

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

In the Matter of
Application for Permit by:

DER File No. AC 20-212334
Gadsden County

City of Gretna
City Hall
Corner of Cedar to Beach
City of Gretna, FL 32332

NOTICE OF INTENT TO DENY

The Department of Environmental Regulation gives notice of its Intent to Deny an air construction permit for the proposed project as detailed in the application specified above, for the following reasons.

The applicant, City of Gretna, applied to the Department of Environmental Regulation for a permit to construct a waste-to-energy facility to be located in Gadsden County, Florida to incinerate 244.8 tons per day (TPD) of processed municipal solid waste (MSW), also known as refuse derived fuel (RDF), and shredded scrap tires, also known as tire derived fuel (TDF).

PROJECT DESCRIPTION

The applicant has applied for an air construction permit to construct a resource recovery facility that is capable of receiving 500 TPD of MSW, of which 244.8 TPD of MSW will be incinerated as RDF and TDF and the rest separated and sold as recyclables. The heat generated by this waste-to-energy combustor is proposed to be used for producing steam to power a 7.4 MW generator, as specified in the application and other supporting materials. This facility is to be located in the Gretna Industrial Park, on Highway 12, Gadsden County, Florida. The latitude is 30°35'00"N and the longitude is 84°39'30"W.

REASONS FOR DENIAL

Rule 17-4.070, Florida Administrative Code, requires all permit applicants to provide the Department with appropriate reasonable assurances that the proposed permittee will comply with applicable regulations and requirements in connection with the proposed project. The applicant has failed to satisfy the Department's following concerns:

1. Significant Changes Made to the Original Application:

The applicant has made significant changes to the original construction permit application (changing SO₂ emissions from 202.4 TPY to 65.7 TPY; NO_x emissions from 248.8 TPY to 99.16 TPY; and CO emissions from 227.3 TPY to 98.11 TPY). These reductions appear to have been made to avoid more stringent review and are not consistent with original application and design parameters.

2. Market for Contaminated Recyclables:

The City of Gretna produces about 6 tons per day (TPD) of MSW but would like to be permitted for a 500 TPD facility, from which 244.8 TPD of MSW will be combusted in the proposed incinerator, and the rest separated and sold as recyclables. The applicant has failed to provide reasonable assurance that it has firm contracts or written statements from potential recyclable purchasers acknowledging their intent to consider the purchase of contaminated recyclables and/or energy. This type of information is essential to assure the Department that the facility will operate as intended.

3. Air Emissions Equipment/Vendor Design Information:

The applicant has failed to supply the name of a specific baghouse vendor that will guarantee emission limits. The applicant also failed to provide any information as to the type of fans that will be used in the proposed incinerator system. This information is needed to assure the Department that the baghouse and I.D. fans will operate properly.

4. SO₂ and NO_x Continuous Emissions Monitors:

The applicant has failed to supply the Department with design information or guarantee from any continuous emission monitor manufacturer that can meet the Department's standards to monitor the SO₂ and NO_x emissions.

5. Carbon Monoxide (CO) Continuous Emission Monitor:

The applicant claims that a CO continuous emissions monitor (CEM) is not necessary. The applicant has revised CO emission estimates from 227.3 tons per year (TPY) to 98.11 TPY. If the actual CO emission meets or exceeds 100 TPY, this project will be subject to PSD regulations which will be subject to more stringent review. The Department considers installation of a CO CEM to be essential to provide assurance that CO emissions will be less than 100 TPY.

6. NO_x Control System:

The applicant has failed to select a specific Selective Non-Catalytic Reduction (SNCR) process to control the NO_x emissions. The Department would require assurance from either the NO_x OUT process or Thermal DeNO_x vendor that it can guarantee at least a 60% NO_x removal efficiency. If the control efficiency is less than 60%, the NO_x emissions will exceed 100 TPY, subjecting the applicant to full PSD review.

7. MSW Weighing Equipment/Vendor Design Information:

The applicant has failed to provide the Department with a specific vendor for the automatic weighing device that feeds the MSW (RDF/TDF) to the combustor along with the manufacturer's guarantee that the weigh scales can be calibrated to within + or - 2.0%. If the weigh scales exceed a 2.0% limitation, the charging rate would exceed the 250 TPD limitation, thus subjecting this facility to a more stringent requirement of 40CFR60, Subpart Ea. The Department requires this information before a permit can be issued.

8. Lack of Mercury Emission Control:

The applicant has failed to provide the Department with information on how mercury or other air toxic pollutant will be controlled. The Department views that a waste-to-energy facility with a process input rate of 245 TPD of RDF/TDF should be equipped with mercury and other air toxic pollutant control devices.

Pursuant to Section 403.815, Florida Statutes and Rule 17-103.150, F.A.C., you (the applicant) are required to publish at your own expense the enclosed Notice of Intent to Deny Permit. The notice shall be published one time only within 30 days in the legal ad section of a newspaper of general circulation in the area affected. For the purpose of this rule, "publication in a newspaper of general circulation in the area affected" means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031, F.S., in the county where the activity is to take place. The applicant shall provide proof of publication to the Department's Bureau of Air Regulation, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within seven days of publication. Failure to publish the notice and provide proof of publication within the allotted time may result in the denial of the permit.

A person whose substantial interests are affected by the Department's permit denial may petition for an administrative proceeding (hearing) in accordance with Section 120.57, Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 2600 Blair Stone Road, Tallahassee, Florida

32399-2400. Petitions filed by the permit applicant and the parties listed below must be filed within 14 days of receipt of this notice. Petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. Failure to file a petition within this time period shall constitute a waiver of any right such person may have to request an administrative determination (hearing) under Section 120.57, Florida Statutes.

The Petition shall contain the following information:

(a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Department Permit File Number and the county in which the project is proposed;

(b) A statement of how and when each petitioner received notice of the Department's action or proposed action;

(c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action;

(d) A statement of the material facts disputed by Petitioner, if any;

(e) A statement of facts which petitioner contends warrant reversal or modification of the Department's action or proposed action;

(f) A statement of which rules or statutes petitioner contends require reversal or modification of the Department's action or proposed action; and

(g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action.

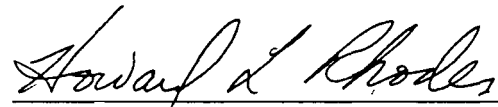
If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the application(s) have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 14 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Section 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-5.207, F.A.C.

This notice constitutes final agency action unless a petition is filed in accordance with the above paragraphs or unless a request for extension of time in which to file a petition is filed within the time specified for filing a petition and conforms to Rule 17-103.070, F.A.C. Upon timely filing of a petition or a request for an extension of time this notice will not be effective until further Order of the Department.

Any party to this Notice of Permit Denial has the right to seek judicial review pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400; and by filing a copy with the appropriate District Court of Appeal. Notice of Appeal must be filed within 30 days from the date the Notice of Permit Denial is filed with the Clerk of the Department.

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION



Howard L. Rhodes, Director
Division of Air Resources Mgmt.
2600 Blair Stone Road
Tallahassee, FL 32399-2400
(904) 488-1344

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this Notice of Permit Denial and all copies were mailed before the close of business on 9/11/92 to the listed persons.

FILED, on this date, pursuant to §120.52(9), Florida Statutes, with designated Department Clerk, receipt of which is hereby acknowledged.

Martha Jane Wise 9/11/92
Clerk Date

Copies furnished to:

Ed Middleswart, NWD
David Buff, P.E., KBN
James Carter, Gretna City Manager
Chairman, Gadsden County Commission
Sen. Pat Thomas
John Mathews, Florida Reduction Group
Jewell Harper, EPA
Chris Shaver, NPS
James W. Pulliam, Jr., FWS
Hon. Al Lawson
Hon. Hurley Rudd

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION
NOTICE OF INTENT TO DENY

The Department of Environmental Regulation gives notice of its intent to deny an air construction permit (AC20-212334) to the City of Gretna, City Hall, Corner of Cedar and Beach Streets, Gretna, FL 32332 to construct a waste-to-energy facility that would receive 500 tons per day (TPD) of municipal solid waste (MSW) from which 245 TPD of Refuse Derived Fuel (RDF) and Tire Derived Fuel (TDF) will be incinerated while generating 7.4 MW. The remainder of the MSW would be sold as recyclables. This facility is to be located in the Gretna Industrial Park on Highway 12, Gadsden County, Florida. The Latitude is 30°35'00"N and Longitude is 84°39'30"W.

A person whose substantial interests are affected by the Department's proposed permitting decision may petition for an administrative proceeding (hearing) in accordance with Section 120.57, Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within 14 days of publication of this notice. Petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. Failure to file a petition within this time period shall constitute a waiver of any right such person may have to request an administrative determination (hearing) under Section 120.57, Florida Statutes.

The Petition shall contain the following information; (a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Department Permit File Number and the county in which the project is proposed; (b) A statement of how and when each petitioner received notice of the Department's action or proposed action; (c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action; (d) A statement of the material facts disputed by Petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Department's action or proposed action; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Department's action or proposed action; and (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the application have the right to petition to become a party to the proceeding. The

petition must conform to the requirements specified above and be filed (received) within 14 days of publication of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Section 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-5.207, F.A.C.

The application is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at:

Department of Environmental Regulation
Bureau of Air Regulation
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Department of Environmental Regulation
Northwest District
160 Governmental Center
Pensacola, Florida 32501-5794

Department of Environmental Regulation
Northwest District Branch Office
2815 Remington Green Circle - Suite A
Tallahassee, Florida 32308-1513

Any person may send written comments on the proposed action to Mr. Preston Lewis at the Department's Tallahassee address. All comments received within 30 days of the publication of this notice will be considered in the Department's final determination.

RULES OF ADMINISTRATIVE PROCEDURE - FINAL AGENCY ACTION
(NON-RULEMAKING) AND APPEAL

DER 17-103.130(1)(b)

7/92

PART I: DECISIONS (ADJUDICATORY) DETERMINING
SUBSTANTIAL INTERESTS OF AFFECTED PERSONS

parties may agree to, or for good cause the presiding officer may direct, any other order of presentation.

(2) In enforcement, license revocation, or other similar proceedings, the Department shall have the burden of proof. In these proceedings, the order of presentation shall be the Department, any party who supports the action proposed by the Department, any party against whom the proceeding has been initiated and any party who opposes the action proposed by the Department. Rebuttal testimony and public comment shall be submitted as directed by the presiding officer. The parties may agree to any other order of presentation.

Specific Authority: 120.53, 403.087, 403.088, F.S.

Law Implemented: 120.53, F.S.

History: New 2-6-78, Amended 4-28-81, Transferred from 17-1.59, Amended 6-1-84.

17-103.140 Relationship with Other Rules. Where there are conflicts between the requirements of this chapter and other specific procedural rules such as Chapter 17-17, F.A.C., procedural rules promulgated to implement the Florida Electrical Power Plant Siting Act, and the Florida Transmission Line Siting Act, and Chapter 17-23, F.A.C., procedural rules to implement the Florida Industrial Siting Act, and any rules which set forth more specific procedures, the latter rules shall govern.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History: New 2-6-78, Transferred from 17-1.61, Amended 6-1-84.

17-103.150 Public Notice of Application and Proposed Agency Action.

(1) Each person who files an application for a Department permit may publish, or may be required to publish, and provide proof of publication to the Department, at his own expense, a Notice of Application in a newspaper of general circulation in the county in which the activity will be located or take place. Publication of a Notice of Application shall be required for those projects which, because of their size, potential effect on the environment or natural resources, controversial nature, or location, are reasonably expected by the Department to result in a heightened public concern or likelihood of request for administrative proceedings. If required, the notice shall be published one time only within fourteen (14) days after a complete application is filed and shall contain:

(a) name of applicant, a brief description of the project and its location;

RULES OF ADMINISTRATIVE PROCEDURE - FINAL AGENCY ACTION
(NON-RULEMAKING) AND APPEAL

DER 17-103.150(1)(b)

7/92

PART I: DECISIONS (ADJUDICATORY) DETERMINING
SUBSTANTIAL INTERESTS OF AFFECTED PERSONS

(b) where the application file is located and when it is available for public inspection;

(c) the notice shall be prepared by the Department and shall comply with the following format:

Notice of Application

The Department of Environmental Regulation announces receipt of an application for permit from (name of applicant) to (brief description of project). This proposed project will be located at (location) in (county) (city).

This application is being processed and is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at (name and address of office).

(2)(a) The Department shall require publication of notice of the Department's proposed action on an application in the following circumstances:

1. All applicants for construction permits for domestic wastewater treatment plants, industrial wastewater treatment plants, solid waste disposal facilities, hazardous waste facilities, standard form dredge and fill projects, and major air pollution sources shall publish, at the applicant's expense, a Notice of Intent to Issue a Permit.

2. The Department shall require other applicants to publish a Notice of Intent to Issue where, the Department finds that the project is reasonably expected to result in a heightened public concern or likelihood of request for administrative proceedings because of the project's size, potential effect on the environment or natural resources, controversial nature or location.

