

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

FLORIDA PROFESSIONAL LICENSE WATCH
(FPLW), INC.,

Petitioner,

vs.

OGC File No. 99-1804

FLORIDA ROCK INDUSTRIES, INC.
and STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Respondents.

FLORIDA CHAPTER OF THE
SIERRA CLUB, INC.,

Petitioner,

vs.

OGC File No. 99-2052

FLORIDA ROCK INDUSTRIES, INC.
and STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Respondents.

ORDER CONSOLIDATING CASES AND ESTABLISHING INFORMAL PROCEEDING

On November 24, 1999, the Department of Environmental Protection (the Department) received a First Amended Petition for Informal Administrative Hearing from Florida Professional License Watch (FPLW), Inc., and a Petition for Informal Administrative Hearing from Florida Chapter of the Sierra Club, Inc. Both Petitions challenge the Department's grant of an extension of time for the Air Construction Permit previously issued to Florida Rock Industries, Inc. (Florida Rock), DEP File Number AC01-267311, PSD-FL-228, Facility I.D. Number 0010087. On December 13, 1999, the Department received Respondent Florida Rock's Motion to Dismiss Petition of Florida Chapter of the Sierra Club, Inc.

Pursuant to Section 120.57(2), Florida Statutes, and Rule 28-106.301 through 28-106.307, Florida Administrative Code (F.A.C.), I hereby establish the following procedure for an informal proceeding to consider and determine the relevant issues of law raised by the Petitioners in relation to the granting of the extension to the Respondents.

1. The above cases are hereby consolidated for purposes of this proceeding.

2. I appoint Kirby B. Green, III, Deputy Secretary, as the Hearing Officer in this proceeding. Mr. Green's mailing address is Department of Environmental Protection, Office of the Secretary, Mail Station 15, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000.

3. An informal hearing will be scheduled by Mr. Green after consulting with the parties. The hearing will be conducted at a time and place to be announced. The purpose of the informal hearing is to allow the parties the opportunity to present argument regarding the Department's extension of time on the referenced Air Construction Permit.

4. At the informal hearing, the Hearing Officer may, if necessary:

- (a) administer oaths and affirmations;
- (b) rule upon offers of proof and receive relevant evidence, assuming there is no disputed issue of material fact;
- (c) regulate the course of the hearing;
- (d) enter any order to carry out the purposes of Chapter 120 of the Florida Statutes and governing procedural rules;
- (e) make and receive offers of settlement, stipulation and adjustment; and

(f) determine whether there are any disputed issues of material fact such that the matter should be referred to the Division of Administrative Hearings for the assignment of an administrative law judge to conduct a formal hearing.

5. The parties shall arrange to have all witnesses and evidence present at the time and place of hearing, if any. Any party to this proceeding has the right, at his, her or its own expense, to be accompanied, represented and advised by counsel. A party's failure to appear at the scheduled hearing may be grounds for the entry of an order of dismissal.

6. The Petitioners shall file and serve on counsel of record written memoranda of law in support of their positions no later than thirty (30) days from the date of this Order. The memoranda of law shall contain all argument in support of the Petitioners' positions. The memorandum of Florida Chapter of the Sierra Club, Inc. shall also specifically address the issues raised in Florida Rock's Motion to Dismiss. Failure to file the memoranda of law may be grounds for entry of an order of dismissal. The memoranda shall be accompanied by a separate, short and concise statement of the material facts upon which Petitioners rely as grounds for their requested relief.

7. The Department and Florida Rock may file written responses to the memoranda of law submitted by the Petitioners no later than fifteen (15) days after Petitioners' memoranda are served on Respondents. If any fact identified by the Petitioners is disputed or is not deemed material, the Department or Florida Rock shall so state. Both Respondents shall also, in a separate document, concisely identify any additional material facts they deem relevant to the issues. If Petitioners controvert any additional fact identified by Respondents, they shall file a statement identifying such facts within ten (10) days of service of Respondents' statement.

8. After receipt of the memoranda and statements of fact, the Hearing Officer may dispense with oral argument if he does not deem it likely to be helpful to his deliberations.

9. A copy of any statement, pleading or other paper filed with the Hearing Officer by any party to this proceeding shall be served on each party. Service shall be made upon the party or his, her or its representative by delivering a copy or by mailing it to the last known address.

10. The Hearing Officer shall issue a Final Order in compliance with the requirements of Section 120.569, F.S.

11. If during the course of this informal proceeding a party timely raises a disputed issue of material fact, the Department will forward this matter to the Division of Administrative Hearings for the assignment of an Administrative Law Judge to conduct a formal hearing.

12. Pursuant to Section 120.60, F.S., and/or Rule 62-4.080(3), F.A.C., Florida Rock's permit referenced above is extended until the completion of these proceedings.

DONE AND ORDERED this 23rd day of December, 1999.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Kirby B. Green, III
Kirby B. Green, III
Deputy Secretary

Douglas Building, MS 15
3900 Commonwealth Boulevard
Tallahassee, FL 32399-3000
Telephone: (850) 488-9314

FILING AND ACKNOWLEDGMENT:

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

Heather Chapman
Clerk

12/23/99
Date

CERTIFICATE OF SERVICE

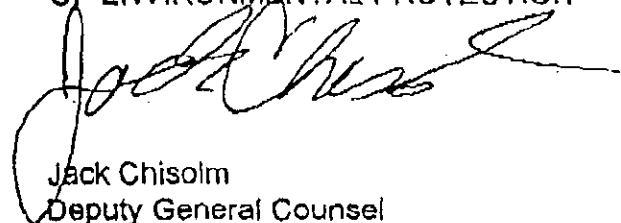
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to:

James J. Konish
President, FPLW, Inc.
Post Office Box 2309
Gainesville, Florida 32602-2309

Segundo J. Fernandez, Esq.
Oertel, Hoffman, Fernandez & Cole, P.A.
Post Office Box 6507
Tallahassee, Florida 32314-6507

On this 23 day of December, 1999.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Jack Chisolm
Deputy General Counsel
Florida Bar No. 273473

3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, FL 32399-3000
Telephone: (850) 488-9314