREAS, the City (doing business as Gainesville Regional Utilities) has entered into a Consent Order with the Department dated September 28, 1992, reference number 88-0539 (Consent Order), relating to the Facility, which is the Site for the purposes of this agreement. The Site boundary is described in Attachment "A". The Consent Order is attached hereto as Attachment "B" and incorporated by reference; and

WHEREAS, the Site is located within the Gainesville SPROUT Brownfields Assessment Demonstration Pilot Area (Pilot Area) pursuant to a Brownfields Assistance Agreement between the United States Environmental Protection Agency (EPA) and the City; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, it is agreed as follows:

This Brownfield Site Rehabilitation Agreement (BSRA) is entered into between the Department and the City, hereinafter referred to as the Person Responsible For Brownfield Site Rehabilitation (PRFBSR)(collectively as the "parties"), to reach an agreement on the terms for rehabilitation of a brownfield area pursuant to §376.80(5), F.S. The Department and the PRFBSR agree to the following:

1. The Department is the agency of the State of Florida with the authority and power to enforce the provisions of Chapters 403 and 376, F.S.

2. The City is the PRFBSR as defined in §376.79(12), F.S., for the real property described in the attached map and legal description (see Attachment "A"), incorporated herein, that has been designated by local government resolution as a brownfield

area as defined in §376.79(4), F.S. The PRFBSR has agreed to conduct "site rehabilitation" as defined in §376.79(15), F.S., at the real property described in Attachment "A".

3. Upon the execution of this Agreement, the terms and conditions of the Consent Order, pertaining to parcels 13053-000 and 13053-001 and a portion of Depot Avenue as shown on Attachment "A", will be held in abeyance and shall remain in abeyance, provided the PRFBSR is in compliance with the terms of this BSRA. In the event the Department finds that PRFBSR is not in compliance with the terms and conditions of this BSRA, subject to the provisions of Paragraph 11 and 19 hereof, the terms and conditions of the Consent Order shall return in full force and effect.

4. The PRFBSR agrees:

(a) to conduct site rehabilitation and submit technical reports and rehabilitation plans in a timely manner according to the attached brownfield site rehabilitation schedule approved by the Department (Attachment "C-1"), and incorporated herein;

(b) to conduct site rehabilitation activities under the observation of professional engineers or professional geologists who are registered in accordance with the requirements of Chapter 471, F.S., or Chapter 492, F.S., respectively. Submittals provided by the PRFBSR must be signed and sealed by a professional engineer registered under Chapter 471, F.S., or by a professional geologist registered under Chapter 492, F.S., certifying that the submittal and associated work comply with the laws and rules of the Department and those governing the profession. Upon completion of the approved remedial action, a professional engineer registered under Chapter 471, F.S., or a professional geologist registered under Chapter 492, F.S., must certify that the corrective action was, to the best of his or her knowledge,

completed in substantial conformance with the plans and specifications approved by the Department;

(c) to conduct site rehabilitation in accordance with Chapter 62-160, F.A.C.;

(d) to conduct site rehabilitation consistent with state, federal, and local laws and consistent with the cleanup criteria in §376.81, F.S., and the requirements of Chapter 62-785, F.A.C., Brownfields Cleanup Criteria rule;

(e) to maintain and allow site access for the Department during the entire site rehabilitation process as evidenced by the attached documentation Attachment "D", establishing that site access has been secured in order to perform site rehabilitation activities and for access by the Department to the real property described in Attachment "A"; and

(f) to consider appropriate pollution prevention measures and to implement those that the PRFBSR determines are reasonable and cost-effective, taking into account the ultimate use or uses of the real property described in Attachment "A".

(g) to remediate the Site anticipating the continuance of existing industrial uses.

5. The latitude and longitude coordinates in minutes, degrees and seconds used to determine the coordinates for the real property described in Attachment "A" are: Section 5, Township 10, Range 20 East, Latitude 29°38'44" North and Longitude 82°19'24" West.

6. The PRFBSR must ensure that any contractor performing site rehabilitation program tasks under contract with the PRFBSR at or for the real property described in Attachment "A" has provided documentation to the Department certifying that the contractor:

(a) meets all certification and license requirements imposed by law;

(b) has obtained approval for the comprehensive quality-assurance plan prepared under Department rules;

(c) complies with applicable OSHA regulations;

(d) maintains workers' compensation insurance for all employees as required by the Florida Workers' Compensation Law;

(e) maintains comprehensive general liability and comprehensive automobile liability insurance with minimum limits of at least $1 million per occurrence and $1 million annual aggregate, sufficient to protect it from claims for damage for personal injury, including accidental death, as well as claims for property damage which may arise from performance of work under the Brownfields program, designating the state as an additional insured party;

(f) maintains professional liability insurance of at least $1 million per occurrence and $1 million annual aggregate; and

(g) has the capacity to perform or directly supervise the majority of the work at a site in accordance with §489.113(9), F.S.

7. During the entire site rehabilitation process, the PRFBSR agrees to ensure that the contractor continues to comply with the requirements of paragraph 6 of this BSRA pursuant to the requirements of §376.80(6) and (7).

8. The PRFBSR has established and shall maintain the existence of an advisory committee pursuant to the requirements of §376.80(4), F.S., for the purpose of improving public participation and receiving public comments on rehabilitation and redevelopment of the brownfield area, future land use, local

employment opportunities, community safety, and environmental justice. The names, addresses, and contact numbers for all Advisory Committee members are included as Attachment "E".

9. The PRFBSR shall save and hold harmless and indemnify the State of Florida and the Department against any and all liabilities, claims, judgments or costs of whatsoever kind and nature for injury to, or death of any person or persons and for the loss or damage to any property resulting from the use, service, operation or performance of work under the terms of this BSRA, resulting from the negligent acts or omissions of the PRFBSR, or the negligent acts or omissions of its contractors, subcontractors, or any of the employees, agents or representatives of the PRFBSR and the contractor or subcontractor to the extent allowed by law.

10. Any professional engineer or professional geologist providing professional services relating to site rehabilitation program tasks must carry professional liability insurance with a coverage limit of at least $1 million in accordance with §376.80(8), F.S.

11. The liability protection provided under §376.82 F.S., shall become effective upon execution of this BSRA and shall remain effective, provided the PRFBSR complies with the terms of this BSRA. If the PRFBSR fails to comply with the provisions of this BSRA, the Department will notify the PRFBSR in writing of any breach of this agreement. The PRFBSR will have 90 days from receipt of the letter from the Department to return to compliance or to negotiate a modification to this BSRA with the Department for good cause shown. The 90-day grace period does not apply if an imminent hazard exists at the site. If such imminent hazard exists, the PRFBSR shall act immediately to abate the hazard. If

the project is not returned to compliance with this BSRA and a modification cannot be negotiated, then the immunity provisions of §376.82, F.S., are revoked and the Consent Order #88-0539 returns to full force and effect except in the event of a force majeure, as described below, in which case such 90-day grace period shall be extended pursuant to subparagraph 11(a) below. After the 90-day grace period, the Consent Order #88-0539 returns to full force and effect.

If any event occurs that does not result in a breach of this agreement but causes delay or the reasonable likelihood of delay in the achievement of the requirements of this Agreement, the PRFBSR shall have the burden of proving that the delay was or will be caused by circumstances beyond the reasonable control of the PRFBSR that could not have been overcome by due diligence. Upon occurrence of the event, PRFBSR shall, within 7 days, notify the Department orally and in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which PRFBSR intends to implement these measures. However, if an imminent hazard exist the PRFBSR shall act immediately to abate the hazard.

(a) If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of the PRFBSR, the time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances, or 90 days if the delay results in a breach of this agreement, unless circumstances warrant more time in the opinion of the Department. A letter from the Department, to PRFBSR, accepting or, if necessary, modifying the extension request shall confirm such agreement.

(b) The PRFBSR shall adopt all reasonable measures to avoid or minimize any delay. Failure of the PRFBSR to comply with the notice requirements of this paragraph shall constitute a waiver of the right to request an extension of time for complying with the requirements of this Agreement. Increased costs of performance of the terms of this Agreement shall not be considered circumstances beyond the control of the PRFBSR.

(c) In the event that the Department and PRFBSR cannot agree that any delay in the achievement of the requirements of this Agreement, including failure to submit any report or document, has been or will be caused by circumstances beyond the reasonable control of the PRFBSR, the PRFBSR may seek an administrative hearing or judicial determination of the issue pursuant to the provisions in Paragraph 19 of this Agreement.

12. In consideration of the execution and successful completion of this BSRA, unless it is demonstrated that one of the provisions in §376.82(3)(a)-(e), F.S., has occurred, the PRFBSR shall be relieved from further liability for remediation of any identified sources of contamination on the Site to the state under the BSRA and Consent Order and to third parties and of liability in contribution to any other party who has or may incur cleanup liability for the Site.

13. Nothing herein shall be construed to limit the authority of the Department to undertake any action in response to or to recover the costs of responding to conditions at or from the real property described in Attachment "A" that require Department action to abate an imminent hazard to the public health, welfare or the environment.

14. This BSRA has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida and any local regulations. Wherever possible, each provision of this BSRA shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this BSRA shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this BSRA.