3. Applicants for construction permits for drinking water treatment plants whose facilities will discharge to surface or ground water and will be required to obtain a permit to discharge or will require some other Department permit shall publish, at the applicant's expense, a Notice of Intent to Issue a Permit.

4. Applicants for construction or expansion of solid waste facilities shall publish Notice of Intent to Deny Permit.

5. After publication of a Notice of Intent to Issue or Intent to Deny a permit application the applicant shall publish an additional notice if the subject activity or project is substantially modified by the applicant and the Department proposes to issue the permit with the modification.

RULES OF ADMINISTRATIVE PROCEDURE - FINAL AGENCY ACTION
(NON-RULEMAKING) AND APPEAL

DER 17-103.150(2)(a)5.

7/92

PART I: DECISIONS (ADJUDICATORY) DETERMINING
SUBSTANTIAL INTERESTS OF AFFECTED PERSONS

The additional notice shall not be required for applications for which a Notice of Administrative Proceeding on Permit Application has been published pursuant to Paragraph (2)(e) below. For the purposes of this subparagraph, the term "substantially modified" means a major relocation or modification of the activity or project that is reasonably expected to cause new or greater adverse environmental impacts upon the substantial interests of a person other than the applicant.

(b) The applicant shall cause the notice to be published as soon as possible after notification by the Department of its intended action. The provisions of Section 120.60(2), F.S., shall be tolled by the request of the Department for publication of notice and shall resume 14 days after receipt by the Department, at the address specified in the request for publication, of proof of publication.

(c) The notice shall be published one time only in the legal ad section of a newspaper of general circulation in the area affected. For the purpose of this rule, "publication in a newspaper of general circulation in the area affected" means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031, F.S., in the county where the activity is to take place. The applicant shall provide proof of publication to the Department, at the address specified in the request for publication, within seven days of publication. The notice shall be prepared by the Department and shall contain:

1. name of applicant and a brief description of the proposed activity and its location;
2. location of the application and its availability;
3. statement of the Department's intended action; and
4. notification of administrative hearing opportunity.

(d) The notice required by Subparagraphs (2)(a)1., 2., 3., or 4. above shall substantially read as follows:

Notice of Intent to [insert "Issue" or "Deny" as appropriate] Permit

The Department of Environmental Regulation gives notice of its intent to (issue)(deny) a permit to (name and address of applicant) to (brief description of project).

A person whose substantial interests are affected by the Department's proposed permitting decision may petition for an administrative proceeding (hearing) in accordance with Section 120.57, F.S. The petition must contain the information set forth below and must be filed (received) in the Office

RULES OF ADMINISTRATIVE PROCEDURE - FINAL AGENCY ACTION
(NON-RULEMAKING) AND APPEAL

DER 17-103.150(2)(d)

7/92

PART I: DECISIONS (ADJUDICATORY) DETERMINING
SUBSTANTIAL INTERESTS OF AFFECTED PERSONS

of General Counsel of the Department at 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within 14 days of publication of this notice. Petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. Failure to file a petition within this time period shall constitute a waiver of any right such person may have to request an administrative determination (hearing) under Section 120.57, F.S.

The petition shall contain the following information: (a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Department Permit File Number and the county in which the project is proposed; (b) A statement of how and when each petitioner received notice of the Department's action or proposed action; (c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Department's action or proposed action; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Department's action or proposed action; and (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the application have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 14 days of publication of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Section 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule [cite appropriate rule], F.A.C.

The application is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at (name and address of office).

(e) If the applicant initiates an administrative proceeding with regard to a permit denial or an intent to deny and the project or activity is one for which publication of a Notice of Intent to Issue would have been required pursuant to Subparagraphs (2)(a)1. or 2. above, the applicant shall publish a Notice of Administrative Proceeding on Permit Application.

RULES OF ADMINISTRATIVE PROCEDURE - FINAL AGENCY ACTION
(NON-RULEMAKING) AND APPEAL

DER 17-103.150(2)(e)1.

7/92

PART I: DECISIONS (ADJUDICATORY) DETERMINING
SUBSTANTIAL INTERESTS OF AFFECTED PERSONS

1. The notice shall be published at the applicant's expense either:
 - a. Within fifteen days after the applicant's petition for administrative proceeding has been forwarded to the Division of Administrative Hearing (DOAH); or
 - b. Within fifteen days after the initiation of an administrative proceeding before the Department pursuant to Subsection 120.57(1) or (2), F.S.; or
 - c. At the option of the applicant, when the applicant has filed a request for an extension of time in which to file a petition for an administrative proceeding.
2. The notice shall read substantially as follows:

Notice of Administrative Proceeding on Permit Application

The Department of Environmental Regulation gives notice of the receipt of a [request for an extension of time in which to file a] petition for and the initiation of an administrative proceeding (hearing) on its [intent to deny or denial of] a permit to [name and address of applicant, application number, OGC file number and, if applicable, DOAH case number] to [brief description of activity or project and location].

The administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the proposed agency action and may result in the issuance of a permit as requested by the applicant or as modified in the course of the proceeding or by settlement. Persons whose substantial interests will be affected by any decision of the Department with regard to the application have the right to petition to become a party to the proceeding. The petition must be filed within 14 days after publication of this notice and must be filed (received) with the Office of General Counsel, Department of Environmental Regulation, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, [and the assigned Hearing Officer [name] at the Division of Administrative Hearings, Department of Administration, 2009 Apalachee Parkway, Tallahassee, Florida 32399-1500]. Petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing.

Failure to petition within the allowed time period constitutes a waiver of any right such person has to request a hearing under Section 120.57, F.S., and to participate as a party in this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule [cite appropriate rule], F.A.C.

RULES OF ADMINISTRATIVE PROCEDURE - FINAL AGENCY ACTION
(NON-RULEMAKING) AND APPEAL

DER 17-103.150(2)(e)2.

7/92

PART I: DECISIONS (ADJUDICATORY) DETERMINING
SUBSTANTIAL INTERESTS OF AFFECTED PERSONS

The petition shall contain the following information: (a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Department Permit File Number, the OGC file number, the county in which the project is proposed, and if applicable the DOAH case number; (b) A statement of how each petitioner's substantial interests are affected by any Department action on the application; (c) A statement of the material facts disputed by petitioner, if any; (d) A statement of facts which petitioner contends warrants affirmance, reversal, or modification of the Department's action or proposed action; (e) A statement of which rules or statutes petitioner contends require affirmance, reversal, or modification of the Department's action or proposed action; and (f) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action.

The Department will not enter a final settlement or otherwise resolve the issues in this proceeding until after the expiration of the 14-day time period in which a petition can be filed.

The application and the Department's [intent to deny or denial] are available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at (name and address of office).

(f) Notices of Intent to Issue Permit for hazardous waste facilities shall be in the format set forth above but shall include the time frames set forth in Rule ⁴ 17-30.220, F.A.C.

(3) The Department or any person whose substantial interests are or may be affected by proposed agency action other than on a permit application may publish or may be required to publish public notice, and provide proof of publication, in a newspaper of general circulation in the county or counties affected by the proposed action. Such public notice shall contain at least the following information and be in substantially the following form:

State of Florida
Department of Environmental Regulation
Notice of Proposed Agency Action

(a) The type of proposed agency action (e.g., Consent Order);

(b) A description and location of the subject matter or activity covered by the action, the Department's identification number, and the name and address of any person to whom the action is directed;

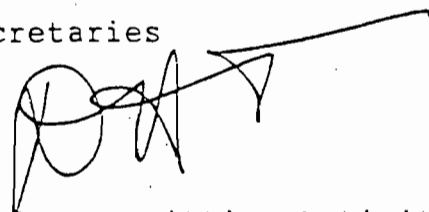


State of Florida
DEPARTMENT OF ENVIRONMENTAL REGULATION

For Routing To Other Than The Addressee	
To: <u>Person</u>	Location: _____
To: _____	Location: _____
To: _____	Location: _____
From: _____	Date: _____

Interoffice Memorandum

TO: Division Directors
Deputy Assistant Secretaries

FROM: Dale Twachtmann 

DATE: October 31, 1990

RE: Notice Requirements For Permitting Activity

It is the Department's policy to encourage full public participation in the evaluation of permit applications. The legislature has established notice provisions for public participation in Section 403.815, Florida Statutes, which states that the Department can publish or require the applicant to publish notices of permit applications and intended agency action on applications. The Department has implemented this statute in Florida Administrative Code Rule 17-103.150.

During the past several months -- in locations throughout the state -- we have found that we need to enhance our procedures for providing notice to citizens and to elected officials. During the upcoming legislative session we plan to offer additional ideas to enable the Department to provide broader notice and participation than that which is currently authorized. Beginning immediately, we will make an extra effort to make sure that the citizens and the elected officials have more opportunity to be aware of:

- Our receipt of applications for projects of heightened public concern
- Department decisions on permit applications for such projects

This memorandum describes certain procedures, in addition to the current requirements of the law and our rules, that must apply to these projects.

Projects of heightened public concern

The notice requirements described in this memorandum apply to the following projects that require construction or operation permits:

- Biohazardous waste incinerators
- Class I, II and III solid waste landfills
- Waste-to-energy combustors not covered under the Power Plant Siting Act

- Hazardous Waste Treatment, Storage and Disposal facilities
- Thermal treatment facilities for soil remediation

If, after consultation with the Assistant Secretary or myself, the Deputy Assistant Secretary or the Division Director determines that an individual project not included in this list is a project of heightened public concern, the notice requirements in this memorandum should apply to that project as well. Excluded from the notice requirements are activities subject to general permits or exemptions.

Please remember that some of these projects, such as hazardous waste facilities and facilities affecting air quality needing State Implementation Plan amendments, may require additional notices beyond those described in the memorandum. Also, the Henderson Act requires special notice for wetland resource projects, as described in Section 403.916, Florida Statutes.

Sending Notice to Elected Officials

For all listed projects, the Department will mail a notice of permit application, immediately after its receipt, to the Chair of the Board of County Commissioners, the highest ranking elected official of the municipality, and each State Senator and Representative serving the jurisdiction in which the project is located. After the Department completes the permit review, a copy of the notice of intent to issue, or intent to deny or denial, will also be sent to these same officials.

Requiring Notice to be Advertized in Newspaper

For the listed projects the Department will require the applicant to publish a "Notice of Application" immediately upon receipt of the permit application. Florida Administrative Code Rule 17-103.150(1)(c) sets out the content of the notice. The applicant must be advised that failure to publish notice is grounds for permit denial. Then later, applicants must also publish notice of the Department's intended action to issue, or intent to deny or denial, in conformance with Florida Administrative Code Rule 17-103.150(2).

Upon receipt of proof of publication of notice, the Department must carefully review it to determine whether the newspaper in which the notice has been published is a newspaper of general circulation in the county in which the activity will be located. If the notice has been published in any newspaper other than a well established newspaper with wide circulation in that area, we will need to find out more about the newspaper, including where and how often it is printed, what its circulation is, where it is available, whether it is available to the public generally, and what kind of information it prints. Section 50.031, Florida Statutes, copy attached, describes these legal requirements in

greater detail. The district office or division affected must then review this information with the General Counsel to determine whether the newspaper meets the legal requirements for notice. If the Department concludes that it does not we must advise the applicant promptly that notice must be readvertized in an appropriate newspaper and that failure to do so will result in denial of the permit.

In the next few days you will receive new forms for sending out notices of receipt of application and agency action. These new forms will be consistent with the policies in this memorandum.

CHAPTER 50

LEGAL AND OFFICIAL ADVERTISEMENTS

- 50.011 Where and in what language legal notices to be published.
 50.021 Publication when no newspaper in county.
 50.031 Newspapers in which legal notices and process may be published.
 50.041 Proof of publication; uniform affidavits required.
 50.051 Proof of publication; form of uniform affidavit.
 50.061 Amounts chargeable.
 50.071 Publication costs; court docket fund.

50.011 Where and in what language legal notices to be published.—Whenever by statute an official or legal advertisement or a publication, or notice in a newspaper has been or is directed or permitted in the nature of or in lieu of process, or for constructive service, or in initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, or for any purpose, including all legal notices and advertisements of sheriffs and tax collectors, the contemporaneous and continuous intent and meaning of such legislation all and singular, existing or repealed, is and has been and is hereby declared to be and to have been, and the rule of interpretation is and has been, a publication in a newspaper printed and published periodically once a week or oftener, containing at least 25 percent of its words in the English language, entered or qualified to be admitted and entered as second-class matter at a post office in the county where published, for sale to the public generally, available to the public generally for the publication of official or other notices and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public.

History.—s. 2, ch. 3022, 1877; RS 1296; GS 1727; s. 1, ch. 5610, 1907; RGS 2942; s. 1, ch. 12104, 1927; CGL 4666, 4901; s. 1, ch. 63-367; s. 6, ch. 67-254.
Note.—Former s. 49.01.

