



# Florida Department of Environmental Protection

Rick Scott  
Governor

Carlos Lopez-Cantera  
Lt. Governor

South District  
Post Office Box 2549  
Fort Myers, Florida 33902-2549  
*SouthDistrict@dep.state.fl.us*

Jonathan P. Steverson  
Secretary

April 26, 2016

## VIA ELECTRONIC MAIL

Mr. Stanley Rzad  
Keys Energy Services  
1001 James Street  
Key West, Florida 33041-6100  
**E-mailed to:** [Stanley.Rzad@keysenergy.com](mailto:Stanley.Rzad@keysenergy.com)

Subject: Monroe County – WC  
Site Rehabilitation Completion Order (SRCO) Approval  
No Further Action Risk Management Option Level III (NFA RMO III)  
Former Key West Gas and Electric Company  
101-111 Geraldine Street, Key West, Florida 33040  
Waste Cleanup Tracking Number: COM\_303264  
Discharge Date: February 20, 2012

Dear Mr. Rzad:

The Florida Department of Environmental Protection (Department) has completed our technical review of the documentation (including No Further Action with Institutional Controls Proposal for Former Key West Gas and Electric Company, generated by PM Environmental, Inc. (PM)) submitted in support of a Site Rehabilitation Completion Order with Conditions (SRCO-C) pursuant to Florida Administrative Code (F.A.C.) Rule 62-780.680(3) Risk Management Option Level III (RMO III) for the Former Key West Gas and Electric Company Facility located at 101-111 Geraldine Street, Key West, Florida 33040. All the documents submitted to date are adequate to meet the site assessment requirements of Rule 62-780.680(3) Florida Administrative Code (F.A.C.). The DRC is hereby incorporated by reference in this Site Rehabilitation Completion Order (Order) No Further Action Risk Management Options Level III (NFA RMO III). Therefore, you are released from any further obligation to conduct site rehabilitation at the site for petroleum product contamination associated with the discharge referenced above, except as set forth below.

- 1) In the event concentrations of petroleum products' contaminants of concern migrate beyond the established physical limits as documented in the Declaration of Restrictive Covenant approved in this Order, or if a subsequent discharge of petroleum or petroleum product occurs at the site, the Florida Department of Environmental Protection (Department) may require assessment and site rehabilitation pursuant to Chapter 62-780, F.A.C., to reduce concentrations of petroleum products' contaminants of concern to the levels approved in the SRCO or otherwise allowed by Chapter 62-777, F.A.C.

- 2) Additionally, you are required to properly abandon all monitoring wells within 60 days of receipt of this Order. The monitoring wells must be plugged and abandoned in accordance with the requirements of Subsection 62-532.500(4), F.A.C.

### Legal Issues

The Department's Order shall become final unless a timely petition for an administrative hearing is filed under sections 120.569 and 120.57, Florida Statutes (F.S.), within 21 days of receipt of this Order. The procedures for petitioning for an administrative hearing are set forth below. Persons affected by this Order have the following options:

- 1) If you choose to accept the Department's decision regarding the DRC NFA RMO III you do not have to do anything. This Order is final and effective on the date filed with the Clerk of the Department, which is indicated on the last page of this Order.
- 2) If you choose to challenge the decision, you may do the following:
  - a) File a request for an extension of time to file a petition for an administrative hearing with the Department's Agency Clerk in the Office of General Counsel within 21 days of receipt of this Order; 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 an administrative hearing; or
  - b) File a petition for an administrative hearing with the Department's Agency Clerk in the Office of General Counsel within 21 days of receipt of this Order.

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 an Administrative Hearing

For good cause shown, pursuant to subsection 62-110.106(4), F.A.C., the Department may grant a request for an extension of time to file a petition for an administrative hearing. Such a request must be filed (received) by the Department's Agency Clerk in the Office of General Counsel at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida, 32399-3000, within 21 days of receipt of this Order. Petitioner, if different from Keys Energy Services shall mail a copy of the request to Mr. Stanley Rzad ([Stanley.Rzad@keysenergy.com](mailto:Stanley.Rzad@keysenergy.com)), Keys Energy Services, 1001 James Street, Key West, Florida 33041-6100, at the time of filing. Timely filing a request for an extension of time tolls the time period within which a petition for an administrative hearing must be made.

