



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

SEP 18 2014

Clay A. Deatherage  
Partner  
Shutts & Bowen LLP  
300 South Orange Avenue, Suite 1000  
Orlando, Florida 32801

Re: Camino Reale Properties, LLC  
EPA ID Number: FLR000120139  
Consent Agreement and Final Order, Docket No. RCRA-04-2014-4012(b)

Dear Mr. Deatherage:

Enclosed, please find a copy of the executed Consent Agreement and Final Order (CA/FO) as filed with the Regional Hearing Clerk in the above-referenced matter. Please note that the timing of all obligations required by the CA/FO begins on the effective date of the CA/FO, which is the date the CA/FO is filed with the Regional Hearing Clerk.

Thank you for your assistance in resolving this matter. If you have any questions, please contact me at (404) 562-9023, or by email at [pratt.marirose@epa.gov](mailto:pratt.marirose@epa.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Marirose", with a long horizontal flourish extending to the right.

Marirose J. Pratt  
Assistant Attorney  
US EPA, Region 4

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: ) DOCKET NO.: RCRA-04-2014-4012(b)  
)  
Camino Reale Properties, LLC ) Proceeding Under Section 3008(a) of the  
8600 Bunkhouse Road ) Resource Conservation and Recovery Act  
Orlando, Florida 32832 ) 42 U.S.C. § 6928(a)  
EPA ID No.: FLR000120139 )  
)  
Respondent )

HEARINGS CLERK

2014 SEP 18 AM 10:47

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EPA REGION IV

**CONSENT AGREEMENT**

**I. NATURE OF THE ACTION**

1. This is a civil administrative enforcement action, pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), ordering compliance with the requirements of Chapter 403 of the Florida Statutes (Fla. Stat.), Fla. Stat. § 403.702 et seq. [Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939f], and the regulations promulgated pursuant thereto and set forth at Florida Administrative Code Annotated Rule (Fla. Admin. Code Ann. r.) 62-730 [Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270]. This action seeks injunctive relief pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of Fla. Stat. § 403.702 et seq. [Section 3005 of RCRA, 42 U.S.C. § 6925] and Fla. Admin. Code Ann. r. 62-730 [40 C.F.R. Parts 260 through 270].
2. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, which govern this action and are promulgated at 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

**II. THE PARTIES**

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, United States Environmental Protection Agency (EPA) Region 4. Complainant is authorized to issue the instant CA/FO pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and applicable delegations of authority.

In the Matter of: Camino Reale Properties, LLC  
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Docket No.: RCRA-04-2014-4012(b)

5. Respondent is Camino Reale Properties, LLC, a corporation organized under the laws of Florida. Respondent is the current owner of real property located east of State Road 417 and south of State Road 528 in Orange County, Florida consisting of approximately 1,100 acres (the Facility). The Facility address is 8600 Bunkhouse Road, Orlando, Florida 32832.

### III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the State of Florida (State) has received final authorization to carry out a hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of the authorized state program are found at Fla. Stat. § 403.702 et seq. and Fla. Admin. Code Ann. r. 62-730.
7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states regardless of their authorization status and are implemented by the EPA until a state is granted final authorization for certain portions of HSWA, including those recited herein.
8. Although the EPA has granted the State authority to enforce its own hazardous waste program, the EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2). This authority is exercised by the EPA in the manner set forth in the Memorandum of Agreement between the EPA and the State.
9. As the State's authorized hazardous waste program operates in lieu of the federal RCRA program, the citations for the violations of those authorized provisions alleged herein will be to the authorized State program; however, for ease of reference, the federal citations will follow in brackets.
10. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State before issuance of this CA/FO.
11. Section 403.722 of the Florida Statutes, Fla. Stat. § 403.722 [Section 3005 of RCRA, 42 U.S.C. § 6925], sets forth the requirement that a facility treating, storing, or disposing of hazardous waste must have a permit or interim status. The implementing regulations for this requirement are found at Fla. Admin. Code Ann. r. 62-730.180 and 62-730.220 [40 C.F.R. Parts 264 (permitted facilities) and 265 (interim status facilities), and 270 (permitting)].
12. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.2], a "solid waste" is any discarded material that is not otherwise excluded from the regulations. A discarded material includes any material that is abandoned by being stored in lieu of being disposed.
13. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.3], a solid waste is a "hazardous waste" if it meets any of the criteria set forth in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.3(a)(2)] and is not otherwise excluded from regulation as a hazardous waste by Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.4(b)].

14. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.30], a solid waste is a listed hazardous waste if it is listed in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. Part 261, Subpart D].
15. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.20], solid wastes that exhibit any of the characteristics identified in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. §§ 261.21-24] are characteristic hazardous wastes and are provided with the EPA hazardous waste numbers D001 through D043.
16. Pursuant to Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.24], a solid waste that exhibits the characteristic of toxicity for lead is a hazardous waste and is identified with the EPA Hazardous Waste Number D008.
17. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], a “facility” includes “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.” For corrective action purposes, a “facility” includes all contiguous property under the control of the owner or operator seeking a permit.
18. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) (40 C.F.R. § 260.10), a “person” includes a corporation.
19. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], an “owner” is “the person who owns a facility or part of a facility” and an “operator” is “the person responsible for the overall operation of a facility.”
20. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], “pile” means any non-containerized accumulation of solid, non-flowing hazardous waste that is used for treatment or storage and that is not a containment building.
21. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], “storage” means the holding of a hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.
22. Pursuant to Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10], “disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.
23. For purposes of this CA/FO, “Work” shall mean all the activities and requirements specified in this CA/FO, including, but not limited to, the requirements set forth in Section IX (Work To Be Performed).

