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November 12, 1985

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VIA FEDERAL EXPRESS

Mr. Jack Ravan
Regional Administrator
Region IV
Environmental Protection Agency
345 Cortland Street, N.E.
Atlanta, GA 30365

RE: Hillsborough County
Resource Recovery Facility

Dear Mr. Ravan:

As you know, this firm represents Hillsborough County, Florida on several environmental law matters. On behalf of Hillsborough County, we want to express the County's willingness to work with the United States Environmental Protection Agency (EPA) to resolve EPA's concerns about the Prevention of Significant Deterioration (PSD) permit for the Hillsborough County resource recovery facility. To help resolve those concerns, we are sending you this response to the EPA letter (dated September 16, 1985) from Winston A. Smith to Steve Smallwood at the Florida Department of Environmental Regulation (DER).

DER

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Summary

According to Mr. Smith's letter, EPA is concerned about the PSD permit issued to Hillsborough County under the Florida Electrical Power Plant Siting Act (PPSA), Sections 403.501-403.519, Fla. Stat. (1983), because:

- (1) EPA is unsure about DER's ability to require, and EPA's ability to enforce, PSD permits for power plants reviewed pursuant to the PPSA;
- (2) The public notice provided by the PPSA is not precisely the same as the notice required by DER for PSD permits; and
- (3) The Governor and Cabinet of Florida, sitting as the Siting Board, may grant variances which are inconsistent with the Clean Air Act.

Although these concerns may create a genuine issue in some hypothetical future case, we believe that they do not materially affect the instant case. They do not affect the validity of Hillsborough County's PSD permit.

In response to the first concern, it should be recognized that Hillsborough County filed a standard PSD permit application with its application for approval under the PPSA. DER conducted its normal PSD review process and then issued a PSD permit, subject to BACT requirements, as part of the PPSA approval. DER has already advised EPA that, in DER's opinion, a valid federally enforceable PSD permit has been issued. For its part, Hillsborough County has always acknowledged and continues to acknowledge EPA's authority to enforce the conditions of the PSD permit. Hillsborough County would readily stipulate or otherwise publicly acknowledge EPA's authority.

Secondly, there was an enormous amount of publicity about the Hillsborough County resource recovery project. There were many opportunities for public comment. The public notice provided for this PSD permit was certainly adequate and, in many respects, it was much better than the notice given for most PSD permits. Any deficiency in the notice was immaterial.

Thirdly, Hillsborough County did not request or receive a variance from any provision of the Clean Air Act. In this case, it does not matter whether the Siting Board could theoretically grant a variance.

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We believe EPA should recognize the validity of Hillsborough County's PSD permit. Although EPA may wish to modify the PPSA or PSD permitting program for future permit applicants, there is no legitimate reason to question the validity of Hillsborough County's PSD permit. At this late date, it would be inappropriate and grossly unfair to require the County to start all over and undergo a second PSD review.

These issues are discussed in greater detail on the following pages.

EPA's PSD Delegation to DER

Mr. Smith's letter raised certain questions about EPA's delegation of authority to DER. We believe EPA gave full authority to DER to issue PSD permits under the PPSA.

EPA approved Florida's PSD permitting program and delegated EPA's PSD permitting authority to Florida on November 22, 1983. See 48 F.R. 52716 and 40 C.F.R. §52.530. EPA's approval was subject to certain limitations, but EPA did not identify any limitations on Florida's authority to issue PSD permits pursuant to the PPSA. Without such express limitations, Florida received and still has lawful authority to issue PSD permits under the PPSA. Although EPA now claims that it did not recognize the scope of its delegation of PSD permitting authority, EPA should not now punish Hillsborough County for properly obtaining a PSD permit in a lawful manner approved by EPA. The County should not suffer simply because of EPA's inadvertence or negligence.

PPSA and PSD Permits -- An Overview

Mr. Smith's letter raised several questions about DER's ability to issue or require PSD permits under the PPSA. These concerns are based on a misunderstanding of Florida law. As Mr. Smith concedes in his letter,

"it is the position of the Florida DER Office of General Counsel that the Florida legislature enacted the PPSA merely as a one-step procedural

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mechanism by which electrical generating facilities (EGF's) could be permitted for siting, construction and operation and that certification is intended to be a PSD permit." (emphasis supplied).

We concur with the DER General Counsel.

The PPSA contains the following statement of legislative intent:

"The Legislature finds that the present and predicted growth in electric power demands in this state requires the development of a procedure for the selection and utilization of sites for electrical generating facilities and the identification of a state position with respect to each proposed site. . . . The Legislature find that the efficiency of the permit application and review process at both the state and local level would be improved with the implementation of a process whereby a permit application would be centrally coordinated and all permit decisions could be reviewed on the basis of standards and recommendations of the deciding agencies. It is the policy of this state that, while recognizing the pressing need for increased power generation facilities, the state shall ensure through available and reasonable methods that the location and operation of electrical power plants will produce minimal adverse effects on human health, the environment, the ecology of the land and its wildlife, and the ecology of state waters and their aquatic life. It is the intent to seek courses of action that will fully balance the increasing demands for electrical power plant location and operation with the broad interests of the public. Such action will be based on these premises:

(1) To assure the citizens of Florida that operation safeguards are technically sufficient for their welfare and protection.

(2) To effect a reasonable balance between the need for the facility and the environmental impact resulting from construction and operation of the facility, including air and water quality, fish and wildlife, and the water resources and other natural resources of the state.

(3) To provide abundant, low cost electrical energy." (emphasis supplied).

§403.502, Fla. Stat. (1983). Similarly, subsection 403.510(3), Fla. Stat., acknowledges:

". . . the legislative intent that this act is to provide an efficient, simplified, centrally coordinated, one-stop permitting process." (emphasis supplied).

These statements of legislative intent clearly show that the Florida Legislature adopted the PPSA as a centralized permitting procedure, but the Legislature did not want to abridge or alter any of the substantive requirements which regulate the construction and operation of electrical generating facilities.

The Legislature's interest in substantive environmental matters is evident in the PPSA. The PPSA requires DER to conduct studies of the environmental impacts of the proposed facility. §403.507(2)(h), Fla. Stat. In addition, DER must prepare a written report indicating whether the proposed facility "will be in compliance with the rules of the department [DER]." §403.504(8)(a), Fla. Stat. The PPSA also provides that, if DER adopts new or stricter environmental standards after the facility is approved, the new or stricter standards will be automatically imposed against the facility as new permit conditions. §403.511(5)(a), Fla. Stat.

The statutory requirements of the PPSA are reflected in DER's rules. DER Rule 17-17.08(1), Florida Administrative Code, requires the permit applicant to provide information about the environmental impacts of the proposed facility. DER Rule 17-17.091(2), F.A.C., requires DER to study and prepare a report concerning the:

- "(b) Technical sufficiency of proposed construction and operational safeguards for the protection of human health, wildlife, and aquatic life;

* * *

- (h) Environmental impacts of maximum proposed steam or solar generating capacity;
- (i) Impact on air quality and water quality of maximum proposed steam or solar electrical generating capacity; . . . " (emphasis supplied).

The DER rules expressly require the application of all of the relevant environmental standards during the PPSA process. After DER prepares its environmental analysis, a duly noticed "certification" hearing must be conducted to publicly review the application for the proposed facility. §17-17.141, F.A.C.. At the hearing, the hearing officer is required by rule to conduct:

"... an examination of the expected environmental impact resulting from the operation of the facilities, the standards of the agencies [including DER], operational safeguards, other public interests and any issue made applicable by law in consideration of the site." (emphasis supplied)

DER Rule 17-17.141(2), F.A.C. If there are any substantive DER standards (e.g., PSD permitting requirements) that would normally be applicable to the permitting of the proposal facility, those standards must be applied and evaluated in the PPSA permitting process.

Although the PPSA provides a coordinated procedural mechanism for reviewing permit applications for electrical generating facilities, the PPSA does not change the substantive requirements that are applied. If a proposed electrical generating facility would need a PSD permit pursuant to EPA and DER regulations, the facility would undergo PSD review within the context of the PPSA permitting process. The applications for PSD permits under the PPSA are subject to the same stringent scrutiny and analysis that are applied to other PSD permit applications. If a proposed facility does not satisfy the substantive requirements for a PSD permit, it cannot receive DER's approval under the PPSA. Conversely, if the facility complies with all of the applicable PSD requirements and receives a PSD permit under the PPSA, there is no reason to issue a separate PSD permit. It does not matter whether the approval under the PPSA is Florida's

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"sole license," §403.511(1), Fla. Stat., for the facility because the facility must comply with all of the substantive PSD regulations.

Section 403.087(1), Fla. Stat., prohibits anyone from constructing, operating or maintaining a stationary source of air pollution "without an appropriate and currently valid permit" from DER. If someone started to build an electrical generating facility without a PSD permit, issued under the PPSA or standard DER permitting procedures, they would not have an "appropriate" permit and thus would face DER enforcement proceedings. See §§403.121, 403.131, 403.141, 403.161, Fla. Stat. Hence, DER and EPA have the authority to enforce PSD permitting requirements, regardless of whether PSD approval is sought through DER's normal permitting program or the PPSA.

As previously noted, DER believes that certification under the PPSA constitutes a valid, enforceable PSD permit. EPA should defer to DER's judgment concerning the interpretation and application of the PPSA. This is a question of state law that is uniquely within the province of the state agency. Florida and federal courts have consistently held that DER's interpretation of its regulations is entitled to great weight. Here, EPA should not contest DER's determination that, as a matter of state law, PSD permits can be required and enforced pursuant to the PPSA and Chapter 403, Fla. Stat.

Hillsborough County's PSD Permit

Regardless of whether EPA is concerned about the federal enforceability of PSD permits issued under the PPSA, EPA should not be concerned about its ability to enforce Hillsborough County's PSD permit.

In the instant case, Hillsborough County's application for approval under the PPSA included a separate application for a PSD permit. Volume III of the Hillsborough County PPSA application included DER form 17-1.202(1), the standard DER application form for PSD permits. The County's PSD permit application included 1 1/2 inches of documentary material supporting the PSD permit application. These materials addressed all of the issues that are normally evaluated in PSD permit applications.

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DER evaluated Hillsborough County's PSD permit application as though it had been submitted in the same manner as any other PSD permit application. DER made BACT determinations. It imposed appropriate PSD permit conditions and limitations. These permit conditions were accepted without objection by Hillsborough County and were approved without modification by the Governor and Cabinet, sitting as the Siting Board.

Although the PSD permit conditions were not set forth in a separate document entitled "PSD permit," there was and is no reason to prepare a separate document. Hillsborough County has always acknowledged the authority of DER and EPA to enforce the PSD permit conditions, regardless of whether the permit conditions were embodied in a "PSD permit" or in the conditions of site certification.

