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August 9, 2000

Hamilton S. Oven, Jr., P.E.
Administrator
Siting Coordination Office
Department of Environmental Protection
2600 Blair Stone Road
Twin Towers Office Building
Tallahassee, Florida 32399

RECEIVED

AUG 11 2000

**BUREAU OF AIR REGULATION
RECEIVED**

AUG 11 2000

BUREAU OF AIR REGULATION

Re: Lee County Resource Recovery Facility;
DEP File No. PA 90-30C; PSD-FL-151B;
OGC Case No. 99-1343

Dear Mr. Oven:

As you know, this law firm assists Lee County with various environmental issues affecting the County's Resource Recovery Facility (Facility). On behalf of Lee County, I am sending you this letter to confirm and supplement the information I have provided to you during our recent telephone conversations.

Lee County respectfully requests the Department of Environmental Protection (DEP) to issue a final order modifying the conditions of certification for Lee County's Resource Recovery Facility, pursuant to DEP Rule 62-17.211(1)(b)5, Florida Administrative Code (F.A.C.). More specifically, the County requests DEP to issue a final order containing those portions of the Department's "Proposed Final Order Modifying Conditions of Certification" to which no objections were filed. In addition, the County requests the Department to confirm in writing that the County may proceed with the construction of the County's proposed materials recovery facility (MRF) and yard waste processing facility on the County's certified site.

Both of these issues are discussed in more detail in the following paragraphs.

Chronology of Events

On June 16, 1992, the Siting Board issued a final order approving the certification of the Facility pursuant to the

Hamilton S. Oven, Jr., P.E.
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Florida Electrical Power Plant Siting Act (PPSA), Sections 403.501-.508, Florida Statutes (F.S.). On August 5, 1999, Lee County filed a letter (dated July 21, 1999) with DEP and thereby requested DEP to modify the conditions of certification for the Facility. The County's letter also requested DEP to modify the air construction permit that had been issued for the Facility pursuant to the Department's program for the prevention of significant deterioration (PSD) of air quality. The County's request was divided into four sections:

1. Section 1 requested seven changes and clarifications to the Facility's PSD permit, plus corresponding changes to the conditions of certification.
2. Section 2 requested a clarification of the description of the fuel that is authorized for use at the Facility.
3. Section 3 requested authorization to construct and operate a yard waste processing facility.
4. Section 4 requested authorization to construct and operate a materials recovery facility (MRF).

Copies of the County's request were sent by certified mail (return receipt requested) to all of the parties to the PPSA certification proceeding for the Facility. Mr. W. Dexter Bellamy, Ph.D., received a copy of the County's request on August 7, 1999. Mr. Bellamy sent a letter (dated September 16, 1999) to the Department concerning the County's proposed modifications. In his letter, Mr. Bellamy expressed concerns about the County's proposal to change the definition of the authorized fuel at the Facility, but he did not object to any other aspect of the County's request. A copy of Mr. Bellamy's letter is attached hereto.

On October 18, 1999, the Department issued its notice of intent to revise the PSD permit for the Facility. Notice of the Department's proposed agency action was published on November 6, 1999 in the Ft. Myers News-Press, a newspaper of general circulation that is published daily in Lee County. The newspaper notice expressly states that:

Hamilton S. Oven, Jr., P.E.
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The modification [to the PSD permit for the Facility] is to reduce testing requirements for certain pollutants with emissions that are well below limitations, consolidate testing for particular matter emissions, revise certain requirements to conform to federal standards for municipal waste combustion facilities, allow for the use of natural gas as an auxiliary fuel, and revise the definition of allowable solid waste fuels.

The Department did not receive any comments or objections from any agency or any member of the public concerning the proposed modification to the Facility's PSD permit.

The County, however, objected to some of the terms in the draft PSD permit. The Department responded to the County's objections and then, on January 31, 2000, the Department issued a new notice of intent to modify the PSD permit for the Facility. Notice of the Department's proposed action was published in the News-Press on February 11, 2000. The newspaper notice on February 11, 2000 repeated the language quoted above from the notice published on November 6, 1999. The February 11, 2000 notice also states that:

Principal changes from the initial draft are a change to allow combustion of up to 5% tires as segregated loads after demonstration tests are conducted, removal of the predominantly combustible fraction of sorted construction and demolition debris from the percentage limitation on wastes fired, deletion of the minimum roof temperature requirement, changes in allowable excess emissions to match federal requirements, and minor changes to testing requirements.

The Department did not receive any comments or objections from anyone concerning the proposed modification to the Facility's PSD permit. Since there were no objections, the Department issued the PSD permit modification on March 21, 2000.