#### IV. EPA ALLEGATIONS AND DETERMINATIONS

24. Respondent is a “person” as defined in Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10].
25. Respondent is the “owner/operator” of a “facility” consisting of approximately 1,100 acres located east of State Road 417 and south of State Road 528 in Orange County, Florida, as those terms are defined in Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10].
26. Approximately 130 acres of the Facility formerly contained a shot gun range known as the TM Shotgun Sports Range, located at 1550 TM Ranch Road in Orlando, Florida 32832. The shot gun range operated from approximately 1999 to 2004. As a result of the shot gun range activity, soil, surface water and sediment in stormwater ponds on the property became contaminated with lead shot pellets.
27. At some point following the closure of the shot gun range, a former property owner conducted certain activities at the Facility pursuant to an Agreed Authorization for Remediation with the Florida Department of Environmental Protection (FDEP), dated August 19, 2005 (OGC File #05-1926), which was a hazardous waste remedial action permit pursuant to 40 C.F.R. Part 270, Subpart H, as adopted by reference in Fla. Admin. Code Ann. r. 62-730.220(1). These activities involved stripping the top layer of soil in some areas and creating a number of waste piles made up of a mixture of lead pellets and contaminated soil. Since then, the waste piles have remained on the property and, currently, are not covered sufficiently to protect them from the elements such that lead may be leaching into the surrounding soil and groundwater.
28. The lead shot pellets in the waste piles constitute discarded material that have been abandoned in lieu of being disposed and therefore are “solid waste” as that term is defined in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.2]. The lead shot pellets in the waste piles are also “hazardous waste” as that term is defined in Fla. Admin. Code Ann. r. 62-730.030(1) [40 C.F.R. § 261.3].
29. On February 25, 2010, the FDEP sampled the soil in a number of the waste piles and found that the concentration of lead in five of the samples met the hazardous waste toxicity characteristic for lead, identified in Fla. Admin. Code Ann. R. 62-730.030(1) [40 C.F.R. Part 261, Subpart C].
30. The soils in the waste piles that met the hazardous waste toxicity characteristic for lead are contaminated media which contain hazardous waste, and as such must be managed as hazardous waste until such time as they no longer exhibit the hazardous waste characteristic.
31. Respondent has been holding the hazardous waste described in Paragraphs 28 and 30 at the Facility for a temporary period, at the end of which the hazardous waste will be treated, disposed of, or stored elsewhere and has, therefore, been “storing” hazardous waste as that term is defined in Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10]. In addition, Respondent has failed to keep the waste piles covered such that solid or hazardous waste, or any constituent thereof, may be entering the environment or be emitted into any waters,

including groundwaters. Respondent has, therefore, “disposed” of hazardous waste as that term is defined in Fla. Admin. Code Ann. r. 62-730.020(1) [40 C.F.R. § 260.10].

32. The EPA therefore alleges that Respondent has violated Fla. Stat. § 403.722 [§ 3005 of RCRA, 42 U.S.C. § 6925], by storing and disposing of hazardous waste without a permit or interim status.

## V. TERMS OF AGREEMENT

Based on the foregoing Preliminary Statements, Allegations and Determinations, the parties agree to the following:

33. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in Sections I, II and III above pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
34. Respondent neither admits nor denies the factual allegations and determinations set out in Section IV or in any other section of this CA/FO.
35. Respondent waives any right to contest the allegations set out in Section IV or in any other section of this CA/FO in any action by the EPA and Respondent waives its right to appeal the proposed Final Order accompanying the Consent Agreement. Respondent does not waive any right it may have to contest the allegations set out in Section IV, or in any other section of this CA/FO, in any civil action not involving the EPA or the enforcement of this CA/FO
36. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq.
37. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CA/FO.
38. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CA/FO, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
39. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
40. The parties agree that compliance with the terms of this CA/FO shall resolve only Respondent’s liability for injunctive relief for the specific violations alleged in this CA/FO.
41. Each party will pay its own costs and attorneys’ fees.

## **VI. PAYMENT OF CIVIL PENALTY**

42. No civil penalty is assessed in this CA/FO. The EPA reserves the right to pursue civil penalties for the violations alleged herein should it elect to do so at some later date.

## **VII. PARTIES BOUND**

43. This CA/FO shall be binding on Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.
44. No change in ownership, partnership, corporate or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
45. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

## **VIII. STATEMENT OF PURPOSE**

46. The mutual objectives of the EPA and Respondent in entering into this CA/FO are to: (1) develop and implement a plan to properly dispose of and/or treat any hazardous wastes being stored at the Facility and to eliminate the ongoing threat of the release of hazardous waste or hazardous constituents to the environment from the storage and disposal of hazardous waste on site; (2) to determine the nature and extent of any releases of hazardous waste or hazardous constituents at or from the Facility; (3) to mitigate and/or remediate any releases of hazardous waste or hazardous constituents at or from the Facility; and (4) to perform any other actions as necessary to correct or evaluate actual or potential threats to human health and/or the environment resulting from the release of hazardous waste or hazardous constituents at or from the Facility.

## **IX. WORK TO BE PERFORMED**

### **A. GENERAL PROVISIONS**

47. All Work Plans shall include: 1) a Project Management Plan, which shall include the names, titles, and qualifications of the Facility personnel, and of any contractors or subcontractors, to be used in carrying out the Work; 2) a Data Collection Quality Assurance Project Plan, which shall follow current EPA quality assurance and quality control procedures and data validation methods as set forth in Section XV (Quality Assurance); and 3) a Data Management Plan, which shall describe the management process and procedures for the performance of Work activities described in the Work Plan.
48. Respondent may eliminate the North Pond at any time from the requirements of this CA/FO by submitting to the EPA a narrative explanation, including supporting maps and historical records of land use, and confirmatory sampling, demonstrating that the North Pond was never exposed to contamination from the previous gun range activities. This narrative explanation is subject to approval by the EPA in accordance with Section XII (Document Approval and Work Implementation).

49. Where appropriate, and subject to EPA approval, Work Plans and other submittals required by this CA/FO may incorporate data or other information contained in the Environmental Assessment, dated July 30, 2013, prepared by EXP Services Inc.
50. Before commencing any Work under this CA/FO, Respondent shall submit to the EPA a Health and Safety Plan designed to ensure the protection of workers and the public during the performance of all Work conducted pursuant to this CA/FO. Such Health and Safety Plan shall be consistent with the requirements of the EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92963414, June 1992) and the applicable Occupational Safety and Health Act (OSHA) regulations found at 40 C.F.R. Part 1910, and shall apply to all Work being conducted under this CA/FO.

**B. PROJECT COORDINATORS**

51. EPA Region 4 has designated a Project Coordinator, as identified below. The EPA Project Coordinator will be the EPA's designated representative for the Facility. All communications between Respondent and the EPA, and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to this CA/FO, shall be directed to the Project Coordinator.
52. The EPA Project Coordinator is:

Parvez Mallick  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA, Region 4  
61 Forsyth St., SW  
Atlanta, Georgia 30303  
mallick.parvez@epa.gov  
(404) 562-8594

The EPA will provide written notice to Respondent of any change in the EPA Project Coordinator for the Facility.