Hillsborough County has done everything in its power to fully comply with all of the applicable local, state and federal permitting requirements. The Board of County Commissioners of Hillsborough County sincerely wanted to use the very best air pollution control equipment available at the time the County was undergoing PSD review. For example, DER found that BACT for particulate matter was .021 grains per standard cubic foot (GPSCF), but the County Commission unilaterally and voluntarily decided to spend an additional \$180,000 to purchase electrostatic precipitators designed to reduce the particulate matter in the facility's emissions to .019 GPSCF.

It is our understanding that EPA does not dispute the adequacy of the technical data contained in the County's PSD permit application, the adequacy of the technical review by DER, or the adequacy of the permit conditions imposed by DER. Moreover, we have been informally advised by EPA staff that, if the County now submitted a new application to EPA for a new PSD permit, EPA's BACT determination for particulate matter would be .020 GPSCF -- an emission level greater than the .019 GPSCF that the County expects to achieve under its current PSD permit. Thus, even if Hillsborough County submitted a new PSD permit application to EPA, there would be no environmental benefits from that procedural gyrations.

On the other hand, if Hillsborough County submitted a new permit application, it could be exposed to substantial new costs and liabilities. The County spent more than \$5,000,000 to obtain its pollution control equipment for the resource recovery facility. The County's equipment has been custom designed. It

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has undergone extensive, expensive scale-model testing. The actual equipment has been under fabrication for some time.

If the County were required to modify its equipment as a result of a new PSD permit condition or BACT determination, it could face a variety of potential law suits from its vendor and sub-contractors. In addition, the County's \$160,000,000 resource recovery project was financed with \$144,000,000 of bonds. Changes in the design of the facility could cause new financial requirements, bonding problems, and unwarranted expenses for the taxpayers of Hillsborough County. Finally, changing the air pollution equipment would needlessly delay the construction and start-up of a very desirable facility which is one of the cornerstones of the County's solid waste disposal program.

Public Notice and Chronology

EPA has expressed some concern about the notice published under the PPSA. We believe there was an exceptional degree of public notice and awareness about the Hillsborough County resource recovery facility. There were many opportunities for public comment. These opportunities were thoroughly utilized by the individuals and organizations that opposed the resource recovery project, including the Brandon Chamber of Commerce, the Greater Brandon Citizens Alliance, and the Concerned Citizens Alert Group.

To help EPA appreciate the very extensive media coverage of this project, we have attached approximately 100 newspaper articles for your review. We also have attached a staff report entitled "Hillsborough County Resource Recovery Project -- Chronological History (1974-1984)" which summarizes some of the key events that led to the construction of the resource recovery facility. In addition, the chronology set forth below focuses on EPA's specific concerns.

Hillsborough County established a Solid Waste Resource Recovery Management Committee in September, 1977. In December, 1978, the Committee submitted a pre-application to EPA for resource recovery development under the President's urban

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policy. In October, 1979, EPA awarded \$261,826 to Hillsborough County for feasibility studies and other planning activities.

Over the next few years, the County conducted studies and public meetings to evaluate solid waste disposal and resource recovery programs.

On August 12, 1982, representatives of Hillsborough County and DER met in Tallahassee to identify the permits needed for the County's proposed resource recovery facility. The County was advised that DER had partial authority to conduct the PSD permit review. At that time, DER reviewed PSD permit applications and made recommendations to EPA.

On September 29, 1982, the Board of County Commissioners heard testimony from the public concerning the potential location of the resource recovery facility. On October 27, 1982, the County Commission approved its consultants' recommendation that the resource recovery facility be located on Faulkenberg Road near the unincorporated community of Brandon.

On December 14, 1982, EPA gave notice in the Federal Register (Volume 47, No. 240; pp. 55964-55965) of its conditional approval of Florida's PSD regulations.

In January and February 1983, County representatives met with the Brandon Chamber of Commerce, the Plant City Rotary Club, the Kensington Homeowners Association and others to discuss the proposed resource recovery project. Similar public meetings were conducted in March and April, 1983.

On June 27, 1983, the Hillsborough County City-County Planning Commission conducted a duly noticed public hearing to evaluate the County's request for an amendment to the local comprehensive plan. The amendment would allow construction of the resource recovery facility at the proposed site near Brandon. The requested amendment was unanimously approved by the Planning Commission.

On July 12, 1983, Hillsborough County met with DER and other regulatory agencies to discuss the proposed resource recovery facility. DER advised Hillsborough County that DER would evaluate the PSD permit in the PPSA process. The permit application would be submitted directly to DER and DER would coordinate with EPA. Parenthetically, DER also told Hillsborough County that DER did not have the authority to issue NPDES permits

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and, therefore, Hillsborough County would have to submit its application for an NPDES permit directly to EPA, which Hillsborough County did.

On August 5, 1983, DER published notice (attached) in the Tampa Tribune that Hillsborough County had filed notice of its intent to seek authorization for the construction and operation of a resource recovery facility on Faulkenburg Road.

On September 7, 1983, the Board of County Commissioners adopted a resolution which instructed the County staff to post signs and publish additional newspaper notices concerning the proposed amendment to the land use plan for the resource recovery facility. The County Commission wanted to increase public awareness about the project and encourage public participation.

On November 22, 1983, EPA published notice in the Federal Register (Volume 948, No. 226, pp. 52713-52716) that EPA approved DER's PSD program.

In November and December, 1983, the County conducted informational meetings at the Limona elementary school to address public concerns about the proposed project.

In January, 1984, the Greater Brandon Citizens Alliance distributed approximately 10,000 illustrated pamphlets in opposition to the proposed resource recovery facility. The pamphlets described the reasons why the Citizens Alliance opposed the facility. In its effort to solicit public support, the Citizens Alliance repeatedly expressed concern about the facility's potential impact on air quality.

On January 11, 1984, the County Commission conducted a public hearing to allow the Greater Brandon Citizens Alliance, the Greater Brandon Chamber of Commerce, and others to express their concerns about the proposed resource recovery facility. Additional comments were received at a County Commission meeting on January 25, 1984.

On February 27, 1984, the County Commission conducted a public hearing concerning the proposed amendment to the County's comprehensive land use plan. Advance notice of the hearing was published, the relevant issues were widely discussed in the local media, and the hearing was very well-attended.

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On April 13, 1984, a zoning hearing master conducted an 8 hour public hearing concerning the proposed rezoning of the site for the resource recovery facility. Again, advance notice was published and the issues were extensively covered by the media. Moreover, the opponents of the project were represented by legal counsel who fully presented their concerns.

In May, the Brandon Chamber of Commerce and the Citizens Alliance conducted a "community blitz" to increase public awareness of the resource recovery facility. Among other things, the Chamber of Commerce:

- (1) established a special task force;
- (2) established "awareness" posts at strategic locations throughout the community;
- (3) distributed fact sheets;
- (4) solicited signatures for petitions;
- (5) asked the public to turn out en masse at subsequent county commission meetings concerning the resource recovery facility;
- (6) sought help from the local legislative delegation; and
- (7) sent letters soliciting the support of each member of the chamber.

All of these activities were widely reported in the press. The Brandon Chamber of Commerce spent approximately \$2,500 in 30 days on this public awareness campaign.

On May 2, 1984, Hillsborough County's consultants were again advised by DER that DER had received EPA's full delegation of PSD permitting authority and therefore DER would issue the PSD permit for the Hillsborough County resource recovery facility.

On May 14, 1984, the County Commission conducted a 4 hour public hearing to consider the rezoning of the site. On May 29, 1984, the County Commission heard another 5 1/2 hours of public comment concerning the facility. These hearings were widely reported in the newspapers and were covered by live television broadcasts. Both hearings were attended by several hundred people.

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On July 3, 1984, the Greater Brandon Citizens Alliance filed a lawsuit in state court to challenge the County's rezoning of the site and the County's amendment to the local comprehensive plan.

On July 13, 1984, Hillsborough County filed an application with EPA for an NPDES permit for the resource recovery facility. The application stated that:

"[a]ir construction and operating permits will be obtained through the Power Plant Siting Act process in accordance with requirements established in the Prevention of Significant Air Quality Deterioration (PSD) regulations and the regulations governing New Source Review for Non-attainment Areas (NSRNA)."

On August 2, 1984, Hillsborough County filed its application with DER for approval pursuant to the Power Plant Siting Act. The PPSA application included a standard DER application for a PSD permit.

On September 7, 1984, notice was published pursuant to the PPSA that a land use hearing concerning the resource recovery facility would be conducted. The notice (attached) covered approximately 1/2 of a page in the Tampa Tribune, a newspaper which is widely distributed in Hillsborough County and the State of Florida. This extremely large notice was published in the main body of the newspaper. It was much more conspicuous than the typical notice for a PSD permit that is published in the classified ads section of the newspaper. The notice stated that:

- (1) Hillsborough County had filed an application for authorization to construct and operate an electrical power plant;
- (2) the application was available for public inspection at specifically identified locations in Tampa, Brooksville, and Tallahassee, Florida;
- (3) a public hearing would be held to consider the environmental and other impacts of the facility;
- (4) any non-profit environmental organization could become a party to the proceeding simply by filing notice of its intent to be a party; and

- (5) the public would be given an opportunity to present oral or written comments about the proposed project.

On September 7, 1984, DER published notice (attached) of "a public hearing to which the public is invited" which would be conducted on October 22, 1984, in Tampa, to determine whether the proposed resource recovery facility was consistent with local land use plans and zoning regulations. The notice was published again on September 14, 1984. Both notices were published in the Florida Administrative Weekly, the official publication which announces meetings and hearings conducted by Florida's administrative agencies. The Florida Administrative Weekly is published by the Florida Secretary of State and is distributed throughout the State of Florida.

On October 5, 1984, DER published notice (attached) in the Florida Administrative Weekly of "a public hearing to which the public is invited" to evaluate the environmental effects of Hillsborough County's proposed facility.

On October 6, 1984, notice (attached) of the site certification hearing was published in the Tampa Tribune. In large bold-faced print, DER gave:

"NOTICE OF CERTIFICATION HEARING ON AN APPLICATION TO CONSTRUCT AND OPERATE AN ELECTRICAL POWER PLANT ON A SITE TO BE LOCATED NEAR TAMPA, FLORIDA."

The 1/2 page notice expressly stated that:

- (1) Hillsborough County had submitted an application for authorization to construct and operate an electrical power plant;
- (2) DER had evaluated the application;
- (3) the application and the Department's analysis of the impacts of the project were available for public inspection at four identified locations;
- (4) a public hearing would be conducted on November 8, 1984 "to take written or oral testimony on the effects of the proposed electrical power plant or any other matter appropriate to the consideration of the site";

- (5) written comments could be sent to the hearing officer;
- (6) any non-profit environmental organization could be a party to the proceeding by simply filing a notice of intent to be a party; and
- (7) any person would be given an opportunity to present oral or written communications to the hearing officer.