15. All reports, plans, data, responses, addenda, or modifications to reports and plans required by this BSRA to be submitted to the Department shall be sent to Brownfields District Coordinator, 7825 Baymeadows Way, Suite B200, Jacksonville, Florida 32256 for review. The PRFBSR contact shall be the Brownfields Coordinator, Box 490, Station 48, Gainesville, FL 32602. The Department encourages the use of electronic media (such as, e-mailing reports, CDs, or 3.5 inch disk) over the use of hard copies, when appropriate. Time-frames for the Department's review of technical reports and plans shall be governed by the attached schedule (see Attachment "C-2"), incorporated herein. Two hard copies of each draft report or proposal shall be submitted to the Department. After final Department approval of each report or plan, one hard copy and an electronic copy shall be submitted. The electronic copy shall be saved on Compact Disk (CD) for archiving purposes. The CD shall include a file directory and specify the "naming convention".

a) Final reports (any text files) shall be in ".pdf" format.

b) Site maps shall be in ".dxf" and ".pdf" format.

c) Site surveys shall be in ".dxf" format.

d) Site specific GIS data tables in Excel 5.0 or text (tab delimited).

e) The cover of the CD should include at a minimum the Site Name, Designated Brownfield Area, Date and Type of Report(s).

f) The left inside cover of the CD should list all the files located on the CD.

16. During the cleanup process, if the Department fails to complete review of a technical document within the time-frame specified in this BSRA, with the exceptions of requests for "no further action", "monitoring only proposals," and feasibility studies, which must be approved prior to implementation, the PRFBSR may proceed to the next site rehabilitation task. However, the PRFBSR does so at its own risk and may be required by the Department to complete additional work on a previous task.

17. The PRFBSR shall not assign any rights or responsibilities under this BSRA to any other party without the written consent of the Department and unless the proposed assignee has agreed, in writing, to assume all obligations of the PRFBSR under the terms of this BSRA. However, under no event shall the PRFBSR be relieved of its obligations under the existing Consent Order #88-0539 until site rehabilitation is completed and a Site Rehabilitation Completion Order is issued.

18. By entering into this BSRA, the PRFBSR waives its right to challenge the contents of this BSRA in an administrative hearing afforded by §120.569 and §120.57, F.S., and an appeal afforded by the terms of §120.68, F.S. This BSRA does not deny the PRFBSR a right to challenge agency actions taken pursuant to this BSRA. Any action hereon or in connection herewith shall be brought in Alachua County, Florida. No delay or failure to

exercise any right, power or remedy accruing to either party upon breach or default by either party under this BSRA, shall impair any such right, power or remedy of either party; nor shall such delay or failure be construed as a waiver of any such breach or default, or any similar breach or default thereafter.

19. This Agreement shall be effective twenty-one (21) days after date of execution, unless a timely petition for an administrative hearing or request for extension of time to file a petition for administrative hearing is filed under Sections 120.569 and 120.57, F.S. Section 376.82(2), F.S., establishes liability protection for the PRFBSR upon execution of a brownfield site rehabilitation agreement. Persons who have filed a petition for administrative hearing may seek to mediate the dispute, and choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for petitioning a hearing or filing requests for extension of time to file a petition for administrative hearing are set forth below. The parties hereto agree that if an administrative hearing or mediation is necessary to resolve an issue with the BSRA, the terms and conditions of the Consent Order are not subject to reviews in such a proceeding.

20. This BSRA shall not constitute a release, waiver, or in any way a limitation or restriction, of any claim or cause of action that PRFBSR may have against any person or entity not a signatory to this BSRA, including, but not limited to, any claim or cause of action for contribution or cost recovery that PRFBSR may have against such a person or entity for costs incurred by PRFBSR to satisfy PRBSR's obligations under this BSRA.

21. This site shall remain eligible for restoration funding assistance in accordance with the eligibility determination made

previously by Department of the Site's entitlement to restoration funding assistance under Section 376.3071(9), Florida Statues, for the discharge discovered on August 30, 1988. In addition, this BSRA does not relieve Department or PRFBSR of any of their respective obligations under that certain Agreement For Site Rehabilitation Funding Allocation For A Petroleum Contaminated Site With Both Eligible And Non-Eligible Contamination entered into previously by Department and PRFBSR, effective June 28, 2000, a copy of which is attached hereto as Attachment "F".

Persons other than the PRFBSR whose substantial interests are adversely affected by this Agreement have the following options:

1. file a petition for administrative hearing with the Department within twenty-one (21) days of receipt of this Agreement; or

2. file a request for an extension of time to file a petition for hearing with the Department within 21 days of receipt of this Agreement. Such a request should be made if you wish to meet with the Department in an attempt to informally resolve any disputes without first filing a petition for hearing; or

Please be advised that mediation of this decision pursuant to section 120.573, F.S., is not available.

How to Request an Extension of Time to File a Petition for Hearing

For good cause shown, pursuant to Rule 62-110.106(4), F.A.C., the Department may grant a request for an extension of time to

file a petition for hearing. Such a request must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida, 32399-3000, within 21 days of receipt of this Agreement Petitioner, if different from the PRFBSR, shall mail a copy of the request to the PRFBSR at the time of filing. Timely filing a request for an extension of time tolls the time period within which a petition for administrative hearing must be made.

How to File a Petition for Administrative Hearing

A person whose substantial interests are affected by this Agreement may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida, 32399-3000, within 21 days of receipt of this Agreement. Petitioner, if different from the PRFBSR shall mail a copy of the petition to the PRFBSR at the time of filing. Failure to file a petition within this time period shall waive the right of anyone who may request an administrative hearing under Sections 120.569 and 120.57, F.S.

Pursuant to Subsections 120.54(5)(b)4 and 120.569(2), F.S. and Rule 28-106.201, F.A.C., a petition for administrative hearing shall contain the following information:

a) The name, address, and telephone number of each petitioner, the name, address, and telephone number of the petitioner's representative, if any, the site owner's name and address, if different from the petitioner, the DEP facility number, and the name and address of the facility;

b) A statement of how and when each petitioner received notice of the Department's action or proposed action;
c) An explanation of how each petitioner's substantial interests are or will be affected by the Department's action or proposed action;
d) A statement of the material facts disputed by the petitioner, or a statement that there are no disputed facts;
e) A statement of the ultimate facts alleged, including a statement of the specific facts the petitioner contends warrant reversal or modification of the Department's action or proposed action;
f) A statement of the specific rules or statutes the petitioner contends requires reversal or modification of the Department's action or proposed action; and
g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Department's action or proposed action.

Timely filing a petition for administrative hearing postpones the date this Agreement takes effect until the Department issues either a final agreement pursuant to an administrative hearing or an Agreement Responding to Supplemental Information provided to the Department pursuant to meetings with the Department.

Judicial Review

Any party to this Agreement has the right to seek judicial review of it under Section 120.68, F.S., by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department in the Office of

General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this agreement is filed with the clerk of the Department (see below).

Questions

Any questions regarding the Agreement should be directed to Brownfields District Coordinator, at (904) 448-4320, extension 221. Questions regarding legal issues should be referred to the Department's Office of General Counsel at (850) 488-9314. Contact with any of the above does not constitute a petition for administrative hearing or request for an extension of time to file a petition for administrative hearing.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed, the day and year last written below.

FOR THE CITY OF GAINESVILLE, FLORIDA:

_____
DATE

By: _____
Wayne Bowers
City Manager
P.O. Box 490, Station 6
Gainesville, Florida 32602-0490
(352) 334-5010

_____
DATE

_____
Michael L. Kurtz
General Manager
Gainesville Regional Utilities
P.O. Box 147117, Station A134
Gainesville, FL 32614-7117
(352) 334-3400

DONE AND ORDERED this _____ day of _____, 2000, in Jacksonville, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Approved as to form:

_____

_____
Ernest E. Frey, P. E.
Director of District Management
Northeast District
7825 Baymeadows Way, Suite 200B
Jacksonville, Florida
(904) 448-4320

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

_____ _____
Clerk (or Deputy Clerk) Date

CC:

Attachment A

Map and Legal Description

Parcel #1: 13053-000

710 SE 2nd Street, Gainesville

COM 193.29 FT N & 161.80 FT W OF SE COR SEC N 17.28 FT POB N ALONG W SIDE SE 2ND ST 174.72 FT W 244.20 FT TO W SIDE ALLEY S 279.94 FT TO N LINE DEPOT

