

INTEROFFICE MEMORANDUM

Date: 10-Aug-2000 03:50pm
From: Hamilton Oven TAL
OVEN_H
Dept: Office Siting Coordination
Tel No: 850/487-0472

Subject: Re: Lee County RRF - PA90-30

Hold off issuing the final. There has been an objection to the definition of solid waste.

INTEROFFICE MEMORANDUM

Date: 09-Aug-2000 12:23pm
From: David S. Dee
ddee@landersandparsons.com
Dept:
Tel No:

Subject: Lee County RRF

Gentlemen,

Attached for your review are two WordPerfect documents concerning the Lee County Resource Recovery Facility. The first document is from me to DEP. The second document is a draft response from DEP to me.

Please give me your comments ASAP. If possible, I would like to submit my letter to DEP later today or tomorrow morning.

Thanks for your help.

August _____, 2000

David S. Dee
Landers & Parsons
P.O. Box 271
Tallahassee, Florida 32302

Dear Mr. Dee:

The Department has received and reviewed your letter dated August _____, 2000, concerning Lee County's request to modify the conditions of certification for the County's Resource Recovery Facility. As noted in your letter, the Department has not received any objections to Lee County's plan to build a Materials Recovery Facility and a Yard Waste Processing Facility on the certified site for the Resource Recovery Facility. We also note that all of the parties involved in the site certification hearing were provided copies of the County's proposal to build a MRF and Yard Waste Processing Facility, but none of the agencies or other parties have proposed any new or modified conditions of certification to address these two new facilities. Thus, it appears that the conditions of certification for the Lee County Resource Recovery Facility do not need to be modified for the construction of the MRF and Yard Waste Processing

David S. Dee
August 9, 2000
Page 2

Facility.

Based on the representations in your letter, it appears that the MRF and Yard Waste Processing Facility can be treated as amendments to the County's application for site certification, pursuant to DEP Rule 62-17.205(1)(d), F.A.C. Further, even if a modification were necessary, we anticipate that a modification will be issued in the near future, pursuant to Section 62-17.211(1)(b)5, F.A.C., which authorizes the Department to issue a modification when there is no objection to the proposed activity. For these reasons, it appears that the County can go forward with the construction of the Materials Recovery Facility and Yard Waste Processing Facility.

The Department's conclusions about these issues are subject to several important qualifications. First, the Department assumes that the facts stated in your letter are accurate and correct. If they are not, the Department may need to reconsider and revise its decision. Second, Lee County must comply with all of the applicable conditions of certification, as well as all of the other applicable local, state and federal laws or requirements, if the County

David S. Dee
August 9, 2000
Page 3

proceeds with its plan to build a MRF and Yard Waste
Processing Facility.

David S. Dee
August 9, 2000
Page 4

Sincerely,

Hamilton S. Owen, Jr., P.E.

cc: Scott Goorland
Lindsey Sampson
David Owen

August ____, 2000

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

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

Hamilton S. Oven, Jr., P.E.
August 7, 2000
Page 2

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 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

Hamilton S. Oven, Jr., P.E.
August 7, 2000
Page 3

(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.

Hamilton S. Oven, Jr., P.E.
August 7, 2000
Page 4

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:

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

Hamilton S. Oven, Jr., P.E.
August 7, 2000
Page 5

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 Certification", which was attached to the Department's "Proposed Final Order Modifying Conditions of Certification" (Proposed Final Order) for the Facility. The Department's

Hamilton S. Oven, Jr., P.E.
August 7, 2000
Page 6

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.

Hamilton S. Oven, Jr., P.E.
August 7, 2000
Page 7

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).

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

Hamilton S. Oven, Jr., P.E.
August 7, 2000
Page 8

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

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

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 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.,

Hamilton S. Oven, Jr., P.E.
August 7, 2000
Page 10

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,

Hamilton S. Oven, Jr., P.E.
August 7, 2000
Page 11

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. expressly approve 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.

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

Sincerely,

David S. Dee

Hamilton S. Owen, Jr., P.E.
August 7, 2000
Page 12

DSD/nw
cc: Scott Goorland
Clair Fancy
David Owen
Lindsey Sampson



LEE COUNTY
SOUTHWEST FLORIDA

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County Hearing Examiner

July 21, 1999

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

RECEIVED

AUG 02 2000

BUREAU OF AIR REGULATION

Re: Lee County Resource Recovery Facility;
Case No. PA90-30

Dear Mr. Oven:

On behalf of Lee County, I am sending this letter to the Department of Environmental Protection because Lee County wishes to clarify and modify the conditions of certification for the Lee County Resource Recovery Facility (Facility). The County also wants to clarify and amend the PSD permit (No. PSD-FL-151 (A)) for the Facility, which is necessary to ensure that the PSD permit and the conditions of certification for the Facility are consistent with each other. More specifically, Lee County requests the Department to:

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.



TAMPA ELECTRIC

August 16, 2000

Mr. Clair Fancy
Florida Department of Environmental Protection
2600 Blair Stone Road
Twin Towers Office Building
Tallahassee, Florida 32399-2400

Via Fax and U.S. Mail

**Re: Tampa Electric Company (TEC) - F.J. Gannon Station
Units 5 and 6 Stack Height Increase Construction Permit Application
FDEP File No. 0570040-009-AC**

Dear Mr. Fancy:

Tampa Electric Company requests to withdraw the above referenced permit application. Thank you for your assistance in this matter.

If you have any questions, please contact Shannon Todd or me at (813) 641-5125.

Sincerely,

Patrick L. Shell
Administrator - Air Programs
Environmental Affairs

EP 00SKT188

cc: Mr. Al Linero - FDEP
Mr. Cleve Holladay - FDEP
Mr. Jerry Kissel - FDEP SW
Ms. Alice Harman - EPCHC

TAMPA ELECTRIC COMPANY
P. O. BOX 117 TAMPA, FL 33601-0117

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