On June 21, 2000, the Department issued its "Notice of Intent to Issue Proposed Modification of Power Plant

Hamilton S. Oven, Jr., P.E.
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Page 4

Certification", which was attached to the Department's "Proposed Final Order Modifying Conditions of Certification" (Proposed Final Order) for the Facility. The Department's notice of intent was sent by U.S. Mail to all of the parties to the PPSA certification hearing for the Facility, and a copy was sent to Mr. Bellamy. In response, Mr. Bellamy sent a letter (dated July 21, 2000) to the Department, stating:

It is the contention of this petitioner that materials listed in paragraphs (a) through (g) are not suitable fuel for a Municipal Solid Waste incinerator. . . .

Mr. Bellamy's letter explains why he opposes the definition of fuel in Subsections XIV.A.3.f.8(a)-(g) of the Department's Proposed Final Order, but Mr. Bellamy's letter does not contain any objections to any other aspects of the Proposed Final Order.

Issuance of DEP Final Order

Given the facts set forth above, Lee County respectfully requests the Department to issue a final order approving the uncontested part of Lee County's request for a modification of the Facility's conditions of certification. The Department's final order should be identical to the Department's Proposed Final Order, except that the provisions in Subsections XIV.A.3.f.8(a)-(g) should be deleted.

The County's request should be granted pursuant to DEP Rule 62-17.211(1)(b)5, F.A.C., which states:

If written objections are filed which address only a portion of the requested modification, then the department shall issue a Final Order approving the portion of the modification to which no objections were filed, unless that portion of the requested modification is substantially related to or necessary to implement the portion to which written objections are filed.

(Emphasis added).

Hamilton S. Oven, Jr., P.E.
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In this case, no person or agency has objected to any provision in the Department's Proposed Final Order, except Mr. Bellamy. Mr. Bellamy's objections, however, only address Subsections XIV.A.3.f.8(a)-(g). Although Mr. Bellamy has received actual notice of the PPSA modifications on two opportunities and had newspaper notice of the PSD permit modification on two other occasions, Mr. Bellamy has never objected to anything except the definition of fuel in Subsections XIV.A.3.f.8(a)-(g).

Since Mr. Bellamy did not object to the other portions of the County's request for a modification, he apparently believes that the fuel definition is a separate and discrete issue, which is not "substantially related to or necessary to implement the" other portions of the County's request. The County also believes that the definition of fuel is a separate and discrete issue, which should not delay the issuance of a DEP final order approving the uncontested parts of the County's request.

Accordingly, the County believes DEP should issue a final order that is identical to DEP's Proposed Final Order, except that Subsections XIV.A.3.f.8(a)-(g) should be deleted.

Approval of MRF and Yard Waste Processing Facility

As noted above, the County's request to modify the Facility's conditions of certification contained a description of the County's plan to build a yard waste processing facility and a materials recovery facility on the Facility's certified site. No one, not even Mr. Bellamy, has objected to the construction or operation of these facilities. Accordingly, the Department should promptly issue a final order authorizing the construction and operation of these facilities, pursuant to DER Rule 62-17.211(1)(b)5, F.A.C.

In addition, a close review of the facts in this case indicates that the yard waste processing facility and MRF can be built without a modification to the Facility's conditions of certification.

The existing conditions of certification are adequate to address any potential impacts associated with the yard waste processing facility and MRF. No modifications to the conditions of certification are necessary for these facilities. Indeed, the Department's Proposed Final Order does not contain any changes to

Hamilton S. Oven, Jr., P.E.
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the conditions of certification that even mention the yard waste processing facility or MRF.

Out of an abundance of caution, the County included the yard waste processing facility and MRF in its request for modification to the conditions of certification, but it now appears that these facilities should simply be handled as amendments to the County's site certification application. Consistent with provisions in DEP Rule 62-17.205(1), F.A.C., the County's plans have been distributed to all of the parties to the PPSA certification hearing. No one has suggested that new permits are required or new language is needed in the conditions of certification. Accordingly, the MRF may be treated as an amendment, pursuant to DEP Rule 62-17.205(1)(d), F.A.C.

Because there have been no objections to the proposed yard waste processing facility or MRF, Lee County recently awarded a contract for the construction of the MRF, but the County temporarily delayed issuance of the notice to proceed with this \$4+ million project while the County evaluated Mr. Bellamy's objection to the modification of the Facility's conditions of certification.

