

**BEFORE THE FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION**

BILL PROCTER, LEON COUNTY
COMMISSIONER, 1ST DISTRICT
OF LEON COUNTY, FLORIDA,

Petitioner

Case No.
FDEP File No. 0730109-0001-AC

v.

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondent

PETITION FOR ADMINISTRATIVE HEARING
PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES

Petitioner, BILL PROCTER, COUNTY COMMISSIONER FOR THE 1ST DISTRICT FOR LEON COUNTY OF FLORIDA, hereby petitions for an administrative hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes, challenging Respondent, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION'S ("FDEP"), approval of Biomass Gas & Electric of Tallahassee, LLC's ("BG&E") application for an air pollution construction permit which authorizes the construction of a nominal 42 megawatts biomass-fed integrated gasification and combined cycle power plant called the Tallahassee Renewable Energy Center. In support thereof, CONCERNED CITIZEN states as follows:

The Parties and Notice of Agency Action

1. The name and address of the affected agency is the FDEP, 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000. The telephone number of the Agency is (850) 245-2118.

2. The Agency's file or identification number is 0730109-0001-AC.

3. The name and address of the Petitioner is Bill Proctor, County Commissioner for the 1st District of Leon County, Florida, 301 S. Monroe Street, Room 202, Tallahassee, Florida 32301. The telephone number is (850) 606-5361.

4. FDEP issued a written notice of intent to issue draft air Construction Permit on October 27, 2008. The Petitioner received FDEP's written notice of intent to issue a Draft Air Construction Permit by electronic mail on or about October 28, 2008, pursuant to Florida Statute §120.60(3). By operation of law, this Petition is filed within a timely manner.

The Petitioner's Substantial Interests are Affected by this Determination

5. The Petitioner, Bill Proctor, believes that the health, well being, and quality of life of himself, his family, and citizens of Leon County in District 1, will be significantly damaged by the air emissions from the applicants proposed facility.

6. By approval of the air construction permit, BG&E's permitted facility will emit air pollutants that will have an immediate and real impact on the Petitioner's substantial interest.

7. For a party to have standing to challenge proposed agency action pursuant to Sections 120.569 and 120.57(1), Florida Statutes, the party must demonstrate its substantial interest are determined or affected by the proposed agency action. This requirement is met when a party demonstrates that, as a result of the agency action, it will suffer an injury in fact, of sufficient immediacy to entitle it to an administrative proceeding on the action and the substantial injury that would result from the agency action is of the type or nature the administrative proceeding is designed to protect. Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d. DCA 1981).

8. As a resident of Leon County and working in the vicinity of the proposed facility site, the Petitioner's substantial interest is being determined in this proceeding. Further, the substantial injury that will result by the presence in the outdoor atmosphere of the state of any one or more substances or pollutants in quantities which are or may be harmful or injurious to human health or welfare, animal or plant life, or property, or unreasonably interfere with the enjoyment of life or property, including outdoor recreation, §62.210.200(12), F.A.C., such injury that this administrative proceeding is designed to protect. Therefore, the Petitioner has standing to challenge FDEP's decision to approve BG&E's application for an air pollution construction permit.

Disputed Issues of Material Fact

9. The Petitioner disputes the determination by FDEP that the applicant, BG&E, has shown that the installation is provided or equipped with pollution control facilities that will abate or prevent pollution to the degree that will comply with the standards or rules adopted by the department in accordance with Florida Statute § 403.087.

10. Petitioner failed to provide reasonable assurance that operation of the proposed facility will not adversely impact air quality and failed provide a reasonable assurance that the project will not cause or contribute to a violation of a state or federal ambient air quality standard.

Ultimate Facts Warranting Reversal of Approval of the Permit

11. The Petitioner contends that the applicant has not adequately demonstrated or proven that the proposed project will not adversely impact or exceed air quality standards set forth in Florida Statutes § 403.087.

12. The Petitioner contends that the applicant has not adequately demonstrated or proven that the proposed project has sufficient safeguards in place to ensure that un-permitted containments do not enter into the fuel source supply.

13. The Petitioner contends that the applicant has not adequately demonstrated or proven that the proposed project meets the requirements that PSD regulations do not apply.

Statutes and Rules requiring Reversal of the Agency Actions

14. The Petitioner contends the following require reversal or modification of the Agency's action as follows:

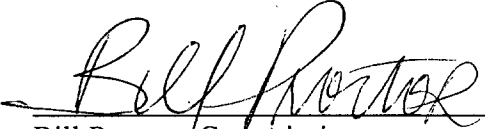
- a. The applicant has not proceeded in accordance with Florida Statutes Chapter 403; specifically Part V entitled Environmental Regulations.
- b. The applicant has not proceeded in accordance with Florida Statute §403.087.
- c. The applicant has not proceeded in accordance with Chapters 62-4, 62-210, and 62-212 of the Florida Administrative Code.

WHEREFORE, based on the foregoing, Petitioner, Bill Proctor, respectfully requests that:

- a. This Petition be granted and referred to the Division of Administrative Hearings to conduct a Formal Administrative Hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes;
- b. The Administrative Law Judge, after the hearing, issue a Recommended Order reversing FDEP's determinations and approval of BG&E's application for an air construction permit;
- c. FDEP thereafter issue a Final Order consistent with the Recommended Order; and
- d. Such other relief as may be appropriately be granted to the Petitioner.

DATED this 7 day of November, 2008.

Respectfully submitted,



Bill Proctor, Commissioner
District 1, Leon County, Florida

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DIVISION OF AIR
RESOURCES MANAGEMENT