50.021 Publication when no newspaper in county. When any law, or order or decree of court, shall direct advertisements to be made in any county and there be no newspaper published in the said county, the advertisement may be made by posting three copies thereof in three different places in said county, one of which shall be at the front door of the courthouse, and by publication in the nearest county in which a newspaper is published.

History.—RS 1297; GS 1726; RGS 2943; CGL 4667; s. 6, ch. 67-254.
Note.—Former s. 49.02.

50.031 Newspapers in which legal notices and process may be published.—No notice or publication required to be published in a newspaper in the nature of or in lieu of process of any kind, nature, character or description provided for under any law of the state, whether heretofore or hereafter enacted, and whether pertaining to constructive service, or the initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, by any court in this state, or any notice of sale of property, real or personal, for taxes, state, county or municipal, or sheriff's, guardian's or administrator's or any sale made pursuant to any judicial order, decree or

statute or any other publication or notice pertaining to any affairs of the state, or any county, municipality or other political subdivision thereof, shall be deemed to have been published in accordance with the statutes providing for such publication, unless the same shall have been published for the prescribed period of time required for such publication, in a newspaper which at the time of such publication shall have been in existence for 1 year and shall have been entered as second-class mail matter at a post office in the county where published, or in a newspaper which is a direct successor of a newspaper which together have been so published; provided, however, that nothing herein contained shall apply where in any county there shall be no newspaper in existence which shall have been published for the length of time above prescribed. No legal publication of any kind, nature or description, as herein defined, shall be valid or binding or held to be in compliance with the statutes providing for such publication unless the same shall have been published in accordance with the provisions of this section. Proof of such publication shall be made by uniform affidavit.

History.—ss. 1-3, ch. 14830, 1931; CGL 1836 Supp. 4274(1); s. 7, ch. 22858, 1945; s. 6, ch. 67-254; s. 1, ch. 74-221.
Note.—Former s. 49.03.

50.041 Proof of publication; uniform affidavits required.—

(1) All affidavits of publishers of newspapers (or their official representatives) made for the purpose of establishing proof of publication of public notices or legal advertisements shall be uniform throughout the state.

(2) Each such affidavit shall be printed upon white bond paper containing at least 25 percent rag material and shall be 8½ inches in width and of convenient length, not less than 5½ inches. A white margin of not less than 2½ inches shall be left at the right side of each affidavit form and upon or in this space shall be substantially pasted a clipping which shall be a true copy of the public notice or legal advertisement for which proof is executed.

(3) In all counties having a population in excess of 450,000 according to the latest official decennial census, in addition to the charges which are now or may hereafter be established by law for the publication of every official notice or legal advertisement, there may be a charge not to exceed \$2 for the preparation and execution of each such proof of publication or publisher's affidavit.

History.—s. 1, ch. 19290, 1939; CGL 1940 Supp. 4668(1); s. 1, ch. 63-49; s. 26, ch. 67-254; s. 1, ch. 76-50.
Note.—Former s. 49.04.

50.051 Proof of publication; form of uniform affidavit.—The printed form upon which all such affidavits establishing proof of publication are to be executed shall be substantially as follows:

*or Deny **

PLJAKRUL

#0011

INTENT TO ISSUE [^] Dec. 1988
(For Office Use Only)
Use only when publication required

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

CERTIFIED

In the Matter of an
Application for Permit by:

DER File No. [REDACTED]
[name of county]

~~[Name and address of
applicant]~~

INTENT TO ISSUE *or Deny **

The Department of Environmental Regulation gives notice of its intent to issue a permit (copy attached) for the proposed project as detailed in the application specified above, for the reasons stated below.

The applicant, ~~[insert name of applicant]~~, applied on ~~[date]~~ to the Department of Environmental Regulation for a permit ~~[add water quality certification if applicable]~~ to ~~[insert description of project and its location]~~.

The Department has permitting jurisdiction under ~~[citations of applicable statutes & rules]~~. The project is not exempt from permitting procedures. The Department has determined that a ~~[type of permit]~~ permit is required for the proposed work.

~~[Insert grounds for intended agency action. Include any caveats such as "issued pending receipt of consent of use..."]~~

02/26/90 for DR. *[Signature]*

Pursuant to Section 403.815, Florida Statutes and DER Rule 17-103.150, F.A.C., you (the applicant) are required to publish at your own expense the enclosed Notice of Intent to Issue Permit. The notice shall be published one time only within 30 days, in the legal ad section of a newspaper of general circulation in the area affected. For the purpose of this rule, "publication in a newspaper of general circulation in the area affected" means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031, F.S., in the county where the activity is to take place. The applicant shall provide proof of publication to the Department, at Northeast District Office, 3426 Bills Road, Jacksonville, Florida 32207 within seven (7) days of publication. Failure to publish the notice and provide proof of publication within the allotted time may result in the denial of the permit.

The Department will issue the permit with the attached conditions unless a petition for an administrative proceeding (hearing) is filed pursuant to the provisions of Section 120.57, F.S.

A person whose substantial interests are affected by the Department's proposed permitting decision may petition for an administrative proceeding (hearing) in accordance with Section 120.57, Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 2600 Blair Stone Road, Tallahassee, Florida 32399-2400. Petitions filed by the permit applicant and the parties listed below must be filed within 14 days of receipt of this intent. Petitions filed by other persons must be filed within 14 days of publication of the public notice or within 14 days of their receipt of this intent, whichever first occurs. Petitioner shall mail a copy of the petition to the applicant at the address indicated above at the

time of filing. Failure to file a petition within this time period shall constitute a waiver of any right such person may have to request an administrative determination (hearing) under Section 120.57, Florida Statutes.

The Petition shall contain the following information;

(a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Department Permit File Number and the county in which the project is proposed;

(b) A statement of how and when each petitioner received notice of the Department's action or proposed action;

(c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action;

(d) A statement of the material facts disputed by Petitioner, if any;

(e) A statement of facts which petitioner contends warrant reversal or modification of the Department's action or proposed action;

(f) A statement of which rules or statutes petitioner contends require reversal or modification of the Department's action or proposed action; and

(g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this intent. Persons whose substantial interests will be affected by any decision of the Department with regard to the application have the right to petition to become a party to the proceeding. The petition

must conform to the requirements specified above and be filed (received) within 14 days of receipt of this intent, in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Section 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-5.207, F.A.C.

Executed in Jacksonville, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION

Ernest E. Frey
Deputy Assistant Secretary
Northeast District Office
3426 Bills Road
Jacksonville, Florida 32207
(904)798-4200

Copies furnished to:

~~[as applicable copy to:
Attorney for applicant or applicant if no attorney
Persons who requested notice
Local program]~~

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this INTENT TO ISSUE and all copies were mailed before the close of business on (date) to the listed persons.

Clerk Stamp

FILING AND ACKNOWLEDGEMENT
FILED, on this date, pursuant to
§120.52(9), Florida Statutes, with
the designated Department Clerk,
receipt of which is hereby
acknowledged.

PL JAX RUL
14

FINAL ORDER DENYING APPLICATION FOR PERMIT
(Send after Intent to Deny Issued)

THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

CERTIFIED

In the matter of an
Application for Permit
By:
~~[Name and address of
Applicant]~~

DER File No. [#]
~~[Name of County]~~

FINAL ORDER DENYING APPLICATION FOR PERMIT

The Applicant, ~~[name and address of applicant]~~, applied for a permit under Chapter 403, Florida Statutes, to ~~[brief description of project]~~.

A Notice of Intent to Deny the above application was issued to the applicant on ~~[date]~~, a copy of which is attached hereto and incorporated herein as Exhibit "A". the Notice states with particularity the specific grounds on which the intended denial was based. The reasons stated in the Notice of Intent which support a denial of the described application are expressed, adopted, and incorporated herein by reference.

The Applicant was advised in the Notice of Intent to Deny of their right to petition for an administrative hearing concerning this matter within fourteen (14) days of receipt of the notice of intended agency action, pursuant to Section 120.57, Florida Statutes. The Applicant declined or failed to timely exercise their right to an administrative hearing.

Therefore, for the reasons set forth above, the permit application is hereby denied.

Any party to this Order has the right to seek judicial review of the Order pursuant to Section 120.68, Florida Statutes by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, 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 from the date this Order is filed with the Clerk of the Department.

Executed in Jacksonville, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION

Ernest E. Frey
Deputy Assistant Secretary
Northeast District Office
3426 Bills Road
Jacksonville, Florida 32207
(904)798-4200

CERTIFICATE OF SERVICE

This is to certify that this FINAL ORDER DENYING APPLICATION FOR PERMIT and all copies were mailed before the close of business on ~~[date]~~ to the listed persons.

Clerk Stamp

Filing and Acknowledgement filed, on this date, pursuant to §120.52(9), Florida Statutes, with the designated Department clerk, receipt of which is hereby acknowledged.

(Clerk)

(date)

Copies furnished to:

~~[as applicable copy to:
Attorney for applicants or applicants if no attorney
Persons who requested notice
Local program]~~

PL JAXRUL
15

NOTICE OF PERMIT DENIAL
When no Intent Issued - replaces
Final Order of Denial

THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

In the matter of an
Application for Permit
By: ~~[Name and address of~~
~~'applicant']~~

DER File No. [#]
[Name of County]

NOTICE OF PERMIT DENIAL

The Applicant, ~~[name and address of applicant]~~, applied on ~~[date]~~,
to the Department of Environmental Regulation for a permit to ~~[brief~~
~~description of project]~~.

The department has permitting jurisdiction under Section 403,
Florida Statutes (F.S.), and Chapter ~~[rule citation]~~, Florida
Administrative Code (F.A.C.). The department has determined that a
~~[type of permit]~~ permit is required for the proposed work.

The department hereby denies the permit for the following
reasons:

~~{set out reasons}~~

A person whose substantial interests are affected by the
Department's permit denial may petition for an administrative
proceeding (hearing) in accordance with Section 120.57, Florida
Statutes. The petition must contain the information set forth below
and must be filed (received) in the Office of General Counsel of the
Department at 2600 Blair Stone Road, Tallahassee, Florida 32399-2400,
within 14 days of receipt of this notice. Petitioner shall mail a

copy of the petition to the applicant at the address indicated above at the time of filing. Failure to file a petition within this time period shall constitute a waiver of any right such person may have to request an administrative determination (hearing) under Section 120.57, Florida Statutes.

The Petition shall contain the following information:

(a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Department Permit File Number and the county in which the project is proposed;

(b) A statement of how and when each petitioner received notice of the Department's action or proposed action;

(c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action;

(d) A statement of the material facts disputed by Petitioner, if any;

(e) A statement of facts which petitioner contends warrant reversal or modification of the Department's action or proposed action;

(f) A statement of which rules or statutes petitioner contends require reversal or modification of the Department's action or proposed action; and

(g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice of Permit Denial. Persons whose substantial interests will be

affected by any decision of the Department with regard to the application have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 14 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Section 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-5.207, F.A.C.

This Notice constitutes final agency action unless a petition is filed in accordance with the above paragraphs or unless a request for extension of time in which to file a petition is filed within the time specified for filing a petition and conforms to Rule 17-103.070, F.A.C. Upon timely filing of a petition or a request for an extension of time this Notice will not be effective until further Order of the Department.

Any party to this Notice of Permit Denial has the right to seek judicial review pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400; and by filing a copy with the appropriate District court of Appeal. Notice of Appeal must be filed within 30 days from the date the Notice of Permit Denial is filed with the clerk of the Department.

EXECUTED in Jacksonville, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION

Ernest E. Frey
Deputy Assistant Secretary
Northeast District Office
3426 Bills Road
Jacksonville, Florida 32207
(904)798-4200

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this NOTICE OF PERMIT DENIAL and all copies were mailed before the close of business on [date] to the listed persons.

Clerk Stamp

FILING AND ACKNOWLEDGEMENT
FILED, on this date, pursuant to
§120.52(9), Florida Statutes, with
the designated Department Clerk,
receipt of which is hereby
acknowledged.

