

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

MELANA C. WEEMS,

Petitioner,

vs.

**OGC CASE NO. 04-0909
DEP Permit #0050009-018-AC**

**STONE CONTAINER CORPORATION, and
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,**

Respondents.

**ORDER DISMISSING PETITION
WITH LEAVE TO AMEND**

On May 12, 2004, the Department of Environmental Protection (Department) received a letter that could be considered as a petition for administrative hearing (Petition) from the Petitioner, MELANA C. WEEMS. The letter appears to challenge the Department's proposed agency action with respect to STONE CONTAINER CORPORATION's application for a permit (Permit No. 0050009-018-AC) to increase the maximum softwood processing rate at its facility in Bay County, Florida.

Section 120.54(5)(b)4, Florida Statutes, Rule 28-106.201(2), Florida Administrative Code, and the notice provided to Petitioner explain the type of information which must be included in a petition for a formal administrative proceeding. The Petitioner's letter does not contain all of the information required under the above-cited statute and rule and the Department is unable to determine whether a formal administrative proceeding should be held. Specifically, the letter does not include the following information:

- (a) A statement of all issues of material fact disputed by the Petitioner or a statement that there are no disputed facts;
- (b) A concise statement of the ultimate facts alleged, including a statement of the specific facts that the Petitioner contends warrant reversal or modification of the Department's proposed decision; and
- (c) A statement of the specific rules or statutes that the Petitioner contends require reversal or modification of the Department's proposed decision; and

In view of the above, the Petition must be dismissed as required by Section 120.569(2)(c), Florida Statutes, and Rule 28-106.201(4), Florida Administrative Code.

IT IS THEREFORE ORDERED:

A. The Petition is DISMISSED, without prejudice. The Petitioner is granted leave to file an amended petition providing the additional information listed above.

B. Any amended petition must be filed (received) in the Office of General Counsel, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within fifteen (15) days after the date set forth in the certificate of service on the last page of this order.

C. This order constitutes final agency action of the Department, unless a timely amended petition is filed in compliance with this order.

Any party to this proceeding has the right to seek judicial review of this order under Section 120.68, Florida Statutes, by the filing of a notice of appeal under Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 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 thirty days after the date this order is filed with the clerk of the Department.

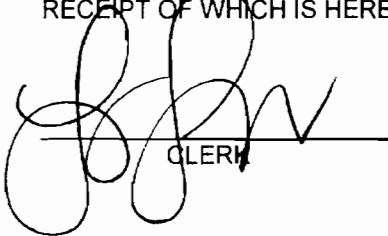
DONE AND ORDERED this 24 day of June, 2004, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



THOMAS M. BEASON
Acting General Counsel
3900 Commonwealth Boulevard – MS 35
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52, FLORIDA STATUTES,
WITH THE DESIGNATED DEPARTMENT CLERK,
RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.


CLERK

6/24/04
DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via this 25th day of June, 2004, to:

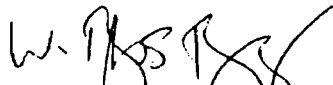
Melana C. Weems
511 North Center Ave.
Panama City, FL 32401

VIA U.S. MAIL ONLY

TERRY COLE, ESQ.
OERTEL, HOFFMAN,
FERNANDEZ & COLE
PO Box 1110
Tallahassee, FL 32302

VIA FACSIMILE ONLY: 521-0720

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



W. DOUGLAS BEASON
Assistant General Counsel
Florida Bar No. 379239
3900 Commonwealth Boulevard, MS #35
Tallahassee, Florida 32399-3000
Telephone (850) 245-2242
Facsimile (850) 245-2302

Gibson, Victoria

From: Light, Lisa
Sent: Monday, June 21, 2004 9:58 AM
To: Vielhauer, Trina
Cc: Beason, Doug; Gibson, Victoria
Subject: RE: stone container

We're slogging thru them. Hope to get them out soon.

Lisa

-----Original Message-----

From: Vielhauer, Trina
Sent: Friday, June 18, 2004 4:06 PM
To: Light, Lisa
Cc: Beason, Doug; Gibson, Victoria
Subject: stone container

Lisa,
Checking in on those 35 defective petitions on stone container. Did you guys get out the denials? I'm hoping so since the company was led to believe they had a final permit in hand sometime ago and we've now had to rescind and put their project on hold....