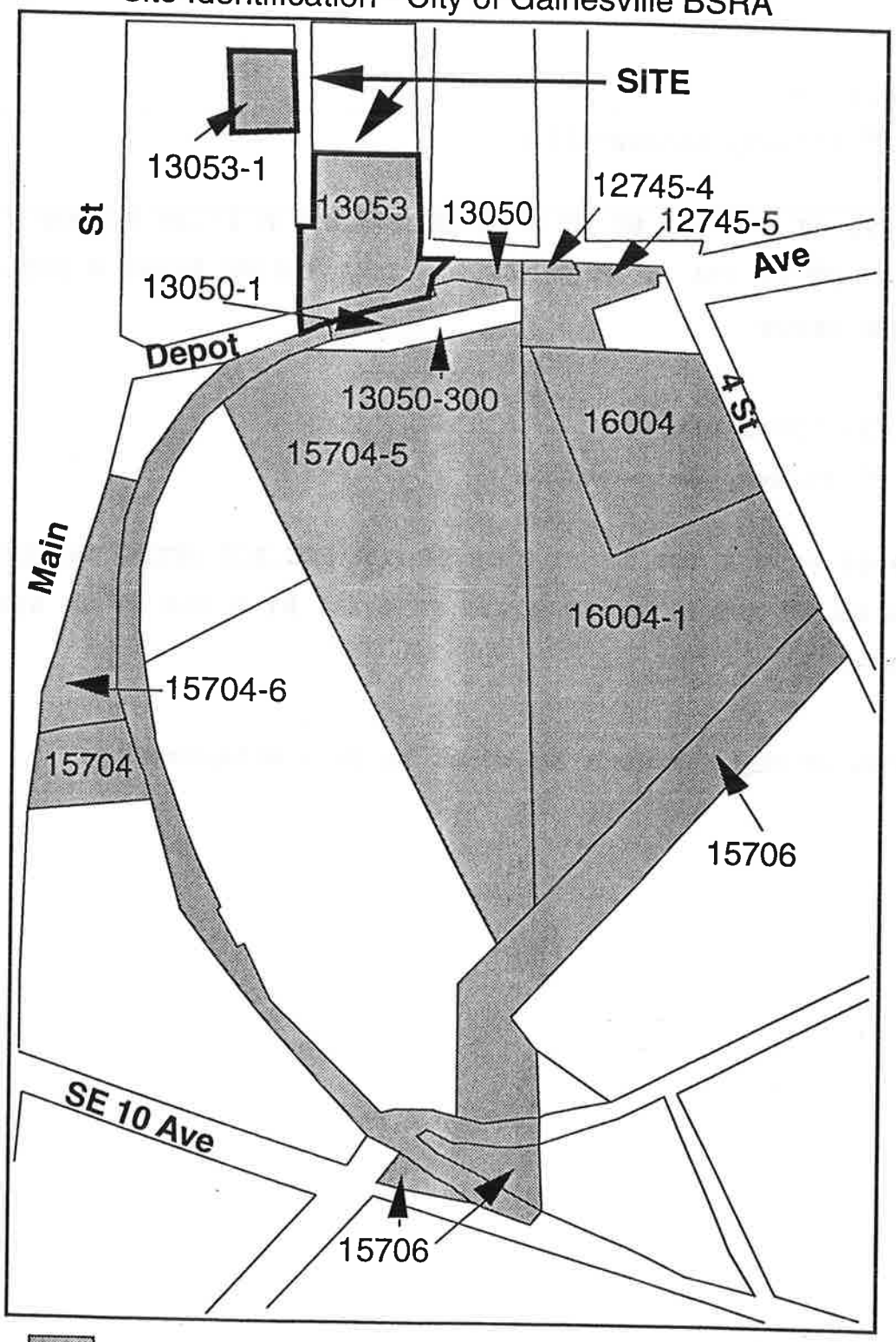
Parcel #2: 13053-001

622 SE 1st Street, Gainesville

COM 679.09 FT N & 406.24 FT W OF SE COR SEC POB BEING SW COR SE 1ST ST & SE 6TH AVE W 104 FT S 210 FT E 104 FT N 210 FT OR 613/183 LESS 60 FT.

A portion of Depot Avenue as shown in this attachment.

Attachment "A"
Site Identification - City of Gainesville BSRA



Section 376.77 - 376.85 F.S. Brownfield Area

Prepared by the Dept. of Comm. Dev./August 2000

N

No Scale

ATTACHMENT "B"

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION Complainant, vs. THE CITY OF GAINESVILLE, FLORIDA d/b/a GAINESVILLE REGIONAL UTILITIES, AND POOLE ROOFING AND SHEET METAL COMPANY, Respondents.	IN THE OFFICE OF THE NORTHEAST DISTRICT OGC CASE NO.: 88-0539

CONSENT ORDER

This Consent Order is made and entered into between the State of Florida Department of Environmental Regulation ("Department") and City of Gainesville, Florida d/b/a Gainesville Regional Utilities ("Respondent GRU") and Poole Roofing and Sheet Metal Company ("Respondent Poole").

The Department finds the following:

1. The Department is the administrative agency of the State of Florida charged with the duty to protect Florida's air and water resources and to administer and enforce Chapter 403, Florida Statutes, and rules promulgated thereunder, Florida Administrative Code Title 17. The Department has jurisdiction over matters addressed in this Consent Order.

2. Respondent GRU is a Florida municipal corporation and is a person within the meaning of Sections 403.031(5) and 403.703(3), Florida Statutes.

3. Respondent Poole is a Florida corporation and is a person within the meaning of Sections 403.031(5) and 403.703(3), Florida Statutes. Respondent Poole is a party to this Consent Order for the limited purpose of providing Respondent GRU access to the Facility for the purpose of complying with Respondent GRU's obligations hereunder.

4. Respondent Poole is the owner of a parcel of real estate located at 710 Southeast Second Street, Gainesville, Alachua County, Florida ("Facility"). The site is further described as located in Section 5, Township 10 South, Range 20 East, Latitude 29°38'44" North and Longitude 82°19'24" West.

5. Prior to 1953, a coal gas manufacturing operation was conducted at the Facility by Gainesville Gas Company. The coal gas manufacturing process was ceased in 1952, at which time Gainesville Gas Company began producing Hasche gas.

6. Coal tar by-products were generated by Gainesville Gas Company through its past coal gas manufacturing operations. Respondent GRU maintains that the past coal gas manufacturing operation was not a coking operation. The parties agree that wastes generated by Gainesville Gas Company, if they were not 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, are 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 and, if so, to provide for the proper remediation, if necessary, of such impacts.

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 as otherwise provided within.

10. In October 1988, a Preliminary Contamination Assessment Report ("PCAR"), prepared by ERM-South on behalf of Gainesville Gas Company, was submitted to the Department. In response to the findings in the PCAR, the Department requires additional work to be performed at the Facility.

11. Respondent GRU acquired certain assets and liabilities of Gainesville Gas Company pursuant to that certain Asset Purchase Agreement dated as of January 3, 1990, by and between the City of Gainesville, Florida, and Gainesville Gas Company. Under the Asset Purchase Agreement, Respondent GRU agreed to assume the responsibility

of Gainesville Gas Company for the assessment and remediation, if necessary, of environmental conditions at the Facility associated with the former operation of the manufactured gas plant, as disclosed in the PCAR.

THEREFORE, having reached a resolution of this matter pursuant to Florida Administrative Code Rule 17-103.110(3), Respondents and the Department mutually agree and it is,

ORDERED:

12. Respondent GRU shall implement the corrective actions as set forth in the document entitled "Corrective Actions for Contamination Site Cases," attached and incorporated herein as Exhibit I within the time frames set forth therein. Where necessary, the Department will assist Respondents with obtaining access to adjacent properties during the term of this Consent Order in order to implement these corrective actions.

13. Respondent GRU's obligation to implement the corrective actions set forth in Exhibit I shall be limited to: (i) conditions present on or under the Facility, and (ii) off-site conditions, either of which result from the former operation of the manufactured gas plant at the Facility.

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

15. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Florida Statutes.

16. 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 or civil 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. Respondents waive their right to an administrative hearing pursuant to Section 120.57, Florida Statutes, on the terms and conditions of the Consent Order. Respondents acknowledge their right to appeal the terms and conditions of this Consent Order pursuant to Section 120.68, Florida Statutes, but waive that right upon signing this Consent Order.

17. 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.

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

19. Respondent GRU shall publish the following notice in a newspaper of daily circulation in Alachua County, Florida. The notice

shall be published one time only within 21 days after execution of the Consent Order by the Department.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION
NOTICE OF CONSENT ORDER

The Department of Environmental Regulation gives notice of agency action of entering into a Consent Order with City of Gainesville and Poole Roofing and Sheet Metal Company pursuant to Rule 17-103.110(3), Florida Administrative Code. The Consent Order addresses the implementation of a Contamination Assessment Plan in the vicinity of 710 Southeast Second Avenue, Gainesville, Alachua County, Florida. The Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Regulation, 5700 Southwest 34 Street, Suite 1204, Gainesville, Florida.

Persons whose substantial interests are affected by this Consent Order have a right to petition for an administrative hearing on the Consent Order. The Petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Section 120.57, Florida Statutes.

The petition shall contain the following information: (a) The name, address, and telephone number of each petitioner; the

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

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any rights such person has to request a hearing under Section 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-5.207, Florida Administrative Code.

* * * * * * * * * *

A party who is adversely affected by this Consent 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 one copy of a Notice of Appeal with the Agency Clerk of the State of Florida Department of Environmental Regulation and a second 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.

20. 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, Florida Statutes, 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 an administrative proceeding if Respondents object to the Department's determination, pursuant to Section 120.57, Florida Statutes, and Chapters 17-103 and 28-5, Florida Administrative Code. Respondents shall have the burden to establish the inappropriateness of the Department's determination. The petition must conform with the requirements of Florida Administrative Code Rule 28-5.201, and must be received by the Department's Office of General

Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32301, within fourteen (14) days after receipt of notice from the Department of any determination Respondents wish to challenge. 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, Florida Statutes. 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.

21. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes or the rules promulgated thereunder not covered by the terms and conditions of this Consent Order. Correspondingly, Respondents reserve all of their legal rights and defenses against any such legal action which may be initiated by the Department.

22. Respondent Poole shall allow authorized representatives of Respondent GRU access to the Facility for the purpose of performing its obligations under this Consent Order.

23. Respondent Poole shall allow authorized representatives of the Department access to the Facility at reasonable times for the purpose of determining compliance with this Consent Order, and rules and regulations of the Department.

24. All reports, plans, data required by this Consent Order to be submitted to the Department should be sent, in triplicate, to Dr. Brian S. Cheary, Florida Department of Environmental Regulation,

Northeast District, 7825 Baymeadows Way, Suite B200, Jacksonville, Florida 32256-7577.

25. Respondents are fully aware that a violation of the terms of this Consent Order may subject Respondents to judicial imposition of damages, civil penalties up to $10,000 per offense and criminal penalties.

26. It is the intent of the Department to protect the citizens of Florida from unknowlingly becoming exposed to hazardous wastes and from entering sites which may have been contaminated by hazardous wastes. Therefore, Respondents shall post warning signs in accordance with Florida Administrative Code Rule 17-736.

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

28. This Consent Order is final agency action of the Department pursuant to Section 120.69, Florida Statutes, and Florida Administrative Code 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,

Florida Statutes. Upon the timely filing of a petition this Consent Order will not be effective until further order of the Department.

FOR THE RESPONDENTS:

Michael L. Kurtz
General Manager
Gainesville Regional Utilities
(City of Gainesville d/b/a)
301 Southeast 4th Avenue
Gainesville, Florida 32601

DATE

Roy Poole, President
Poole Roofing and Sheet Metal Co.
710 Southeast Second Street
Gainesville, Florida 32602

DATE

DONE AND ORDERED this 28 day of SEPT., 1992, in Jacksonville, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION

Ernest E. Frey, P.E.
Director of District Management
Northeast District
7825 Baymeadows Way, Suite B200
Jacksonville, Florida 32256-7577
Telephone (904)448-4300

FILING AND ACKNOWLEDGEMENT
FILED, on this date, pursuant to §120.52 Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.
Clerk 9/29/92 Date

Copies Furnished to: Michael L. Kurtz
Roy Poole
Claire Lardner, OGC
Dr. Pat Reynolds, GBO
William L. Pence, Esq.

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION
CORRECTIVE ACTIONS FOR CONTAMINATION SITE CASES

Index

Part 1 Quality Assurance Certification

1. Within 30 days of the effective date of this Order, Respondent shall submit to the Department documents certifying that the organization(s) and laboratory(s) performing the sampling and analysis have a DEPARTMENT APPROVED Comprehensive Quality Assurance Plan (Comp QAP) in which they are approved for the sampling and analysis intended to be used for the assessment and corrective actions at the site. The documentation shall, at a minimum, contain the TITLE PAGE and TABLE OF CONTENTS of the approved CompQAP meeting the requirements of Rule 17-160, F.A.C. If the organization(s) or laboratory(s) performing the sampling and analysis change at any time during the assessment and corrective actions, documentation of their DEPARTMENT APPROVED Cc QAP will be required. If at any time sampling and analysis are to conducted which are not in the Approved Comp QAP, documentation of amendments and approvals pursuant to Rule 17-160.210, F.A.C., shall be required.

Part 2 Interim Remedial Actions

2. If at any time following the effective date of an Order incorporating these procedures, the Department determines that an Interim Remedial Action(IRA) is appropriate, the Respondent shall submit to the Department a detailed written Interim Remedial Actior Plan (IRAP). The IRAP ,shall be submitted within sixty (60) days following Department determination that an IRA is appropriate. Applicable portions of the IRAP shall be signed and sealed pursuant t Rule 103.110(4), F.A.C. The objectives of the IRA shall be to remov specific known contaminant source(s), and/or provide temporary control to prevent or minimize contaminant migration. The IRA shall not sprea contaminants into uncontaminated or less contaminated areas throug untreated discharges or improper treatment. The IRAP may include th following, as appropriate:

A. Rational for the IRA proposed, incorporating engineerin and hydrogeological considerations including, as applicable, technica feasibility, long-term and short-term environmental effects implementability (including any permits or approvals from federal state, and local agencies), and reliability;

B. Design and construction details and specifications for IR

EXHIBIT I

C. Operational details of the IRA 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, surface water, or to the ground; and the expected concentrations and quantities of any contaminants discharged into the air as a result of remedial action;

D. Operation and maintenance plan for the IRA including, but not necessarily limited to daily, weekly, and monthly operations under routine conditions; a contingency plan for nonroutine conditions;

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

F. Proposed methodology including post-IRA soil, sediment, surface water, and ground water monitoring, as applicable, to confirm the effectiveness of the interim remedial action;

G. Schedule for the completion of the IRA; and

H. A Department approved (Comp QAP) shall be required for all sampling and analysis performed as part of the IRA.

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

4. In the event that additional information is necessary for the Department to evaluate the IRAP, or if the IRAP does not adequately address the objectives set forth in Paragraph 2, the Department will make a written request to Respondent for the information, and Respondent shall provide all requested revisions in writing to the Department within thirty (30) days from receipt of said request, unless the requested information requires additional time for a response, in which case the Respondent shall submit in writing to the Department within 30 days of the Department's request, a reasonable schedule for completing the work needed to provide the requested information.

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

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

B. Notify the Respondent that Respondent has failed to comply with the Paragraph 4 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 an IRAP has been approved by the Department, it shall become effective and made a part of this Order and shall be implemented within thirty (30) days from receipt of the Department's notification to the Respondent that the IRAP has been approved. The approved IRAP shall incorporate all required modifications to the IRAP identified by the Department.

7. On the first working day of each month, after beginning implementation of an IRAP, the Respondent shall submit written progress reports to the Department. These reports shall describe the status of each required task and, when available, the results of any confirmatory

sampling and monitoring. The reports shall be submitted until planned tasks have been completed to the satisfaction of the Department.

Part 3 Contamination Assessment

8. 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). Applicable portions of the CAP shall be signed and sealed pursuant to Rule 17-103.110(4), F.A.C. If the Respondent has previously 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 horizontal 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, both onsite and offsite, of any and all contaminated media;

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

(5) 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);

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

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

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

(9) Provide a site history as specified in Paragraph 8C.(1).

B. The CAP shall specify tasks, which are necessary to achieve the objectives described in Paragraph 8.A. above. The CAP shall include a reasonable and detailed 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 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 and sediment 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;

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

(13) As a mandatory task, preparation and submittal of a written Contamination Assessment Report ("CAR") to the Department.

C. The CAP shall provide a detailed technical approach and description of proposed methodologies describing how proposed tasks are to be carried out. The CAP shall include, as applicable, the following information:

(1) A detailed site history including: a description of past and present property and/or facility owners; a description of past and present operations including those which involve the storage, use, processing or manufacture of materials which may be potential pollution sources; a description of all products used or manufactured and of all by-products and wastes (including waste constituents) generated during the life of the facility; a summary of current and past environmental permits and enforcement actions; a summary of known spills or releases of materials which may be potential pollution sources; and an inventory of potential pollution sources within 0.25 (one quarter) mile;

(2) Details of any previous site investigations including results of any preliminary ground water flow evaluations;

(3) Proposed sampling locations and rationale for their placement;

(4) A description of methods and equipment to be used to identify and quantify soil or sediment contamination;

(5) A description of water and air sampling methods;

(6) Parameters to be analyzed for, analytical methods to be used, and detection limits of these methods and justification for their selection;

(7) Proposed piezometer and well construction details including methods and materials, well installation depths and screened intervals, well development procedures;

(8) A description of methods proposed to determine aquifer properties (e.g., pump tests, slug tests, permeability tests, computer modeling);

(9) A description of geophysical methods proposed for the project;

(10) Details of any other assessment methodology proposed for the site;

(11) A description of any survey to identify and sample

public or private wells which are or may be affected by the contaminant plume;

(12) A description of the regional geology and hydrogeolo of the area surrounding the site;

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

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

(15) Details of how drill cuttings, development and purge water from installation of monitoring wells will be collected, managed and disposed of.

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 Order. The QAPP shall comply with all applicable requirements of Rule 17-160, F.A.C. In the event that the Respondent wishes to amend or change an approved QAPP or the Department requires a new QAPP or modification of the previously approved QAPP, protocals specified in Rule 17-160.220(7), F.A.C., shall be followed. If the QAPP modifications are required by the Department, the QAPP shall be submitted to the Department within 30 days of receipt of a notice from the Department to do so. The Department, at its discretion, may grant an extension of time for submittal of the QAPP. 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 if there is reasonable doubt as to the quality of the data or methods used or which are not in accordance with the Department approved QAPP.