Clerk

Date

Copies furnished to:

~~(as applicable, copy to:~~
~~Attorney for applicant or applicant if no attorney~~
~~Parties~~
~~Persons who have requested notice~~
~~Local Program)~~

**RULES OF ADMINISTRATIVE PROCEDURE
DER 1991 FINAL AGENCY ACTION (NON-RULEMAKING) AND APPEAL 17-103**

**CHAPTER 17-103
RULES OF ADMINISTRATIVE PROCEDURE - FINAL AGENCY ACTION
(NON-RULEMAKING) AND APPEAL**

**PART I
DECISIONS (ADJUDICATORY) DETERMINING
SUBSTANTIAL INTERESTS OF AFFECTED PERSONS**

17-103.010	General.
17-103.020	Who May Appear: Criteria for Authorized Representation.
17-103.030	Staff Personnel. (Repealed 10-19-1988)
17-103.040	Form.
17-103.050	Filing and Service.
17-103.060	Signature, Verification and Certificate of Service.
17-103.070	Extension of Time for Filing.
17-103.080	Computation of Time.
17-103.090	Informal Conference.
17-103.100	Petitions or Applications for Variances.
17-103.110	Administrative Enforcement Actions.
17-103.120	Department Approval of Testing and Research Programs for Air Pollution Sources.
17-103.130	Burden of Proof; Order of Presentation.
17-103.140	Relationship with Other Rules.
17-103.150	Public Notice of Application and Proposed Agency Action.
17-103.155	Petition for Administrative Hearing; Waiver of Right to Administrative Proceeding.
17-103.160	Uniformity in Approval and Denial of Applications for Department Permits and Certifications.
17-103.170	Designation, Preparation and Transmittal of Record for Administrative Appeals.
17-103.180	Videotaped Depositions.
17-103.190	Suspension and Revocation of Department Permits, Certifications or Certificates.
17-103.200	Agency Action on Recommended Orders.
17-103.201	Final Orders.
17-103.202	Certificate of Mailing or Hand Delivery; Permitting.
17-103.205	Official Record of Hearing.
17-103.210	Designation of Official Reporter; Subject Matter Index.

17-103 Index

**RULES OF ADMINISTRATIVE PROCEDURE
DER 1991 FINAL AGENCY ACTION (NON-RULEMAKING) AND APPEAL 17-103**

**PART II
APPEALS TO THE GOVERNOR AND CABINET ON COASTAL CONSISTENCY**

17-103.300	General.
17-103.310	Final Agency Action.
17-103.320	Parties to Appeals; Amicus Curiae; Intervenors.
17-103.330	Initiation of Appeal; Request for Record; Contents of Notice; Compliance and Enforcement; Public Notice.
17-103.340	Initiation of Cross-Appeals.
17-103.350	Briefs.
17-103.360	Oral Argument.
17-103.370	Proposed Orders.
17-103.380	Record.
17-103.390	Scope of Review.
17-103.400	Decisions.
17-103.410	Ex Parte Communications.
17-103.420	Settlement.
17-103.430	Certificates of Service.
17-103.440	Copies.
17-103.450	Motions.
17-103.460	Orders.
17-103.470	Meetings; Notice; Presiding Officer; Quorum Agendas; Distribution of Agendas; Recording of Proceedings; Minutes; Order of Procedure; Agency Action; Voting; Amendment to Rules; Parliamentary Matters.
17-103.500	Purpose and Use of Declaratory Statement.
17-103.510	Petition.
17-103.520	Department Disposition.

**PART III
DECLARATORY STATEMENT**

17-103 Index

PART I
DECISIONS (ADJUDICATORY) DETERMINING
SUBSTANTIAL INTERESTS OF AFFECTED PERSONS

17-103.010 General. Proceedings determining the substantial interests of a person, except rulemaking proceedings, under statutes which the Department is required to implement, shall be pursuant to Section 120.57, Florida Statutes, Chapter 17-103 and Chapter 28-5, F.A.C., as amended, except for proceedings for which another specific rule has been promulgated.

Specific Authority: 120.53(1), F.S.

Law Implemented: 120.53(1), F.S.

History: Revised 10-20-73; Amended 2-6-78; Formerly 17-1.10;

Transferred from 17-1.19 and Amended 6-1-84.

17-103.020 Who May Appear: Criteria for Authorized Representation.

(1) A party may be represented by an attorney or other qualified representative or may appear on his own behalf.

(2) If a party is not represented by an attorney, or does not appear on his own behalf, the presiding officer, as early as possible in the proceedings, but prior to the final hearing, shall make diligent inquiry of the representative under oath, to assure that the representative is qualified to appear in the agency proceeding and capable of preserving the rights of the party. This inquiry shall include consideration of the nature of the legal skills, knowledge and experience of the representative, including the representative's ability to apply concepts relating to the rules of evidence and hearsay, the ability of the representative to apply and interpret Chapter 120, Florida Statutes, including Section 120.57, Florida Statutes, and Titles 17 and 28, F.A.C., the representative's ability to identify the issues in the proceeding, the representative's knowledge of and experience with the statutes and rules at issue in the proceeding, the nature and complexity of the factual and legal issues present in the proceeding, and the representative's experience in dealing with these issues, the representative's interest in the proceeding, whether the party is aware of the nature and extent of the representation which the representative can provide, whether the party is aware of the right to be represented by an attorney, and any other matter deemed relevant

17-103.010 -- 17-103.020(2)

by the presiding officer. The presiding officer shall authorize the representative to appear in the proceeding if the presiding officer is reasonably assured that the representative is capable of providing competent, responsible and ethical representation of the party's substantial interests in a manner which will not impair the fairness of the proceeding or the correctness of the action to be taken. The presiding officer may reconsider, for specific cause relative to the criteria established by this subsection, a ruling on this issue at any time during the proceedings.

(3) All attorneys and qualified representatives appearing in proceedings shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Florida as specified in the Florida Code of Professional Responsibility, and presiding officers shall require such compliance. Failure to comply shall authorize presiding officers to disqualify any attorneys or qualified representatives appearing before them in a proceeding.

(4) An attorney or other qualified representative (approved by the presiding officer) for any party to a proceeding who has filed an initial pleading or notice of appearance for that party shall remain the attorney or representative of record and shall receive pleadings until a motion to withdraw has been served on the represented party and approved by the presiding officer, or until disqualified by the presiding officer.

(5) Notice of appearance by any successor or associated attorney or other qualified representative shall be filed prior to the filing of any pleading with, or appearance before, the agency or presiding officer.

Specific Authority: 120.53(1), 120.62(2), F.S.

Law Implemented: 120.53(1), 120.62(2), F.S.

History: Revised 10-20-73; Formerly 17-1.12; Amended 4-28-81;

Transferred from 17-1.21 and Amended 6-1-84.

17-103.030 Staff Personnel.

Specific Authority: 120.53(1), F.S.

Law Implemented: 120.53(1), F.S.

History: Revised 10-20-73; Formerly 17-1.14; Transferred from 17-1.23, 6-1-84; Repealed 10-19-88.

17-103.020(2) -- 17-103.030 (History)

RULES OF ADMINISTRATIVE PROCEDURE
DER 1991 FINAL AGENCY ACTION (NON-RULEMAKING) AND APPEAL 17-103

17-103.040 Form. All pleadings in adjudicatory proceedings shall be printed, typewritten, or otherwise duplicated in legible form on white, letter size (8½ x 11 inch) paper. Unless printed, the impression shall be on one side of the paper only, and the lines shall be double spaced, except quotations of two or more lines, which shall be single spaced and indented. A left margin of not less than one and one-half inches and a top margin of at least two inches must be provided.

Specific Authority: 120.53(1), F.S.

Law Implemented: 120.53(1), F.S.

History: Revised 10-20-73; Formerly 17-1.15; Transferred from 17-1.24, 6-1-84; Amended 10-19-88.

17-103.050 Filing and Service.

(1) Filing of the initial pleading required to be filed by the Department, such as a petition for hearing, petition for declaratory statement, petition for rule or other pleading or document which initiates a proceeding, or of a notice of appeal, or a request for extension of time, shall be deemed complete upon receipt, during regular business hours, by the Office of General Counsel of the Department in Tallahassee, Florida.

(2) Service of a subsequent pleading, motion, or other document shall be deemed complete upon being properly addressed, stamped and deposited in the United States Mail.

(3) If a hearing officer has been assigned to conduct the proceedings, pursuant to Section 120.57, Florida Statutes, the original and one copy of each subsequent pleading, motion, or other document shall be filed with the hearing officer, and a copy served on the designated Department attorney and all parties of record. However, after the Hearing Officer has submitted a Recommended Order to the Department all subsequent pleadings and documents shall be filed with the Department's clerk in the Office of General Counsel.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History: Revised 10-20-73; Amended 2-6-78; Formerly 17-1.16; Amended 4-28-81; Transferred from 17-1.25 and Amended 6-1-84.

17-103.040 -- 17-103.050 (History)

RULES OF ADMINISTRATIVE PROCEDURE
DER 1991 FINAL AGENCY ACTION (NON-RULEMAKING) AND APPEAL 17-103

17-103.060 Signature, Verification and Certificate of Service. Pleadings shall be signed by one of the parties, or an official thereof if the party is a corporation or association, or by the party's attorney. Initial pleadings filed pursuant to Section 403.412, Florida Statutes, shall be verified. Pleadings filed by the Department will be signed by the Secretary, Department Counsel, or other designee of the Secretary. All pleadings shall include a Certificate of Service as provided in the Florida Rules of Civil Procedures, except initial pleadings.

Specific Authority: 120.53(1), F.S.

Law Implemented: 120.53(1), F.S.

History: Revised 10-20-73; Amended 2-6-78; Formerly 17-1.17; Transferred from 17-1.26, 6-1-84.

17-103.070 Requests for Extension of Time.

(1) The hearing officer or if no hearing officer is presiding, the Secretary of the Department, may for good cause shown grant an extension of time for the service or filing of any pleading required or permitted by Department rule.

(2) A request for extension of time must be served on all parties and filed with the Department. A request shall set forth the grounds for granting of an extension, contain a certificate that the moving party has consulted with the opposing party or his counsel concerning the extension, and state whether or not the opposing party objects to such an extension. Written objections may be filed within five days of service of the request for extension.

(3) A timely request for extension of time shall toll the running of the applicable time period until the request is acted upon.

Specific Authority: 120.53(1), F.S.

Law Implemented: 120.53(1), F.S.

History: Revised 10-23-77; Amended 2-6-78; Formerly 17-1.20; Amended 4-28-81; Transferred from 17-1.29 and Amended 6-1-84; Amended 10-19-88; Amended 5-10-89.

17-103.080 Computation of Time. Except for the filing of notices of appeal, the time within which any pleading, motion, notice, brief or exceptions may be served or filed, or the time within which any act is required to be performed, as provided by any rule or order of the Department, shall be computed in accordance with the Florida Rules of Civil Procedure.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History: Revised 10-20-73; Amended 2-6-78, 4-28-81; Formerly 17-1.16; Transferred from 17-1.32 and Amended 6-1-84.

17-103.060 -- 17-103.080 (History)

17-103.090 Informal Conference on Notice of Violation.

(1) If the Department deems it advisable in reaching a prompt resolution of the issues raised by a notice of violation issued by the Department pursuant to Rule 17-103.110, F.A.C., it may arrange an informal conference between the party or parties and the Department. Unless otherwise specified, a party must request an informal conference within 10 days of receipt of the notice of violation. An attempt shall be made to resolve the controversy or dispute in an amicable manner.

(2) A respondent's rights will not be adjudicated at an informal conference, and the right to request an administrative hearing on the issues raised by the notice of violation will not be affected by requesting and participating in an informal conference. The Department staff members participating in such informal conference shall file with the Department a report concerning matters covered in the informal conference. Unless otherwise specified in writing by the Department, a petition for hearing shall be filed within 10 days from the completion of the informal conference, unless a longer time is provided by Rule 17-103.110, F.A.C, or Chapter 403, Florida Statutes. Failure to file a petition for hearing within that time period shall be deemed a waiver of the right to a hearing under Chapter 120, F.S. Specific Authority: 120.53(1), F.S.
Law Implemented: 120.53(1), F.S.
History: Revised 10-20-73; Amended 2-6-78; Formerly 17-1.44; Transferred from 17-1.53 and Amended 6-1-84; Amended 10-19-88.

17-103.100 Petitions or Applications for Variances.

(1) A petition or application for a variance, pursuant to Section 403.201, Florida Statutes, of the Florida Air and Water Pollution Control Act, shall be in accordance with these rules. The petitioner or applicant shall address the factors listed in paragraphs (a) through (g) in the request. The Department shall review the petition within a reasonable period of time to determine if the petition is complete. If the Department determines the petition to be incomplete, the petitioner shall be afforded an opportunity to supply additional information before the Department evaluates the merits of the request.

(a) The statute or rule from which a variance is sought.

(b) The facts which show that a variance should be granted because of one of the reasons set forth in Section 403.201, Florida Statutes.

(c) The period of time for which the variance is sought, including the reasons and facts in support of the time period.

17-103.090 -- 17-103.100 (1)(c)

(d) The requirements which the petitioner can meet, including the date or time when the requirements will be met.

(e) The steps or measures the petitioner is taking to meet the requirement from which the variance is sought. If the request is pursuant to Section 403.201(1)(b), F.S., the petitioner shall include a schedule when compliance will be achieved.

(f) The social, economic and environmental impacts on the applicant, residents of the area and of the state if the variance is granted.

(g) The social, economic and environmental impacts on the applicant, residents of the area and of the state if the variance is denied.

(2) Renewals of variances, pursuant to Section 403.201, Florida Statutes, shall be applied for in the same manner as for the initial variance.