53. Within seven (7) calendar days of the Effective Date of this CA/FO, Respondent shall designate its own Project Coordinator and notify the EPA in writing of the selected Project Coordinator.
54. Respondent shall provide written notice within ten (10) calendar days to the EPA prior to changing its designated Project Coordinator, or any Facility personnel, contractors, or subcontractors identified in a Project Management Plan pursuant to Paragraph 47.
55. The absence of the EPA Project Coordinator from the Facility shall not be cause for the stoppage of Work.

**C. SITE SECURITY**

56. Within seven (7) calendar days of the Effective Date of this CA/FO, Respondent must provide for site security designed to prevent the unknowing entry, and minimize the



possibility for the unauthorized entry, of persons or livestock onto the active portion of the Facility. This security must include, but is not limited to, an artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff), which completely surrounds the active portion of the Facility and a means to control entry, at all times, through the gates or other entrances to the active portion of the Facility (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the Facility). Respondent must also post signage that reads, "Danger—Unauthorized Personnel Keep Out," at each entrance to the active portion of a Facility, and at other locations, in sufficient numbers to be seen from any approach to the active portion of the Facility.

**D. INITIAL SAMPLING OF WASTE PILES AND STORMWATER PONDS**

57. Within thirty (30) calendar days of the Effective Date of this CA/FO, Respondent shall submit to the EPA a written Initial Sampling and Analysis Work Plan ("ISAWP") to collect and analyze representative samples of the soil in the waste piles, and the surface water and sediment in the stormwater ponds. Such Work Plan shall include sampling locations, analytical methods, and a detailed schedule for implementing the Work and reporting the results. The soil, surface water, and sediment should be sampled and analyzed for metals, polycyclic aromatic hydrocarbons (PAHs), volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), and explosives and propellants. The Work Plan shall include screening levels, based on the EPA Regional Screening Levels (RSLs) or the Florida Contaminant Cleanup Target Levels (CTLs) set forth in F.A.C. Chapter 62-777 (whichever is most stringent), to be used in evaluating the results of such sampling.
58. The ISAWP is subject to approval by the EPA in accordance with Section XII (Document Approval and Work Implementation).
59. Within thirty (30) calendar days after completion of the Work outlined in the ISAWP, Respondent shall submit for EPA review and approval an ISAWP Final Report summarizing the sampling results and proposing a list of Contaminants of Concern (COC) for the Facility. This ISAWP Final Report and COC list is subject to approval by the EPA in accordance with Section XII (Document Approval and Work Implementation).

**E. WASTE PILE AND STORMWATER POND REMEDIATION**

60. Within thirty (30) calendar days after EPA approval of the COC list submitted pursuant to Paragraph 59, Respondent shall submit to the EPA a written Waste Pile and Stormwater Pond Remediation Work Plan ("RWP"). The RWP shall include: 1) the proposed methods and processes for removing and disposing/recycling the lead pellets recovered from the stormwater ponds and the waste piles located at the Facility; 2) a sampling and analysis plan and proposed screening levels, based on the EPA RSLs or the Florida CTLs (whichever is most stringent), to be used to evaluate the remnant pond sediment, surface water, and waste pile soils after the lead is removed for all COCs identified in the approved COC list; 3) the proposed cleanup levels, based on the Florida CTLs or site-specific standards, as appropriate, for any COCs that exceed applicable screening levels; 4) a description of any further removal or remediation Work that will be conducted to address the waste piles or stormwater ponds, including the use of institutional and/or engineering controls, to meet the cleanup levels; 5) a description of how all Work will comply with applicable hazardous waste management

regulations, including, but not limited to, the Land Disposal Restrictions (LDRs) contained in 40 C.F.R. Part 268 and all applicable state and local regulations and permitting requirements; and 6) a good-faith cost estimate and schedule for implementing this Work and reporting the results.

61. The RWP is subject to approval by the EPA in accordance with Section XII (Document Approval and Work Implementation).
62. Within thirty (30) calendar days after EPA approval of the RWP, Respondent shall obtain appropriate Financial Assurance in the amount of the approved cost estimate. Respondent shall refer to the EPA's *Interim Guidance on Financial Responsibility for Facilities Subject to RCRA Corrective Action*, September 30, 2003, available at, <http://www2.epa.gov/sites/production/files/documents/interim-fin-assur-cor-act.pdf>, for guidance on how to obtain an appropriate mechanism to satisfy the financial responsibility requirements.
63. Within thirty (30) calendar days after completion of all the Work outlined in the approved RWP, Respondent shall submit for EPA review and approval a RWP Final Report summarizing the Work performed under the approved RWP. This RWP Final Report shall include: 1) a description of any remediation or treatment technologies used, including any institutional and/or engineering controls selected, to address contamination at the Facility; 2) a listing of quantities and types of any materials removed off-site and of the ultimate destination(s) of those materials; 3) a presentation of the analytical results of all sampling and analyses performed, including the quality assurance/quality control (QA/QC) documentation; and 4) an appendix containing all other relevant documentation generated during the performance of the Work (e.g. manifests, bills of lading, invoices, contracts, and permits), not previously provided to the EPA. This RWP Final Report is subject to approval by the EPA in accordance with Section XII (Document Approval and Work Implementation).

#### **F. SITEWIDE ASSESSMENT AND REMEDIATION**

64. Within thirty (30) calendar days after EPA approval of the RWP Final Report, Respondent must submit to the EPA a Sitewide Sampling and Analysis Work Plan ("SSWP") to conduct representative sampling of all remaining surface soils, surface water, sediment, and groundwater at the Facility not previously addressed by this CA/FO for the COCs identified in the approved COC list. Such Work Plan must be designed to fully characterize the horizontal and vertical nature and extent of any remaining contamination from COCs at or from the Facility and shall include: 1) sampling locations, analytical methods, and a schedule for implementing the sampling Work and reporting the results; and 2) screening levels, based on the EPA RSLs or the Florida CTLs (whichever is most stringent), to be used in evaluating the results of such sampling.
65. The SSWP is subject to approval by the EPA in accordance with Section XII (Document Approval and Work Implementation).
66. Within thirty (30) calendar days after completion of the Work outlined in the approved SSWP, Respondent shall submit for EPA review and approval a SSWP Final Report summarizing the Work performed under the approved SSWP. This SSWP Final Report shall

include: 1) a presentation of the analytical results of all sampling and analyses performed, including the quality assurance/quality control (QA/QC) documentation and 2) either: a) a presentation of any samples that exceeded the applicable screening levels or b) a summary of how completion of the Work outlined in the approved SSWP confirms that no further contamination from COCs at or from the Facility exists.