9. The Department shall review the CAP and QAPP and provide the Respondent with written responses to the plans. Any action taken Respondent with regard to the implementation of the CAP and QAPP prior to the Respondent receiving written notification from the Department that the CAP and QAPP have been approved shall be at Respondent's risk.

10. In the event that additional information is necessary for the Department to evaluate the CAP and/or QAPP, or if the CAP and/or QAPP do not adequately address the CAP objectives set forth in Paragraph 8.A and/or the QAPP requirements referenced in Paragraph 8.D, the Department will make a written request to Respondent for the information, and Respondent shall provide all requested revisions in writing to the Department within thirty (30) days from receipt of said request, unless the requested information requires additional time for a response, in which case the Respondent shall submit in writing to the Department within thirty (30) days of the Department's request, a reasonable schedule for completing the work needed to provide the requested information.

11. If the Department determines upon review of the resubmitted CAP and/or QAPP that the CAP and/or QAPP still do not adequately address the objectives and/or requirements in Paragraph 8.A and/or 8.D, the Department, at its option, may choose to either:

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

B. Notify the Respondent that Respondent has failed to comply with Paragraph 10, in which case the Department may do any or all of

the following: take legal action to enforce compliance with the Order; file suite to recover damages and civil penalties; or complete the contamination assessment and corrective actions outlined herein and recover the costs of completion from Respondent.

12. Once a CAP and QAPP both have been approved by the Department, they shall become effective and made a part of this Order and shall be implemented within thirty (30) days of the Department's written notification to the Respondent that the CAP and QAPP have been approved. The approved CAP and QAPP shall incorporate all required modifications to the proposed CAP and QAPP 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. All reporting and notification requirements spelled out in Paragraphs 42 through 47 shall be complied with during the implementation of the CAP tasks.

13. Within 45 days of completion of the tasks in the CAP, Respondent shall submit a written Contamination Assessment Report (CAR) to the Department. Applicable portions of the CAR shall be signed and sealed pursuant to Rule 17-103.110(4), F.A.C. The CAR shall:

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

B. Specify results and conclusions regarding the Contamination Assessment objectives outlined in Paragraph 8.A.;

C. Include, but not be limited to, the following tables and figures:

(1) A table with well construction details, top of casing elevation, depth to water measurements, and water elevations;

(2) A site map showing water elevations, water table contours and the groundwater flow direction for each aquifer monitored for each sampling period;

(3) A table with water quality information for all monitor wells;

(4) Site maps showing contaminant concentrations and contours of the contaminants; and

(5) Cross sections depicting the geology of the site at least to the top of the confining unit. In general there should be at least one north to south cross section and one east to west cross section.

D. Include copies of field notes pertaining to field procedures, particularly of data collection procedures; and

E. Specify recommendations for either No Further Action (NFA), a Monitoring Only Plan (MOP), additional contamination assessment, a Risk Assessment/Justification (RAJ), a Feasibility Study (FS) or remedial actions requiring a Remedial Action Plan (RAP).

14. The Department shall review the CAR and determine whether it has adequately met the objectives specified in Paragraph 8.A. In the event that additional information is necessary for the Department to evaluate the CAR or if the CAR does not adequately address the CAP objectives set forth in Paragraph 8A, the Department will make a written request to the Respondent for the information, and the Respondent shall provide all requested revisions in writing to the Department within thirty (30) days from receipt of said request

unless the requested information requires additional time for a response, in which case the Respondent shall submit in writing to the Department, within thirty (30) days of the Department's request, a reasonable schedule for completing the work needed to provide the requested information.

15. If the Department decides upon review of the CAR or the CAR Addendum that all of the CAP objectives and tasks have been satisfactorily completed and that the recommended next action proposed is reasonable and justified by the results of the contamination assessment, the Department will provide written approval to the Respondent.

16. If the Department determines upon review of the CAR or the CAR Addendum that the CAR still does not adequately address the objectives in Paragraph 8A, or that the next proposed action is not acceptable, the Department, at its option, may choose to either:

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

B. Notify the Respondent that Respondent has failed to comply with Paragraph 14, 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 contamination assessment and corrective actions outlined herein and recover the costs of completion from Respondent.

17. The Department, at its option, may establish 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 develo such SRLs for the site. The SRLs for ground water as determined b the Department shall be the Rule 17-3, F.A.C. standards and the Department's numerical interpretation of the Rule 17-3, F.A.C. minimum criteria. The SRLs for surface waters shall be those specified in Rule 17-302, F.A.C. The Department, at its option, may define the SRLs for soils and sediments or may require that a risk assessment be completed by the Respondent 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 or approve a risk assessment and requires the Respondent to remediate the site to those SRLs, the Respondent shall implement the FS, if required by the Department as set forth in Paragraph 28, or submit the RAP as set forth in Paragraph 39.

18. After completion and Department approval of the CAR, the Respondent shall prepare and submit to the Department a RAJ if the Department requires the task, or if (with Department approval) the Respondent proposes to develop and justify SRLs other than those determined by the Department or if (with Department approval) the Respondent intends to justify a monitoring only proposal or a no further action proposal for the site where the results of the contamination assessment alone do not support a "monitoring only" or "no further action" proposal. In most instances the Department will not approve the use of a RAJ to develop alternative SRLs for water if a standard exists or a numerical interpretation of the minimum

criteria has been developed by the Department for the constituent for a particular class of water or in all waters. The RAJ which includes a risk assessment and a detailed justification of any alternative SRLs or "monitoring only" or "no further action" proposals shall be submitted within sixty (60) days of the Department's written approval of the CAR and notice that a RAJ is required, or within sixty (60) days of the Department's written approval of the CAR and the RAJ recommendation. 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 Assessment 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 actual and potential exposure routes;

(4) Identify actual and potential receptors for each exposure route; and

(5) 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 constituents and exposure routes to which the standards apply. Criteria for constituents and exposure routes for which specific DER standards are not established shall be based upon criteria such as Recommended Maximum Contaminant Levels (RMCLs), Maximum Contaminant Levels (MCLs), Average Daily Intake values (ADIs), Carcinogenic Slope Factor (SF), Reference Doses (Rfds), 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 RMCLs, MCLs, ADIs, SF, Rfds, 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; and

(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 proposed Site Rehabilitation Levels (SRLs) or a "monitoring only" or "no further action" proposal. The purpose of this section is to provide justification on a case-by-case basis for a "no further action" or "monitoring only" proposal or for proposed SRLs 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.

19. The Department shall review the RAJ document and determine whether it has adequately addressed the risk assessment task elements.

In the event that additional information is necessary to evaluate any portion of the RAJ document, the Department shall make a written request and Respondent shall provide all requested information within 20 days of receipt of said request.

20. The Department shall review the justification section and determine whether the Department approves or disapproves of the proposed SRLs or "monitoring only" proposal or "no further action" proposal. If the Department does not approve the proposed SRLs, the Respondent shall use the SRLs as determined by the Department. If the Department requires the use of the Department determined SRLs or if the Department approves of the alternative SRLs justified by the Respondent or if the Department does not approve the monitoring only or no further action proposals the Respondent shall implement the Feasibility Study, if required by the Department as set forth in Paragraph 28, or submit the Remedial Action Plan (RAP) as set forth in Paragraph 33.

Part 4 Remedial Planning and Remedial Actions

21. If the approved CAR or approved RAJ recommends a MOP, the Respondent shall submit to the Department, within forty five (45) days from receipt of written Department approval of the CAR or RAJ a MOP. Applicable portions of the MOP shall be signed and sealed pursuant to Rule 17-103.110(4), F.A.C. The MOP shall provide a detailed technical approach and description of proposed monitoring methodologies. The MOP shall include, but may not be limited to, the following:

A. Environmental media for which monitoring is proposed, monitoring locations and rationale for the selection of each location, and proposed monitoring frequency;

B. Parameters to be analyzed, analytical methods to be used, and detection limits of these methods;

C. Methodology for evaluating contamination trends based on data obtained through the MOP and a proposed format including a time table for submittal of monitoring data and data analysis to the Department; and

D. A detailed contingency plan describing proposed actions to be taken if trends indicate that contaminant concentrations are increasing, ground water standards or criteria are exceeded for monitoring locations at which exceedences did not occur during the previous monitoring period, or monitoring data appear questionable.

22. The MOP shall contain as a separate document a new or modified QAPP, if the circumstances or conditions listed in Rule 17-160.220(7), F.A.C., have occurred, which shall apply to all sampling and analysis required to implement the MOP. The new or modified QAPP shall be prepared in accordance with Paragraph 8D.

23. The Department shall review the MOP, and provide the Respondent with a written response to the proposal. Any action taken by the Respondent with regard to the implementation of the MOP before the MOP has been approved shall be at Respondent's risk.

24. In the event that additional information is necessary for the Department to evaluate the MOP or if the MOP does not adequately address the MOP requirements set forth in Paragraph 21, the Department will make a written request to Respondent for the information, and

Respondent shall provide all requested revisions in writing to the Department within thirty (30) days from receipt of said request, unless the requested information requires additional time for a response, in which case the Respondent shall submit in writing to the Department within 30 days of the Department's request, a reasonable schedule for completing the field work needed to provide the requested information.