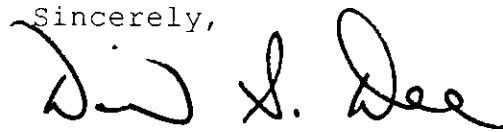
After considering all of the relevant issues, Lee County has concluded that it can issue a notice to proceed with the construction of the MRF because: (a) a modification to the conditions of certification is not required for the construction of the MRF or yard waste processing facility; (b) even if a modification were necessary, there have been no objections to the construction of these facilities and, therefore, the Department can issue a final order modifying the conditions of certification pursuant to DEP Rule 62-17.211(1)(a)5, F.A.C., and expressly approving these two facilities; (c) the construction of these facilities would greatly enhance the County's solid waste management program and thus provide significant public benefits; and (d) the County does not want the County's contractor to be adversely affected by Mr. Bellamy's objections regarding unrelated issues.

Conclusion

Lee County would greatly appreciate the Department's assistance with these issues. Most importantly, the County would like to receive the Department's prompt written confirmation that the County may proceed with the construction of the County's MRF.

Hamilton S. Owen, Jr., P.E.
August 9, 2000
Page 7

Please call me if you have any questions about these issues.
Thank you in advance for your assistance.

Sincerely,


David S. Dee

DSD/nw
Attachment
cc: Scott Goorland
Clair Fancy
David Owen
Lindsey Sampson
Jim Yaeger
Paul Darst
Wayne Daltry
James Golden
John Fumero
Rob Vandiver
Joe Treshler
Tom Erickson
Sheauching Yu
Jim Antista
Doug Bailey
Matthew P. Farmer
W. Dexter Bellamy

W.Dexter Bellamy, PhD

5548 Hamlet Lane, Fort Myers, FL 33919-2713

Phone 941 481-1780, FAX 941 481-8745

e-mail wdbellamy@usacomputers.net

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September 16 1999

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ATTORNEY

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SEP 22 1999

COMMISSIONER
RAY JUDAH

Hamilton S. Oven, Jr., Administrator
Siting Coordination Office
Department of Environmental Protection
2600 Blair Stone Road
Twin Towers Office Building
Tallahassee, Florida 32399

Re: Lee County Resource Recovery Facility; Case No. PA 90-30
Redefinition of Municipal Solid Waste

Dear Mr. Oven:

In the letter to you from Linsey Sampson, Deputy Director of Solid Waste for Lee County, he has requested a change in the definition of Municipal Solid Waste, MSW, as reported item 2 of his letter. (Clarify the description of the fuels that may be used at the Facility.) The change requested is to all solid waste from garbage and trash as reported in CLARIFICATION OF THE DESCRIPTION OF FUEL in section 2.0 of Sampson's letter. (see Addendum No.1)

As you know, F. Perry Odom, Hearing Officer, for the State of Florida Department of Environmental Protection ruled in Case No.PA87-23 that Pasco County Board of Directors and Ogden Martin were denied a permit to expand the definition of municipal solid waste,MSW. (see Addendum No.2 Statement...Conclusion)

Although the Facility was licensed as a power plant, its purpose is and was to process MSW; power generation is a secondary concern. Beyond the questionable expansion of the definition of MSW is the concern for capacity of the Facility. At the present rate of growth in volume of MSW the Facility will be adequate for at least five more years but if additional solid waste is included, the Facility will require earlier

expansion at a cost of more than sixty million dollars. It is in the interest of Lee County taxpayers to postpone the expansion as long as possible.

Please add my name to the mailing list any correspondence or reports concerning Case No. PA90-30.

Truly yours

W. Dexter Bellamy

W. Dexter Bellamy

cc Linsey Sampson, Solid Waste Dept.
Ray Judah, Commissioner
Andrew Smith, Esq. LEAF

2.0 CLARIFICATION OF THE DESCRIPTION OF FUEL

Lee County requests DEP to clarify the description of the fuels that may be used in the Facility. Subsection XIV. B. of the Conditions of Certification states:

"The SWERF (Facility) shall utilize refuse such as garbage and trash (as defined in Chapter 17-7, F.A.C.) as its fuel. Use of alternate fuels except for distillate fuel oil or natural gas in the startup burners would necessitate modification of these Conditions of Certification. Refuse as fuel shall not include "hazardous waste" as defined in Chapter 17-30, F.A.C. The alternate fuel, which may be used distillate oil, shall not contain more than 0.3% sulfur by weight and shall not be used more than required during boiler startup or shutdown"

Subsection E. states that "No suspected or known hazardous, toxic, or infectious wastes as defined by Federal, State, or local statutes, rules, regulations, or ordinances shall be burned or landfilled at the site."