(3) Variances shall be denied or granted at the discretion of the Secretary of the Department, except for variances submitted under the Florida Electrical Power Plant Siting Act, the Florida Transmission Line Siting Act or the Florida Industrial Siting Act, which shall be granted or denied at the discretion of the Governor and the Cabinet.

(4) The Department shall publish notice of intent in the Florida Administrative Weekly. The petitioner shall publish such notice in a newspaper of general circulation in the area affected by the proposed variance. Notice shall be in accordance with Rule 17-103.150, F.A.C, and shall read substantially as set forth in Rule 17-103.150(3), F.A.C.

(5) An application for a variance or exemption, pursuant to Section 403.854, Florida Statutes, of the Florida Safe Drinking Water Act, shall be in accordance with Section 17-22.090, Florida Administrative Code. The variance provisions of Section 403.201, Florida Statutes, do not apply to the Florida Safe Drinking Water Act or rules promulgated thereunder.

(6) Relief from Department rules may also be granted pursuant to other specific rules, such as, but not limited to, rules 17-3.031, 17-4.243, and 17-4.245, F.A.C.

Specific Authority: 120.53(1), F.S.

Law Implemented: 120.53(1), F.S.

History: New 2-6-78; Amended 7-8-82; Transferred from 17-1.57 and Amended 6-1-84.

17-103.090(1)(d) -- 17-103.100 (History)

17-103.110 Administrative Enforcement Actions.

(1) Notice of Violation.

(a) A notice of violation is an appropriate initial administrative pleading which may be issued by the Department when, after investigation, it has reason to believe that a person has, or is presently engaged in an activity in violation of the provisions of Chapters 403, 373, 376 or 253, Florida Statutes, or Department rules. Such notice shall be served on the respondent(s) by actual delivery to; service of process on, in accordance with Florida Rules of Civil Procedure; or by certified mail, return receipt requested; and shall identify the provision of law, rule, or Department permit alleged to have been violated, and shall include a brief statement of the facts constituting such alleged violation.

(b) A notice of violation shall be issued by the Secretary, Assistant Secretary or District Manager. Unless a responsive pleading and request for a Section 120.57 administrative hearing is filed within twenty (20) days after service of the notice, or as otherwise provided by Rule 17-103.090, F.A.C (Informal Conference), the notice of violation, and the allegations contained therein, shall become binding and final, and the right to an administrative hearing shall be deemed waived.

(2) Orders for Corrective Action.

(a) Orders for corrective action may accompany and be served with a notice of violation upon the alleged violator of provisions of law, rule, or a Department permit. The orders shall include a description of remedial action, with implementing time-table, which is required, and set forth any damages, costs of investigation, or other demands the Department is authorized by law to recover. Unless a responsive pleading and request for a Section 120.57 administrative hearing is filed within twenty (20) days after service of the notice, or as otherwise provided by Rule 17-103.090, F.A.C (Informal Conference), the orders for corrective action shall become final and effective, and shall constitute a final adjudication of the matters alleged, subject only to judicial review under Section 120.68, Florida Statutes.

(b) Orders for corrective action, which constitute final agency action, shall be enforceable pursuant to sections 403.161(1)(b), 403.131, 403.412, 403.860, and 120.69, Florida Statutes.

17-103.110 -- 17-103.110(2)(b)

(3) Consent Order.

A consent order is a final agency order wherein all parties and the Department, by negotiation, have arrived at a mutually acceptable resolution of alleged violations of law for the purpose of achieving full and expeditious compliance with Chapters 253, 403, 373 and 376, Florida Statutes, and Department rules promulgated thereunder. A consent order, executed by all parties to an enforcement action, shall have the same force and effect as a final order entered by the Department after a formal Section 120.57 administrative hearing and the submission of hearing officer's recommended order, and shall be enforced in like manner. The Secretary, or his authorized designee, may enter consent orders, copies of which shall be served on all parties. If a notice of violation is issued, in accordance with Rule 17-103.110, F.A.C, no consent order shall be entered until ten (10) days after the filing of the notice.

(4) Where the preparation of documents in response to administrative enforcement action requires the practice of professional engineering or professional geology as described in Chapter 471 or 492, F.S., the applicable portions of such documents shall be signed and sealed by the professional(s) who prepared or approved them.

Specific Authority: 120.53, 403.0877, F.S.
Law Implemented: 120.53, 403.0877, 471.005, 492.102, F.S.
History: New 2-6-78; Transferred from 17-1.58 and Amended 6-1-84, 6-13-90.

17-103.120 Department Approval of Testing and Research Programs for Air Pollution Sources.

(1) Upon receiving a petition for authorization to conduct testing, demonstration of new or innovative technologies, and/or research programs relating to pollution and its causes, effects, prevention, abatement and control, the Department may, in its discretion, issue an order authorizing the testing, demonstration, or research program as a temporary source of air pollution.

(a) The petition shall be filed with the Secretary of the Department and shall include at least the following information:

1. The name and address of the person or entity requesting authorization;
2. A description of the substance of the proposed testing, demonstration, or research program;
3. A list of all rules, permit or certification conditions, and other requirements of law that might be temporarily violated as a result of the testing, demonstration, or research program;
4. The proposed duration of the program; and

17-103.100(3) -- 17-103.120(1)(a)4.

5. The purpose of the proposed program.

(b) The Department shall, after due notice, hold a public hearing on each petition.

(2) The order of the Department authorizing an air testing, demonstration or research program shall contain such conditions as are necessary to assure that state and federal ambient air quality standards, applicable Prevention of Significant Deterioration increments, Standards of Performance for New Sources contained in 40 C.F.R., Part 60, and National Emissions Standards for Hazardous Air Pollutants contained in 40 C.F.R., Part 61, will not be violated; and that the program will not interfere with attainment of ambient air quality standards in nonattainment areas. The order shall authorize the construction or operation of a temporary source of pollution subject to such interim emission limitations, sampling and monitoring requirements, reporting requirements, and any other requirement different from that established by rule, permit or certification condition, or Department Order.

(3) No condition, contained in an order issued pursuant to this Section, which is different from any requirement established by rule, permit or certification condition, or Department Order, shall be effective for more than two years, provided however, the order may be renewed by the Department.

Specific Authority: 120.53, F.S.
Law Implemented: 120.53, 403.061(8), 403.061(18), F.S.
History: New 4-6-80; Transferred from 17-1.585 and Amended 6-1-84.

17-103.130 Burden of Proof; Order of Presentation.

(1)(a) In licensing (permit) proceedings, including variance, exception, exemption, site specific alternative criteria, or other similar proceedings, the applicant shall have the burden of establishing, by a preponderance of the evidence, entitlement to the requested license, variance, exception, exemption, site specific alternative criteria, or other relief.

(b) The order of presentation in proceedings described in Rule 17-103.130(1)(a), F.A.C., shall be applicant, any party who supports issuance of the license or granting of other relief, the Department (whether it proposes to issue or deny the license or other relief), and any party who supports denial of the license or other relief. Rebuttal testimony and public comment shall be submitted as directed by the presiding officer. The parties may agree to, or for good cause the presiding officer may direct, any other order of presentation.

17-103.120(1)(a)5. -- 17-103.130(1)(b)

(2) In enforcement, license revocation, or other similar proceedings, the Department shall have the burden of proof. In these proceedings, the order of presentation shall be the Department, any party who supports the action proposed by the Department, any party against whom the proceeding has been initiated and any party who opposes the action proposed by the Department. Rebuttal testimony and public comment shall be submitted as directed by the presiding officer. The parties may agree to any other order of presentation.
Specific Authority: 403.087, 403.088, 120.53, F.S.
Law Implemented: 120.53, F.S.
History: New 2-6-78; Amended 4-28-81; Transferred from 17-1.59 and Amended 6-1-84.

17-103.140 Relationship with Other Rules. Where there are conflicts between the requirements of this Chapter and other specific procedural rules such as Chapter 17-17, F.A.C., procedural rules promulgated to implement the Florida Electrical Power Plant Siting Act, and the Florida Transmission Line Siting Act, and Chapter 17-23, F.A.C., procedural rules to implement the Florida Industrial Siting Act, and any rules which set forth more specific procedures, the latter rules shall govern.
Specific Authority: 120.53, F.S.
Law Implemented: 120.53, F.S.
History: New 2-6-78; Transferred from 17-1.61 and Amended 6-1-84.

17-103.150 Public Notice of Application and Proposed Agency Action.

(1) Each person who files an application for a Department permit may publish, or may be required to publish, and provide proof of publication to the Department, at his own expense, a Notice of Application in a newspaper of general circulation in the county in which the activity will be located or take place. Publication of a Notice of Application shall be required for those projects which, because of their size, potential effect on the environment or natural resources, controversial nature, or location, are reasonably expected by the Department to result in a heightened public concern or likelihood of request for administrative proceedings. If required, the notice shall be published one time only within fourteen (14) days after a complete application is filed and shall contain:

(a) name of applicant, a brief description of the project and its location;

(b) where the application file is located and when it is available for public inspection;

(c) the notice shall be prepared by the Department and shall comply with the following format:

17-103.130(2) -- 17-103.150(1)(c)

Notice of Application

The Department of Environmental Regulation announces receipt of an application for permit from (name of applicant) to (brief description of project). This proposed project will be located at (location) in (county) (city). This application is being processed and is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at (name and address of office).

(2)(a) The Department shall require publication of notice of the Department's proposed action on an application in the following circumstances:

1. All applicants for construction permits for domestic wastewater treatment plants, industrial wastewater treatment plants, solid waste disposal facilities, hazardous waste facilities, standard form dredge and fill projects, and major air pollution sources shall publish, at the applicant's expense, a Notice of Intent to Issue a Permit.

2. The Department shall require other applicants to publish a Notice of Intent to Issue where, the Department finds that the project is reasonably expected to result in a heightened public concern or likelihood of request for administrative proceedings because of the project's size, potential effect on the environment or natural resources, controversial nature or location.

3. Applicants for construction permits for drinking water treatment plants whose facilities will discharge to surface or ground water and will be required to obtain a permit to discharge or will require some other Department permit shall publish, at the applicant's expense, a Notice of Intent to Issue a Permit.

4. Applicants for construction or expansion of solid waste facilities shall publish Notice of Intent to Deny Permit.

5. After publication of a Notice of Intent to Issue or Intent to Deny a permit application the applicant shall publish an additional notice if the subject activity or project is substantially modified by the applicant and the Department proposes to issue the permit with the modification. The additional notice shall not be required for applications for which a Notice of Administrative Proceeding on Permit Application has been published pursuant to subparagraph (2)(e) below. For the purposes of this subparagraph, the term "substantially modified" means a major relocation or modification of the activity or project that is reasonably expected to cause new or greater adverse environmental impacts upon the substantial interests of a person other than the applicant.

17-103.150(1)(c) -- 17-103.150(2)(a)5.

(b) Applicant shall cause the notice to be published as soon as possible after notification by the Department of its intended action. The provisions of Section 120.60(2), F.S., shall be tolled by the request of the Department for publication of notice and shall resume 14 days after receipt by the Department, at the address specified in the request for publication, of proof of publication.

(c) The notice shall be published one time only in the legal ad section of a newspaper of general circulation in the area affected. For the purpose of this rule, "publication in a newspaper of general circulation in the area affected" means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031, F.S., in the county where the activity is to take place. The applicant shall provide proof of publication to the Department, at the address specified in the request for publication, within seven days of publication. The notice shall be prepared by the Department and shall contain:

1. name of applicant and a brief description of the proposed activity and its location;
2. location of the application and its availability;
3. statement of the Department's intended action; and
4. notification of administrative hearing opportunity.

(d) The notice required by subparagraphs (2)(a) 1., 2., 3., or 4. above shall substantially read as follows:

Notice of Intent to (insert "Issue" or "Deny" as appropriate)
Permit

The Department of Environmental Regulation gives notice of its intent to (issue) (deny) a permit to (name and address of applicant) to (brief description of project).

A person whose substantial interests are affected by the Department's proposed permitting decision may petition for an administrative proceeding (hearing) in accordance with Section 120.57, F.S. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within 14 days of publication of this notice. Petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. Failure to file a petition within this time period shall constitute a waiver of any right such person may have to request an administrative determination (hearing) under Section 120.57, Florida Statutes.

17-103.150(2)(b) -- 17-103.150(2)(d)

The petition shall contain the following information; (a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Department Permit File Number and the county in which the project is proposed; (b) A statement of how and when each petitioner received notice of the Department's action or proposed action; (c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action; (d) A statement of the material facts disputed by Petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Department's action or proposed action; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Department's action or proposed action; and (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the application have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 14 days of publication of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Section 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule (cite appropriate rule), F.A.C.

The application is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at (name and address of office).

(e) If the applicant initiates an administrative proceeding with regard to a permit denial or an intent to deny and the project or activity is one for which publication of a notice of intent to issue would have been required pursuant to subparagraphs (2)(a) 1. or 2. above, the applicant shall publish a Notice of Administrative Proceeding on Permit Application.