### How to File a Petition for an Administrative Hearing

A person whose substantial interests are affected by this Order may petition for an administrative hearing under sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received) by the Department's Agency Clerk in the Office of General Counsel at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida, 32399-3000, within 21 days of receipt of this Order. Petitioner, if different from Keys Energy Services shall mail a copy of the request to Mr. Stanley Rzad ([Stanley.Rzad@keysenergy.com](mailto:Stanley.Rzad@keysenergy.com)), Keys Energy Services,

1001 James Street, Key West, Florida 33041-6100, 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 subsection 120.569(2), F.S. and rule 28-106.201, F.A.C., a petition for an 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 facility owner's name and address, if different from the petitioner; the FDEP facility number, and the name and address of the facility;
- b) A statement of when and how 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 disputed issues of material fact, 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 require 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.

This Order is final and effective on the date filed with the Clerk of the Department, which is indicated on the last page of this Order. Timely filing a petition for an administrative hearing postpones the date this Order takes effect until the Department issues either a final order pursuant to an administrative hearing or an Order Responding to Supplemental Information provided to the Department pursuant to meetings with the Department.

#### Judicial Review

Any party to this Order 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 Department's Agency Clerk in the Office of General Counsel at 3900 Commonwealth Boulevard, Mail Station 35, 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 30 days after this Order is filed with the Department's clerk (see below).

Questions

Any questions regarding the Department's review of your Declaration of Restrictive Covenant (DRC) No Further Action Risk Management Options Level III (NFA RMO III) should be directed to Mark A. Sautter at (239) 344-5690 or [Mark.Sautter@dep.state.fl.us](mailto:Mark.Sautter@dep.state.fl.us). **Whenever possible, please submit any written response(s) electronically to [FTM.Tanks.Cleanup@dep.state.fl.us](mailto:FTM.Tanks.Cleanup@dep.state.fl.us).**

Questions regarding legal issues should be referred to the Department's Office of General Counsel at (850) 245-2242. Contact with any of the above does not constitute a petition for an administrative hearing or a request for an extension of time to file a petition for an administrative hearing. The FDEP Waste Cleanup Tracking Number for this site is **COM\_303264**. Please use this identification on all future correspondence with the Department.

Sincerely,



\_\_\_\_\_  
Jon M. Iglehart  
Director of District Management  
South District


JMI/MAS/se

Enclosures: (1) Site Rehabilitation Completion Order (SRCO) Approval April 19, 2016  
(2) Declaration of Restrictive Covenant

cc: Candace Chin Fatt – PM ([chinfatt@pmenv.com](mailto:chinfatt@pmenv.com))  
Lindsay C. Walton, Esq. – Goldstein Env. Law Firm ([lwalton@goldsteinenvlaw.com](mailto:lwalton@goldsteinenvlaw.com))  
Dan Blackwell – FDEP ([Dan.Blackwell@dep.state.fl.us](mailto:Dan.Blackwell@dep.state.fl.us))  
Toni Sturtevant – FDEP ([Toni.Sturtevant@dep.state.fl.us](mailto:Toni.Sturtevant@dep.state.fl.us))  
Jennifer Carpenter – FDEP ([Jennifer.Carpenter@dep.state.fl.us](mailto:Jennifer.Carpenter@dep.state.fl.us))  
Elizabeth Sweigert – FDEP ([Elizabeth.Sweigert@dep.state.fl.us](mailto:Elizabeth.Sweigert@dep.state.fl.us))  
Charles A. Masella – FDEP ([Charles.Masella@dep.state.fl.us](mailto:Charles.Masella@dep.state.fl.us))  
Ryan Snyder – FDEP ([Ryan.Snyder@dep.state.fl.us](mailto:Ryan.Snyder@dep.state.fl.us))  
Mark A. Sautter – FDEP ([Mark.Sautter@dep.state.fl.us](mailto:Mark.Sautter@dep.state.fl.us))

