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BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Petitioner,

v.

Case No.: 12-4008EF

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

Respondents.

_____ /

MOTION FOR RECONSIDERATION

COMES NOW, the Respondent, MARK F. GERMAIN, and respectfully requests that this Honorable Court reconsider one (1) aspect of the Order on Pending Procedural Matters dated August 13, 2013, and as grounds therefore would state:

1. The Order only granted a continuance of approximately 30 days.

That is not enough time for the Respondent to find and serve the several ex-employees and subcontractors of FDEP whose names appear on Pollutant Storage Tank System Inspection Report Forms and other closure documents from the late 1980s and early 1990s. FDEP is not at all helpful in finding Charles Cox, Karen D. Millicic, Larin C. Malone and William Brewer.

2. FDEP was contacted by the Respondent and it objects to this Motion.

3. With regard to the continuance, Florida Statute 376.308 grants an "innocent purchaser defense" and a "third party defense." Respondent has already demonstrated a *prima facie* case for these defenses. According to the FDEP website,

the Facility status is "CLOSED" and the "the Cleanup Status" is "No Contamination."

4. In addition to an "innocent purchaser defense" and a "third party defense," Respondent has affirmative defenses of estoppel, laches and contributory negligence as well. FDEP failed to mitigate damages over the last 24 years.

5. Respondent should be given every opportunity to explore the leads discovered at Brett LeRoux's deposition on July 19, 2013. This means compelling FDEP to provide the contact information for its ex-employees and subcontractors, tracking them down, interviewing them regarding the tank closures 24 years ago, and serving them for hearing. This all takes time, especially in light of FDEP's reluctance to cooperate. The request for an additional 90 days was reasonable.

WHEREFORE, the Respondent, MARK F. GERMAIN, respectfully requests that this Honorable Court reconsider the 30 day continuance and continue the final hearing in this matter for 90 days instead.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to: Bonnie.Malloy@DEP.State.FI.US, and this 20th day of August, 2013.

/s/ Mark F. Germain

MARK F. GERMAIN
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