In October, 1984, the Greater Brandon Citizens Alliance filed notice of their intent to be a party to the hearings conducted pursuant to the PPSA.

On October 18, 1984, the Greater Brandon Citizens Alliance voluntarily dismissed its lawsuit against the County.

On October 22, 1984, a public hearing was conducted pursuant to the PPSA to evaluate the land use aspects of Hillsborough County's project. At the hearing, the Greater Brandon Citizens Alliance presented their comments to the hearing officer, and then withdrew their request to be a party. According to several newspaper reports, community support for the Citizens Alliance had "waned" and so, too, had its financial resources.

On November 8, 1984, a site certification hearing was conducted pursuant to the PPSA to evaluate the environmental impacts of the resource recovery project. No individual, group or agency spoke or submitted written comments in opposition to the project. All of the local, regional and state reviewing agencies found that the project was consistent with their respective policies and, therefore, they recommended approval of the project.

On November 28, 1984, the hearing officer filed a recommended order with the Governor and Cabinet concerning the site certification hearing. The hearing officer recommended that the Governor and Cabinet approve the location, construction and operation of the proposed facility, subject to certain conditions, including conditions governing the PSD permit. No individual, group or agency filed any exceptions or objections to the hearing officer's recommendation.

On December 13, 1984, EPA published notice of its intent to issue an NPDES permit to Hillsborough County for certain

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discharges during the construction of the resource recovery facility.

On December 7, 1984, DER published notice in the Florida Administrative Weekly of a public hearing, to which the public was invited, where the Governor and Cabinet would consider the hearing officer's recommended orders concerning the resource recovery facility. The notice stated that the Governor and Cabinet would consider the recommended orders concerning Hillsborough County's application for approval of the location, construction and operation of a resource recovery facility.

On December 18, 1984, the Governor and Cabinet conducted a public hearing to consider the recommended orders and the proposed conditions of certification for the construction and operation of the Hillsborough County facility. No individual, group or agency spoke in opposition to the project. Accordingly, the Governor and Cabinet approved and adopted the following findings of fact by the hearing officer:

- (a) Hillsborough County will use BACT to minimize any potential impact on air quality;
- (b) By burning refuse to generate electricity, the County will recover the energy equivalent of 150,000 tons of coal each year or \$156 million of oil over 20 years;
- (c) DER concluded that the resource recovery facility will comply with all applicable environmental regulations, including air pollution regulations;
- (d) All of the reports from local, regional and state agencies were favorable; and
- (e) "Adequate and sufficient notice of the site certification hearing has been given to all parties and to the general public."

On January 8, 1985, DER advised EPA by letter that the State of Florida certified the NPDES permit for the Hillsborough County resource recovery facility. The state certification of the NPDES permit included "the terms and requirements of the Conditions of Certification (PA. 83-19) regarding stormwater run-off adopted by the Governor and Cabinet on December 18, 1984." A copy of the

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conditions of certification was attached for EPA's review, including the conditions governing Hillsborough County's PSD permit.

In December 1984, in reliance on the PPSA approval of the resource recovery facility and DER's issuance of a PSD permit, Hillsborough County sold more than \$144,000,000 of bonds to finance the construction of the resource recovery facility. Hillsborough County also entered into a multitude of contracts for the construction and operation of the facility.

On January 8, 1985, Hillsborough County conducted a well-publicized ground-breaking ceremony for the project.

On January 10, 1985, Hillsborough County gave notice that its contractor could proceed with the construction of the facility. Site clearing activities and preliminary work began immediately. The contractor has proceeded on an expedited timetable since January.

In May, 1985, Hillsborough County sent status reports to EPA concerning the construction of the facility and the activities under the NPDES permit.

By November 1, 1985, approximately \$50,000,000 had been spent on the construction of the facility. Approximately 40% of the construction work had been completed. Most or all of the air pollution control equipment had been fabricated.

To summarize, notice was repeatedly published and opportunities were repeatedly provided for the public to comment about the resource recovery project. Initially, there was a substantial amount of public debate about this project, but that debate "waned" with time. Indeed, no one spoke or wrote in opposition to the project at the site certification hearing or at the hearing conducted by the Governor and Cabinet. For whatever reason, the people who were actively opposed to the project choose not to participate and thus they waived their right to participate.

In light of the enormous media coverage of this project over a period of several years, it would have been virtually impossible for anyone not to know about the project. The 1/2

Mr. Jack Ravan/EPA
November 12, 1985
Page 18

page ads in the Tampa Tribune for the PPSA hearings were more than adequate to give notice under the Clean Air Act. The PPSA notices were certainly much more conspicuous than the typical PSD permit notices that are buried in a newspaper's classified ads section. In the context of this case, it is impossible to believe that anyone's behavior was affected by any technical deficiency in the notice concerning the PPSA hearings for the PSD permit. For these reasons, any such deficiency must be deemed immaterial.

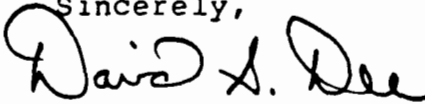
Conclusion

We believe that EPA should recognize the validity of the PSD permit which was lawfully issued to Hillsborough County in the PPSA proceeding. If EPA disagrees, we would be glad to work with EPA to identify a procedure by which we can resolve EPA's concerns. In light of the unique circumstances involved in this case, however, there is no reason for Hillsborough County to submit a new PSD permit application. This case will not establish a precedent or affect future cases because DER is willing to modify the PPSA to eliminate prospective or hypothetical permitting problems. Since Hillsborough County has done its utmost to comply in good faith with all of the applicable environmental regulations, we believe EPA should use its discretionary powers to fashion a reasonable solution to the issues facing EPA and Hillsborough County.

EPA has had actual and constructive notice of Hillsborough County's activities on this project since EPA awarded its grant to the County in 1979. The County should not now become the innocent victim in a dispute between DER and EPA. From a legal perspective, it would be arbitrary and capricious for EPA to change its position about DER's PSD program and attempt to impose after-the-fact requirements against the County. From an equitable perspective, it simply is not fair.

We sincerely appreciate your consideration of this matter. We look forward to working with you in the future.

Mr. Jack Ravan/EPA
November 12, 1985
Page 19

Sincerely,

David S. Dee

JDV:mm
Enclosures

cc: Jay Sargent, Esq. (w/attachments)
Joan Boilen
Jewel Harper
Winston Smith
Vicki Tschinkel
Mary Smallwood
Gary Early, Esq.
Marc Rogoff
George Butler, Esq.
Dale Twachtmann
Robert Homiak
Peter Wyckoff

bcc: Steve Smallwood



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET
ATLANTA, GEORGIA 30365

NOV - 5 1985

REF: 4APT-AP

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Victoria J. Tschinkel
Secretary, Department of
Environmental Regulation
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32301

RE: Partial Delegation Request

Dear Ms. Tschinkel:

This is in response to your letter of October 9, 1985, requesting responsibility for implementation of the technical and administrative portions of the Prevention of Significant Deterioration (PSD) of Air Quality program as it is applied to sources subject to or reviewed under the Electrical Power Plant Siting Act, PHC §§403.501-403.517 and regulated under FAC Chapter 17-17. We have determined that the procedures for new source review by the State of Florida provide an adequate and effective procedure for the implementation of the technical and administrative portions of the PSD program for the sources described above. Therefore, pursuant to 40 CFR Subpart A (General Provisions) and 40 CFR §52.21(u) (Delegation of Authority), we hereby delegate our authority for the technical and administrative portions of the federal PSD program, as described in 40 CFR §52.21, to the State of Florida as follows:

- A. EPA delegates its authority for the technical and administrative review of all sources which are subject to or reviewed under the Electrical Power Plant Siting Act located or to be located in the State of Florida and subject to review under the federal regulations for the Prevention of Significant Air Quality Deterioration, promulgated in 40 CFR §52.21.
- B. EPA delegates to the State of Florida its authority and procedures for technical review and evaluation of new sources and public participation pursuant to 40 CFR §124.3-124.14, but not its authority under 40 CFR §124.15-124.19 to take final action on an application or its authority to take enforcement action.
- C. For purposes of and in accordance with paragraph B above, the State of Florida shall follow the procedures in 40 CFR §§124.3-124.14, except that the word "Director" and the phrase "Regional Administrator" shall mean "State Director". A copy of the State's preliminary determination, a copy of all materials submitted by the owner or operator of the source seeking the PSD permit, a copy or summary of the materials (if any) considered by the State in making its preliminary determination, and a copy

of the notice shall be sent to the EPA Regional Office immediately upon issuance of a preliminary determination. Immediately upon issuance of a final determination, the state shall forward a copy of the final analysis to the EPA Regional Office. Upon receipt of the State's final analysis, the EPA Regional Office shall take final action on an application pursuant to 40 CFR §124.15.

D. This delegation is based upon the following conditions:

1. Quarterly reports containing pertinent information relating to the status of sources subject to 40 CFR §52.21 (or other reports as required by the Regional Administrator) will be submitted to EPA by the State of Florida as part of the existing reports normally submitted to EPA through program plan reporting.
2. In accomplishing the delegated PSD technical and administrative review, the State of Florida will apply all applicable federal air permitting rules and follow the applicable federal permit processing procedures. If at any time it is determined the state rules or statutes prohibit the Department from applying any such standard or procedure, the pertinent portion of the delegation may be revoked.
3. If the Regional Administrator determines that the State procedure for implementing the technical and administrative portions of PSD is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Florida Department of Environmental Regulation.
4. Acceptance of this delegation of presently promulgated PSD regulations (40 CFR §52.21, as amended 8/7/80) does not commit the State of Florida to accept responsibility for new federal standards or requirements promulgated after the effective date of this delegation.
5. Public availability of information shall be in accordance with 40 CFR §52.21(q).
6. EPA shall overview the conduct of the technical and administrative portions of the PSD program through an overview program consistent with that described in the State/EPA agreement.

The State and EPA will develop a system of communication sufficient to guarantee a program that includes the items described below:

- A. Each agency is informed of the current compliance status of subject sources in the State of Florida.
- B. Prior EPA concurrence is obtained on any matter involving interpretation of 40 CFR §52.21 (including unique questions of applicability of the standards).

A notice announcing this delegation will be published in the Federal Register in the near future. The notice will state, among other things, that effective immediately, all reports required pursuant to PSD regulations by covered sources located or to be located in the State of Florida should be submitted to the Bureau of Air Quality Management, Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida, 32301. Any such reports which have been or may be received by EPA, Region IV, will be promptly transmitted to the State Agency.

