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MEMORANDUM

RECEIVED

OCT 18 2000

BUREAU OF AIR REGULATION

DATE: October 16, 2000

TO: Scott Sheplak, P.E.

FROM: Steven S. Pak, P.E. *SP*

THRU: Sterlin K. Woodard, P.E. *[Signature]*

SUBJECT: Proposed Title V Permit for McKay Bay Refuse to Energy Facility

On October 2, 2000, we received a fax from you requesting assistance with a requirement at the facility referenced above that ash hauling trucks be subject to a wheel wash prior to leaving the site. The facility requested that such a requirement not be included in their Title V permit. Wheel washing was listed as a reasonable precaution in their 1996 Title V permit application and also in the 1997 construction permit application for modifications to comply with 40 CFR 60, Subpart Cb.

After visiting the facility on October 6, 2000, I confirmed that the facility has wheel wash equipment in use at the original ash handling area currently being used for Units 1 and 2. In this area, the ash is discharged outside onto piles and is eventually loaded into trucks by front-end loaders. The trucks pass through a wheel wash prior to exiting the ash handling area. Because the ground in this area is blanketed with ash that could easily be picked up by truck tires, the requirement for wheel washing should continue to apply to this ash handling area.

Units 1 and 2 are scheduled to be shut-down by November 13, 2000. After the units are rebuilt, all of the ash from all four units will go to the new ash handling area currently serving rebuilt Units 3 and 4. This area was much cleaner than the old ash handling area and the facility believes that they could maintain it that way because of the layout of the area (i.e., the front-end loaders never enter the path of the ash trucks) and because it is in a paved, enclosed building. The building has a water hose near the truck loading area that the facility said would be used to wash away ash that spills during truck loading. The wastewater travels down the sloped floor inside the building to a wastewater sump. Based on my observations on October 6th, I believe that these precautions would be adequate and that a wheel wash is not necessary for the new ash handling building.

As stated above, I believe that the truck wash should continue to be used at the old ash handling area as long as it is in operation. For the new ash handling area/building, I believe that a wheel wash is not necessary provided that the facility is required after each truck loading to wash away any ash on the floor of the building in the path of the ash truck traffic.

*10/19/00 cc: Scott Sheplak
Ed Irec*

Ed

SuH
10/11

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CITY OF TAMPA,)	
)	
Petitioner,)	
)	
Y.)	DEP Draft Permit No. 0570127-001-AV
)	OGC File No. 99-1787
DEPARTMENT OF ENVIRONMENTAL)	
PROTECTION,)	
)	
Respondent.)	

CITY OF TAMPA'S
PETITION FOR FORMAL ADMINISTRATIVE HEARING

Petitioner, the City of Tampa, respectfully submits this petition for a formal administrative hearing, pursuant to the Florida Department of Environmental Protection's Order Denying Request for Extension of Time to File Petition for Hearing, and in accordance with Sections 120.569 and 120.57(1), Florida Statutes, and Rule 28-106.201, Florida Administrative Code. In support of this petition, the City says:

The Parties

1. Petitioner, the City of Tampa (the "City"), is a political subdivision of the State of Florida. The City's offices are located at City Hall, 315 East Kennedy Boulevard, Tampa, Florida 33602. The City Attorney's telephone number is 813-274-8996. For the purposes of this proceeding, all legal papers and correspondence should be served upon the City's environmental

counsel, Mr. David S. Dee, and copies provided to Mr. James Palermo, the City Attorney. The addresses and telephone numbers for Mr. Dee and Mr. Palermo are provided below.

2. Respondent, the Florida Department of Environmental Protection (the "Department" or "DEP") is an agency of the State of Florida. The Department's address is 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-2400. The telephone number for the Department's Office of General Counsel is (850) 488-9314.

Notice of Agency Action

3. The City owns the McKay Bay Refuse-to-Energy Facility (the "Facility"), which is located at 107 North 34th Street, Tampa, Florida. On June 17, 1996, the City filed an application with the Department for a Title V air operation permit for the Facility. On October 11, 1999, the Department provided the City with a copy of DEP's "Intent to Issue Title V Air Operation Permit" and the draft Title V Air Operation Permit for the City's Facility (DEP Permit No. 0570127-001-AV) (the "Draft Permit"). The Draft Permit contained a number of provisions that were inconsistent with the City's application or otherwise inappropriate. Accordingly, the City timely requested and the Department granted a series of extensions of time to file a petition for a formal administrative hearing in this case.