1. The notice shall be published at the applicant's expense either:

a. Within fifteen days after the applicant's petition for administrative proceeding has been forwarded to the Division of Administrative Hearing (DOAH); or

17-103.150(2)(d) -- 17-103.150(2)(e)1.a.

b. Within fifteen days after the initiation of an administrative proceeding before the Department pursuant to subsection 120.57(1) or (2), F.S.; or

c. At the option of the applicant, when the applicant has filed a request for an extension of time in which to file a petition for an administrative proceeding.

2. The notice shall read substantially as follows:

Notice of Administrative Proceeding on Permit Application
The Department of Environmental Regulation gives notice of the receipt of a (request for an extension of time in which to file a) petition for and the initiation of an administrative proceeding (hearing) on its (intent to deny or denial of) a permit to (name and address of applicant, application number, OGC file number and, if applicable, DOAH case number) to (brief description of activity or project and location).

The administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the proposed agency action and may result in the issuance of a permit as requested by the applicant or as modified in the course of the proceeding or by settlement. Persons whose substantial interests will be affected by any decision of the Department with regard to the application have the right to petition to become a party to the proceeding. The petition must be filed within 14 days after publication of this notice and must be filed (received) with the Office of General Counsel, Department of Environmental Regulation, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, (and the assigned Hearing Officer (name) at the Division of Administrative Hearings, Department of Administration, 2009 Apalachee Parkway, Tallahassee, Florida 32399-1500.) Petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing.

Failure to petition within the allowed time period constitutes a waiver of any right such person has to request a hearing under Section 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule (cite appropriate rule), F.A.C.

The petition shall contain the following information; (a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Department Permit File Number, the OGC file number, the county in which the project is proposed, and if applicable the DOAH Case number; (b) A statement of how each petitioner's substantial interests are affected by the

17-103.150 (2)(e)1.b. -- 17-103.150(2)(e)2.

RULES OF ADMINISTRATIVE PROCEDURE
DER 1991 FINAL AGENCY ACTION (NON-RULEMAKING) AND APPEAL 17-103

Department's action on the application; (c) A statement of the material facts disputed by Petitioner, if any; (d) A statement of facts which petitioner contends warrant affirmance, reversal, or modification of the Department's action or proposed action; (e) A statement of which rules or statutes petitioner contends require affirmance, reversal or modification of the Department's action or proposed action; and (f) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action.

The Department will not enter a final settlement or otherwise resolve the issues in this proceeding until after the expiration of the 14 day time period in which a petition can be filed.

The application and the Department's (intent to deny or denial) are available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at (name and address of office).

(f) Notices of Intent to Issue Permit for hazardous waste facilities shall be in the format set forth above but shall include the time frames set forth in Rule 17-30.220, F.A.C.

(3) The Department or any person whose substantial interests are or may be affected by proposed agency action other than on a permit application may publish or may be required to publish public notice, and provide proof of publication, in a newspaper of general circulation in the county or counties affected by the proposed action. Such public notice shall contain at least the following information and be in substantially the following form:

17-103.150(2)(e)2. - 17-103.150(3)

RULES OF ADMINISTRATIVE PROCEDURE
DER 1991 FINAL AGENCY ACTION (NON-RULEMAKING) AND APPEAL 17-103

State of Florida
Department of Environmental Regulation
Notice of Proposed Agency Action

(a) The type of proposed agency action (e.g., Consent Order);

(b) A description and location of the subject matter or activity covered by the action, the Department's identification number, and the name and address of any person to whom the action is directed;

(c) The location where complete copies of the document and accompanying material expressing the proposed agency action are available for public inspection; and

(d) Paragraphs which read substantially as follows:
Persons whose substantial interests are affected by the above proposed agency action have a right, pursuant to Section 120.57, F.S., to petition for an administrative determination (hearing) on the proposed action. The Petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within 21 days of publication of this notice. A copy of the Petition must also be mailed at the time of filing to the (persons named) above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative determination (hearing) pursuant to Section 120.57, F.S.

The petition shall contain the following information:

(a) The name, address, and telephone number of each petitioner; the Department's identification number and the county in which the subject matter or activity is located (b) A statement of how and when each petitioner received notice of the Department's action or proposed action; (c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Department's action or proposed action; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Department's action or proposed action; (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action;

17-103.150(3)(a) - 17-103.150(3)(d)

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject agency (proposed) action have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of publication of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Section 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule (cite appropriate rule), F.A.C.

(4) Notice to substantially affected persons concerning applications for Department permits is an essential and integral part of the state environmental licensing process. Therefore, no application for a permit for which publication of notice is required shall be granted until and unless proof of publication of Notice is furnished to the appropriate Department permitting office.

(5) (a) Any applicant or person benefiting from the Department's action may elect to publish notice of proposed agency action in the manner provided by subsection (2) or (3). Any person who elects to publish notice of proposed agency action, upon presentation of proof of publication to the Department, prior to final agency action, shall be entitled to the same benefits under this rule as a person who is required to publish notice of proposed agency action. Since persons whose substantial interests are affected by a Department decision on a permit application may petition for an administrative proceeding within fourteen (14) days after receipt of notice and since, unless notice is given or published as prescribed in this rule, receipt of notice can occur at any time, the applicant or persons benefiting from the Department's action cannot justifiably rely on the finality of the Department's decision without the notice having been duly given or published.

(b) The notices required by this rule may be combined with other notices required by the Department pursuant to Chapter 403, 376, or 253, F.S., or Chapter 17, F.A.C.

(c) The provisions of this section shall also apply to the permitting of hazardous waste facilities, but only to the extent it is consistent with Chapter 17-30, Part IV, F.A.C. Whenever Chapter 17-30, Part IV, F.A.C. provides for a different time or notice procedure than that set forth in this section the time and notice provisions of Chapter 17-30 shall govern.

17-103.150(3)(d) - 17-103.150(5)(c)

(6) Failure to publish any notice of application, Notice of Intent to Issue Permit or notice of agency action required by the Department shall be an independent basis for the denial of a permit.

Specific Authority: 120.53, 403.0876, 403.815, F.S.

Law Implemented: 120.53, F.S.

History: New 9-20-79; Amended 4-28-81; Transferred from 17-1.62 and Amended 6-1-84; Amended 10-19-88, 10-30-91.

17-103.155 Petition for Administrative Hearing; Waiver of Right to Administrative Proceeding.

(1) (a) Any person whose substantial interests may be affected by proposed or final agency action by the Department may file a petition for formal administrative hearing in accordance with this rule if the person disputes the material facts upon which the Department's action is based.

(b) Any person whose substantial interests may be affected by proposed or final action by the Department may file a petition for informal administrative hearing in accordance with this rule if the person objects to the Department's action but does not dispute the material facts upon which the Department's action is based.

(2) A petition for formal or informal administrative hearing pursuant to section 120.57, F.S., shall contain the following information:

(a) The name, address, and telephone number of each petitioner. If the petitioner challenges a Department action or proposed action on a permit application, the applicant's name and address, the Department Permit File Number and the county in which the project is proposed shall also be included;

(b) A statement of how and when each petitioner received notices of the Department action or proposed action;

(c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action;

(d) A statement of those material facts (i.e., those facts upon which the Department's action or proposal is based) is disputed by petitioner. If no facts are disputed, petitioner shall so state;

(e) A statement of facts which petitioner contends warrant reversal or modification of the Department's action or proposed action;

(f) A statement of which rules or statutes petitioner contends require reversal or modification of the Department's action or proposed action;

(g) A statement of relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action.

17-103.150(6) - 17-103.155(2)(g)

RULES OF ADMINISTRATIVE PROCEDURE
DER 1991 FINAL AGENCY ACTION (NON-RULEMAKING) AND APPEAL 17-103

(3)(a) A petition shall be in the form required by this rule and must be filed (received) in the Office of General Counsel of the Department within the following number of days after receipt or publication (whichever occurs first) of notice of proposed agency action or of notice of agency action:

1. Petitions concerning Department action or proposed action on applications for permits (except permits for hazardous waste facilities): 14 days;

2. Petitions concerning Department action or proposed action on applications for hazardous waste facility permits: 45 days;

3. Petitions concerning notices of violation when no informal conference is held: 20 days after receipt of the notice of violation;

4. Petitions concerning notices of violation when an informal conference is held: 10 days after receipt of notice of completion of the informal conference;

5. Petitions concerning other Department actions or proposed actions: 21 days.

The petitioner shall also serve a copy of the petition on all other parties to the proceeding, as identified in the published notice, at the time of filing.

(b) Failure to timely file a petition within the applicable time period after receipt of notice of agency action or receipt of notice of proposed agency action, whichever notice first occurs, shall constitute a waiver of any right to request an administrative proceeding under Chapter 120, F.S.

(4) If a petition is filed that does not substantially comply with the requirements of subsection (2) of this rule, the Department shall issue an order dismissing the petition with leave to file an amended petition complying with the requirements of this rule within 15 days of service of the order. If an amended petition complying with this rule is not filed (received) within 15 days of service of the order, the petitioner's right to a proceeding under Section 120.57, F.S., is waived.

(5) When there has been no publication of notice of agency action or notice of proposed agency action as prescribed in Rule 17-103.150, F.A.C., a person who has actual knowledge of the agency action or has knowledge which would lead a reasonable person to conclude that the Department has taken final agency action, has a duty to make further inquiry within 14 days of obtaining such knowledge by contacting the Department to ascertain whether action has occurred. The Department shall upon receipt of such an inquiry, if agency action has occurred, promptly provide the person with notice as prescribed by Rule 17-103.150, F.A.C. Failure of the person to make inquiry with the Department within 14 days after obtaining such knowledge may stop the person from obtaining an administrative proceeding on the agency action.

17-103.155(3)(a) - 17-103.155(5)

RULES OF ADMINISTRATIVE PROCEDURE
DER 1991 FINAL AGENCY ACTION (NON-RULEMAKING) AND APPEAL 17-103

(6)(a) "Receipt of notice of agency action" means receipt of written notice of final agency action, as prescribed by Department rule, or the publication, pursuant to Department rule, of notice of final agency action, whichever first occurs.

(b) "Receipt of notice of proposed agency action" means receipt of written notice (such as a letter of intent) that the Department proposes to take certain action, or the publication pursuant to Department rule of notice of proposed agency action, whichever first occurs.

(7) Notwithstanding any other provision in this Chapter, should a substantially affected person who fails to timely request a hearing under Section 120.57, F.S., administratively appeal the final Department action or order, the record on appeal shall be limited to:

(a) the application and accompanying documentation submitted by the applicant prior to the issuance of the agency's intent to issue or deny the requested permit.

(b) the materials and information relied upon by the agency in determining the final agency action or order;

(c) any notices issued or published; and

(d) the final agency action or order entered concerning the permit application.

(8) In such cases where persons do not timely exercise their rights accorded by Section 120.57(1), Florida Statutes, the allegations of fact contained in or incorporated by the final agency action shall be deemed uncontested and true, and appellants may not dispute the truth of such allegations upon subsequent appeal.

(9) Any applicant may challenge the Department's request for additional information by filing with the Office of General Counsel an appropriate petition for administrative proceeding pursuant to Section 120.60, F.S., following receipt by the applicant of the Department's notification pursuant to Section 403.0876, F.S., that additional information is required. Specific Authority: 120.53, 403.0876, 403.815, F.S.

Law Implemented: 120.53, F.S.

History: New 9-20-79; Amended 4-28-81; Transferred from 17-1.62 and Amended 6-1-84; Amended 10-19-88.

17-103.155(6)(a) - 17-103.155(History)

17-103.160 Uniformity in Approval and Denial of Applications for Department Permits and Certifications. To the extent possible and consistent with the public interest, the Department approves and denies applications for permits and certifications on a uniform and consistent basis. Final Department actions on applications for permits and certifications shall be consistent with prior Department actions, unless deviation therefrom is explained by the Department in writing or the hearing officer who submits a recommended order to the Department for final agency action in accordance with Section 120.57, Florida Statutes.
Specific Authority: 120.53(1), F.S.
Law Implemented: 120.53(1), 120.68(12), F.S.
History: New 2-6-78; Transferred from 17-1.63, 6-1-84.

17-103.170 Preparation of Record on Appeal of Department Orders.

- (1) In appeals of Department orders under Section 120.68, F.S., the record on appeal shall be prepared in accordance with the requirements of Rule 9.200, Florida Rules of Appellate Procedure.
 - (2) The Department charges 50 cents (\$0.50) per page for the preparation and transmittal of records on appeal with no charge for postage or certification. The cost of preparation shall be borne by the appellant.
 - (3) The Department Clerk shall prepare the record as follows:
 - (a) The record shall be securely bound in consecutively numbered volumes not to exceed 200 pages each. Each page of the record shall be consecutively numbered. The cover sheet of each volume shall be headed "State of Florida Department of Environmental regulation" and contain the style and number of the case.
 - (b) The Clerk shall prepare and furnish to the parties a complete index to the record.
 - (c) Upon receipt of payment of the charge for preparation of the record, the Clerk shall certify and transmit the record to the court.
- Specific Authority: 119.07, 120.53, 286.0105, 403.061(7), F.S.
Law Implemented: 119.07, 120.53, 253.76, F.S.
History: New 2-6-78; Amended 4-28-81, 4-1-82; Transferred from 17-1.64 and Amended 6-1-84; Amended 10-19-88.