**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

\_\_\_\_\_  
April 26, 2016  
Date

## SRCO Approval Attachment

SRCO NFA RMO III for Waste Cleanup Tracking Number: COM\_303264

Former Key West Gas and Electric Company  
101-111 Geraldine Street, Key West, Florida 33040  
Waste Cleanup Tracking Number: COM\_303264  
Discharge Date: February 20, 2012

I hereby certify that in my judgment, the components of this Site Rehabilitation Completion Order (SRCO) satisfy the requirements set forth in Chapter 62-780.680(3), Florida Administrative Code (F.A.C.), No Further Action Risk Management Options Level III (NFA RMO-III) and that the conclusions in this report provide reasonable assurances that the objectives in Chapter 62-780.680(3), F.A.C., have been met.

- I personally completed this review.
- This review was conducted by Mark A. Sautter working under my direct supervision.



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Charles A. Masella  
Projects Manager-Environmental Consultant  
Florida Department of Environmental Protection

April 21, 2016 *COM*

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Date

**This instrument prepared by:**

Lindsay C. Walton, Esq.  
The Goldstein Environmental Law Firm, P.A.  
One Southeast Third Avenue, Suite 2120  
Miami, Florida 33131  
Tel: (305) 777-1686  
Email: [lwalton@Goldsteinenvlaw.com](mailto:lwalton@Goldsteinenvlaw.com)

**DECLARATION OF RESTRICTIVE COVENANT**

This **DECLARATION OF RESTRICTIVE COVENANT** (hereinafter "Declaration") is made by **THE UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA**, authorized to conduct business in the State of Florida (hereinafter "Grantor") and the **FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION** (hereinafter "FDEP"). The Grantor and the FDEP are the "Parties" under this Declaration.

**I. Recitals**

A. The Grantor is the fee simple owner of that certain real property situated in the City of Key West, Monroe County, Florida, more particularly described in the legal description attached hereto at Exhibit A and made a part of this Declaration hereof (hereinafter the "Property"). The street address of the Property is 100 Angela Street, Key West, Monroe County, FL, and the parcel numbers are 13950; 13960; 13970; 13900; 13910; 13870; 13860; and 13830.

B. The FDEP Facility Identification Number for the Property is COM\_303264.

C. The Property was formerly utilized for manufactured gas and electric power plant operations and is currently used as an electrical substation. In connection with historic site uses, there are onsite petroleum constituent impacts to groundwater. The assessment of groundwater at the Property is documented in the following reports that are incorporated into this Declaration by reference (hereinafter, the "Environmental Reports"):

1. Correspondence issued by C. A. Masella, FDEP, to S. Rzad, Keys Energy Services, regarding Former Key West Gas and Electric Company Site, Waste Cleanup Tracking Number: COM\_303264, dated July 16, 2015;
2. 4<sup>th</sup> Quarter, 1<sup>st</sup> Year Natural Attenuation Monitoring Report, prepared by PM Environmental, dated July 10, 2015;
3. 3<sup>rd</sup> Quarter, 1<sup>st</sup> Year Natural Attenuation Monitoring Report, prepared by PM Environmental, dated March 11, 2015;
4. 2<sup>nd</sup> Quarter, 1<sup>st</sup> Year Natural Attenuation Monitoring Report, prepared by PM Environmental, dated December 5, 2014;

**RECEIVED**

**MAR 02 2016**

**D.E.P. South District**

5. Supplemental Site Assessment Report, prepared by PM Environmental, dated August 25, 2014; and
6. Site Assessment Report and 1<sup>st</sup> Quarter, 1<sup>st</sup> Year Natural Attenuation Monitoring Report, prepared by PM Environmental, dated March 10, 2014.