25. If the Department determines upon review of the resubmitted MOP that the MOP still does not adequately address the requirements in Paragraph 21, the Department at its option, may choose to either:

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

B. Notify the Respondent that Respondent has failed to comply with Paragraph 24, 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 contamination assessment and corrective actions outlined herein and recover the costs of completion from Respondent.

26. Once a MOP has been approved by the Department, it shall become effective and made a part of this Order, and shall be implimented within thirty (30) days of the Department's written notification to the Respondent that the MOP has been approved. The approved MOP shall incorporate all required modifications to the MOP identified by the Department.

27. The Respondent shall submit the required monitoring data and data analysis products to the Department according to the time table in the approved MOP. If at any time trends are discovered by the Respondent that require the actions proposed in the approve contingency plan to be necessary, the Respondent shall notify the Department in a timely manner.

28. The Department, at its option, shall also determine from review of the CAR and other relevant information whether the Respondent should prepare and submit a FS to the Department. Applicable portions of the FS shall be signed and sealed pursuant to Rule 17-103.110(4), F.A.C. 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 Paragraphs 17 or 18. The FS shall include the following tasks:

A. Identify and review pertinent treatment, containment, 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; and

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).

29. 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.

30. 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.

31. 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.

32. 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 30 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.

33. Within 45 days of receipt of written notice from the Department, Respondent shall submit to the Department a detailed RAP. Applicable portions of the RAP shall be signed and sealed pursuant to Rule 17-103.110(4), F.A.C. 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 as applicable:

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.

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 new or modified QAPP document if circumstances or conditions listed in Rule 17-160.220(7), F.A.C., have occurred, subject to the review procedures outlined in Paragraphs 9 through 12 and prepared in accordance with Paragraph 8.D;

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 t objective of the RAP; and

G. Schedule for the completion of the remedial action.

34. 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.

35. In the event that additional information is necessary for the Department to evaluate the RAP, or if the RAP does not adequately address the objectives and requirements set forth in Paragraph 33, the Department will make a written request to Respondent for the information, and Respondent shall provide all requested revisions in writing to the Department within forty five (45) days from receipt of said request, unless the requested information requires additional time for a response, in which case the Respondent shall submit in writing to the Department, within forty five (45) days of the Department's request, a reasonable schedule for completing the work needed to provide the requested information.

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

A. Draft specific modification 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 35 above, in which case the Department may do an

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.

37. Once a RAP has been approved by the Department, it shall become effective and made a part of an Order and shall be implemented within thirty (30) days from receipt of the Department's notification to the Respondent that the RAP has been approved. The approved RAP shall incorporate all required modifications to the RAP identified by the Department. All reporting and notification requirements spelled out in Paragraphs 42 through 47 shall be complied with during the implementation of the RAP tasks.

Part 5 Termination of Remedial Actions

38. Following termination of remedial action (clean up of the contaminated area to the SRLs, designated monitoring wells shall be sampled on a schedule determined by the Department.

39. Following completion of monitoring requirements pursuant to the approved MOP or 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 contain a demonstration, with supporting documentation, that site cleanup objectives have been achieved. Applicable portions of the SRCR shall be signed and sealed pursuant to Rule 17-103.110(4), F.A.C.

40. 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.

41. 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.

Part 6 Progress Reporting and Notifications

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

43. 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.

44. Respondent shall provide written notification to the Department at least twenty (20) 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.

45. 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.

46. 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 can not be overcome by due diligence. Upon occurrence of the event Respondent shall promptly notify the Department orally and shall, within seven 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 time table 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.

47. 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.

48. Should the Department conclude that clean up 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 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 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 recover Department-assessed environmental damages pursuant to Section 403.141, Florida Statutes.

Attachment C-1

Poole Roofing Site Rehabilitation Schedule

6/00	Draft Remedial Action Plan Modification (RAPM) submitted to ACEPD by GEI Consultants, Inc.,
7/00	Review of RAPM by ACEPD/FDEP
8/00	Selection of remedial alternative by ACEPD/FDEP
9/00-1/01	Review of remedial alternative and cost analysis by City
2/01 -5/01	Initiate preliminary remediation-related activities (e.g., final design, bidding, contracting, utility relocation)
6/01-12/01	Conduct remediation

* Schedule is tentative as of December 1, 2000.

Attachment C2

Department Report/Plan Review Time-Frames

Type of Report or Activity	Department Review or Comment Time-frames
Interim Source Removal Proposal	Within 30 days of receipt.
Interim Source Removal Status Report	No comment required.
Interim Source Removal Report	Within 60 days of receipt.
Site Rehabilitation Plan (SRP) (See Rule 62-785.450, F.A.C.)	Within 60 days of receipt.
Site Assessment Report (SAR)	Within 60 days of receipt.
Risk Assessment Report (RAR)	Within 60 days of receipt.
No Further Action (NFA) Proposal	Within 60 days of receipt.
Natural Attenuation with Monitoring Proposal (NA)	Within 60 days of receipt.
Natural Attenuation with Monitoring Report (NAMR)	No comment required.
Remedial Action Plan (RAP)	Within 60 days of receipt.
As-Built Drawings	No comment required.
Initiate Operation of Active Remedial Action	No comment required.
Remedial Action Status Report	No comment required.
Post Active Remediation Monitoring Plan (PARMP)	Within 60 days of receipt.
Post Active Remediation Monitoring Report	No comment required.
Site Rehabilitation Completion Report (SRCR)	Within 60 days of receipt. If the brownfield area meets the requirements of Chapter 62-785, F.A.C. for the issuance of a SRCO, a SRCO will be issued.
Submittal to the Department of addenda, responses, or modification to plans or reports, pursuant to Chapter 62-785, F.A.C.	Within the same time-frame for review of the original submittal.

Attachment D

Right of Entry Agreement

This Right of Entry Agreement (hereinafter referred to as "Agreement") is made and entered into between the City of Gainesville, FL d/b/a Gainesville Regional Utilities (City) and Poole Roofing and Sheet Metal Company (Owner) for the purpose of securing access to the real property referred to as tax parcels 13053 and 13053-1 (referred to together as the "Site") to allow the City to perform its obligations under a Brownfield Site Rehabilitation Agreement (BSRA).

WHEREAS, City entered into a Consent Order (Case No. 88-0539) on September 28, 1992 with the State of Florida for the remediation of impacts resulting from the former Gainesville Gas Company facility at the Site, and

WHEREAS, the Site is located within a state designated brownfield area pursuant to Sections 376.77-376.85, Florida Statutes, and

WHEREAS, City wishes to enter into a Brownfield Site Rehabilitation Agreement ("BSRA") with the Florida Department of Environmental Protection ("Department"), a copy of which is attached, for the purposes of site remediation, and

WHEREAS, upon the execution of the BSRA the Consent Order will be held in abeyance, provided the City is in compliance with the terms of the BSRA, and

WHEREAS, holding the Consent Order in abeyance also suspends paragraphs 22 and 23 contained therein, which grant City and Department access to the Site for the purpose of fulfilling the responsibilities of the Consent Order, and

WHEREAS, City desires access to the Site for the sole purpose of performing its obligations under the terms of the BSRA, and

NOW, THEREFORE, it is agreed as follows:

1. Owner shall allow authorized representatives of the City to access the site for the sole purpose of performing its obligations under the BSRA.
2. Owner shall allow authorized representatives of the Department to access the Site at reasonable times for the purpose of determining compliance with the Department rules and regulations related to the BSRA.
3. The granting of this permission by the Owner is not intended, nor should it be construed as, an admission of liability on the part of the Owner or the Owner 's successors and assigns for any contamination discovered on the property.
4. The Owner shall not be liable for any injury, damage or loss on the property suffered by the City and its agents or employees thereof, which is not caused by the negligence or intentional acts of the Owner's agents or employees.
5. The Department, its agents or contractors may enter the property upon reasonable notice, during normal business hours, will not disturb normal business operations and may also make special arrangements to enter the property at other times with express permission from the Owner. The Department shall not be construed as being an agent, employee or contractor of the City.
6. The City shall not be liable for any injury, damage or loss on the property suffered by the Owner, its employees and agents or employees thereof, which is not caused by the negligence or intentional acts of the City, its agents or employees.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed, the day and year last written below.