Subsection A.3.f. states that the following materials are restricted at the Facility:

- biohazardous waste
- sewage sludge
- hazardous waste

The Conditions of Certification are out-of-date and need to be revised, consistent with DEP's current practices and current definition of "fuel" for MWCs. Chapter 17-7 has been replaced. "Garbage and trash" do not adequately describe the fuel accepted at the Facility.

Lee County has accepted and will continue to accept a wide variety of materials that fit within the broad state and federal definitions of MSW. In general, all solid waste will be accepted at the Facility for disposal, except hazardous waste, untreated medical waste, nuclear waste, and those special wastes that are prohibited by law, such as lead acid batteries. These materials may be received either as a mixture or as a single-item stream of household, commercial, institutional, or industrial discards (except industrial process wastes).

The Facility adheres to good combustion operating practices in accordance with 40 CFR Section 60.53b. The Facility operates and maintains continuous emissions monitors (CEMS) for oxygen, carbon monoxide, sulfur dioxide, oxides of nitrogen, opacity, and temperature in accordance with 40 CFR Section 60.58b and records and maintains the CEMS data in accordance with 40 CFR 60.59b. These steps ensure and verify continuous compliance with the emissions limitations in the Conditions of Certification. The Facility minimizes its airborne emissions by using front-end source separation and recycling programs, as well as post-combustion air pollution control systems.

Therefore, the County proposes that the term "fuel" should be clarified as follows.

"All solid waste except: hazardous waste, untreated medical waste, nuclear waste, and those special wastes as prohibited by law, such as lead acid batteries. The waste materials may be received as a mixture or as a single-item stream of household commercial, institutional or industrial discards (except industrial process waste) "

The County believes that the proposed clarifications to the description of "fuel" will have no significant adverse environmental impacts on the air emissions from the Facility or to the environment in general.

Natural Gas

Because it appears that a natural gas transmission pipeline may be constructed within reasonable proximity to the Facility, the County requests that natural gas be approved as an acceptable auxiliary fuel for the Facility.

DEC 12 1997

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PASCO COUNTY BOARD OF
COUNTY COMMISSIONERS, and
OGDEN MARTIN SYSTEMS OF
PASCO, INC.,

Petitioners,

vs.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Respondent,

and

Legal Environmental Assistance Foundation,
Inc. ("LEAF"), and Susan M. Elko and
Nathan Elko,

Intervenors,

Final Order

Pursuant to notice, an informal administrative hearing in accordance with 120.57(2), F.S., (Supp 1996) was conducted in the above-styled proceeding before F. Perry Odom, the assigned Hearing Officer, on July 25, 1997, in Tallahassee, Florida.

APPEARANCES

For the Petitioners: Mary F. Smallwood, Esq.
215 South Monroe Street
Tallahassee, Florida 32301

For the Respondent: W. Douglas Beason, Esq.
Assistant General Counsel
2600 Blair Stone Road
Tallahassee, Florida 32301

For the Intervenors. Andrew J. Smith, Esq.
1115 North Gadsden Street
Tallahassee, Florida 32303

STATEMENT OF THE ISSUE

The issue is whether the Prevention of Significant Deterioration ("PSD") permit issued to the Pasco County Board of County Commissioners authorizes the County to combust "Additional Solid Waste" as that term is defined in the Amendment to the Service Agreement between the Pasco County Board of County Commissioners and Ogden Martin Systems of Pasco, Inc.,

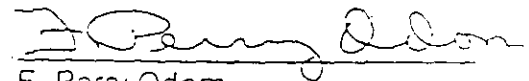
PRELIMINARY STATEMENT

By letter dated December 30, 1996, the Petitioners requested an interpretation from the Department of Environmental Protection ("DEP") regarding the definition of municipal solid waste ("MSW") as that term is utilized in the PSD permit for the Pasco County Resource Recovery Facility (PSD-FL-127). By letter dated February 6, 1997, the Director of DEP's Division of Air Resources Management notified the Petitioners that DEP did not interpret the term municipal solid waste to include "Additional Solid Waste" as that term is defined in the Amendment to the Service Agreement.

On March 13, 1997, the DEP received a Petition for an Informal Administrative Hearing challenging the DEP's interpretation of the term "municipal solid waste" ("MSW"). On May 29, 1997, DEP entered an Order

CONCLUSION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department hereby DENIES the Petitioners' request for the entry of a Final Order holding that the PSD Permit No. PSD-FL-127 and Conditions of Certification in Case No. PA 87-23 authorized the permittee (County) to burn "Additional Solid Waste" at the Facility except upon prior written approval of the Department.