67. This SSWP Final Report is subject to approval by the EPA in accordance with Section XII (Document Approval and Work Implementation).
68. Within thirty (30) calendar days after EPA approval of any SSWP Final Report containing a presentation of samples exceeding the applicable screening levels, Respondent shall submit for EPA review and approval a Sitewide Remediation Work Plan ("RWP2"). The RWP2 shall include: 1) the proposed plan for any additional sampling and analysis needed to delineate the full nature and extent of the contamination; 2) the proposed cleanup levels, based on the Florida CTLs or site-specific standards, as appropriate, for the COCs that exceed applicable screening levels; 3) a proposed plan for the removal and/or remediation of, and/or the use of institutional and/or engineering controls for, any soil, sediment, surface water, or groundwater that exceed the cleanup levels; 5) a description of how all Work will comply with applicable hazardous waste management regulations, including, but not limited to, the LDRs contained in 40 C.F.R. Part 268 and all applicable state and local regulations and permitting requirements; and 6) a good-faith cost estimate and schedule for implementing this Work and reporting on the results.
69. Within thirty (30) calendar days after EPA approval of the RWP2, Respondent shall update/increase its Financial Assurance, established pursuant to Paragraph 62, in the amount of the approved cost estimate.
70. Within thirty (30) calendar days after completion of the Work outlined in the approved RWP2, Respondent shall submit for EPA review and approval a RWP2 Final Report summarizing the Work performed under the approved RWP2. This RWP2 Final Report shall include: 1) a description of any remediation or treatment technologies used, including any institutional and/or engineering controls selected, to address contamination at the Facility; 2) a listing of quantities and types of any materials removed off-site and of the ultimate destination(s) of those materials; 3) a presentation of the analytical results of all sampling and analyses performed, including the quality assurance/quality control (QA/QC) documentation; and 4) an appendix containing all other relevant documentation generated during the performance of the Work (e.g. manifests, bills of lading, invoices, contracts, and permits), not previously provided to the EPA. This RWP2 Final Report is subject to approval by the EPA in accordance with Section XII (Document Approval and Work Implementation).

#### **X. ADDITIONAL WORK**

71. The EPA may determine or Respondent may propose that certain tasks, including investigatory Work or procedure/methodology modifications, are necessary in addition to or in lieu of the tasks included in Section IX (Work to be Performed) of this CA/FO to meet the purposes set forth in this CA/FO. If the EPA determines that Respondent shall perform additional Work, the EPA will specify in writing the basis for its determination that the additional Work is necessary. Within fifteen (15) calendar days after the receipt of such

determination, Respondent shall have the opportunity to meet or confer with the EPA to discuss the additional Work. If required by the EPA, Respondent shall submit for EPA approval a Work Plan for the additional Work. Such Work Plan shall be submitted within thirty (30) calendar days of receipt of the EPA's determination that additional Work is necessary, or according to an alternative schedule established by the EPA. Upon approval of the Work Plan in accordance with Section XII (Document Approval and Work Implementation), Respondent shall implement such Work Plan in accordance with the schedule and provisions contained therein.

## XI. NOTIFICATION AND CERTIFICATION

72. Unless otherwise specified, copies of all reports, correspondence, notices, or other submittals relating to or required under this CA/FO shall be in writing, and reports shall be submitted in hard copy and electronically on a CD, and shall be sent to:

Larry L. Lamberth  
Chief, South Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA, Region 4  
61 Forsyth St., SW  
Atlanta, Georgia 30303  
lamberth.larry@epa.gov  
(404) 562-8590

and

Tim Bahr, Administrator  
Hazardous Waste Programs  
Florida Department of Environmental Protection  
MS 4560  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

73. All EPA notifications and other communications proposed under this CA/FO shall be sent to:

Clay A. Deatherage  
Partner  
Shutts & Bowen LLP  
300 South Orange Avenue, Suite 1000  
Orlando, Florida 32801  
(407) 835-6978  
cdeatherage@shutts.com

74. All notices made by any party under this CA/FO shall be hand delivered, sent by certified mail (return receipt requested) or overnight courier, or sent by electronic mail (return receipt requested) and shall be deemed effective upon receipt.

75. Any report or other document submitted by Respondent pursuant to this CA/FO which makes any representation concerning Respondent's compliance or noncompliance with any requirement of this CA/FO shall be certified by a responsible corporate officer of Respondent or a duly authorized representative. A responsible corporate officer means: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation.

76. The certification required by Paragraph 75 above, shall be in the following form:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to evaluate the information submitted. I certify that to the best of my knowledge and belief the information contained in or accompanying this submittal is true, accurate, and complete. As to those identified portion(s) of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## **XII. DOCUMENT APPROVAL AND WORK IMPLEMENTATION**

77. The EPA will review all written proposals, work plans, reports, draft and final reports, and any other documents required to be submitted under this CA/FO ("submissions"), and will notify Respondent in writing of the EPA's: (a) approval, (b) approval with conditions and/or modifications, or (c) disapproval, with comments and/or modifications, directing Respondent to resubmit the submission after incorporating the EPA's comments and/or modifications. The EPA may also approve, modify, or disapprove a portion of a submission.

78. Upon receipt of any written notice of EPA disapproval, Respondent shall revise and resubmit for EPA approval any submission in accordance with the requirements of this CA/FO and the EPA's notice of disapproval, within the due date specified therein. Revised submissions are subject to EPA approval, approval with conditions and/or modifications, or disapproval. If Respondent does not submit a revised submission by the due date, Respondent shall be in violation of this CA/FO as of the due date.