Since this delegation is effective immediately, there is no requirement that the State notify EPA of its acceptance. Unless EPA receives from the State written notice of objections within ten (10) days of receipt of this letter, the State will be deemed to have accepted all of the terms of the delegation.

Sincerely yours,



Jack E. Ravan
Regional Administrator

DER

OCT 31 1985

BAQM

HOPPING BOYD GREEN & SAMS

ATTORNEYS AND COUNSELORS

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CAROLYN S. RAEPPLE

OF COUNSEL
W. ROBERT FOKES

October 30, 1985

BY FEDERAL EXPRESS

Jack Ravan
Regional Administrator
U. S. Environmental Protection Agency
Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

Re: Prevention of Significant Deterioration Permitting
Under the Florida Power Plant Siting Act

Dear Mr. Ravan:

I am writing on behalf of the Florida Electric Power Coordinating Group, Inc. (FCG), which recently received a copy of a letter dated September 16, 1985, from Winston Smith of your staff to Steve Smallwood, Chief of the Bureau of Air Quality Management in the Florida Department of Environmental Regulation's (DER). (See Attachment "A".) Mr. Smith's letter discusses a perceived problem involving implementation of the Prevention of Significant Deterioration permit program for facilities licensed under the Florida Electric Power Plant Siting Act (PPSA).

The FCG's membership comprises thirty-seven investor-owned, municipally-owned and cooperatively-owned electric utilities serving virtually one hundred percent of the electrical consumers in Florida. One of the functions of the FCG is, where feasible, to present a unified viewpoint to State and federal environmental agencies in furtherance of the FCG's goal of ensuring adequate, reliable electrical power at the lowest possible cost consistent with environmental standards.

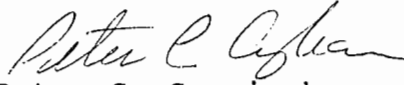
In accordance with the above-stated goal, the FCG has a strong and continuing interest in issues relating to the PPSA. To the extent that a problem exists in regard to the relationship between the PPSA and the PSD permit program, the FCG and its members could be affected by the manner in

Jade Ravan
October 30, 1985
Page 2

which it is resolved. The FCG therefore wishes to be involved in any discussions between Region IV, the Florida DER and other interested parties concerning this matter. I would specifically request that Region IV provide me with advance notice of any meetings that your staff may schedule to discuss this subject with DER or other interested parties. It is my hope that the FCG can contribute to a mutually-acceptable resolution of the issues of concern which avoids the imposition of unnecessary burdens on either permit applicants or the regulatory agencies.

Thank you in advance for your consideration in this matter.

Sincerely,


Peter C. Cunningham

PCC/gb

cc: Winston Smith
James Sargent, Esquire
Jewell Harper, Esquire
Victoria J. Tschinkel
Mary Smallwood, Esquire
Gary Early, Esquire
Steve Smallwood
Clair Fancy
David S. Dee, Esquire

CARLTON, FIELDS, WARD, EMMANUEL, SMITH & CUTLER, P. A.

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LAUREL E. LOCKETT

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JAMES D. WING
DEXTER R. WOODS, JR.
GWYNNE A. YOUNG
ROBERT L. YOUNG
GEORGE ZADOCZNY
PETER W. ZINOBER

October 7, 1985

FEDERAL EXPRESS

Mr. Jack Ravan
Regional Administrator
United States Environmental
Protection Agency
Region IV
345 Cortland Street, N.E.
Atlanta, Georgia 30365

Dear Mr. Ravan:

This law firm represents Hillsborough County, Florida in certain cases involving environmental law matters. Among other things, we helped Hillsborough County, Florida obtain site certification for a resource recovery facility pursuant to the Florida Power Plant Siting Act.

It is our understanding that the U.S. Environmental Protection Agency (EPA) is now concerned about potential conflicts between the Florida Power Plant Siting Act and Florida's State Implementation Plan. As a result, EPA may require Hillsborough County to obtain a Prevention of Significant Deterioration (PSD) permit from EPA.

We, and the other representatives of Hillsborough County, are extremely concerned about the potential consequences of EPA's proposed action. We believe that it is very important for us to discuss this matter with you before EPA enters any order or takes any action involving Hillsborough County's resource recovery facility.

DER

OCT 07 1985

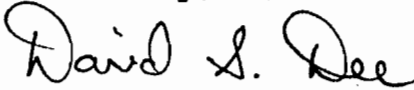
BAQM

Mr. Jack Ravan
October 7, 1985
Page Two

Hillsborough County sincerely wants to cooperate with EPA and informally resolve EPA's concerns about the resource recovery facility. For this reason, Hillsborough County believes it is unnecessary and inappropriate for EPA to take any formal action at this time. At a minimum, Hillsborough County wants an opportunity to discuss this issue with you before EPA takes any action.

EPA's proposal could cause substantial problems. The resource recovery facility was subjected to PSD review and a BACT determination by the Florida Department of Environmental Regulation. After the review process and site certification were completed in 1984, Hillsborough County committed \$144,000,000 in public funds to this project. More than \$40,000,000 has already been spent. A multitude of contracts and other commitments have been finalized. EPA's proposed actions could jeopardize those commitments and expose Hillsborough County to substantial delays and expenses.

Please call me after you have had an opportunity to consider this request. Thank you for your cooperation and assistance with this matter.

Sincerely,

David S. Dee

DSD/mm

cc: Jewel Harper
Jay Sargeant, Esq.
Gary Early, Esq.
Mark Rogoff
George Butler, Esq.
Steve Smallwood
Mary Smallwood
Victoria Tschinkel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET
ATLANTA, GEORGIA 30365

DER

SEP 17 1985

BAQM

4APT-AC

SEP 13 1985

Mr. Steve Smallwood, P.E., Chief
Bureau of Air Quality Management
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32301

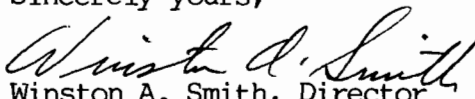
Dear Mr. Smallwood:

This is to respond to your letter dated August 1, 1985, in which you questioned the identification of the two resource recovery facilities in Hillsborough and Pinellas Counties as significant violators and requested that both facilities be removed from the significant violators list.

Through EPA legal interpretations of the Florida Power Plant Siting Act, both facilities were determined as having initiated construction without a federally enforceable Prevention of Significant Deterioration (PSD) permit. In a letter that will follow shortly, EPA will summarize the legal position and history of the two facilities in regard to the federal PSD rules and regulations and the means to correct this permitting deficiency. The remedies have already been discussed with you and your staff in recent telephone conversations. However, we do not believe that removal of these two sources from the significant violators list is appropriate.

Should you have any further questions regarding the matters discussed above, please feel free to call me at (404) 881-3043 or Mr. James T. Wilburn, Chief, Air Compliance Branch at (404) 881-2904.

Sincerely yours,


Winston A. Smith, Director
Air, Pesticides, and Toxics
Management Division

cc: Mr. Marshall Mott-Smith
Field Operations Coordinator
Division of Permitting

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

TWIN TOWERS OFFICE BUILDING
2600 BLAIR STONE ROAD
TALLAHASSEE, FLORIDA 32301-8241



BOB GRAHAM
GOVERNOR

VICTORIA J. TSCHINKEL
SECRETARY

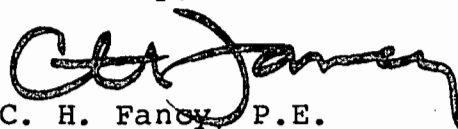
August 28, 1985

Mr. Roger Pfaff
EPA - Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

Dear Mr. Pfaff:

The enclosed proposed amendment to Florida Administrative Code 17-17, Electrical Power Plant Siting, is intended to specify that PSD related conditions be included in the public notice - Notice of Certification Hearing. We would appreciate your comments by phone as to its adequacy, since the public workshop for discussing this and other changes is scheduled for September 10, 1985. We would appreciate an early response.

Sincerely,


C. H. Fancy, P.E.
Deputy Chief
Bureau of Air Quality
Management

WES/CHF/s

~~State~~
WES/CHF
Thank you
for
9-9-85

Ed Svec -

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17-17.151(6)4. A statement that: "Application Number ____ for certification to authorize construction and operation of an electrical power plant near _____, Florida," (and where applicable: "and associated transmission lines from _____ to _____") "is now pending before the Department of Environmental Regulation pursuant to the Florida Electrical Power Plant Siting Act, Chapter 403, Part II, F.S. Certification of this power plant would allow construction and operation of a new source of air pollution which would consume an increment of air quality resources. The department review has resulted in an assessment of the prevention of significant deterioration impacts and a determination of the Best Available Control Technology (or Lowest Achievable Emission Rate) necessary to control the emission of air pollutants from this source.

OGDEN MARTIN SYSTEMS, INC.
140 EAST RIDGEWOOD AVENUE
PARAMUS, N. J. 07652

DER
JAN 21 1986
BAQM

RICHARD W. SEELINGER
EXECUTIVE VICE PRESIDENT
(201) 599-2400

January 20, 1985

Mr. Winston A. Smith, Director
Air, Pesticides & Toxics Management Division
US EPA
345 Courtland St., N.E.
Atlanta, GA 30365

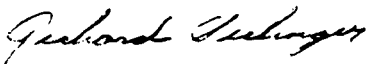
Dear Mr. Smith:

I believe our meeting of last Friday brought us one step closer in resolving the Hillsborough County issue. As per your request, we have enclosed some additional data on lead emissions from municipal waste combustors. There are, however additional points concerning lead and other trace metals emissions I wish to make. The original modeling done for the permit issued by the State of Florida used a lead emission factor of about 0.05 pounds lead per ton of solid waste fired. This emission rate did not cause a violation of the NAAQS.

The lead emission limitation you suggested at the Friday meeting of 0.005 lbs/ton was taken from the California Air Resources Board report and to the best of my knowledge reflects LEAR from a bag house. As the Hillsborough plant is using a BACT ESP, the lead emissions will be higher. The 0.05 is rather conservative and after the plant is running and has completed its compliance testing it may be appropriate to lower the limitation. We have no control over the amount of lead or any other trace metals in the municipal waste stream. The efficiency of the particulate control device plus the variations in metal content of the waste determines metals emissions rates. As the efficiency of the particulate control device is set during the BACT determination, additional limitations of individual trace metals should not be required.

If you insist on stipulating a lead emission limitation in the EPA permit, I believe the use of the original emission number is more appropriate than an arbitrary factor taken from the CARB report.