F. Perry Odom
Hearing Officer
Douglas Building
3900 Commonwealth Boulevard
Mail Station #35
Tallahassee, Florida 32399-3000
Telephone: (850) 488-9314

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was mailed on this 10th day of December, 1997, to Mary F. Smallwood, Esq., 215 South Monroe Street, Tallahassee, Fl. 32301, W. Douglas Beason, Assistant General Counsel, 2600 Blair Stone Road, Tallahassee, Fl. 32301, and Andrew J. Smith, Esq, 1115 North Gadsden Street, Tallahassee, Fl. 32303.



Joe

LANDERS & PARSONS, P.A.
Attorneys at law
310 West College Avenue
Tallahassee, Florida 32301
(850) 681-0311
(850) 224-5595 FAX
FAX COVER SHEET

DATE: August 1, 2000

NUMBER OF PAGES (INCLUDING COVER SHEET): 15

<u>PLEASE DELIVER FAX TO:</u>	<u>FAX NO.</u>
Clair Fancy	922-6979
FROM: DAVID S. DEE	
IF ANY PROBLEMS, please contact Nanci at: (850) 681-0311.	

MESSAGE:

The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. If you have received this communication in error, please immediately notify us by telephone. Thank you.



Jeb Bush
Governor

Department of Environmental Protection

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

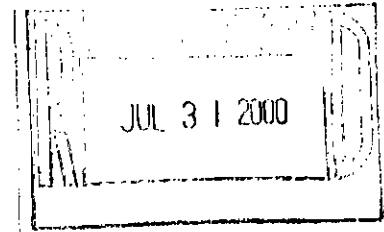
David B. Struhs
Secretary

Lee RPF
- agency comments
- copy see
- Dep. Bellamy objections

July 27, 2000

To: All names on the attached service list

Re: In Re: Lee County Resource Recovery Facility
DEP File No. PA90-30 OGC Case No. 99-1343



To Whom It May Concern:

On August 10th, 1999, Lee County Resource Recovery facility filed an application for modification of the above named facility to clarify the testing and other requirements concerning the airborne emissions for the Facility, clarify the description of fuels that may be used at the Facility, authorize the construction and operation of a yard waste processing facility on the certified site, authorize the construction and operation of a materials recovery facility on the certified site, and revise the conditions to conform with amended permits issued under federally delegated or approved permit programs. Furthermore, on March 21, 2000 the Department issued an amendment to permit PSD-FL-151 and PSD-FL-151(A) for the County as PSD-FL-151(B). This action requires the Department to make certain modifications to conform the Conditions of Certification for the above referenced facility to the revised PSD permit. Additionally, the Department proposed and the petitioner concurred that the conditions should be updated to reflect the Department's current name, other agency name changes, and current rule citations. On June 23, 1999, the South Florida Water Management District approved the discontinuance of a surface water monitoring program subject to Condition XV.C.3.c.(4). The District's action is included in this modification. The District has also requested revisions to the water use conditions, specifically those pertaining to impacts on legal uses, impacts on existing off-site land uses, impacts to natural resources, modification of authorized withdrawals, and a water conservation plan.

On June 30, 2000, the Department of Environmental Protection caused to be published a "NOTICE OF INTENT TO ISSUE PROPOSED MODIFICATION OF POWER PLANT CERTIFICATION" in the Florida Administrative Weekly for the above described facility. That Notice specified that "Any person who is not already a party to the certification proceeding and whose substantial interest is affected by the requested modification has 30 days from the date of publication of this public notice to object in writing. The written objection must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000."

"Protect, Conserve and Manage Florida's Environment and Natural Resources"

On July 21, 2000, a written objection to the modifications proposed for Lee County RRF was received by the Department. A copy of that letter is attached as Exhibit "A".

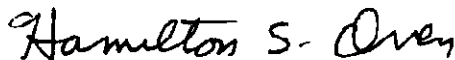
Pursuant to Section 403.516(1)(b), F.S., processing of the application for modification of the Lee County RRF by the Department will cease. Processing shall resume if the letter of objection is revoked in writing. Furthermore, the applicant or the Department may file a petition for modification pursuant to Section 403.516(1)(c) and (2), F.S. Any such petition for modification must set forth the following:

- (1) The proposed modification,
- (2) The factual reasons asserted for the modification,
- (3) The anticipated effects of the proposed modification on the applicant, the public, and the environment.

The petition for modification shall be filed with the Department and the Division of Administrative Hearings.