For the City of Gainesville

Date

Wayne Bowers
City Manager
P.O. Box 490
Gainesville, FL 32602-0490

For Poole Roofing and Sheet Metal

Date

Roy Poole, President
Poole Roofing and Sheet Metal Co.
710 SE Second Street
Gainesville, FL 32602

Attachment E

(East Gainesville Sprout Project Task Force)

Advisory Committee Members

Chris Bird
Alachua County EPD
226 S. Main Street
Gainesville, FL 32601
(352) 955-2442
(352) 955-2440 (fax)

Stephen Boyes
610 NE Boulevard
Gainesville, FL 32601
(352) 372-2657 (home)

Dr. Linda Crider
1030 SW 11 Terrace
Gainesville, FL 32601
(352) 392-8192
lcrider@nervm.nerdc.ufl.edu

Phyllis Filer
2121 NE 7th Avenue
Gainesville, FL 32641-5948
(352) 334-3900 (w)

Brad Guy
Center for Construction & Environment
P.O. Box 115703
Gainesville, FL 32611-5703
(352) 392-9029
(352) 392-9606 (fax)
minou@grove.ufl.edu

Commissioner Robert Hutchinson
Board of County Commissioners
P.O. Box 2877
Gainesville, FL 32602-2877
(352) 374-5210
(352) 338-7363 (fax)
hutchrk@ns1.co.alachua.fl.us

Linda McGurn
McGurn Investments
P.O. Box 2900
Gainesville, FL 32602
(352) 372-6172
(352) 371-9229 (fax)
linda@mcgurn.com

Carla Palmer
Star Route 1308
Earleton, FL 32631
(904) 329-4500 (work)
(904) 329-4315 (fax)

Kerry Rowell
First Union
104 N. Main Street
Gainesville, FL 32601
(352) 335-3389
kerryrowell@firstunion.com

Mr. Kinnon Thomas
Mirror Image Studios
619 South Main Street
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(352) 376-8742 (work)
(352) 376-1557 (fax)
(352) 215-7777 (cel)
kkinnon@thomas.net

Janie Williams
811 SW 5 Street
Gainesville, FL 32601
(352) 378-4586 (home)
(352) 333-2801 (work)

ATTACHMENT "F"

Department of Environmental Protection

Jeb Bush
Governor

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

David B. Struhs
Secretary

June 30, 2000

Ms. Yolanta E. Jonynas
Gainesville Regional Utilities
Post Office Box 147117
Station A136
Gainesville, Florida 32614-7117

Dear Ms. Jonynas:

Please find enclosed the executed agreement between The Florida Department of Environmental Protection and Gainesville Regional Utilities. If you have any questions, please call Mike Sole at (850) 921-0788.

Sincerely,

Cissy Jones

Cissy Jones
Administrative Assistant II

CJ/s

Enclosure
cc/enc: Prasad Kuchibhotla
Tom Conrardy
Rebecca Grace
Mike Ashey

AGREEMENT FOR SITE REHABILITATION FUNDING ALLOCATION FOR A PETROLEUM CONTAMINATED SITE WITH BOTH ELIGIBLE AND NON-ELIGIBLE CONTAMINATION

This Agreement is entered into by and between the Florida Department of Environmental Protection (hereinafter "Department"), whose address is 2600 Blair Stone Road, Tallahassee, Florida 32399 and the City of Gainesville, (hereinafter "Participant") whose address is City of Gainesville, Gainesville Regional Utilities, P.O. Box 147117, Gainesville, FL 32614-7117, to perform cleanup on a cost share basis of certain contamination identified as originating at 710 S.E. 2nd Street, Gainesville, Florida, FDEP Facility I.D. # 018518101 ("site").

WHEREAS, petroleum contamination originating at and migrating from the site has been determined to be eligible for restoration coverage under the Early Detection Incentive (EDI) program pursuant to Section 376.3071(9), Florida Statutes ("F.S."), for the discharge discovered on August 30, 1988;

WHEREAS, in accordance with Section 376.30711, F.S., the Department is authorized to provide state funding assistance at sites determined eligible for EDI, based on the site's priority ranking established pursuant to Section 376.3071(5)(a), F.S. and Chapter 62-771, Florida Administrative Code;

WHEREAS, coal tar contamination from the former Gainesville Manufactured Gas Plant has been identified to be commingled with the eligible petroleum contamination;

WHEREAS, it is necessary for the Participant, and desirable for the Department, to address the cleanup of the ineligible coal tar contamination that has occurred at a site with existing petroleum contamination determined to be eligible under Section 376.3071(9), F.S.;

WHEREAS, it is appropriate for persons assuming responsibility for cleanup of such discharges to share the costs associated with managing and conducting cleanup of those discharges upon application to the Department and in accordance with a priority established for such cleanup in negotiated site rehabilitation agreements;

WHEREAS, consistent with Sections 376.3071(5) and 376.30711, F.S., and the rules and guidance adopted thereunder, the Department, in consultation with the Participant and based on the GEI Consultants, Inc. August 6, 1999 report entitled "Delineation of Soil Exceeding Petroleum Contamination Site Cleanup Criteria, Former Gainesville Manufactured Gas Plant Site", has agreed to a funding allocation arrangement as described in this agreement; and

WHEREAS, the Participant and the Department desire to enter into an Agreement to share the costs of site rehabilitation as set forth below in order to effect

site rehabilitation pursuant to Sections 376.30711 and 376.30713, F.S., and Chapter 62-770, Florida Administrative Code ("F.A.C.").

NOW, THEREFORE, in consideration of the mutual benefits to be derived herefrom, and other good and valuable consideration, the Department and the Participant do hereby agree as follows:

GENERAL.

1. The Parties will each contract separately with the site rehabilitation contractor (the "Designated Contractor") to effect site rehabilitation. The Participant agrees to cause the Designated Contractor to submit work plans and related documents to the Department requesting approval for the site rehabilitation strategy. The Department will review such proposals promptly in accordance with the internal procedures of the Preapproval Program and will issue work orders directly to the Designated Contractor for implementation of the approved site rehabilitation strategy. Such work orders will be effective upon execution of the work order by the Department and the Designated Contractor.

2. All activities associated with the performance of this Agreement shall be in conformance with the provisions of Chapter 376, F.S., and Chapter 62-770, F.A.C. All other terms and conditions, including payments by the Department of its cost share under this Agreement, shall be construed in conformance with the provisions of Sections 376.30711 and 376.30713, F.S. The Parties hereto agree that this Agreement shall additionally be subject to the applicable provisions of Section 287.058, F.S.

3. The limitations and provisions governing the EDI Program as set forth in Section 376.3071, F.S., shall continue to apply. By entering into this Agreement, the Participant is bound by the terms of this Agreement.

4. The Participant understands that during the course of site rehabilitation the Department may, based upon applicable Florida Statutes, and rules and guidance of the Department, revise the site rehabilitation strategy due to technical or cost considerations. Any changes made by the Department to the site rehabilitation strategy which will not increase the Participant's allocation of total cleanup costs specified in Paragraphs 6 and 7 may be made unilaterally by the Department and will not require the Participant's consent. However, in this event the Participant may elect, upon the Department's consent, to continue a more costly or aggressive site rehabilitation strategy at the Participant's sole cost and expense, and the Department's obligation to cost share under this Agreement shall be suspended until such time as the Parties can mutually agree upon the appropriate future site rehabilitation strategy and costs. Changes proposed by the Department to the site rehabilitation strategy which would increase the Participant's allocation

of total cleanup costs in excess of the proportion contemplated in Paragraph 6 will be made only with the Participant's consent.

TERM OF AGREEMENT.

5. This Agreement is effective on the date of execution and shall be in effect until site rehabilitation of the petroleum contamination subject of this Agreement has been completed as evidenced by the issuance of a Site Rehabilitation Completion Order (SRCO) or SRCO with Conditions by the Department. The Agreement may be terminated earlier upon mutual agreement of the Parties.

6. The cost share allocation and ratio shall be allocated between the Department and Participant as follows:

   a. The Department shall pay the entire cost, $14,201.66 of the RAP modification as proposed by GEI Consultants, Inc./Atlantic in their work order submitted to Alachua County Environmental Protection Department dated November 10, 1999.

   b. Transportation and/or treatment costs of the first 7,250 cubic yards of soils excavated or treated from within the petroleum footprint ("Footprint")as indicated in Exhibit A shall be borne 100% by the Department except as otherwise provided in Paragraphs 7 and 8 below. The Footprint was defined by GEI Consultants, Inc. in their August 6, 1999 report entitled "Delineation of Soil Exceeding Petroleum Contamination Site Cleanup Criteria, Former Gainesville Manufactured Gas Plant Site." The Participant shall be responsible for the transportation and/or treatment costs for all non-eligible contaminated soil that may exist outside of the Footprint.

   c. All other tasks implemented that pertain to the soil and groundwater remediation at the site pursuant to the approved site rehabilitation strategy shall be allocated as follows: Department - 73%, Participant – 27%.

7. Participant shall be responsible for any incremental treatment cost for soils excavated within the Footprint defined in Paragraph 6(b) above that exceed the Department's standard cost for treatment of petroleum contaminated soils. The parties will agree in advance on the Department's current approved costs for the treatment technology that is ultimately determined to be the appropriate remedy at this site for petroleum contaminated soils. To the extent that the actual treatment technology results in charges in excess of that unit cost for any reason, or alternate treatment methods are required due to non-eligible contamination, Participant shall be responsible for the incremental unit costs.

8. During the course of remediation it may be possible to ascertain a distinctly different cleanup endpoint for eligible and non-eligible contamination, which would

also result in a need to reassess the cost share ratio. The Parties agree to reevaluate the cost share agreement at any time during the course of remediation when it becomes evident of a growing disparity of cleanup timeframes or costs for eligible and non-eligible contamination.

COVENANTS AND REPRESENTATIONS OF THE DEPARTMENT.

9. In accordance with Sections 376.3071, F.S., and Paragraph 1 of this Agreement, the Department will negotiate work orders with the Designated Contractor, and will thereby be responsible to the Designated Contractor solely for the Department's percentage of its cost share as specified in the work order.