D. The Environmental Reports set forth the nature and extent of the contamination located at the Property. These reports confirm that contaminated groundwater as defined by Chapter 62-780, Florida Administrative Code (F.A.C.), exist on the Property. Also, these reports document that the groundwater contamination does not extend beyond the Property boundary, that the extent of the groundwater contamination does not exceed 1/4 acre, and the groundwater contamination is not migrating.

E. It is the intent that the restrictions in this Declaration reduce or eliminate the risk of exposure of users or occupants of the Property and the environment to the contaminants and to reduce or eliminate the threat of migration of the contaminants.

F. FDEP has agreed to issue the Grantor, or its respective successors or assigns, a Site Rehabilitation Completion Order (hereinafter "SRCO") upon recordation of this Declaration, and the FDEP can unilaterally revoke the SRCO if the conditions of this Declaration or of the SRCO are not met. Additionally, if concentrations of contaminants increase above the levels approved in the SRCO, or if a subsequent discharge occurs at the Property, the FDEP may require site rehabilitation to reduce concentrations of contamination to the levels allowed by the applicable FDEP rules. The SRCO relating to this Declaration can be found by contacting the South District office of the FDEP.

G. The Grantor deems it desirable and in the best interest of all present and future owners of the Property that an SRCO be obtained and maintained so long as contaminants remain at the Property above applicable cleanup target levels, and that the Property be held subject to certain restrictions, all of which are more particularly hereinafter set forth.

## **II. Agreement**

**NOW, THEREFORE**, to induce the FDEP to issue the SRCO and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the undersigned Parties, Grantor agrees as follows:

1. The foregoing Recitals are true and correct and are incorporated herein by reference.
2. The Grantor hereby imposes on the Property the following restrictions:
  - a. There shall be no use of the groundwater under the Property. There shall be no drilling for water conducted on the Property, nor shall any wells be installed on the Property other than monitoring wells pre-approved in writing by FDEP's Division of Waste Management, in addition to any authorizations required by the Division of Water Resource Management ("DWRM") and the Water Management Districts ("WMD"). Additionally, there shall be no stormwater swales, stormwater detention

or retention facilities, or ditches on the Property. For any dewatering activities, a plan approved by FDEP's Division of Waste Management must be in place to address and ensure the appropriate handling, treatment, and disposal of any extracted groundwater that may be contaminated.

3. In the remaining paragraphs, all references to "Grantor" and "FDEP" shall also mean and refer to their respective successors and assigns.

4. For the purpose of monitoring the restrictions contained herein, FDEP is hereby granted a right of entry upon and access to the Property at reasonable times and with reasonable notice to GRANTOR.

5. It is the intention of Grantor that the restrictions contained in this Declaration shall touch and concern the Property, run with the land and with the title to the Property, and shall apply to and be binding upon and inure to the benefit of Grantor and to the FDEP, and to any and all parties hereafter having any right, title or interest in the Property or any part thereof as provided by applicable law. The FDEP may enforce the terms and conditions of this Declaration by injunctive relief and other appropriate available legal remedies. Any forbearance on behalf of the FDEP to exercise its right in the event of the failure of the Grantor to comply with the provisions of this Declaration shall not be deemed or construed to be a waiver of the FDEP's rights hereunder. This Declaration shall continue in perpetuity, unless otherwise modified in writing by Grantor and the FDEP as provided in Paragraph 7 of this Declaration. These restrictions may also be enforced in a court of competent jurisdiction by any other person, firm, corporation, or governmental agency that is substantially benefited by this Declaration. If the Grantor does not or will not be able to comply with any or all of the provisions of this Declaration, the Grantor shall notify the FDEP in writing within three (3) calendar days. Additionally, Grantor shall notify FDEP thirty (30) days prior to any conveyance or sale, granting or transferring the Property, to any heirs, successors, assigns or grantees, including, without limitation, the conveyance of any security interest in said Property.