17-103.180 Videotaped Depositions.

- (1) Depositions for the purpose of discovery or any other use allowed by the Florida Rules of Civil Procedure may be recorded upon videotape after notice appropriate under the Rules of Civil Procedure.

17-103.160 - 17-103.180(1)

- (2) Such depositions may be utilized, without transcription, in any proceeding before the Department.
 - (3) The originals of any deposition so recorded shall be filed with the Clerk of the Office of General Counsel who shall make appropriate provision for their preservation.
 - (4) Upon request and tender of the actual costs of reproduction, the Department shall provide a copy of any tape or tapes to any person, and shall make available on the premises of the Department equipment for reviewing the same by any party.
 - (5) Oaths of deponents shall be administered by any person who is authorized by law to administer oaths.
 - (6) Videotape equipment utilized to record such depositions shall be operated by a person trained in the operation of such equipment and such person shall certify, under oath, that the videotape is a true and accurate recording of any such deposition.
 - (7) Upon a showing of good cause, a hearing officer or the Secretary may prescribe additional safeguards designed to assure the accurate recording and preservation of any testimony given by deposition.
- Specific Authority: 120.53, F.S.
Law Implemented: 120.53, F.S.
History: New 2-6-78; Transferred from 17-1.65, 6-1-84.

17-103.190 Suspension and Revocation of Department Permits, Certifications or Certificates. The Department may suspend or revoke any Department permit, certification, or certificate as provided by Section 403.087, Florida Statutes, and Chapters 17-4 and 17-16, Florida Administrative Code. Prior to suspending or revoking such permit, certification, or certificate, the Department shall serve, by certified mail, an administrative complaint. The procedures contained in Sections 28-6.09, and 28-6.11, Florida Administrative Code, are expressly incorporated herein, and shall govern such suspension or revocation.
Specific Authority: 120.53, 403.061(7), F.S.
Law Implemented: 403.087, 120.53, 120.60(5), F.S.
History: New 2-6-78; Amended 4-28-81; Transferred from 17-1.67, 6-1-84.

17-103.200 Agency Action on Recommended Orders. The following procedures shall apply to the entry of Final Department Orders adopting, rejecting or modifying Recommended Orders submitted by hearing officers of the Division of Administrative Hearings (DOAH).

17-103.180(2) - 17-103.200

RULES OF ADMINISTRATIVE PROCEDURE
DER 1991 FINAL AGENCY ACTION (NON-RULEMAKING) AND APPEAL 17-103

(1) Within 15 days from the date of filing of a Recommended Order with the Clerk of DOAH, in accordance with Section 120.57(1), F.S., parties to the proceeding may file written Exceptions to the Recommended Order in the Department's Office of General Counsel, with service of copies on all parties. Exceptions not filed (received) in the Office of General Counsel within the 15 days shall be rejected. Exceptions shall state, with particularity, the basis for asserting that the hearing officer erred in making or omitting specific findings of fact, conclusions of law, or a recommendation. Any exception disputing a finding of fact must be accompanied by a complete transcript of the hearing. Any party may serve one Response to Exceptions within 10 days of service of the Exceptions. No further pleadings will be allowed except by order of the Department for good cause shown by the movant. The Department may extend or shorten the times provided herein. Any party may file a proposed final order within 30 days of rendition of a recommended order.

(2) After expiration of the allotted time for filing Exceptions and within the time requirements imposed by Sections 120.60 and 120.59, Florida Statutes, the Secretary shall issue the Final Order of the Department in accordance with Section 120.57, Florida Statutes.

(3) Should a party desire to present oral argument before the Secretary in support of its Exceptions, a Request for Oral Argument shall accompany the Exceptions. The granting of oral argument and the time allowed is discretionary with the Secretary.

Specific Authority: 120.53(1), F.S.

Law Implemented: 120.53(1), F.S.

History: New 2-6-78; Amended 4-28-81; Transferred from 17-1.68 and Amended 6-1-84; Amended 12-23-84, 10-19-88.

17-103.201 Final Orders.

In any final order (including a decision on a permit application) issued by the Department pursuant to Sections 120.59 or 120.60, Florida Statutes, one of the following notices shall be included:

(1) If the parties to the Order had received notice of agency action or proposed agency action before entry of the Order the following paragraph shall be included (unless the parties waived their right to appeal the Order):

17-103.200(1) - 17-103.201(1)

RULES OF ADMINISTRATIVE PROCEDURE
DER 1991 FINAL AGENCY ACTION (NON-RULEMAKING) AND APPEAL 17-103

Any party to this Order has the right to seek judicial review of the Order pursuant to Section 120.68, Florida Statutes by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400; 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 from the date this Order is filed with the clerk of the Department.

(2) If the parties to an Order had not received notice of agency action or proposed agency action before entry of the Order the following paragraphs shall be included in the Order:

Persons whose substantial interests are affected by this Order have a right, pursuant to Section 120.57, Florida Statutes, to petition for an administrative determination (hearing) on it. The Petition must conform to the requirements of Chapters 17-103, F.A.C., and must be filed (received) in the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within (insert appropriate number from Rule 17-103.155(3), F.A.C.) days of receipt of this notice. Failure to file a petition within that time constitutes a waiver of any right such person has to an administrative determination (hearing) pursuant to Section 120.57, F.S.

This Order is final and effective on the date filed with the clerk of the Department unless a petition is filed in accordance with this paragraph. Upon the timely filing of a petition this Order will not be effective until further Order of the Department.

(3) If the parties to an Order had received notice of agency action or proposed agency action before entry of the Order, but no notice as published pursuant to Rule 17-103.150, F.A.C., the following paragraphs shall be included in the Order;

Persons whose substantial interests are affected by this Order have a right, pursuant to Section 120.57, F.S., to petition for an administrative determination (hearing) on it, unless the right to petition has been waived. The petition must conform to the requirements of Chapter 17-103, F.A.C., and must be filed (received) in the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within (insert appropriate number from Rule 17-103.155(3), F.A.C.) days of receipt of this notice. Failure to file a petition within that time constitutes a waiver of any right such person has to an administrative determination (hearing) pursuant to Section 120.57, F.S.

17-103.201(1) - 17-103.201(3)

This Order is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with this paragraph. Upon the timely filing of a petition this Order will not be effective until further Order of the Department.

Any party to the Order has the right to seek judicial review of the Order pursuant to Section 120.68, F.S., by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400; 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 from the date the Final Order is filed with the Clerk of the Department.

(4) If none of the notices set forth above is appropriate, the Department may include such other language in an order as is necessary to notify persons of their rights (if any) to administrative or judicial review of the order.

Specific Authority: 120.53, F.S.

Law Implemented: 120.59, F.S.

History: New 10-11-84; Amended 10-19-88.

17-103.202 Certificate of Mailing or Hand Delivery; Permitting. In each letter of intent to grant or deny a permit application, and in each order denying or granting a permit (including the permit itself if not accompanied by separate order), the Department shall include a certification that shows the time and date the letter, order or permit was mailed or hand delivered to the applicant, each party or the party's attorney, and to each person who requested notice of the action or proposed action. The Department shall file the letter, permit, or order with the agency clerk, or deputy agency clerk, as appropriate.

Specific Authority: 120.53, F.S.

Law Implemented: 120.60, F.S.

History: New 10-11-84.

17-103.201(3) - 17-103.202(History)

17-103.205 Official Record of Hearing.

(1) The Department routinely provides mechanical recording devices at any evidentiary hearing. A copy of the recording tapes shall be made available to any party upon request and tender of actual cost of the tape and of making the copy. It is the responsibility of the party seeking a transcript of a hearing to forward a copy of the tape to the court reporter of their choice for transcription. Any party desirous of having a court reporter present in lieu of the Department mechanically recording the hearing shall make arrangements with the reporter of their choice. Original written transcriptions or copies may be ordered directly from the court reporter at the requesting party's expense. If a court reporter is present at the hearing and records the proceedings, the recordation shall become the official transcript. The Department, in its discretion, may opt not to provide mechanical recording whenever a court reporter is present.

(2) Prior to the hearing, any party arranging for the presence of a court reporter should notify the hearing officer and all parties of the identity, mailing address and telephone number of the court reporter engaged to record the proceeding.

(3) Should any party decide to appeal any decision made by the Department with respect to any matter considered at a hearing of the Department, that party may need to ensure that a verbatim record of the proceedings is made. Such a record shall include the testimony and evidence upon which the appeal is to be based. A party filing exception to any finding of fact of the hearing officer must file a complete transcript of the hearing with the exception.

Specific Authority: 120.53, F.S.

Law Implemented: 120.53, F.S.

History: New 6-1-84, Amended 12-23-84.

17-103.210 Designation of Official Reporter; Subject Matter Index. The Department designates Judicial and Administrative Research Associates, Inc., publisher of the Florida Administrative Law Reports, as its official reporter for the purpose of publishing and indexing by subject matter all Department orders rendered after a proceeding in which the substantial interests of a party are determined by the Department. A subject matter index of permits is available for public inspection at the Bureau of Information Systems, Department of Environmental Regulation, 2600 Blair Stone Road, Tallahassee, Florida 32301. This index is computerized, therefore it is recommended that prior arrangements be made with the office. A copy of the index is available upon payment of actual costs.

Specific Authority: 403.087, 403.088, 120.53, F.S.

Law Implemented: 120.53, F.S.

History: New 4-28-81, Transferred from 17-1.681 and Amended 6-1-84.

17-103.205(1) - 17-103.210(History)

PART II
APPEALS TO THE GOVERNOR AND CABINET ON COASTAL CONSISTENCY

17-103.300 General. The following rules shall govern appeals from final agency action before the Governor and Cabinet, hereinafter referred to as the Board, arising under section 380.23(2), F.S., regarding determinations by the department of consistency with the Florida Coastal Management Program. Proceedings prior to final agency action are governed by Chapter 17-103, Part I, F.A.C. Rule 17-103.050, F.A.C, shall govern the filing and service of pleadings. The Florida Rules of Appellate Procedure shall govern the computation of time, except where inconsistent with this part.
Specific Authority: 20.05(5), 120.53, F.S.
Law Implemented: 380.23(2), F.S.
History: New 6-24-76, Formerly 17-1.70, Amended 4-28-81, Transferred from 17-1.87 and Amended 6-1-84, Amended 2-20-85.

17-103.310 Final Agency Action. The final agency actions subject to appeal under this part are those final actions of the Secretary of the Department and of those persons designated by the Secretary to take such actions, and which involve:
(1) the determination of consistency or inconsistency of a matter with the Florida Coastal Management Program pursuant to section 380.23(2), F.S.
(2) Declaratory Statements involving section 380.23(2), F.S. and issued by the Secretary pursuant to section 120.565, F.S.
Specific Authority: 20.05(5), 120.53, F.S.
Law Implemented: 380.23(2), F.S.
History: New 6-24-76, Formerly 17-1.71, Amended 4-28-81, Transferred from 17-1.88, 6-1-84, Amended 2-20-85.

17-103.320 Parties to Appeals; Amicus Curiae; Intervenors.
(1) Only parties of record to final agency actions subject to appeal may initiate an appeal.
(2) The Secretary may allow other persons to appear and participate as amicus curiae in accord with Rule 9.370, Fla. R. App. P., except that the time for filing a motion to appear as an amicus curiae shall be within fifteen (15) days of the filing of the notice of appeal. The motion may be heard and disposed of by the Secretary after reasonable notice of such hearing has been served on the attorneys in the cause.
(3) The Board may allow other persons to intervene as parties to the appeal who were not parties to the final agency action, if such persons demonstrate that:
(a) they have standing under section 120.57, F.S., and that

17-103.300 -- 17-103.320(3)(a)

(b) they had no reasonable notice of the agency proceeding prior to the entry of the written document representing final agency action. Persons allowed to become parties to an appeal pursuant to this subsection shall be bound by the record on appeal and the status of the proceedings as they find them at the time they are permitted to become a party.
Specific Authority: 20.05(5), 120.53, F.S.
Law Implemented: 253.76, F.S.
History: New 6-24-76, Formerly 17-1.72, Amended 4-28-81, Transferred from 17-1.89, 6-1-84.