10. The Department will review and approve site rehabilitation activities in accordance with the terms of the work orders and Chapter 62-770, F.A.C., and shall make copies of such documents available to the Participant. The Participant is further advised and understands that the Department may task a locally contracted county with review of site rehabilitation documents or issuance of work orders under this Agreement.

11. In accordance with Section 287.0582, F.S., the State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

COVENANTS AND REPRESENTATIONS OF THE PARTICIPANT.

12. The Participant further represents that it is a municipal corporation in the State of Florida and has the capacity to enter into this Agreement and is able to fully perform its duties under this Agreement.

TERMINATION OF AGREEMENT AND REMEDIES FOR BREACH OF AGREEMENT.

13. This Agreement may be terminated by either Party for material breach of obligations. Material breach means substantial failure to comply with the terms and conditions of this Agreement. A Party terminating the Agreement shall give written notice of the breach to the other Party within 14 days of discovery of facts giving rise to the breach. Such notice shall be of sufficient detail so that the Party allegedly in breach can formulate a remedy. If the breach is remedied within 15 days of the notice, the Agreement shall remain in effect. If the breach is not remedied within 15 days of the notice, the Agreement may be terminated within 15 days of the close of the 15-day remedy period. In the event that the Department determines, in its sole discretion, that the Participant is in breach of this Agreement, the Department reserves the right to exercise all remedies at law and equity including, but not limited to, suit for specific performance and/or cost recovery pursuant to Chapter 376.3071(7), F.S. In the event that the Department is in breach of this Agreement, then the Participant reserves the right to exercise all such remedies at law and equity.

14. The Department reserves the right to unilaterally cancel this Agreement for refusal by the Participant to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, F.S., and made or received by the Participant in conjunction with this Agreement.

NOTICES.

15. Any notice or written communication required or permitted hereunder between the Parties shall be considered delivered when posted by Certified Mail, Return Receipt Requested, or delivered in person to the appropriate Party Representative, as designated below. The Department shall give reasonable notice (and not less than any specifically required under this Agreement) of its inspection of documents, conduct of audits, review of files, request for information, request for copies or otherwise relating to the exercise of such rights as referred to in this Agreement. Party Representatives are as follows:

For the Department:

Michael Ashey, Chief
Bureau of Petroleum
Storage Systems
Department of Environmental
Protection
2600 Blair Stone Road, MS 4575
Tallahassee, Florida 32399-2400
Phone (850) 488-3935

For the Participant:

Ms. Yolanta Jonynas
Gainesville Regional Utilities
P.O. Box 147117 (Dept. A136)
Gainesville, FL 32614-7117
Phone (352) 334-3400 ext. 1284

Each Party shall have the right to change its Representative upon 10 days written notice to the other Party.

OWNERSHIP OF EQUIPMENT.

16. Upon completion of site rehabilitation, the Parties shall cause an inventory to be performed of any equipment purchased by the Parties as part of the shared costs. The Parties shall then mutually agree upon an appropriate division of such equipment based upon their respective proportionate share of payment of the shared costs. During the term of this Agreement, any equipment purchased by the Parties shall only be used at the site which is the subject of this Agreement or other sites where the Parties have an executed Funding Allocation Agreement. Equipment or machinery owned solely by a Party or purchased or leased directly by a Party (other than a shared cost) shall remain the property of that Party.

AMENDMENTS.

17. No amendment to this Agreement shall be effective unless in writing and signed by the Parties.

ASSIGNMENT.

18. This Agreement shall not be assigned by either Party without prior written consent of the non-assigning Party.

CHOICE OF LAW/FORUM.

19. The Parties hereby agree that any and all actions or disputes arising out of this Agreement shall be governed by the laws of the State of Florida; and any such actions shall be brought in Leon County, Florida.

ENTIRE AGREEMENT.

20. It is hereby understood and agreed that this Agreement states the entire agreement and understandings between the Parties, and that the Parties are not bound by any stipulations, representations, agreements or promises, oral or otherwise, not printed in this Agreement.

NO ADMISSION OF LIABILITY.

21. This Agreement shall not constitute, be interpreted, construed or used as evidence of any admission of liability, law or fact, a waiver of any right or defense, nor an estoppel against any party, by the Parties as between themselves or by any other person or entity not a Party. However, nothing in this Paragraph whatever is intended or should be construed to limit, bar or otherwise impede the enforcement of any term or condition of this Agreement against either Party to this Agreement by the other Party to this Agreement.

FOR THE PARTICIPANT:

City of Gainesville d/b/a
Gainesville Regional Utilities

By: _____
Michael L. Kurtz
Title: General Manager for Utilities

Date: June 27, 2000

Approved as to form and legality

By: _____
Utilities Attorney
City of Gainesville

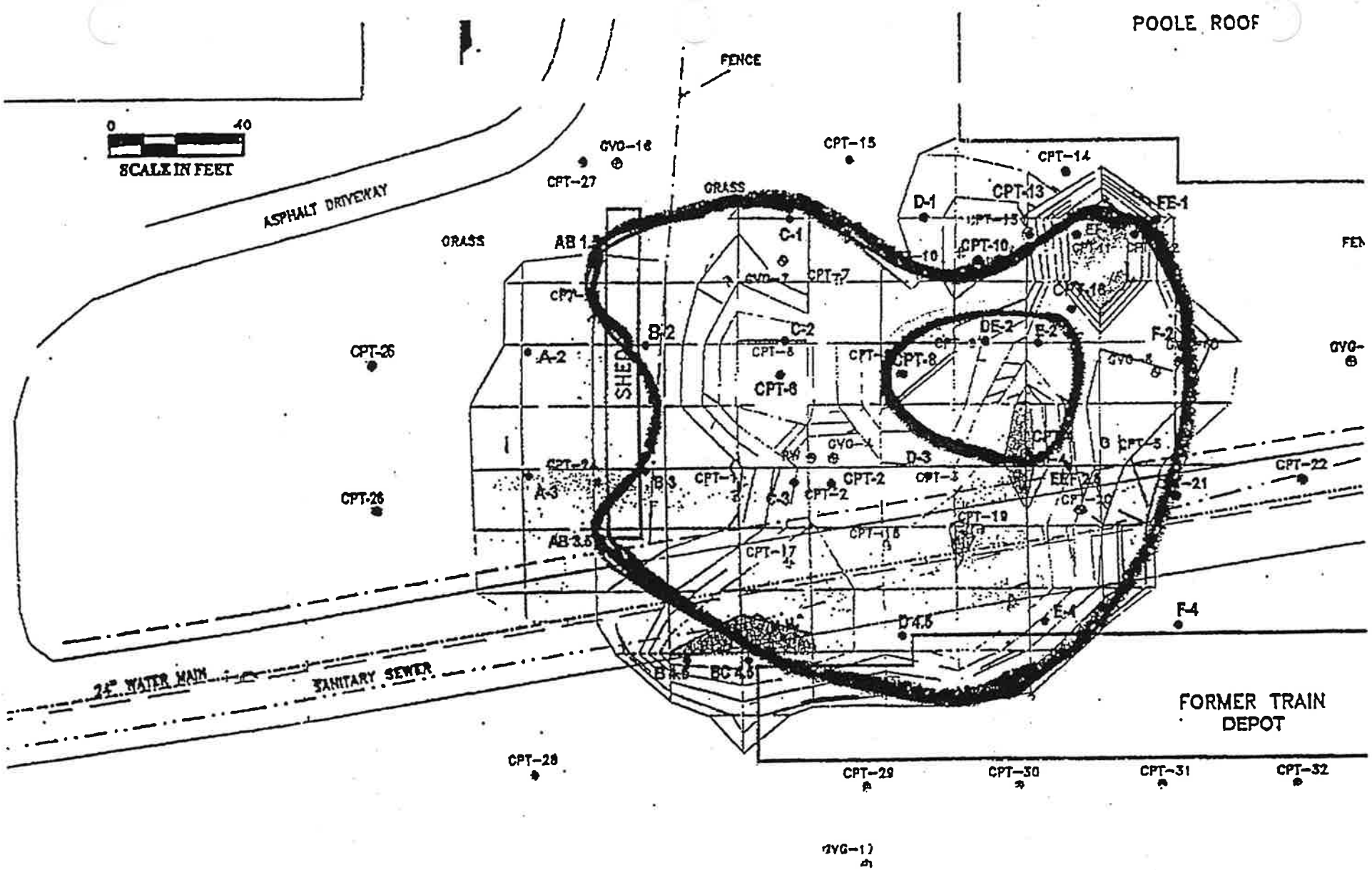
FOR THE DEPARTMENT:

Florida Department of
Environmental Protection

By: _____

Title: Assistant Director

Date: June 28, 2000



Legend

- A-3 GEI Soil Sampling Location
- CPT-25 Handex Cone Penetrometer Location
- CPT-6 Handex Cone Penetrometer/GEI Soil Sampling Location
- Extent of Petroleum Contaminated Soil

10 foot depth bls

18 foot depth bls

GBI Consultants, Inc.
ATLANTIC ENVIRONMENTAL DIVISION

Figure 2
Extent of Petroleum Impacted Soil

Gainesville Former MGP Site