Should you have any questions or concerns, please contact me at (850) 487-2822.

Sincerely,



Hamilton S. Oven, Jr., P.E.
Administrator
Siting Coordination Office

Certificate of Service

I hereby certify that a copy of the foregoing letter regarding receipt of objection to the proposed Intended Action regarding the Lee County Resource Recovery Facility, Power Plant Site Certification was sent to the following parties by interagency delivery or United States Mail on July 27, 2000.

Jim Yaeger
Office of the County Attorney
P.O. Box 398
Fort Myers, FL 32902

David Dec
Landers & Parsons
P.O. Box 271
Tallahassee, FL 32302

Lindsey Sampson
Lee Co. Dept. of Solid Waste
Management
P.O. Box 398
Fort Myers FL 33902

Joe Treshler
Tom Erickson
Ogden Projects, Inc.
350 N. Falkenburg Road
Tampa FL 33619

Paul Darst
Dan Stengle
Dept. of Community Affairs
2740 Centerview Drive
Tallahassee FL 32399-2100

Sheauching Yu
Dept. of Transportation
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Tallahassee FL 32399-0450

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SWFRPC
4980 Bayline Drive, 4th Floor
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North Fort Myers FL 33918

Jim Antista
Doug Bailey
Fish & Wildlife Conservation Commission
620 South Meridian
Tallahassee FL 32399-1600

James Golden
John Fumero
SFWMD
P.O. Box 24680
West Palm Beach FL 33416-4680

Mathew P. Farmer
Attorney for SFCARE
Farmer & Fitzgerald
708 East Jackson St
Tampa FL 33602

Rob Vandiver
Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee FL 32399-0450

The following persons on the Department's "Interested Persons" mailing list for this case were sent a copy:

W. Dexter Bellamy
5548 Hamlet Lane
Fort Myers, FL 33919-2713

Hamilton S. Oves

Hamilton S. Oves, Jr.
Administrator
Siting Coordination Office
Department of Environmental Protection
2600 Blair Stone Road, M.S. 48
Tallahassee, FL 32399-2400
850-487-2822

21 00 12:01p

W. Dexter Bellamy

941-4819806

W. Dexter Bellamy, PhD
5548 Hamlet Lane, Fort Myers, FL 33919-2713
Phone (941) 481-1780 FAX (941) 481-9806
e-mail wdbellamy@usacomputers.net

July 21, 2000

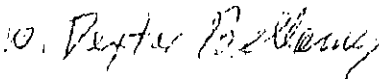
Scott A. Goorland
Senior Assistant General Counsel
DEP
2600 Blair Stone Road, MS 35
Tallahassee, FL 3239-2400

Dear Mr. Goorland:

I am FAXing a cc of my letter to; The Clerk of the DEP, Office of General Counsel, 3900 Commonwealth Blvd. Tallahassee, FL 32300-3000.

Please note the original date on this letter. I hope you will consider my letter because I am listed on the original notice.

Truly yours



W. Dexter Bellamy

DEPARTMENT OF
ENVIRONMENTAL PROTECTION

JUL 27 2000

BITING COORDINATION

Jul 21 00 12:02p

W. Dexter Bellamy

941-481-9000

007,015

NOTICE OF APPEAL

June 12, 2000

Clerk of the Department of Environmental Protection
Office of General Counsel
3000 Commonwealth Boulevard
Tallahassee, FL 32309-3000

July 21, 2000

In Re: Lee County Resource Recovery Facility DEP FILE NO. PA
90-30C
Modification of Conditions of Certification OGC Case No. 99-1343
Lee County, Florida

As reported on page 18 of the above defined file, the petitioner wishes to include as fuel for Lee County's Municipal Solid Waste incinerator, aka Lee County Resource Recovery Facility, materials that were rejected for inclusion in Pasco County's Municipal Solid Waste incinerator as recorded in Appendix A : Pasco County Board of Commissioners and Ogden Martin Systems of Pasco County Inc. vs. State of Florida Department of Environmental Protection OGC CASE NO. 97-0507.

It is the contention of this petitioner that materials listed in paragraphs (a) through (g) are not suitable fuel for a Municipal Solid Waste incinerator because as the DEP stated, as reported in Appendix A file, it was not the intent of the DEP to so broaden the definition of MSW. The DEP has insisted on a narrow definition of MSW.

The residents of Lee County will be better served by keeping the narrow definition of MSW as defined by DEP for the following reasons.

- (a) Less toxic compounds and elements will emitted into the atmosphere

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF GENERAL COUNSEL

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF GENERAL COUNSEL

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF GENERAL COUNSEL

Jul 21 00 12:02p

W. Dexter Bellamy

(b) Emission of fine particulate matter (less than 2microns) will increase.