Sincerely,



Richard Seelinger

RS/lp

cc: David Dee, Carlton, Fields etal.
J.T. Sweeney, Ogden
G.K. Crane, Ogden
D. Sussman, Ogden

SUMMARY OF LEAD EMISSIONS DATA

<u>Plant I.D.</u>	<u>Test I.D.</u>	<u>Emission wt % of particulate</u>	<u>Flue Gas Temperature °F</u>
Japan	3.D1	5.31	410
0.13 Sheridan Avenue	1	0.13	350-400
	2	1.10	
	3	0.58	
	4	1.01	
	5	0.90	
	6	0.14	
	<u>Ave.</u>	<u>0.64</u>	
Westchester RESCO (BNY)	4	1.6	
	5	2.7	
	6	3.66	
	7	1.55	
	8	1.21	
	9	0.35	
	10	0.62	
	11	1.08	
	12	1.38	
	13	0.9	
	14	1.3	
	15	0.73	
	16	1.76	
	17	1.58	
	<u>Ave.</u>	<u>1.46</u>	
Braintree		1.4	

SUMMARY OF LEAD EMISSIONS DATA
(Continued)

<u>Plant I.D.</u>	<u>Test I.D.</u>	<u>Emission wt % of particulate</u>	<u>Flue Gas Temperature °F</u>
Saugus	1	4.72	400+
	2	3.31	
	3	3.56	
	4	3.32	
	Ave.	3.73	
Kure		0.754	430
Kirsch 7 German Plants		1.87 ave. 0.05 min. 6.19 max.	
SYSAV-Maimo	400302	0.575	418-436
	400303	0.85	
	400401	0.665	
	420201	0.54	
	420202	0.60	
	430302	0.42	
	430303	0.415	
	430402	0.37	
	Ave.	0.55	
Gallatin	2	0.892	420-474
	3	0.495	
	4	0.49	
	Ave.	0.626	
Munich-North		0.37	295-330

SUMMARY OF LEAD EMISSIONS DATA
(Continued)

<u>Plant I.D.</u>	<u>Test I.D.</u>	<u>Emission wt % of particulate</u>	<u>Flue Gas Temperature °F</u>
SWARU, 1976		0.57	487-554
SWARU, 1979	2	1.74	415-438
	3	0.98	
	4	1.52	
	5	2.39	
	6	1.78	
	7	<u>1.74</u>	
	Ave.	<u>1.69</u>	
Charlottetown Normal Operation	PT2	7.0	360-390
	PT3	6.4	
	PT4	<u>6.1</u>	
	Ave.	<u>6.5</u>	
Long Feed Cycle	PT5	7.5	
	PT6	8.2	
	PT7	<u>5.1</u>	
	Ave.	<u>6.9</u>	
High Sec. Temp.	PT8	5.4	
	PT9	6.8	
	PT10	<u>6.4</u>	
	Ave.	<u>6.2</u>	
Low Sec. Temp.	PT11	6.7	
	PT12	4.5	
	PT13	<u>4.2</u>	
	Ave.	<u>5.1</u>	
Average of all Charlottetown		6.2	
Overall Average		1.9	
Minimum		0.05	
Maximum		6.2	

rec'd 1-3-85

Notice of Prevention of Significant Deterioration (PSD)
Draft Permit

Name and address of applicant:

Name and address of office processing application:

On (date) _____, Hillsborough [Pinellas] County applied to the Florida Department of Environmental Regulation (DER) to construct [describe source] at [location]. The application is subject to U.S. Environmental Protection Agency (EPA) regulations for Prevention of Significant Deterioration of Air Quality (PSD), codified at 40CFR52.21. These regulations require that, before construction on a source of air pollution subject to PSD may begin, a permit must be obtained from EPA. Such permit can only be issued if the new construction has been determined by EPA to comply with the requirements of the PSD regulations, which are described in 40CFR52.21. These requirements include a restriction on the incremental increases in air quality due to the new source, and application of best available control technology (BACT).

4-17-80 ✓

The DER has been granted delegation by EPA to carry out the PSD review of this source, except for final signature of the PSD permit. Acting under that delegation, the DER has prepared a draft permit and made a preliminary determination that the construction will comply with all applicable provisions of the PSD regulations. The degree of increment consumption that will result from the construction is:

Pollutant	Class I Area		3-hr. average
	Annual average	24-hr. average	
Particulate (Pinellas only)	%	%	N/A
Sulfur dioxide	%	%	%

~~The source is located more than 100 kilometers from any Class I area.~~

A copy of the administrative record of the application, including the draft PSD permit, the preliminary determination, and all materials submitted by the applicant, will be available for review for 30 days at the following locations:

- (Tallahassee address and hours available)
- (Hillsborough [Pinellas] address and hours available)

Written comments on the preliminary determination may be submitted to:

(Name, phone no. of DER contact) CHF

Further information on the application, including copies of the application, the draft permit and a fact sheet, may be obtained from the person named above.

All comments postmarked within 30 days of the date of this notice will be considered by DER in preparing the final determination. The final determination will be sent to EPA for issuance or denial of the PSD application.

Any person may request a public hearing on the draft permit. Requests must be in writing, and shall state the issues to be raised in the hearing.

DER

JAN 06 1986

BAQM

Requests for a hearing must be postmarked not later than 30 days from the date of this notice and sent to:

(DER contact)

CHF

A special set of circumstances is applicable to this PSD permit application. A permit to construct the source was issued by the Power Plant Siting Board on (date) under the Florida Power Plant Siting Act. At that time, DER considered such a permit to constitute a PSD permit issued under Florida's PSD regulations, which have been approved by EPA. Such approval by EPA transferred permit signature authority for PSD sources from EPA to DER. Subsequent to the issuance of that permit, EPA determined that Power Plant Site Certifications, because of certain procedural differences, do not constitute PSD permits under the DER regulations, and thus do not satisfy the requirements of the federal Clean Air Act. In order to rectify this situation, EPA withdrew authority from DER to issue PSD permits to such sources, but delegated to DER the authority to process the PSD applications in preparation for issuance of a permit by EPA.

Since Florida had already issued a ~~construction permit~~ ^{Site Certification} to [Hillsborough/Pinellas] County, the source had begun construction prior to EPA's determination that the Florida procedure is inadequate. Consequently, EPA issued an administrative order under Section 167 of the Clean Air Act, which required [Hillsborough/Pinellas] County to either immediately apply for a PSD permit or cease construction. Because of the special circumstances surrounding this application, EPA determined that the determination of best available control technology for this source could be made as of the date of the original complete application to Florida for a Power Plant Site Certification permit. Therefore, the draft permit and preliminary determination reflect the best available control technology as of (date) the date of that application.

the date of this notice and sent for
requirements for a hearing and later than 30 days from

ROUTING AND TRANSMITTAL SLIP

Date: *11/3/85*

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. <i>Clair Fency</i>		
2.		
3.		
4.		
5.		

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

*Attached is a suggested
public notice to
Pinellas RRF and
Hillsborough RRF
(404) 347-4253*

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post) <i>Roger Hoff</i>	Room No.—Bldg.
	Phone No.

RECEIVED

DEC 21 1984

Dept. of Environmental Regulation
Office of General Counsel

BEFORE THE GOVERNOR AND CABINET
OF THE STATE OF FLORIDA

IN RE: HILLSBOROUGH COUNTY)
RESOURCE RECOVERY PROJECT)
POWER PLANT SITING CERTIFICATION)
APPLICATION PA 83-19)

DOAH CASE NO. 84-2789
(LAND USE HEARING)

FINAL ORDER

BY THE GOVERNOR AND CABINET:

The Governor and Cabinet, sitting as the Siting Board, having reviewed the Recommended Order which is attached hereto as Exhibit 1, and otherwise being fully advised herein, issue this Final Order and, therefore, it is

ORDERED:

1. The Recommended Order (dated November 9, 1984) prepared by the Hearing Officer pursuant to Section 403.508(2), Florida Statutes, concerning the land use issues in this case, is approved and adopted.

DONE AND ORDERED this 20th day of December, 1984, in Tallahassee, Florida, pursuant to the vote of the Governor and Cabinet, sitting as the Siting Board, at a duly noticed and constituted Cabinet meeting on December 18, 1984.

FOR THE GOVERNOR AND CABINET,
SITTING AS THE SITING BOARD

BY: 
THE HONORABLE BOB GRAHAM
Governor

The action of the Siting Board is based on the following vote:

	<u>For</u>	<u>Against</u>	<u>Absent</u>
Honorable Bob Graham	✓		
Honorable George Firestone			✓
Honorable Bill Gunter	✓		
Honorable Gerald A. Lewis	✓		
Honorable Jim Smith	✓		
Honorable Ralph D. Turlington	✓		
Honorable Doyle Conner	✓		

FILING AND ACKNOWLEDGEMENT

Filed, on this date, pursuant to Section 120.52(10), Florida Statutes (1983), with the designated Department Clerk, receipt of which is hereby acknowledged.

Aiane M. Nelson
Clerk

12/21/84
Date

Copies furnished to:
(See attached list)

COPIES FURNISHED TO:

Jacob D. Varn, Esquire
David S. Dee, Esquire
Post Office Drawer 190
Tallahassee, Florida 32302

Honorable Bob Graham
Governor
The Capitol
Tallahassee, Florida 32301

Gary Stephens, Esquire
Assistant General Counsel
State of Florida Department
of Environmental Regulation
2600 Blairstone Road
Tallahassee, Florida 32301

Honorable George Firestone
Secretary of State
The Capitol
Tallahassee, Florida 32301

C. Lawrence Keesey, Esquire
Department of Community Affairs
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Tallahassee, Florida 32301

Honorable Jim Smith
Attorney General
The Capitol
Tallahassee, Florida 32301

Karen A. Lloyd, Esquire
Southwest Florida Water
Management District
2379 Broad Street
Brooksville, Florida 33512

Honorable Bill Gunter
Treasurer and Insurance
Commissioner
The Capitol
Tallahassee, Florida 32301

Bonnie E. Davis, Esquire
Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

Honorable Gerald Lewis
Comptroller
The Capitol
Tallahassee, Florida 32301

Hamilton S. Oven, Jr.
Department of Environmental
Regulation
Twin Tower Office Building
2600 Blairstone Road
Tallahassee, Florida

Honorable Doyle Conner
Commissioner of Agriculture
The Capitol
Tallahassee, Florida 32301

Diane D. Tremor
Hearing Officer
Division of Administrative
Hearings
The Oakland Building
2009 Apalachee Parkway
Tallahassee, Florida 32301

Honorable Ralph D. Turlington
Commissioner of Education
The Capitol
Tallahassee, Florida 32301

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: HILLSBOROUGH COUNTY)
RESOURCE RECOVERY PROJECT) CASE NO. 84-2789
POWER PLANT SITING CERTIFICATION) (LAND USE HEARING)
APPLICATION PA 84-19.)
_____)

RECOMMENDED ORDER

Pursuant to notice, an administrative hearing was held before Diane D. Tremor, Hearing Officer with the Division of Administrative Hearings, on October 22, 1984, in Tampa, Florida. The sole issue for determination at the hearing, pursuant to Section 403.508(2), Florida Statutes, is whether the site selected for Hillsborough County's proposed resource recovery facility is consistent and in compliance with existing land use plans and zoning ordinances.