4. On September 12, 2000, the Department issued an order denying the City's most recent request for an extension of time to

file a petition for a formal administrative hearing concerning the Draft Permit. The Department's order provides that the City shall have 10 days (i.e., until September 22, 2000) to file a petition for an administrative hearing in this case. Accordingly, this petition is timely filed.

The City's Negotiations with the Department

5. On behalf of the City, the City's consultants (Camp Dresser & McKee Inc. or "CDM") submitted comments to the Department concerning the Draft Permit on December 20, 1999. The Department did not respond to the City's comments for 8 months-- until August 17, 2000--at which time the Department provided the City's consultants with an electronic copy of a revised Draft Permit (the "Revised Permit"). The Revised Permit was intended to supercede and replace the Draft Permit. In the Revised Permit, the Department changed the conditions in the Draft Permit to address some, but not all, of the City's comments. However, the Revised Permit also included new requirements, which had not been in the Draft Permit, including a requirement to install a "wheel wash" system at the Facility.

6. On August 29, 2000, the City's consultants had lengthy discussions with the Department's staff concerning the Revised Permit. During those discussions, the Department's staff verbally agreed to change the Revised Permit to satisfy many of the City's remaining concerns. Among other things, the Department's staff

agreed to delete the requirement for a wheel wash system.

7. During the afternoon of September 8, 2000, the Department's staff called the City's consultants and asked whether the City was satisfied with the Revised Permit and would waive its right to file a petition for a formal administrative hearing concerning the Revised Permit. The City's consultants told the Department's staff that the City still had objections to the Revised Permit and, further, the consultants did not have the authority to waive the City's rights. In response, the Department's staff stated that the Department would deny the City's pending request for additional time to file a petition and would issue a "Proposed Permit", notwithstanding the City's objections.

8. On September 11, 2000, the Department issued a Proposed Permit for the Facility, which was provided electronically to the U.S. Environmental Protection Agency ("EPA"). The Proposed Permit superceded the Revised Permit. The Proposed Permit includes some, but not all, of the changes that the Department's staff verbally agreed to make during their August 29, 2000 discussions with the City's consultants. Significantly, the Proposed Permit requires the City to install a wheel wash system at the Facility, even though the City had objected to this requirement in the Revised Permit.

9. On September 11, 2000, the City's consultants timely submitted additional written comments to DEP concerning the Revised Permit. (A copy of the September 11, 2000 letter from CDM to the

Department is attached hereto as Exhibit A). The Department has not responded in writing to the City's comments in Exhibit A.

The City of Tampa's Substantial Interests

10. The City is the applicant for the Title V air operation permit that is the subject of this petition. As the applicant for the permit, the City's substantial interests are materially affected by the Department's proposed action.

Disputed Issues of Material Fact

11. In Exhibit A (the September 11, 2000 letter to the Department), the City's consultants identified the City's objections to the conditions imposed by the Department in the Proposed Permit. The issues raised in Exhibit A are incorporated herein by reference as disputed issues of material fact.

12. Based on its preliminary review of the Proposed Permit, the City also raises the following disputed issues of material fact in this case:

a. Whether the Proposed Permit conditions identified in Exhibit A are unnecessary or inappropriate.

b. Whether the Department is acting arbitrarily or unlawfully in attempting to impose the Proposed Permit conditions identified in Exhibit A;

c. Whether the Department had the authority to issue the Proposed Permit to EPA before the City was given the

opportunity to exhaust its state administrative remedies under Chapter 120, Florida Statutes..

13. The City reserves its right to raise additional disputed issues of material fact that may be identified through discovery in this case.

Ultimate Facts Which Entitle the City of Tampa to Relief

14. The City is entitled to relief in this case because the City has provided reasonable assurance that the Facility will comply with all applicable Department rules and requirements, without the imposition of the Proposed Permit conditions identified in Exhibit A. In addition, the Department's attempt to impose the conditions identified in Exhibit A is arbitrary and unlawful. Lastly, the Department exceeded its authority when it issued the Proposed Permit to EPA, over the City's objections, before the City was given an opportunity to file this petition for a formal administrative hearing.

Rules and Statutes Entitling the City to Relief

15. Based on the facts in this case, the City is entitled to relief pursuant to Chapters 120 and 403, Florida Statutes, and Chapters 28-106, 62-4, 62-210, 62-213, and 62-214, Florida Administrative Code.