79. For purposes of Respondent's submissions, Section XX (Dispute Resolution) applies only to submissions disapproved and revised by the EPA, or that have been disapproved by the EPA, then revised and resubmitted by the Respondent, and again disapproved by the EPA.

80. Subject to Section XX (Dispute Resolution) if, after providing the Respondent with the opportunity to correct and resubmit any submission required by this CA/FO, the EPA determines that the submission still fails to meet the technical or administrative requirements of this CA/FO or applicable regulations, the EPA may modify the submission with the EPA's comments and finalize and approve the submission for implementation by the Respondent.
81. Upon receipt of the EPA's written approval, Respondent shall commence Work and implement any approved Work Plan in accordance with the schedule and provisions contained therein.
82. Any EPA-approved submission shall be deemed incorporated into this CA/FO. Any noncompliance with such EPA-approved submission shall constitute noncompliance with this CA/FO. Prior to the EPA's written approval, no submission shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding.

### **XIII. SUBMITTALS OF QUARTERLY PROGRESS REPORTS**

83. Beginning thirty (30) calendar days after EPA approval of the ISAWP, Respondent shall submit quarterly progress reports regarding implementation of the CA/FO which include, at a minimum, the following information:
  - a. Analytical data received regarding sampling events which have not otherwise been provided;
  - b. An estimate of the percentage of completion of the characterization or cleanup, as appropriate;
  - c. Summaries of findings to date;
  - d. Summaries of problems encountered during the previous quarter and how the problems were or are being addressed;
  - e. Changes in personnel associated with the Facility or Work performed;
  - f. Projected Work for the next quarterly reporting period, including a schedule of implementation; and
  - g. Any manifest/shipment documents for any solid or hazardous waste sent off site for disposal or recycling during that quarter.

### **XIV. MINIMUM QUALIFICATIONS FOR PERSONNEL**

84. All Work performed by Respondent pursuant to this CA/FO shall be under the direction and supervision of an individual who has demonstrated expertise in hazardous waste cleanup. As part of Respondent's Project Management Plans, required pursuant to Paragraph 47 above, before any Work is performed, Respondent shall submit to the EPA, in writing, the names, titles, and qualifications of the Facility personnel, and of any contractors or subcontractors, to

be used in carrying out the Work required by this CA/FO. Any contractor or consultant shall have the technical expertise sufficient to adequately perform all aspects of the Work for which it is responsible. Additionally, Respondent shall ensure that when a license is required, only licensed individuals shall be used to perform any Work required by this CA/FO.

#### **XV. QUALITY ASSURANCE**

85. Respondent shall follow current EPA sampling, analysis, quality control, quality assurance and data validation methods and procedures. All laboratory sample analysis shall include Level IV Data Packages. EPA standard operating procedures and quality assurance methods are found in the Science and Ecosystem Support Division's (SESD's) *Field Branches Quality System and Technical Procedures* (FBQSTP). The FBQSTP can be found at: <http://www.epa.gov/region4/sesd/fbqstp/index.html>. Additional information related to Quality Assurance Project Plans (QAPPs) can be found at: [http://www.epa.gov/quality/qa\\_docs.html](http://www.epa.gov/quality/qa_docs.html).

#### **XVI. SAMPLING AND DATA/DOCUMENT AVAILABILITY**

86. Upon request, Respondent shall submit to the EPA the results of all sampling and/or tests or other data generated by agents, consultants, or contractors pursuant to this CA/FO.
87. Respondent shall notify the EPA in writing (including electronic mail (return receipt requested), certified mail (reply requested), or overnight courier) at least seven (7) calendar days before commencing any field activities under this CA/FO, unless otherwise authorized by the EPA on request by Respondent. If Respondent believes it must commence emergency field activities without delay, Respondent may seek emergency telephone authorization from the EPA Project Coordinator or, if the EPA Project Coordinator is unavailable, his/her Section Chief, to commence such activities immediately. At the request of the EPA, Respondent shall provide or allow the EPA or its authorized representative to take split or duplicate samples of all samples collected by Respondent pursuant to this CA/FO.
88. Respondent may assert a business confidentiality claim covering all or part of any information submitted to the EPA pursuant to this CA/FO. Any assertion of confidentiality must be accompanied by information that satisfies the items listed in 40 C.F.R. § 2.204(e)(4) or such claim shall be deemed waived. Information determined by the EPA to be confidential shall be disclosed only to the extent permitted by 40 C.F.R. Part 2. If no such confidentiality claim accompanies the information when it is submitted to the EPA, the information may be made available to the public by the EPA without further notice to Respondent. Respondent agrees not to assert any confidentiality claim with regard to any physical or analytical data.

#### **XVII. ACCESS AND NOTIFICATION**

89. The EPA, its employees and authorized agents, including contractors and subcontractors, shall have access to Respondent's Facility at all reasonable times and in accordance with Respondent's reasonable internal safety and security procedures for the purpose of monitoring, investigating or verifying compliance with the terms of this CA/FO consistent with the authority set forth in Section 3007 of RCRA, 42 U.S.C. § 6907.

90. To the extent that Work being performed pursuant to this CA/FO must be done beyond the Facility property boundary, Respondent shall use its best efforts to obtain access agreements necessary to complete Work required by this CA/FO from the present owner(s) of such property within forty-five (45) calendar days of approval of any Work Plan for which access is required. Best efforts as used in this Paragraph shall include, at a minimum, a certified letter from Respondent to the present owner(s) of such property requesting access agreement(s) to permit Respondent, the EPA and its authorized representatives to access such property, and the payment of reasonable sums of money in consideration of granting access. Any such access agreement shall provide for access by the EPA and its representatives. Respondent shall ensure that the EPA's Project Coordinator has a copy of any access agreement(s). In the event that agreements for access are not obtained within forty-five (45) calendar days of approval of any Work Plan for which access is required, or of the date that the need for access became known to Respondent, Respondent shall notify the EPA in writing within fourteen (14) calendar days thereafter of both the efforts undertaken to obtain access and the failure to obtain such agreements. The EPA may, at its discretion, assist Respondent in obtaining access. In the event the EPA obtains access, Respondent shall undertake EPA-approved Work on such property. Respondent agrees to indemnify the United States as provided in Section XXVI (Indemnification), for any and all claims arising from activities on such property.
91. If, at any time, Respondent or the EPA determines that human exposures are occurring or that contamination has migrated, or is suspected to have migrated, into any soil, groundwater, or surface water beyond the Facility boundary (other than for immediate and short-term emergency response actions), or to other areas within the Facility controlled by different operators, at concentrations exceeding the most stringent applicable RSLs or CTLs, Respondent shall notify the EPA within twenty-four (24) hours of the initial discovery. Respondent shall provide written notification within three (3) calendar days of discovery. This notification shall include a proposed notification letter and a list of known and potentially affected property owners and operators, for EPA approval, before Respondent sends the notification letter to the parties listed below. Within thirty (30) calendar days of EPA approval of the notification letter, Respondent shall notify, by certified or registered mail, at a minimum the following list of people and agencies:
- a. all property owners onto which the contamination is known or suspected by Respondent to have migrated;
  - b. FDEP;
  - c. the local unit of the Florida Department of Health; and
  - d. Copies of the notification letters and proof of receipt must be submitted to EPA within forty-five (45) calendar days of EPA's approval of the letter.
92. Nothing in this Section limits or otherwise affects the EPA's right of access and entry pursuant to applicable law, including RCRA and CERCLA.