APPEARANCES

For Hillsborough County:	David S. Dee and Jacob D. Varn Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A. P.O. Box 190 410 Lewis State Bank Tallahassee, Fl. 32301
For the Department of Environmental Regulation:	Charles G. Stephens and James L. Torres Twin Towers Office Building 2600 Blairstone Road Tallahassee, Fl. 32301
For the Department of Community Affairs:	C. Lawrence Keesev 2571 Executive Center Circle Tallahassee, Fl. 32301
For the Greater Brandon Citizens Alliance:	Thomas Cone Blain & Cone, P.A. 202 Madison Street Tampa, Fl. 33602

INTRODUCTION

Pursuant to the Florida Electrical Power Plant Siting Act, Sections 403.501 - 403.517, Florida Statutes, Hillsborough County filed, on August 2, 1984, an application for power plant site certification for a resource recovery facility. The statutory scheme calls for both a land use hearing and a certification hearing. This land use portion of the proceeding pertains to the

sole issue of whether or not the proposed site conforms with existing land use plans and zoning ordinances.

In support of its position of conformance, Hillsborough County adduced the testimony of seven witnesses and its Exhibits 1-7, 11, 14-17, 19, 20, 27A-G, 30, 31, 34, 36-38, 42, 44, 50, 51, 53, 54, and 56 were received into evidence. Testifying on Hillsborough County's behalf were: Robert Hauser, Jr., an engineer with Camp Dresser & McKee (CDM), who was accepted as an expert witness in the areas of solid waste management disposal, including resource recovery facilities; Dr. Marc Rogoff, the coordinator of the Hillsborough County resource recovery program; Donald F. Elias, the supervisor of the Atmospheric Sciences Division of CDM, who was accepted as an expert in the areas of air pollution, noise, odor, and resource recovery; William Oliver, an engineer who was accepted as an expert in the area of transportation analysis; Gary Engelhardt, Hillsborough County's Zoning Administrator, who was accepted as an expert in zoning and land use planning; James Stutzman, a senior planner at the Hillsborough County City-County Planning Commission, who was accepted as an expert in zoning and land use planning; and Richard Eric Gehring, the district director of the consulting firm of Post, Buckley, Schuh and Jernigan, who was accepted as an expert in zoning and land use planning. Hillsborough County also introduced the deposition testimony of three expert witnesses: Richard Klusza, a real estate appraiser; Paul Darst, a senior planner with the Department of Community Affairs; and David McDevitt, a planner with the Department of Community Affairs.

The Department of Community Affairs, the Department of Environmental Regulation and the Southwest Florida Water Management District are parties to this proceeding, pursuant to Section 403.508, Florida Statutes. They stipulated prior to the hearing that they do not dispute Hillsborough County's contention that the proposed project is consistent and compatible with the local land

use plan and zoning regulations. The Department of Environmental Regulation introduced one exhibit to establish proof of publication of notice for the land use hearing. The Department of Environmental Regulation and the Department of Community Affairs did not call any witnesses. The Southwest Florida Water Management District did not participate at the land use hearing.

Prior to the hearing, the Greater Brandon Citizens Alliance ("Alliance") filed notice of its intent to be a party. At the hearing, however, the Alliance's counsel presented an opening argument and then withdrew the Alliance's request to be a party. Counsel for the Alliance also explained that the Alliance had voluntarily dismissed with prejudice its lawsuit challenging the validity of the zoning and land use plan for the proposed Hillsborough County resource recovery facility.

One witness testified as a member of the general public. Barbara Stillie, a member of the Board of Directors of the Greater Brandon Chamber of Commerce, testified that the Chamber opposed the proposed facility on the grounds that it would negatively impact the residential and business atmosphere and the orderly and healthy growth of the area.

Subsequent to the hearing, Hillsborough County submitted proposed findings of facts and proposed conclusions of law. The other parties did not submit proposed orders. To the extent that Hillsborough County's proposed findings of fact are not included in this Recommended Order, they are rejected as being not supported by competent substantial evidence adduced at the hearing, irrelevant or immaterial to the issues in dispute or as constituting legal conclusions as opposed to factual findings.

FINDINGS OF FACT

Upon consideration of the oral and documentary evidence presented at the hearing as well as the parties' prehearing stipulations of fact, the following relevant facts are found:

The Site:

1. Hillsborough County desires to build a resource recovery facility and a wastewater treatment plant on an undeveloped 50 acre parcel of land ("the site") owned by the County and situated in an unincorporated area of Hillsborough County. The site is located approximately 5 miles east of downtown Tampa, 2.5 miles northwest of the unincorporated community of Brandon, 0.6 mile north of State Road 60 and 0.75 mile west of the Interstate 75 by-pass.

The site is an open, grassy pasture with a few trees, and is presently used for grazing. It is not an environmentally sensitive or pristine area. There are no viable wetlands on the site.

2. The proposed site is bounded by a railroad track on the south, a TECO 230 KV electric transmission line corridor on the west, Faulkenburg Road and a pipe fabrication facility on the east and approximately 300 acres of improved pastureland on the north. Hillsborough County owns the site, the pasture to the north and the land used by the pipe fabricating facility.

3. Nine square miles (5600 acres) of land around the site are designated in the local comprehensive plan for industrial development. Approximately 80% of the land within one mile of the site is zoned for light industrial use. There are many existing industrial facilities in the area, including a pipe fabrication facility, two cement batch plants, a foundry, a garbage collection company with a garbage truck storage area, an automobile battery manufacturer, a bagging company and an oil reprocessing plant which is on the Environmental Protection Agency national priority list of hazardous waste sites.

4. Although there are a few homes scattered along Faulkenburg Road, they constitute nonconforming land uses in this industrial district. The resource recovery facility will be built on the western portion of the 50-acre site and will be more than 1700 feet (560 yards) from the nearest home. The nearest residential subdivision, Woodbury Estates, is 4200 feet (.79 mile) away from the resource recovery building. This subdivision is located

on the far (east) side of the Interstate 75 by-pass. Since the interstate highway is elevated in this area, it forms a natural dividing line or buffer between the industrial and residential areas.

The Resource Recovery Facility and Wastewater Treatment Plant

5. The primary purpose of the proposed resource recovery facility is to receive solid waste and convert it into electrical power. This "waste to energy" facility will initially have 3 boilers, will dispose of 1200 tons of refuse each day and will produce 29 MW of electricity. A fourth combustion unit will be added in the future. With the fourth unit, the facility will use 1600 tons of refuse each day and produce 39 MW of electricity. Mass burn technology will be used and refuse will be the sole combustion fuel. It would take 280,000 barrels of oil each year to produce the same amount of electricity at a power plant. Over the 20-year life of the facility, Hillsborough County will recover the energy equivalent of 5.6 million barrels of oil. The electricity will be sold to TECO, thus reducing the cost of solid waste management.

6. The resource recovery facility and the .75 MGD (eventually to be increased to 3.0 MGD) wastewater treatment plant will be owned by Hillsborough County and operated by a private company under a 20-year contract. It is intended that the facility and the plant will work as an integrated system. The wastewater treatment plant will provide process and cooling water for the resource recovery plant. No groundwater will be used. The resource recovery plant will dispose of treated effluent from the wastewater treatment plant by evaporation. The wastewater treatment plant will treat the liquid wastes from the resource recovery plant. If approval for the on-site wastewater treatment plant cannot be obtained, effluent from another wastewater treatment facility would be brought to the site. Ash and residue will be taken from the resource recovery plant to the Southeast Hillsborough County Landfill for disposal.

7. The site development plans for the entire project contemplate that enclosed refuse trucks will enter the facility from Faulkenburg Road. The trucks will be weighed in the scale house area, proceed up a ramp into the enclosed refuse receiving-unloading building and then exit back onto Faulkenburg Road. The facility consists of the refuse receiving-unloading building, the refuse storage and crane area building, the boiler house portion of the building and the air pollution control system and residue processing portions of the building. There will be an administration building, an electrical switch yard and parking areas. The maximum building height is 140 feet (the boiler building) and the maximum elevation on the flue gas stack is 220 feet. Trees and shrubbery will be planted around the site to provide screening and buffering.

Local Comprehensive Plan

8. The Hillsborough County land use map is part of the local comprehensive plan, known as the Horizon 2000 Plan. Prior to February of 1984, the site was designated on the land use map as Light Industrial. The types of uses allowed in such areas are industrial activities that create a minimal degree of impact on the surrounding environment, particularly in terms of non-objectionable levels of noise, vibration, dust or odors. In February of 1984, the land use map was amended so as to change the designation of the proposed site for the resource recovery facility from Light Industrial to "Public/Semi-Public." The amendment to the land use map was formally reviewed and approved by four different groups in Hillsborough County. First, the amendment was reviewed and approved by the staff of the Hillsborough County City-County Planning Commission, which reviews all proposed amendments to the comprehensive plan. Second, the amendment was reviewed and approved by the staff of the Department of Development Coordination. The Department of Development Coordination submits comments to the Planning Commission concerning any amendment to the local comprehensive plan. Third, the change was approved by a

unanimous vote of the Planning Commission. Finally, it was approved by a unanimous vote of the Board of County Commissioners. The Board found that the proposed site for the resource recovery facility was compatible with the Light Industrial designation contained in the Horizon 2000 Plan, and that the redesignation to Public/Semi-Public was designed to provide notice on the land use map of the existence of a public facility.

9. The Public/Semi-Public land use designation is used to identify the location of existing or proposed public facilities that have unique significance to the community. For example, this designation is used to identify the location of the Tampa International Airport, the University of South Florida and the Hillsborough Heights Landfill. The proposed resource recovery facility and wastewater treatment plant are major public facilities that will provide unique benefits to the citizens of Hillsborough County.

Zoning

10. The proposed site was formerly zoned as Restricted Industry or "M-1A." In May of 1984, zoning on the site was changed to Community Unit District or "C-U." During the review and rezoning process, several public hearings were held and members of the public were provided an opportunity to express their views about the project. The rezoning was reviewed and approved by six different entities or individuals. Specifically, it was approved by the staff of the Planning Commission; the staff of the Department of Development Coordination; various agencies in Hillsborough County, including the Health Department, Traffic Department, and Hillsborough County Environmental Protection Commission; the Zoning Administrator for Hillsborough County; an independent zoning hearing master who conducted an evidentiary hearing; and a unanimous vote of the Board of County Commissioners.