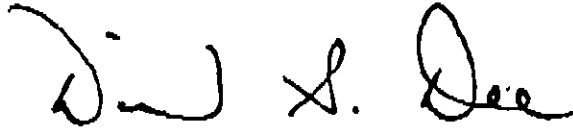
Relief Requested

WHEREFORE, the City of Tampa respectfully requests:

- a. the Department to revise the Proposed Permit to be consistent with the comments provided by the City in Exhibit A; or alternatively,
- b. the Department to forward this petition to the Division of Administrative Hearings for the assignment of an Administrative Law Judge;
- c. the Administrative Law Judge to conduct a formal administrative hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes;
- d. the Administrative Law Judge to issue a recommended order finding that the Proposed Permit conditions identified in Exhibit A are arbitrary and unlawful, and finding that the City has provided reasonable assurance that the Facility will comply with all applicable Department rules and regulations without the conditions identified in Exhibit A; and
- e. the Department to issue a final order granting the City's application for a Title V permit for the McKay Bay Refuse-to-Energy Facility, without the Proposed Permit conditions identified in Exhibit A.

RESPECTFULLY SUBMITTED,

LANDERS & PARSONS



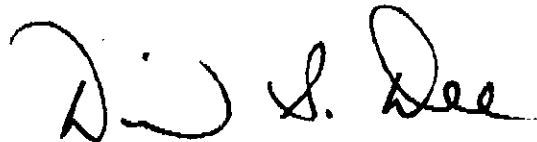
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the City of Tampa's Petition for Formal Administrative Hearing has been furnished via facsimile transmission to the Clerk's Office, Department of Environmental Protection, 3900 Commonwealth Boulevard, Room 659, Tallahassee, Florida on September 21, 2000; that the original and one copy will be furnished by hand delivery to the Clerk's Office, Department of Environmental Protection, 3900 Commonwealth Boulevard, Room 659, Tallahassee, Florida on September 22, 2000; and that a true and correct copy of the foregoing has been furnished by U.S. Mail to W. Douglas Beason, Assistant General Counsel, Department of Environmental Protection, Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399 this 21st day of September, 2000.



Attorney



Camp Dresser & McKee Inc.

Engineering
Environmental
Construction
OperationsWestshore Center
1715 North Westshore Boulevard, Suite 875
Tampa, Florida 33607
Tel: 813 281-2900 Fax: 813 288-8787

EXHIBIT A

September 11, 2000

Mr. Scott Sheplak, P.E.
Title V Administrator
Florida Department of Environmental Protection
Division of Air Resources Management
2600 Blair Stone Road
Mail Station #5505
Tallahassee, Florida 32399-2400

Subject: McKay Bay Title V Permit No. 0570127-001-AV

Dear Mr. Sheplak:

On behalf of the City of Tampa, Camp Dresser & McKee Inc. (CDM) is providing the following additional input on the Revised DRAFT Initial Title V Air Operation Permit for the McKay Bay Resource Recovery Facility (Permit No. 0570127-001-AV), received via electronic submission on August 17, 2000. We appreciate your taking the time to discuss our concerns with us on August 29, 2000. At that time, you agreed to make most of the changes requested. We are disappointed, and think it inappropriate that the Department released the Permit as proposed without our sign off and without incorporating changes previously agreed to. Our comments below, are listed by DRAFT permit condition number:

1. Section I, Subsection II, Condition 8: This Condition has been changed at the request of the Hillsborough County Environmental Protection Commission ("HCEPC") to include the requirement that ash hauling trucks be subjected to a wheel wash prior to leaving the site. Please be advised that the new ash handling configuration incorporated in conjunction with the retrofit project has no facilities for wheel washing and there is no regulatory requirement for providing such facilities. The existing ash handling procedures, which do include truck wheel washing, will be discontinued upon demolition of Emissions Units 001, and 002. We respectfully request that this new requirement for wheel wash facilities be removed.
2. Section III, Subsections A and B: Conditions A.45 and B.15 specify that Subsections A and B will become null and void in their entirety upon demolition of existing Emissions Unit Nos. 001, 002, 003, 004, and 005. Demolition of Units 003, 004, and 005 has already occurred. Demolition of Units 001, and 002, is expected to begin within the next 60 days. Accordingly, we have not conducted an in-depth review of these sections in anticipation that they will shortly become moot.
3. Section III, Subsection C, Condition C.6.1: Two new categories have been added to the list of materials that are prohibited. We are concerned that category (j), "untreated biomedical waste," may result in unnecessary confusion when assessing compliance.