Thanks,
Trina

6/21/2004

Gibson, Victoria

From: Beason, Doug
Sent: Tuesday, June 08, 2004 1:45 PM
To: Vielhauer, Trina; Chisolm, Jack
Cc: Light, Lisa; Gibson, Victoria
Subject: RE: Stone "petitions"

I think that it makes sense for OGC to handle these.

-----Original Message-----

From: Vielhauer, Trina
Sent: Tuesday, June 08, 2004 12:52 PM
To: Beason, Doug; Chisolm, Jack
Cc: Light, Lisa; Gibson, Victoria
Subject: RE: Stone "petitions"

Oh. These are the original petitions?

I was thinking [and I guess this is a good time to clarify how best to do these things] that, since the determination of "legal sufficiency" is a legal one that OGC needs to make, that OGC would still handle the denials with leave to amend. Of course, we'd still want to know the petitions came in, that you have determined they are not legally sufficient, that by law we're required to give leave and we'd like the copy granting the leave.

I'm thinking that our role really is more once the legal hurdle of pleading a sufficient petition is met we can advise and draft the subsequent "how to handle". So I'm thinking our role is the grant or deny extensions or petitions AFTER there's been any denials and leaves to amend for sufficiency.

When Jack and I spoke on this one, I gathered [*and it may have been a bad assumption on my part*] that OGC was going to take lead on helping Sandra draft the rescission as well as denying with leave to amend.

Does that make sense for the future and is that the proper scope for our activities?

Trina

-----Original Message-----

From: Beason, Doug
Sent: Tuesday, June 08, 2004 12:17 PM
To: Vielhauer, Trina
Subject: RE: Stone "petitions"

Trina, I think these are the original petitions and the statute requires that we grant leave to amend.

-----Original Message-----

From: Vielhauer, Trina
Sent: Tuesday, June 08, 2004 12:13 PM
To: Gibson, Victoria; Beason, Doug
Cc: Veazey, Sandra
Subject: RE: Stone "petitions"

Question: Are they sufficient petitions this time? If they are not- are we sure we want to give leave to amend a 2nd time? Are we required to give leave to amend a second time or just the 1st time they are insufficient?

-----Original Message-----

From: Gibson, Victoria
Sent: Tuesday, June 08, 2004 12:02 PM
To: Vielhauer, Trina
Subject: FW: Stone "petitions"

-----Original Message-----

From: Light, Lisa
Sent: Tuesday, June 08, 2004 11:55 AM
To: Gibson, Victoria
Subject: FW: Stone "petitions"

Forgot to copy you on these....

These will be a ROYAL PITA. Do you want to take a stab at the denials, or should I just zap 'em out?

Lisa

-----Original Message-----

From: Light, Lisa
Sent: Friday, May 28, 2004 11:20 AM
To: Veazey, Sandra
Subject: FW: Stone "petitions"

Sandra - here are all 35 petitions - scanned as 1 humungus document. The first page of each "petition" is the OGC Assignment giving each case name & number.

Doug is the lucky guy to get these..... Denials with leave to amend should be ready next week.

Lisa

-----Original Message-----

From: Beebe, Joshua
Sent: Friday, May 28, 2004 11:07 AM
To: Light, Lisa
Subject:

<< File: Chronology of Activities.pdf >>

Legal Case Tracking - Chronology of Activities 06/18/2004 16:04:51

Chronology of Activities

OGC Number: District: County:

Style of Case:

Program Area: Mode:

Lead Attorney: Status:

Forum Name: Forum Case Number:

Permit Appl: Final Order Number:

Date *	Code	Activity Description
05/12/2004	RPFH	PETITION FOR FORMAL HEARING RECEIVED
05/27/2004	AA	ASSIGNED TO LEAD ATTORNEY DOUG D BEASON
05/27/2004	ACO	ADMIN. CASE OPENED IN OGC

(one of the 35)

no updates to the system since 5/27/04 - vs