11. According to the zoning regulations, the purpose of the "C-U" zone is to provide the maximum in development opportunities, subject to reasonable restrictions on height, area,

setback, etc. While the "C-U" zone is not limited as to the types of land uses that are permissible, facilities built in a "C-U" zone must be compatible with surrounding land uses. To determine whether the proposed facility will be compatible with other uses of the land surrounding the proposed site, it is necessary to examine the external impacts anticipated from construction or operation of the resource recovery facility.

External Impacts

12. The resource recovery facility and wastewater treatment plant will be one of the most attractive industrial developments in the area. The project has been designed to resemble an office building and the site will have extensive landscaping, including trees, shrubs and berms. The facility will be fully enclosed to minimize noise, odor, dust and other off-site impacts. The impacts associated with the facility will, in most instances, be less than the impacts associated with the existing industrial uses in the area.

13. The operation of the resource recovery facility will increase noise levels by less than 3 decibels at the nearest residence, which is 1700 feet away from the resource recovery building. An increase of 3 decibels is the limit of perceptibility for the normal person. The noise level at the nearest subdivision, located on the other side of I-75, would not be affected. It would be completely masked by existing noise levels.

14. The resource recovery facility will not produce any objectionable odors off-site. The refuse will be unloaded in an enclosed area inside the resource recovery building. The unloading ("tipping") area will be under negative air pressure. The air in the tipping area will be drawn into the furnace, and heat in the furnace will destroy any odiferous compounds in the air. No refuse, ash or other material will be stored outside of the building.

15. The proposed Hillsborough County resource recovery facility must comply with the Florida and national ambient air

quality standards. The Clean Air Act expressly states that those standards were established to protect the public health and welfare, with an adequate margin of safety.

The proposed facility is designed to minimize any potential air pollution. During normal operating conditions, there will be no smoke emissions from the facility. Less than one percent of the time, during severe wintertime conditions, a trace of a condensation plume at the top of the stack might appear, but it would evaporate quickly. At full operation, the proposed sulphur and sulphur dioxide emissions rate for this facility is 23.1 grams per second. As a comparison, the TECO Big Bend Units 1 through 3 emissions are approximately 8,000 grams per second.

16. Except during the construction phase, there will be no dust created by the facility itself under normal operating conditions. Entrance roads will be paved and maintained and the facility is enclosed and maintained under negative pressure.

17. The proposed facility will have very little effect on traffic in the area. Traffic from the resource recovery facility and wastewater treatment plant will comprise less than five percent (5%) of the capacity on Faulkenburg Road and less than one percent (1%) on State Road 60. The County uses a 5% threshold to determine whether there will be a negative impact on traffic. Traffic from the resource recovery facility will have no effect on the peak or rush hour traffic conditions. The proposed facility will generate less traffic and will have less impact on peak hour conditions than a typical light industrial development that could otherwise be built on this site. A site this size associated with light industrial use could typically be expected to generate about 2,650 vehicle trips per day. When the proposed facility is operating at full capacity, approximately 650 vehicle trips per day are anticipated.

18. The proposed facility will not adversely affect the

value of either the existing nearby industrial properties or vacant land in the area. The site surrounding a similar and larger resource recovery facility in Pinellas County is experiencing a great deal of new residential, commercial and industrial development.

Additional Facts

19. The Hillsborough County zoning regulations and comprehensive plan do not expressly designate a particular zoning or land use category for resource recovery facilities. An electrical power plant is one of the uses designated for a "heavy" as opposed to a "light" industrial area. While the proposed facility will burn refuse and produce electricity, it should not be equated to either an incinerator or a power plant because of its technological superiority to a conventional incinerator and its smallness in size as compared to a typical power plant. It will not have the offensive off-site impacts in terms of dust, noise, odor and air pollution that normally occur at an incinerator or power plant.

20. The Department of Community Affairs (DCA), the Department of Environmental Regulation (DER), and the Southwest Florida Water Management District do not dispute Hillsborough County's contention that the project is consistent and compatible with local zoning regulations and the local comprehensive plan. The DCA has concluded that the project is consistent with the goals, objectives, and policies of the State Comprehensive Plan.

21. Notice of the land use hearing was published in the Tampa Tribune on September 7, 1984, and also in the Florida Administrative Weekly on September 7 and September 14, 1984.

CONCLUSIONS OF LAW

The sole issue for determination in this land use portion of the proceeding is whether the proposed Hillsborough County resource recovery facility site is consistent and in compliance with land use plans and zoning ordinances in effect as of the date of the application for power plant site certification.

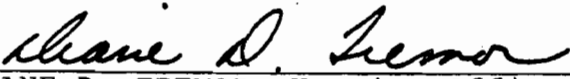
Section 403.508(2), Florida Statutes. There is undisputed, competent substantial evidence of record to demonstrate that the proposed project is in compliance and consistent with the State Comprehensive Plan, the Hillsborough County land use plan and map (the Horizon 2000 Plan) and the local zoning ordinances.

While the local land use map and zoning regulations were changed to accomplish and accomodate this project, it has been demonstrated that the proposed facility, along with its impacts, will be compatible with nearby existing land uses, which are primarily industrial in nature. In terms of noise levels, air pollution, dust, odors, traffic and appearance, the facility will have no greater adverse impact than existing uses of the surrounding areas. The site having been properly classified as Public/Semi-Public and having been rezoned to a Community Unit District, the proposed facility and site are consistent and in compliance with existing land use plans and zoning ordinances.

RECOMMENDATION

Based upon the findings of fact and conclusions of law recited herein, it is RECOMMENDED that the Governor and Cabinet, sitting as the Siting Board, enter a Final Order determining that the Hillsborough County proposed resource recovery facility site is consistent and in compliance with existing land use plans, specifically the Horizon 2000 Plan and the State Comprehensive Plan, and existing zoning ordinances.

Respectfully submitted and entered this 9th day of November, 1984.


DIANE D. TREMOR, Hearing Officer
Division of Administrative Hearings
The Oakland Building
2009 Apalachee Parkway
Tallahassee, Fl. 32301
(904) 488-9675

Filed with the Clerk of the Division of Administrative Hearings this 9th day of November, 1984.

Copies furnished:

See attached page

Case No. 84-2789

Honorable Bob Graham
Governor
State of Florida
The Capitol
Tallahassee, Fl. 32301

Steve Tribble, Clerk
Public Service Commission
101 E. Gaines Street
Tallahassee, Fl. 32301

Honorable Jim Smith
Attorney General
State of Florida
The Capitol
Tallahassee, Fl. 32301

Honorable Doyle Conner
Commissioner of Agriculture
The Capitol
Tallahassee, Fl. 32301

Honorable Ralph Turlington
Commissioner of Education
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Honorable George Firestone
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Honorable Bill Gunter
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Thomas Cone, Esquire
202 Madison Street
Tampa, Fl. 33602

Karen Lloyd
Southwest Florida Water Management District
5060 U.S. 41 South
Brooksville, Fl. 33512

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

TWIN TOWERS OFFICE BUILDING
2600 BLAIR STONE ROAD
TALLAHASSEE, FLORIDA 32301-8241



BOB GRAHAM
GOVERNOR
VICTORIA J. TSCHINKEL
SECRETARY

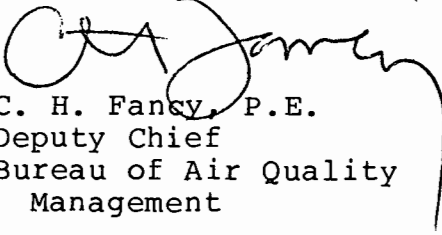
November 26, 1984

Mr. James T. Wilburn, Chief
Air Management Branch
Air & Waste Management Division
U.S. EPA, Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

Dear Mr. Wilburn:

Enclosed for your review and comment is the Air Quality Impact portion of the Hillsborough County Resource Recovery Facility Power Plant Siting Certification which is scheduled to go before the Governor and Cabinet on December 18, 1984. Please contact me at (904)488-1344 prior to December 18 if you have comments or questions regarding this report.

Sincerely,



C. H. Fancy, P.E.
Deputy Chief
Bureau of Air Quality
Management

CHF/pa

Enclosure

DEPARTMENT OF ENVIRONMENTAL REGULATION

TWIN TOWERS OFFICE BUILDING
2600 BLAIR STONE ROAD
TALLAHASSEE, FLORIDA 32301-8241



BOB GRAHAM
GOVERNOR

VICTORIA J. TSCHINKEL
SECRETARY

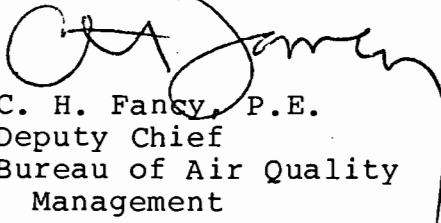
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Sincerely,


C. H. Fancy, P.E.
Deputy Chief
Bureau of Air Quality
Management

CHF/pa

Enclosure

COUNTY



OF HILLSBOROUGH

P.O. BOX 1110 TAMPA, FLORIDA 33601

NORMAN W. HICKEY, COUNTY ADMINISTRATOR

DER

NOV 9 1984

BAQM

November 6, 1984

NEWS RELEASE

FOR MORE INFORMATION CONTACT:

Dr. Marc J. Rogoff
Resource Recovery Program Coordinator
(813)272-6674

On November 5, 1984, the Board of County Commissioners of Hillsborough County, Florida, approved agreements with Ogden Martin Systems of Hillsborough, Inc. for design, construction, and twenty-year operation of the County's solid waste energy recovery facility. Hillsborough County will retain ownership of this 1,200 ton per day mass-burn resource recovery facility which will dispose of all processible municipal solid waste from the County's unincorporated areas.

The County has designated a 40 acre site north of State Road 60 and west of Faulkenburg Road in the unincorporated area of the County for construction of the County's facility. This site is near the center of waste collection for the County, thereby minimizing transportation costs. Electricity generated from the heat produced through the combustion of the County's refuse will be sold to the Tampa Electric Company. Ash residue from the facility will be disposed at the County's

new Southeast Sanitary Landfill, now in operation. The plant will meet all federal, state and local environmental standards.

Ogden Martin has assembled an experienced team to design, construct, and operate the County's facility. The Company's parent, the Ogden Corporation, is a \$1.7 billion Fortune 200 company with headquarters in New York City, and will unconditionally guarantee the performance of its subsidiary. The Martin Company of Munich, Germany will supply its patented combustion technology to the project. There are currently over 200 Martin units in operation in the world, three of which are operating in the United States, including the 2,000 ton per day Pinellas County, Florida facility. Burns and Roe, one of the top 50 engineering firms in the U.S., will serve as design engineers for the overall facility. Metric Constructors, Inc., a subsidiary of J.A. Jones Construction Company, will act as general contractor and construction manager for the facility. Allied Maintenance Corporation, a wholly owned subsidiary of the Ogden Corporation, will provide long-term operation and maintenance of the facility.