These fine particulates are not captured by the emission control devices and contribute to respiratory diseases.

(c) The incinerator will exceed maximum capacity at an earlier date if the petitioner's expanded definition of suitable fuel is used. Constructing additional furnaces will be a major expense and should be postponed as long as possible.

(d) The purpose of the facility is to burn MSW; producing power is secondary.

(e) If this petition is successful there could be a gradual escalation in non MSW waste burned in the incinerator.

W. Dexter Bellamy

W.Dexter Bellamy, PhD, 5548 Hamlet Lane, Fort Myers, FL 33919-2713

Representing all members of the Environmental and Peace Education Center,

EPEC, and all residents of Lee County.

FPEC is an incorporated, not for profit organization in Lee County.

Lee. PAF
CORRESP

W.D.
PAF
JH

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Hamilton S. Oven, Jr., Administrator
Siting Coordination Office
Department of Environmental Protection
2600 Blair Stone Road
Twin Towers Office Building
Tallahassee, Florida 32399

COMMISSIONER
RAY JUDAH

Re: Lee County Resource Recovery Facility; Case No. PA 90-30
Redefinition of Municipal Solid Waste

Dear Mr. Oven:

In the letter to you from Linsey Sampson, Deputy Director of Solid Waste for Lee County, he has requested a change in the definition of Municipal Solid Waste, MSW, as reported item 2 of his letter. (Clarify the description of the fuels that may be used at the Facility.) The change requested is to all solid waste from garbage and trash as reported in CLARIFICATION OF THE DESCRIPTION OF FUEL in section 2.0 of Sampson's letter. (see Addendum No.1)

As you know, F. Perry Odom, Hearing Officer, for the State of Florida Department of Environmental Protection ruled in Case No.PA87-23 that Pasco County Board of Directors and Ogden Martin were denied a permit to expand the definition of municipal solid waste,MSW. (see Addendum No.2 Statement...Conclusion)

Although the Facility was licensed as a power plant, its purpose is and was to process MSW; power generation is a secondary concern. Beyond the questionable expansion of the definition of MSW is the concern for capacity of the Facility. At the present rate of growth in volume of MSW the Facility will be adequate for at least five more years but if additional solid waste is included, the Facility will require earlier

cc: BOCC
JH Y
DON S
KINSEY S.

COPY TO: DAVID DEE, ESQ.

THANKS
[Signature]

expansion at a cost of more than sixty million dollars. It is in the interest of Lee County taxpayers to postpone the expansion as long as possible.

Please add my name to the mailing list any correspondence or reports concerning Case No. PA90-30.

Truly yours

W. Dexter Bellamy

W. Dexter Bellamy

cc Linsey Sampson, Solid Waste Dept.
Ray Judah, Commissioner
Andrew Smith, Esq. LEAF

Addendum No, 1 Page 1

2.0 CLARIFICATION OF THE DESCRIPTION OF FUEL

Lee County requests DEP to clarify the description of the fuels that may be used in the Facility. Subsection XIV. B. of the Conditions of Certification states:

"The SWERF (Facility) shall utilize refuse such as garbage and trash (as defined in Chapter 17-7, F.A.C.) as its fuel. Use of alternate fuels except for distillate fuel oil or natural gas in the startup burners would necessitate modification of these Conditions of Certification. Refuse as fuel shall not include "hazardous waste" as defined in Chapter 17-30, F.A.C. The alternate fuel, which may be used distillate oil, shall not contain more than 0.3% sulfur by weight and shall not be used more than required during boiler startup or shutdown."

Subsection E. states that "No suspected or known hazardous, toxic, or infectious wastes as defined by Federal, State, or local statutes, rules, regulations, or ordinances shall be burned or landfilled at the site."

Subsection A.3.f. states that the following materials are restricted at the Facility.

- biohazardous waste
- sewage sludge
- hazardous waste

The Conditions of Certification are out-of-date and need to be revised, consistent with DEP's current practices and current definition of "fuel" for MWCs. Chapter 17-7 has been replaced "Garbage and trash" do not adequately describe the fuel accepted at the Facility.

Lee County has accepted and will continue to accept a wide variety of materials that fit within the broad state and federal definitions of MSW. In general, all solid waste will be accepted at the Facility for disposal, except hazardous waste, untreated medical waste, nuclear waste, and those special wastes that are prohibited by law, such as lead acid batteries. These materials may be received either as a mixture or as a single-item stream of household, commercial, institutional, or industrial discards (except industrial process wastes).