17-103.330 Initiation of Appeal; Request for Record; Contents of Notice; Compliance and Enforcement; Public Notice.
(1) Appellate review under this part shall be initiated by the filing of a Notice of Appeal with the Office of General Counsel of the Department of Environmental Regulation, on behalf of the Board, within fifteen (15) days of the service upon a party of the written document representing final agency action.
(2) A Notice of Appeal shall include the following:
(a) Style of the matter appealed, and the case, file, notice or permit number;
(b) Nature of action being appealed;
(c) Date of service of written document representing the final agency action being appealed;
(d) A statement, with particularity, of the reasons for the appeal; and
(e) Request, if any, for modification of action appealed.
(3) The record on appeals shall be requested and developed pursuant to section 17-103.170, F.A.C. The times for further prosecution of the appeal shall be tolled until the requested record has been completely developed. Until such record has been completely developed, the appeal shall not be deemed received by the Board.
(4) Compliance and Enforcement. Those portions of final agency action which are contested in an appeal filed pursuant to this part shall not be subject to enforcement action by the department, nor shall compliance with said portions be required until final disposition of the appeal under this part. Those portions of final agency action which are not contested shall be subject to compliance and enforcement regardless of the pendency of the appeal. However, the department shall not be precluded from seeking injunctive relief to prevent irreparable harm.
(5) The department shall publish notice in the Florida Administrative Weekly of each appeal filed under this part.
Specific Authority: 20.05(5), 120.53, F.S.
Law Implemented: 380.23(2), F.S.
History: New 6-24-76, Formerly 17-1.73, Amended 4-28-81, Transferred from 17-1.90, 6-1-84, Amended 2-20-85.

17-103.320(3)(b) -- 17-103.330(History)

RULES OF ADMINISTRATIVE PROCEDURE

DER 1991 FINAL AGENCY ACTION (NON-RULEMAKING) AND APPEAL 17-103

17-103.340 Initiation of Cross-Appeals. Cross-appeals are authorized and shall be initiated in the same manner and shall follow the same procedures as provided for appeals in this part. Specific Authority: 20.05(5), 120.53, F.S.
Law Implemented: 253.76, F.S.
History: New 6-24-76, Formerly 17-1.74, Transferred from 17-1.91, 6-1-84.

17-103.350 Briefs.

(1) Within fifteen (15) days of the filing of the Notice of Appeal, the appellant shall file a main brief in support of the appeal.

(2) An appellee who desires to file a brief shall do so within fifteen (15) days of the service of the appellant's main brief. An amicus curiae shall file a brief within fifteen (15) days of the date of service of the order authorizing his appearance as an amicus curiae.

(3) An appellant who desires to file a reply brief shall do so within five (5) days of the service of the brief to which the reply brief is directed.

(4) Assignments of error not argued in a party's brief are deemed abandoned by that party.

(5) Briefs shall conform to the style and content requirements for briefs set forth in Rule 9.210, Fla. R. App. P.

(6) Motions for extensions of time for filing briefs may be granted by the Secretary for good cause shown, but such extensions shall not be for more than ten (10) days.

Specific Authority: 20.05(5), 120.53, F.S.

Law Implemented: 253.76, F.S.

History: New 6-24-76, Formerly 17-1.75, Amended 4-28-81, Transferred from 17-1.92, 6-1-84.

17-103.360 Oral Argument.

(1) Requests for oral argument, if desired, shall accompany the appellant's main brief and the appellee's and amicus curiae's briefs. Oral argument, including rebuttal, shall be limited to fifteen (15) minutes per appellant, appellee, and amicus curiae. However, the Board by majority vote of those members present, may extend or further limit the time for oral argument.

(2) Oral argument shall not be granted to anyone not filing a brief, and points not raised by a party's or amicus curiae's brief shall not be argued orally by that party or amicus curiae, except in response to questions by members of the Board.

(3) The granting of oral argument is discretionary with the Board, and may be dispensed with by a vote of the majority of the Board members present.

Specific Authority: 20.05(5), 120.53, F.S.

Law Implemented: 253.76, F.S.

History: New 6-24-76, Formerly 17-1.76, Transferred from 17-1.93, 6-1-84.

17-103.340 -- 17-103.360(History)

RULES OF ADMINISTRATIVE PROCEDURE

DER 1991 FINAL AGENCY ACTION (NON-RULEMAKING) AND APPEAL 17-103

17-103.370 Proposed Orders. Parties may submit proposed orders to the Board. However, if a party desires to submit a proposed order, the proposed order shall be served within ten (10) days of the last day for filing the last brief by any party. Specific Authority: 20.05(5), 120.53, F.S.
Law Implemented: 253.76, F.S.
History: New 6-24-76, Formerly 17-1.77, Transferred from 17-1.94, 6-1-84.

17-103.380 Record. Appeals shall be based solely upon a record developed pursuant to sections 120.57 and 120.565, F.S. Specific Authority: 20.05(5), 120.53, F.S.

Law Implemented: 253.76, F.S.

History: New 6-24-76, Formerly 17-1.78, Transferred from 17-1.95, 6-1-84.

17-103.390 Scope of Review.

(1) If the Board finds that the agency has erroneously interpreted a provision of law or rule and that a correct interpretation compels a particular action, it shall:

(a) Set aside or modify the agency action, or

(b) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(2) If the agency's action depends on any fact found by the agency in a proceeding meeting the requirements of section 120.57, F.S., the Board shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. The Board shall, however, set aside agency action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by competent, substantial evidence in the record.

Specific Authority: 20.05(5), 120.53, F.S.

Law Implemented: 253.76, F.S.

History: New 6-24-76, Formerly 17-1.79, Transferred from 17-1.96, 6-1-84.

17-103.400 Decisions.

(1) The decision of the Board on an appeal shall be reduced to writing and served by the Secretary upon the parties and amicus curiae within fifteen (15) days of the making of the decision.

(2) The written decision shall reflect the vote of each Board member, and shall set forth the basis for each Board finding. The Board may adopt and incorporate by reference in its findings all or part of the agency's final order.

Specific Authority: 20.05(5), 120.53, F.S.

Law Implemented: 253.76, F.S.

History: New 6-24-76, Formerly 17-1.80, Transferred from 17-1.97, 6-1-84.

17-103.370 - 17-103.400(History)

RULES OF ADMINISTRATIVE PROCEDURE

DER 1991 FINAL AGENCY ACTION (NON-RULEMAKING) AND APPEAL 17-103

17-103.410 Ex Parte Communications.

(1) Upon the filing of a notice of appeal, no ex parte communication relative to the merits of the appeal, threat, or offer of reward shall be made to the Board, or Board member, by:

(a) An agency head or member of the agency or any other public employee or official engaged in prosecution or advocacy in connection with the matter under consideration or a factually related matter; or

(b) A party to the proceeding or any person who, directly or indirectly, would have a substantial interest in the agency action, or his authorized representative or counsel.

(2) Any ex parte communication shall be reduced to writing and placed in the record by the Board member to whom the communication was directed. Copies shall be served on all parties and amicus curiae. Any party and amicus curiae shall be allowed to rebut the communication, if a request to do so is served within ten (10) days after service of the communication.

Specific Authority: 20.05(5), 120.53, F.S.

Law Implemented: 253.76, F.S.

History: New 6-24-76, Formerly 17-1.81, Transferred from 17-1.98, 6-1-84.

17-103.420 Settlement. Nothing in this part shall preclude the parties to an appeal from disposing of any or all matters on appeal by a settlement agreement entered into by all of the parties to the appeal.

Specific Authority: 20.05(5), 120.53, F.S.

Law Implemented: 253.76, F.S.

History: New 6-24-76, Formerly 17-1.82, Transferred from 17-1.99, 6-1-84.

17-103.430 Certificates of Service.

(1) The notice of appeal shall contain a certificate of service stating that a copy of the notice has been served on all of those persons who were designated in the written document representing final agency action as having been sent copies of that document.

(2) All other documents, pleadings, motions, briefs, proposed orders, and orders shall contain a certificate of service on all parties and amicus curiae to the appeal.

Specific Authority: 20.05(5), 120.53, F.S.

Law Implemented: 253.76, F.S.

History: New 6-24-76, Formerly 17-1.83, Transferred from 17-1.100, 6-1-84.

17-103.410(1) - 17-103.430(History)

RULES OF ADMINISTRATIVE PROCEDURE

DER 1991 FINAL AGENCY ACTION (NON-RULEMAKING) AND APPEAL 17-103

17-103.440 Copies. All pleadings, motions, briefs, and other material, filed with the department shall be accompanied by seven copies thereof in addition to copies served on amicus curiae and parties.

Specific Authority: 20.05(5), 120.53, F.S.

Law Implemented: 253.76, F.S.

History: New 6-24-76, Formerly 17-1.84, Transferred from 17-1.101, 6-1-84.

17-103.450 Motions. The Board, or, where appropriate, the Secretary, may entertain motions to effectuate the purpose and requirement of this part.

Specific Authority: 20.05(5), 120.53, F.S.

Law Implemented: 253.76, F.S.

History: New 6-24-76, Formerly 17-1.85, Transferred from 17-1.102, 6-1-84.

17-103.460 Orders. The Board, and Secretary where appropriate, shall issue such orders and take such action as may be necessary to effectuate and enforce the provisions of this part.

Specific Authority: 20.05(5), 120.53, F.S.

Law Implemented: 253.76, F.S.

History: New 6-24-76, Formerly 17-1.86, Transferred from 17-1.103, 6-1-84.

17-103.470 Meetings; Notice; Presiding Officer; Quorum Agendas; Distribution of Agendas; Recording of Proceedings; Minutes; Order of Procedure; Agency Action; Voting; Amendment to Rules; Parliamentary Matters.

(1) The provisions of sections 16-4.002, 16-4.003, 16-4.004, 16-4.005, 16-4.006, 16-4.007, 16-4.008, 16-4.010, 16-4.012, 16-4.013, 16-4.014, and 16-4.015, F.A.C., are incorporated herein with the following exceptions:

(a) Where the phrase "Department of Natural Resources" appears, the phrase "Board" is substituted;

(b) Where the phrase "Executive Director" appears, the phrase "Secretary of the Department of Environmental Regulation" is substituted;

(c) The last two sentences in section 16-4.06 are irrelevant and therefore excluded from incorporation herein;

(2) The Secretary of the Department of Environmental Regulation shall keep the official minutes of the meeting of the Board. Unless otherwise directed by the Board the Board's Final Order shall constitute the minutes.

Specific Authority: 20.05, 120.53, F.S.

Law Implemented: 120.53, 380.23(2), F.S.

History: New 6-24-76, Formerly 17-1.87, Transferred from 17-1.104, 6-1-84, Amended 2-20-85.

17-103.440(1) - 17-103.470 (History)

PART III
DECLARATORY STATEMENT

17-103.500 Purpose and Use of Declaratory Statement. A declaratory statement is a means for determining the rights of substantially affected persons when a controversy, or when doubt concerning the applicability of any statutory provision, rule or order, has arisen before any wrong has actually been committed. The potential impact upon petitioner's interests must be alleged in order for petitioner to show the existence of a controversy or doubt.

Specific Authority: 120.53(1), F.S.

Law Implemented: 120.53(1), F.S.

History: New 2-6-78, Transferred from 17-1.119, 6-1-84.

17-103.510 Petition.

(1) The petition seeking a declaratory statement shall be filed in writing with the Department.

(2) A form for submission of such petition shall be substantially as follows:

PETITION FOR
DECLARATORY STATEMENT
TO THE FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION

- 1) Name of Petitioner: _____
- 2) Address of Petitioner: _____
- 3) Agency rule, order or statutory provision on which declaratory statement is sought: _____
- 4) The precise factual circumstances giving rise to the petition: _____
- 5) Description of how this rule, order or statute may or does affect the petitioner; and
- 6) The point(s) on which the petitioner requests a declaration.

(Signature of Petitioner)

(Address)

(Date)

Specific Authority: 120.53(1), 120.54(9), 120.565, F.S.

Law Implemented: 120.53(1), 120.54(9), 120.565, F.S.

History: New 2-6-78, Transferred from 17-1.120, 6-1-84.

17-103.500 -- 17-103.510(History)

17-103.520 Department Disposition.

(1) A Department order rendered pursuant to Section 120.565, Florida Statutes, shall only be applicable to the petitioner.

(2) The Department may at its discretion, either upon its own motion or upon request, hold a hearing to dispose of a petition submitted pursuant to Section 120.565, Florida Statutes.

(3) A department order shall be rendered within sixty (60) days after receipt of the petition; provided however, if a hearing is held, the Department order shall be rendered within thirty (30) days of the hearing conclusion and receipt of the transcript, if any.

(4) The Department shall notice in the Florida Administrative Weekly that a petition has been filed. The notice shall contain sufficient information to advise substantially affected persons of the proceedings.

(5) The hearing, if granted by the Department, shall be conducted pursuant to Section 120.57, Florida Statutes, or as otherwise agreed upon by the Department and the parties.

Specific Authority: 120.53(1), 120.54(10), 120.565, F.S.

Law Implemented: 120.53(1), 120.54(10), 120.565, F.S.

History: New 2-6-78; Transferred from 17-1.121, 6-1-84; Amended 10-19-88.

17-103.520(1) -- 17-103.520(History)