A groundbreaking is expected in early 1985 with commercial operation planned for winter, 1987. Construction cost to the County is fixed at \$80,079,000. Ogden Martin will be paid a base fee during plant operation of \$22.93 per ton of refuse processed by the facility (net of ash residue) for the first 280,000 tons of solid waste. The County will pay an operating

NEWS RELEASE, P. 3
November 6, 1984

fee of only \$8.91 per ton of refuse processed by the facility
(net of ash residue) delivered to the plant in the excess of
this amount.

MJR/km

STATE OF FLORIDA
 DIVISION OF ADMINISTRATIVE HEARINGS NOV 5 1984

Re: HILLSBOROUGH COUNTY, FLORIDA)
 RESOURCE RECOVERY PROJECT)
 SITING CERTIFICATION APPLICA-)
 TION PA 84-19)

DOAH CASE NO. **B.P.S**
 84-2789

SUPPLEMENT TO THE PREHEARING STIPULATION BETWEEN
 HILLSBOROUGH COUNTY, THE DEPARTMENT OF COMMUNITY AFFAIRS,
 AND THE DEPARTMENT OF ENVIRONMENTAL REGULATION

HILLSBOROUGH COUNTY, the DEPARTMENT OF COMMUNITY AFFAIRS ("DCA"), and the DEPARTMENT OF ENVIRONMENTAL REGULATION ("DER"), by and through their undersigned counsel, submit this supplement to the prehearing stipulation they filed on October 15, 1984. This document incorporates the prehearing stipulation by reference. It also addresses the issues relevant to the site certification hearing scheduled for November 8 and 9, 1984.

SECTION I: NATURE OF THE PROCEEDING

On August 2, 1984, HILLSBOROUGH COUNTY filed an Application for Power Plant Site Certification ("Application") for a resource recovery facility. The Application was filed pursuant to the Florida Electrical Power Plant Siting Act, §§403.501-403.517, Fla. Stat. (1983). HILLSBOROUGH COUNTY seeks approval of a resource recovery facility which will be built on an undeveloped 50 acre parcel of land in unincorporated Hillsborough County.

A site certification hearing will be held on November 8 and 9, 1984. The issue for determination at that hearing is whether Hillsborough County has provided reasonable assurances that the applicable requirements of the Florida Electrical Power Plant Siting Act have been satisfied and, therefore, the proposed resource recovery facility should be approved.

Currently there is no dispute between Hillsborough County, the DCA, and DER concerning the proposed resource recovery project. DER has recommended approval of the resource recovery facility, subject to certain conditions. HILLSBOROUGH COUNTY accepts and agrees to comply with those conditions.

Although the Greater Brandon Citizens Alliance ("GBCA") filed notice of its intent to be a party to the land use proceeding, the GBCA subsequently withdrew its petition. At this time, HILLSBOROUGH COUNTY, the DCA and DER are unaware of any individual or group, other than the Southwest Florida Water Management District, that intends to participate at the site certification hearing.

SECTION II: THE PARTIES' POSITION

A. Position of HILLSBOROUGH COUNTY.

HILLSBOROUGH COUNTY believes the proposed resource facility will comply with all of the applicable local and state rules and regulations, including the rules of the DCA and DER. Among other things, Hillsborough County has given reasonable assurances that:

- (a) the stormwater retention and detention basins which will be built at the resource recovery facility will collect, filter, and discharge the stormwater in conformance with the applicable DER requirements;
- (b) the proposed resource recovery facility will utilize the best available control technology (BACT) to minimize air emissions; and
- (c) the emissions from the resource recovery facility will comply with all of the applicable air quality standards, including the Florida and national ambient air quality standards.

Accordingly, the resource recovery facility should be approved.

B. Position of DCA.

The DCA has reviewed Hillsborough County's Application and determined that the proposed project is compatible and consistent with the goals, objectives and policies of the State Comprehensive Plan. The position of the DCA is more fully described in the DCA's report dated September 28, 1984 (attached hereto as

Exhibit "A"). The DCA does not dispute Hillsborough's County's other assertions in Section II.A., above.

C. Position of DER.

The DER has inter alia reviewed Hillsborough County's Application. It does not dispute Hillsborough County's statements in Section II.A, above, subject to certain conditions of site certification that are set forth in DER's report (attached hereto as Exhibit "B") concerning the resource recovery project.

SECTION III: EXHIBITS

A. HILLSBOROUGH COUNTY's Exhibits.

HILLSBOROUGH COUNTY's Exhibit List is attached hereto.

B. DCA Exhibits.

1. A report dated September 28, 1984, prepared by the DCA pursuant to §403.507(1), Fla. Stat. (1983).

C. DER Exhibits.

1. A report (dated October, 1984) concerning the Hillsborough County resource recovery project which was prepared by DER pursuant to Section 403.507, Fla Stat.
2. Resumes of the DER witnesses.
3. Reports from other agencies concerning Hillsborough County's resource recovery project.
4. Proof of publication of notice of the site certification hearing.

SECTION IV. WITNESSES.

A. HILLSBOROUGH COUNTY's Witnesses.

1. Donald Elias
2. Robert Hauser
3. Phillip Kennedy (optional)
4. Donald Pompelia (optional)
5. Robert Powell, Ph.D.
6. Louis Tortora
7. The DER witnesses

B. DCA Witnesses.

The DCA does not intend to call any witnesses at the site certification hearing.

C. DER Witnesses.

1. Clair Fancy
DER
Tallahassee, Florida
2. Hamilton Oven, Jr.
DER
Tallahassee, Florida

SECTION V. ADMITTED FACTS.

HILLSBOROUGH COUNTY, the DCA, and DER admit the truth of the facts stated in paragraphs 1 - 14, below, and agree that no proof will be required at the hearings in this case to establish these facts.

1. The Prehearing Stipulation Between Hillsborough County, the Department of Community Affairs, and the Department of Environmental Regulations (dated October 15, 1984) is incorporated herein by reference.

2. To conserve the time and energy of the parties, the testimony presented and exhibits introduced into evidence at the land use hearing on October 22, 1984, shall be incorporated by reference as part of the record for the site certification hearing.

3. The reports which are attached hereto as Exhibits "A" and "B" are true, correct, and genuine copies of the official reports and recommendations of the DCA and DER, respectively, concerning the proposed Hillsborough County resource recovery facility.

4. The reports attached hereto as Exhibits "A" and "B" were prepared by the DER and DCA pursuant to §403.507(1), Fla.Stat. (1983).

5. Exhibits "A" and "B" may be introduced in evidence in this proceeding and used for all purposes.

6. HILLSBOROUGH COUNTY accepts and will comply with the conditions of certification set forth in the attached Exhibit "B."

7. HILLSBOROUGH COUNTY has provided reasonable assurances that the stormwater retention and detention basins proposed at Hillsborough County's resource recovery facility will satisfy all of the applicable DER requirements, including the requirements in Chapter 17-25, Florida Administrative Code.

8. HILLSBOROUGH COUNTY provided reasonable assurances that, subject to the conditions set forth in DER's report (Exhibit "B"), the resource recovery facility will use the best available control technology (BACT) to minimize its air emissions.

9. HILLSBOROUGH COUNTY provided reasonable assurances that, subject to the conditions in Exhibit "B", the resource recovery facility will meet all applicable air quality standards, including the Florida and national ambient air quality standards.

10. HILLSBOROUGH COUNTY provided reasonable assurances that the proposed Hillsborough County resource recovery facility will comply with all applicable DER requirements.

11. HILLSBOROUGH COUNTY has given reasonable assurances that the proposed resource recovery facility should be approved for site certification with an initial site capacity of 29 MW (3 boiler units) and ultimate site capacity of 39 MW (4 units).

12. The DER and DCA received at least 45 days' advance written notice of the site certification hearing scheduled for November 8 and 9, 1984.

13. On October 6, 1984, notice of the site certification hearing was published in the Tampa Tribune.

14. On October 5, 1984, notice of the site certification hearing was published in the Florida Administrative Weekly.

SECTION VI. STIPULATED ISSUES OF LAW.

HILLSBOROUGH COUNTY, DER, and DCA agree and stipulate that:

1. HILLSBOROUGH COUNTY has provided reasonable assurances that it will comply with all of the applicable DER and DCA rules and regulations, subject to the conditions in Exhibit "B."

2. To the extent that the "Admitted Facts" in Section V, above, constitute statements of law, they are adopted herein as stipulated issues of law.

3. Notwithstanding any other provision of this Prehearing Stipulation, DER reserves the right to object to, and dispute the truth of, any statement in any document if the statement is contrary to the statements contained in DER's own report concerning the proposed resource recovery project or contrary to the statements contained in the DER conditions for site certification.

SECTION VII. FACTS TO BE LITIGATED.

HILLSBOROUGH COUNTY, the DCA and the DER do not dispute any of the material facts involved in this case. There are no facts to be litigated between the DER, DCA, and HILLSBOROUGH COUNTY in the site certification hearing.

SECTION VIII. LEGAL ISSUES TO BE LITIGATED.

HILLSBOROUGH COUNTY, the DCA, and the DER are in agreement about the applicable law in this case. There are no legal disputes between the DCA, DER, and HILLSBOROUGH COUNTY to be resolved by the hearing officer.

SECTION IX. RULES OF EVIDENCE.

HILLSBOROUGH COUNTY, the DCA, and the DER are unaware of any disagreements between them as to the application of the Rules of Evidence.

SECTION X. PENDING MOTIONS.

The DCA, DER, and HILLSBOROUGH COUNTY are unaware of any pending motions or other matters which require action by the Hearing Officer.

CARLTON FIELDS WARD EMMANUEL
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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and one copy of the attached Supplement to the Prehearing Stipulation has been filed with the Division of Administrative Hearings, The Oakland Building, 2009 Apalachee Parkway, Tallahassee, Florida 32301; and that a true and correct copy has been furnished by Hand Delivery to the HONORABLE DIANE TREMOR, Hearing Officer, Division of Administrative Hearings, The Oakland Building, 2009 Apalachee Parkway, Tallahassee, Florida 32301; and by U.S. Mail to GARY STEPHENS, Assistant General Counsel, Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301-8241; LARRY KEESEY, General Counsel, Department of Community Affairs, 2571 Executive Center Circle East, Tallahassee, Florida 32301; and KAREN LLOYD, Southwest Florida Management District, 5060 U.S. 41 South, Brooksville, Florida 33512, this ____ day of November, 1984.

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