Addendum No. 1 page 2

The Facility adheres to good combustion operating practices in accordance with 40 CFR Section 60.53b. The Facility operates and maintains continuous emissions monitors (CEMS) for oxygen, carbon monoxide, sulfur dioxide, oxides of nitrogen, opacity, and temperature in accordance with 40 CFR Section 60.58b and records and maintains the CEMS data in accordance with 40 CFR 60.59b. These steps ensure and verify continuous compliance with the emissions limitations in the Conditions of Certification. The Facility minimizes its airborne emissions by using front-end source separation and recycling programs, as well as post-combustion air pollution control systems.

Therefore, the County proposes that the term "fuel" should be clarified as follows:

"All solid waste except: hazardous waste, untreated medical waste, nuclear waste, and those special wastes as prohibited by law, such as lead acid batteries. The waste materials may be received as a mixture or as a single-item stream of household commercial, institutional or industrial discards (except industrial process waste)."

The County believes that the proposed clarifications to the description of "fuel" will have no significant adverse environmental impacts on the air emissions from the Facility or to the environment in general.

Natural Gas

Because it appears that a natural gas transmission pipeline may be constructed within reasonable proximity to the Facility, the County requests that natural gas be approved as an acceptable auxiliary fuel for the Facility.

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Addendum No. 2 page 1

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PASCO COUNTY BOARD OF
COUNTY COMMISSIONERS, and
OGDEN MARTIN SYSTEMS OF
PASCO, INC.,

Petitioners,

vs.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Respondent,

and

Legal Environmental Assistance Foundation,
Inc. ("LEAF"), and Susan M. Elko and
Nathan Elko,

Intervenors,

Final Order

Pursuant to notice, an informal administrative hearing in accordance with
120.57(2), F.S., (Supp 1996) was conducted in the above-styled proceeding
before F. Perry Odom, the assigned Hearing Officer, on July 25, 1997, in
Tallahassee, Florida.

APPEARANCES

For the Petitioners: Mary F. Smallwood, Esq.
215 South Monroe Street
Tallahassee, Florida 32301

Addendum No. 2 page 2

For the Respondent: W. Douglas Beason, Esq.
Assistant General Counsel
2600 Blair Stone Road
Tallahassee, Florida 32301

For the Intervenors: Andrew J. Smith, Esq.
1115 North Gadsden Street
Tallahassee, Florida 32303

STATEMENT OF THE ISSUE

The issue is whether the Prevention of Significant Deterioration ("PSD") permit issued to the Pasco County Board of County Commissioners authorizes the County to combust "Additional Solid Waste" as that term is defined in the Amendment to the Service Agreement between the Pasco County Board of County Commissioners and Ogden Martin Systems of Pasco, Inc..

PRELIMINARY STATEMENT

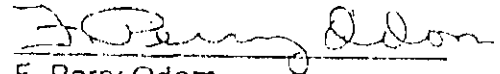
By letter dated December 30, 1996, the Petitioners requested an interpretation from the Department of Environmental Protection ("DEP") regarding the definition of municipal solid waste ("MSW") as that term is utilized in the PSD permit for the Pasco County Resource Recovery Facility (PSD-FL-127). By letter dated February 6, 1997, the Director of DEP's Division of Air Resources Management notified the Petitioners that DEP did not interpret the term municipal solid waste to include "Additional Solid Waste" as that term is defined in the Amendment to the Service Agreement.

On March 13, 1997, the DEP received a Petition for an Informal Administrative Hearing challenging the DEP's interpretation of the term "municipal solid waste" ("MSW"). On May 29, 1997, DEP entered an Order

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CONCLUSION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department hereby DENIES the Petitioners' request for the entry of a Final Order holding that the PSD Permit No. PSD-FL-127 and Conditions of Certification in Case No. PA 87-23 authorized the permittee (County) to burn "Additional Solid Waste" at the Facility except upon prior written approval of the Department.



F. Perry Odom
Hearing Officer
Douglas Building
3900 Commonwealth Boulevard
Mail Station #35
Tallahassee, Florida 32399-3000
Telephone: (850) 488-9314

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was mailed on this 10th day of December, 1997, to Mary F. Smallwood, Esq., 215 South Monroe Street, Tallahassee, Fl. 32301, W. Douglas Beason, Assistant General Counsel, 2600 Blair Stone Road, Tallahassee, Fl. 32301, and Andrew J. Smith, Esq, 1115 North Gadsden Street, Tallahassee, Fl. 32303.