6. In order to ensure the perpetual nature of these restrictions, Grantor shall reference these restrictions in any subsequent lease or deed of conveyance, including the recording book and page of record of this Declaration. Furthermore, prior to the entry into a landlord-tenant relationship with respect to the Property, the Grantor agrees to notify in writing all proposed tenants of the Property of the existence and contents of this Declaration.

7. This Declaration is binding until a partial or full release of this Declaration is executed by the FDEP Secretary (or by the Secretary's designee) and by the Grantor and is recorded in the public records of the county in which the land is located. To receive prior approval from the FDEP to remove this Declaration or any requirement herein, applicable cleanup target levels established pursuant to Florida Statutes and FDEP rules must have been achieved at the Property. This Declaration may be modified in writing only. Any modification of or amendment to this Declaration must be executed by both the Grantor and the FDEP and be recorded by the Grantor as an amendment hereto.



8. If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provisions of the Declaration. All such other provisions shall continue unimpaired in full force and effect.

9. The Grantor covenants and represents that on the date of execution of this Declaration that the Grantor is seized of the Property in fee simple and has good right to create, establish, and impose this restrictive covenant on the use of the Property. The Grantor also covenants and warrants that the Property is free and clear of any and all liens, mortgages, or encumbrances that could impair GRANTOR'S rights to impose the restrictive covenant described in the Declaration.

**[SIGNATURES APPEAR ON FOLLOWING PAGES]**

IN WITNESS WHEREOF, the Grantor has executed this Declaration, this 24 day of February, 2016.

BY: The Utility Board of the City of Key West, Florida  
d/b/a KEYS Energy Services  
1001 James Street  
Key West, FL 33040

[Signature]  
Peter Batty, Chairman

Signed, sealed and delivered in the presence of:

[Signature] Date: 2/24/2016  
Witness

Print Name: Lynne Tejeira

[Signature] Date: 2/24/2016  
Witness

Print Name: Stanley Beard

**NOTARY**

STATE OF Florida

COUNTY OF Monroe

The foregoing instrument was acknowledged before me this 24 day of Feb, 2016, by Peter Batty.

Personally Known  OR Produced Identification \_\_\_\_\_.

Type of Identification Produced \_\_\_\_\_.

[Signature]

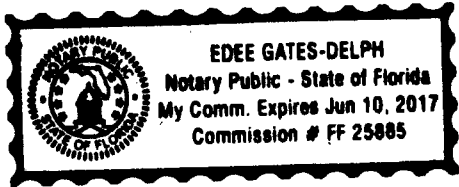
Signature of Notary Public

Edee Gates-Delph

Print Name of Notary Public

Commission No. FF 25885

Commission Expires: June 10, 2017



FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By:

[Signature]  
JON IGLEHART,  
Director of District Management

Approved as to form by:

[Signature]  
Toni Sturtevant, Asst. General Counsel  
Florida Department of  
Environmental Protection  
Office of General Counsel

Dept. of Environmental Protection  
South District  
P O Box 2549  
Fort Myers, Florida 33902-2549

Signed, sealed, and delivered in  
in the presence of:

[Signature]  
Witness Signature  
TERRANCE P. CERULLO  
Printed Name  
March 29, 2016  
Date

[Signature]  
Witness Signature  
MARK SATTOR  
Printed Name  
3/29/2016  
Date

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of March  
2016, by JON IGLEHART, who is personally known to me.

[Signature]  
Notary Public, State of Florida at Large



# Exhibit A

## **Exhibit A**

### **Legal Description**

Subdivisions Eight (8), Eleven (11), Twelve (12), Fifteen (15), Sixteen (16), Nineteen (19), Twenty (20), and Twenty-one (21) in Square Three (3) of Tract Three (3), according to a Diagram of Thomas J. Ashe's Subdivision recorded in Deed Book "I", Page 77 of the Public Records of Monroe County, Florida.

**MONROE COUNTY  
OFFICIAL RECORDS**