93. Nothing in this Section shall be construed to limit or otherwise affect Respondent's liability and obligation to perform corrective measures, including corrective measures beyond the Facility boundary, notwithstanding the lack of access.

#### **XVIII. RECORD PRESERVATION**

94. Except for documents that are covered by the attorney-client privilege or Work product privilege, which are not covered by this Section, Respondent shall retain, during the pendency of this CA/FO and for a minimum of six (6) years after its termination, all data, records, and documents now in its possession or control or which come into its possession which relate in any way to this CA/FO or to hazardous waste management and/or disposal at the Facility. Respondent shall notify the EPA in writing ninety (90) calendar days prior to the destruction of any such records, and shall provide the EPA with the opportunity to take possession of any such records. Such written notification shall reference the Effective Date, caption, and docket number of this CA/FO and shall be addressed to:

Larry L. Lamberth  
Chief, South Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA, Region 4  
61 Forsyth St., SW  
Atlanta, Georgia 30303  
lamberth.larry@epa.gov  
(404) 562-8590

and

Tim Bahr, Administrator  
Hazardous Waste Programs  
Florida Department of Environmental Protection  
MS 4560  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

95. Respondent further agrees that within thirty (30) calendar days of retaining or employing any agent, consultant, or contractor for the purpose of carrying out the terms of this CA/FO, Respondent will enter into an agreement with any such agents, consultants, or contractors whereby such agents, consultants, and/or contractors will be required to provide Respondent a copy of all documents produced pursuant to this CA/FO.
96. All documents pertaining to this CA/FO shall be stored by Respondent in a manner to afford ease of access by the EPA or its representatives.

**XIX. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

97. If Respondent fails to comply with the provisions of this CA/FO, Respondent shall pay Stipulated Penalties as indicated below for each violation for each calendar day during which the violation occurs:

<u>Period of Failure to Comply</u>	<u>Penalty Per Calendar Day Per Violation</u>
1st through 6th day	\$ 100
7th through 30th day	\$ 250
31st through 60th day	\$ 500
61st day and beyond	\$ 1,000

98. Subject to the other paragraphs in this Section, all Stipulated Penalties begin to accrue on the day that complete performance is due, or a violation occurs, and continue to accrue through the final day of correction of the noncompliance, or the day the EPA submits its Statement of Position to the Director, RCRA Division, EPA Region 4, pursuant to Section XX (Dispute Resolution) of this CA/FO, whichever occurs first. Nothing herein shall prevent the simultaneous accrual of separate Stipulated Penalties for separate violations of this CA/FO which derive from Respondent's independent and distinguishable acts and/or omissions. Issuance and receipt of a notice of noncompliance is not a condition precedent to the accrual of Stipulated Penalties.
99. Accrued Stipulated Penalties shall become due and payable thirty (30) calendar days after demand by the EPA for their payment. Stipulated Penalties shall be paid by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: **Treasurer, United States of America**, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
**Fines and Penalties**  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
**U.S. EPA Fines & Penalties**  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
(314) 425-1818

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: John Schmid, (202) 874-7026  
REX (Remittance Express): 1-866-234-5681

100. Respondent shall submit a copy of the payment to the following individuals:

Regional Hearing Clerk  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

and to:

Larry L. Lamberth  
Chief, South Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA, Region 4  
61 Forsyth St., SW  
Atlanta, Georgia 30303  
lamberth.larry@epa.gov  
(404) 562-8590

101. If any payment is not received within thirty (30) calendar days of being due, interest, handling charges and late-payment penalties will begin to accrue in the same manner as set forth at 31 U.S.C. § 3717 and 40 C.F.R. § 13.11(b) and (c).
102. Respondent may dispute the EPA's assessment of Stipulated Penalties by invoking the dispute resolution procedures under Section XX (Dispute Resolution). Except as provided in Section XX (Dispute Resolution), the Stipulated Penalties in dispute shall continue to accrue

- in accordance with Paragraphs 97 and 98, but need not be paid, during the dispute resolution period. Respondent shall pay Stipulated Penalties and interest, if any, in accordance with the dispute resolution decision and/or agreement. Respondent shall submit such payment to the EPA within seven (7) calendar days of receipt of such resolution in accordance with Paragraph 99 of this CA/FO. The EPA in its discretion may waive or reduce any Stipulated Penalties assessed.
103. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any way Respondent's obligation to comply with the terms and conditions of this CA/FO.
104. The Stipulated Penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to the EPA by reason of Respondent's failure to comply with any of the terms and conditions of this CA/FO. However, all Stipulated Penalties which are paid by Respondent shall be off-set against any and all penalties for the same violation which the EPA may be entitled to collect as a result of other enforcement actions.
105. No payments under this Section shall be tax deductible for federal tax purposes.

## **XX. DISPUTE RESOLUTION**

106. The parties shall use their best efforts to informally and in good faith resolve all disputes or differences of opinion. The parties agree that the procedures contained in this Section are the sole procedures for resolving disputes arising under this CA/FO.
107. If Respondent disagrees, in whole or in part, with any written decision (Initial Written Decision) by the EPA pursuant to this CA/FO, Respondent shall notify the EPA of the dispute (Notice of Dispute) in writing within fourteen (14) calendar days of Respondent's receipt of the Initial Written Decision. The Notice of Dispute shall be mailed to:

Larry L. Lamberth  
Chief, South Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA, Region 4  
61 Forsyth St., SW  
Atlanta, Georgia 30303  
lamberth.larry@epa.gov  
(404) 562-8590

108. Respondent and the EPA shall attempt to resolve the dispute informally. The period for informal negotiations shall not exceed twenty-one (21) calendar days from the date of the Notice of Dispute, unless it is modified by written agreement of the parties to the dispute (Negotiation Period). The EPA agrees to confer in person or by telephone to resolve any such disagreement with Respondent as long as Respondent's request for a conference will not extend the Negotiation Period. The Negotiation Period may be modified by written agreement of the parties to the dispute.

109. If the parties cannot resolve the dispute informally under Paragraph 108, then the position advanced by the EPA shall be considered binding unless, within twenty-one (21) calendar days after the conclusion of the informal Negotiation Period, Respondent invokes the formal dispute resolution procedures by serving on the EPA at the address specified in Paragraph 107 above, and to the Director of the RCRA Division, EPA Region 4, a written Statement of Position on the matter in dispute, including, but not limited to, the specific points of the dispute, the position Respondent claims should be adopted as consistent with the requirements of this CA/FO, the basis for Respondent's position, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Respondent. If Respondent fails to follow any of the requirements contained in this Paragraph, then it shall have waived its right to further consideration of the disputed issue.
110. Within fourteen (14) calendar days after receipt of Respondent's Statement of Position, the EPA will serve on Respondent and to the Director of the RCRA Division, EPA Region 4, its Statement of Position, including but not limited to any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the EPA.
111. Following receipt of both Statements of Position, the Director of the RCRA Division, EPA Region 4, will issue a final written decision resolving the dispute, which sets forth the basis for EPA's decision. Such decision shall not be appealed further, and shall be incorporated into and become an enforceable element of this CA/FO.
112. During the pendency of the dispute resolution process, unless there has been a written modification by the EPA of a compliance date, or excusable delay as defined in Section XXI (Force Majeure and Excusable Delay), the existence of a dispute as defined in this Section and the EPA's consideration of matters placed into dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this CA/FO which is not directly in dispute. However, payment of Stipulated Penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, Stipulated Penalties shall accrue in accordance with Paragraphs 97 and 98, unless Respondent prevails on the disputed issue, or the final decision maker, at his or her discretion, reduces the amount of the accrued penalty upon a finding that Respondent had a good faith basis for invoking the dispute resolution process. Stipulated Penalties shall be assessed and paid as provided in Section XIX (Delay in Performance/Stipulated Penalties).

#### **XXI. FORCE MAJEURE AND EXCUSABLE DELAY**

113. Force majeure, for purposes of this CA/FO, is defined as any event arising from causes not reasonably foreseen and beyond the control of Respondent or any person or entity controlled by Respondent, including but not limited to Respondent's contractors, that delays or prevents the timely performance of any obligation under this CA/FO despite Respondent's best efforts to fulfill such obligation. The requirement that Respondent exercise "best efforts to fulfill such obligation" shall include, but not be limited to, best efforts to anticipate any potential force majeure event and address it before, during, and after its occurrence, such that any delay or prevention of performance is minimized to the greatest extent possible. Force majeure does not include increased costs of the Work to be performed under this CA/FO; financial inability to complete the Work; minor precipitation events; or changed

circumstances arising out of sale, lease, or transfer of Respondent's interest in any and/or all portions of the Facility.

114. If any event occurs or has occurred that may delay the performance of any obligation under this CA/FO, whether or not caused by a force majeure event, Respondent shall contact by telephone and communicate orally with EPA's Project Coordinator or, in his or her absence, his or her Section Chief or, in the event both of EPA's designated representatives are unavailable, the Director of RCRA Division, EPA Region 4, within seventy-two (72) hours of when Respondent first knew or should have known that the event might cause a delay. Within five (5) calendar days thereafter, Respondent shall provide to the EPA in writing the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; all other obligations affected by the force majeure event, and what measures, if any, taken or to be taken to minimize the effect of the event on those obligations; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event, unless such failure is waived by the EPA at its discretion. Respondent shall be deemed to have notice of any circumstances of which its contractors had or should have had notice.
115. If the EPA determines that the delay or anticipated delay is attributable to a force majeure event, the time for performance of such obligation under this CA/FO that is affected by the force majeure event will be extended by the EPA for such time as the EPA determines is necessary to complete such obligation. An extension of the time for performance of such obligation affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation, unless Respondent can demonstrate that more than one obligation was affected by the force majeure event. If the EPA determines that the delay or anticipated delay has been or will be caused by a force majeure event, the EPA will notify Respondent in writing of the length of the extension, if any, for performance of such obligations affected by the force majeure event.
116. If the EPA disagrees with Respondent's assertion of a force majeure event, Respondent may elect to invoke the dispute resolution provision, and shall follow the time frames set forth in Section XX (Dispute Resolution). In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this Section. If Respondent satisfies this burden, the time for performance of such obligation will be extended by the EPA for such time as is necessary to complete such obligation.

## XXII. RESERVATION OF RIGHTS

117. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's Facility may present an imminent and substantial endangerment to human health or the environment.
118. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.
119. Consistent with Paragraph 42 of this CA/FO, Complainant reserves the right to pursue enforcement against Respondent for penalties for the violations set forth in this CA/FO.
120. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the storage, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's Facility.
121. The EPA reserves the right to disapprove of Work performed by Respondent that does not conform to the terms of this CA/FO.
122. The EPA reserves the right to perform any portion of the Work consented to herein or any additional site characterization, feasibility study, and remedial Work as it deems necessary to protect human health and/or the environment. The EPA may exercise its authority under CERCLA to undertake response actions at any time, and the EPA reserves its right to seek reimbursement from Respondent for costs for such Work incurred by the United States. Notwithstanding compliance with the terms of this CA/FO, Respondent is not released from liability, if any, for the costs of any such response actions taken or authorized by the EPA.
123. Respondent reserves all rights and defenses it may have regarding liability or responsibility for conditions at the Facility, with the exception of its right to contest the EPA's jurisdiction to issue or enforce this CA/FO and its right to contest the terms of this CA/FO, as set forth in Paragraphs 33 and 35.
124. If the EPA determines that activities in compliance or noncompliance with this CA/FO have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the Work ordered, the EPA may order Respondent to stop further implementation of this CA/FO for such period of time as the EPA determines may be needed to abate any such release or threat and/or to undertake any action which the EPA determines is necessary to abate such release or threat.
125. This CA/FO is not intended to be nor shall it be construed to be a permit. The parties acknowledge and agree that the EPA's approval of any final Work Plan or submittal does not

constitute a warranty or representation that the Work Plans will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State, or federal laws and regulations.

126. No action or decision by the EPA pursuant to this CA/FO, including without limitation, decisions of the Regional Administrator, the Director of the RCRA Division, or any authorized representative of the EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this CA/FO, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this CA/FO.
127. In any action brought by the EPA for a violation of this CA/FO, Respondent shall bear the burden of proving any defenses, including that the EPA's actions were arbitrary and capricious and not in accordance with law.
128. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the Facility, including the collection of a penalty, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been raised in the present matter, except for matters alleged and resolved in this CA/FO.
129. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

### **XXIII. OTHER CLAIMS**

130. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's Facility.

### **XXIV. OTHER APPLICABLE LAWS**

131. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

### **XXV. SERVICE OF DOCUMENTS**

132. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in this proceeding:

In the Matter of: Camino Reale Properties, LLC  
Consent Agreement and Final Order  
Docket No.: RCRA-04-2014-4012(b)



Marirose J. Pratt  
Assistant Regional Counsel  
Office of RCRA, OPA and UST Legal Support  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9023  
pratt.marirose@epa.gov

133. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent in this matter and who is authorized to receive service for Respondent in this proceeding:

Clay A. Deatherage  
Partner  
Shutts & Bowen LLP  
300 South Orange Avenue, Suite 1000  
Orlando, Florida 32801  
(407) 835-6978  
cdeatherage@shutts.com

#### **XXVI. INDEMNIFICATION**

134. Respondent agrees to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising solely from or on account of acts or omissions of Respondent or its officers, employees, agents, independent contractors, receivers, trustees, and assigns in carrying out activities required by this CA/FO. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations of Respondent or the United States under their various contracts.

#### **XXVII. MODIFICATION**

135. This CA/FO may only be modified by mutual agreement of the EPA and Respondent and subject to the approval of the Regional Judicial Officer. Any agreed modifications shall be in writing, be signed by both parties, shall have as their effective date the date on which they are approved by the Regional Judicial Officer, and shall be incorporated into this CA/FO and attached as an appendix.
136. Any requests for modification of a compliance date contained in this CA/FO or in any Work Plan, or for a modification of an approved Work Plan requirement, must be made in writing. Such requests must be timely and provide justification for any proposed compliance date modification or Work Plan revision. The EPA has no obligation to approve such requests, but if it does so, such approval must be in writing.

**XXVIII. SEVERABILITY**

137. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

**XXIX. TERMINATION AND SATISFACTION**

138. The provisions of this CA/FO shall be deemed satisfied upon Respondent's and the EPA's execution of an "Acknowledgment of Termination and Agreement to Record Preservation and Reservation of Rights" ("Acknowledgment"). The EPA will prepare the Acknowledgment for Respondent's signature. The Acknowledgment will specify that Respondent has demonstrated to the satisfaction of the EPA that the terms of this CA/FO, including any additional tasks determined by the EPA to be required pursuant to this CA/FO, have been satisfactorily completed. Respondent's execution of the Acknowledgment will affirm Respondent's continuing obligation (1) to preserve all records and (2) to recognize the EPA's reservation of rights, in accordance with this CA/FO after the rest of the CA/FO is satisfactorily completed.

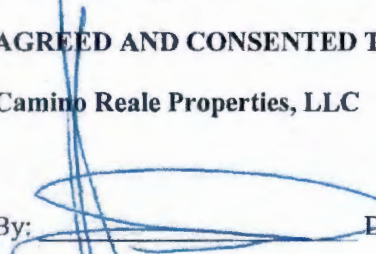
**XXX. EFFECTIVE DATE**

139. The Effective Date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

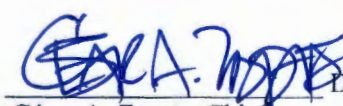
*In the matter of Camino Reale Properties, LLC, Docket No. RCRA-04-2014-4012(b):*

**AGREED AND CONSENTED TO:**

**Camino Reale Properties, LLC**

By:  Dated: Sept. 9, 2014  
Name: Jim V. De Gasperis  
Title: Manager

**United States Environmental Protection Agency**

By:  Dated: 9/11/14  
César A. Zapata, Chief  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division

In the Matter of: Camino Reale Properties, LLC  
Consent Agreement and Final Order  
Docket No.: RCRA-04-2014-4012(b)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: ) DOCKET NO.: RCRA-04-2014-4012(b)  
)  
Camino Reale Properties, LLC ) Proceeding Under Section 3008(a) of the  
8600 Bunkhouse Road ) Resource Conservation and Recovery Act,  
Orlando, Florida 32832 ) 42 U.S.C. § 6928(a)  
EPA ID No.: FLR000120139 )  
)  
Respondent )  
\_\_\_\_\_ )

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED** this 18 day of September, 2014.

BY: Susan B. Schub  
Susan B. Schub  
Regional Judicial Officer  
EPA Region 4

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Camino Reale Properties, LLC, Docket Number: RCRA-04-2014-4012(b), and have served the parties listed below in the manner indicated:

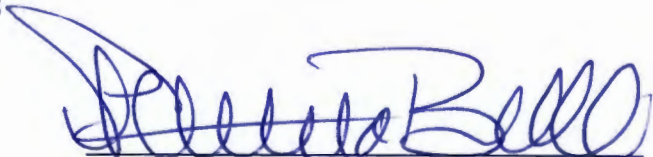
Marirose J. Pratt (Via EPA's electronic mail)  
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Clay A. Deatherage (Via Certified Mail - Partner Return Receipt Requested)  
Shutts & Bowen LLP  
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[cdeatherage@shutts.com](mailto:cdeatherage@shutts.com)

Date: 9-18-14



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9511