



Jeb Bush  
Governor

# Department of Environmental Protection

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

David B. Struhs  
Secretary

## STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mr. E. David Fernandez  
Utilities Director  
City of Key West  
P.O. Box 1409  
Key West, Florida 33041-1409

### ORDER EXTENDING PERMIT EXPIRATION DATE Southernmost Waste To Energy Facility, **Facility ID No.:** 0870047

Section 403.0872(2)(b), Florida Statutes (F.S.), specifies that any facility which submits to the Department of Environmental Protection (Department) a timely and complete application for a Title V permit "is entitled to operate in compliance with its existing air permit pending the conclusion of proceedings associated with its application."

Section 403.0872(6), F.S., provides that a proposed Title V permit which is not objected to by the United States Environmental Protection Agency (EPA) "must become final no later than fifty-five (55) days after the date on which the proposed permit was mailed" to the EPA.

Pursuant to the Federal Acid Rain Program as defined in Rule 62-210.200, Florida Administrative Code (F.A.C.), all Acid Rain permitting must become effective on January 1 of a given year.

This facility, which will be permitted pursuant to Section 403.0872, F.S., (Title V permit) will be required to have a permit effective date subsequent to the final processing date of the facility's Title V permit.

To prevent misunderstanding and to assure that the above identified facility continues to comply with existing permit terms and conditions until its Title V permit becomes effective, it is necessary to extend the expiration date(s) of its existing valid permit(s) until the effective date of its Title V permit. Therefore, under the authority granted to the Department by Section 403.061(8), F.S., **IT IS**

#### **ORDERED:**

1. The expiration date(s) of the existing valid permit(s) under which the above identified facility is currently operating is (are) hereby extended until the effective date of its permit issued pursuant to Section 403.0872, F.S., (Title V permit);
2. The facility shall comply with all terms and conditions of its existing valid permit(s) until the effective date of its Title V permit;
3. The facility will continue to comply with the requirements of Chapter 62-214, F.A.C., and the Federal Acid Rain Program, as defined in Rule 62-210.200, F.A.C., pending final issuance of its Title V permit.

### PETITION FOR ADMINISTRATIVE REVIEW

The Department will take the action described in this Order unless a timely petition for an administrative hearing is filed pursuant to Sections 120.569 and 120.57, F.S.

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

A person whose substantial interests are affected by the proposed permitting decision may petition for an administrative hearing in accordance with Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station #35, Tallahassee, Florida 32399-3000 (Telephone: 850/488-9730; Fax: 850/487-4938). Petitions filed by the permit applicant or any of the parties listed below must be filed within 14 days of receipt of this Order. Petitions filed by any persons other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the public notice or within 14 days of receipt of this Order, whichever occurs first. Under Section 120.60(3), F.S., however, any person who asked the permitting authority for notice of agency action may file a petition within 14 days of receipt of that notice, regardless of the date of publication. A petitioner shall mail a copy of the petition to the applicant at the address indicated above, at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention will be only at the approval of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

A petition that disputes the material facts on which the permitting authority's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of how and when each petitioner received notice of the agency action or proposed action;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and,
- (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and,
- (g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts upon which the permitting authority's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this Order. Persons whose substantial interests will be affected by any such final decision of the Department on the application have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation will not be available in this proceeding.

In addition to the above, a person subject to regulation has a right to apply for a variance from or waiver of the requirements of particular rules, on certain conditions, under Section 120.542, F.S. The relief provided by this state statute applies only to state rules, not statutes, and not to any federal regulatory requirements. Applying for a variance or waiver does not substitute or extend the time for filing a petition for an administrative hearing or exercising any other right that a person may have in relation to the action proposed in this Order.

The application for a variance or waiver is made by filing a petition with the Office of General Counsel of the Department, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000. The petition must specify the following information:

- (a) The name, address, and telephone number of the petitioner;
- (b) The name, address, and telephone number of the attorney or qualified representative of the petitioner, if any;
- (c) Each rule or portion of a rule from which a variance or waiver is requested;
- (d) The citation to the statute underlying (implemented by) the rule identified in (c) above;
- (e) The type of action requested;
- (f) The specific facts that would justify a variance or waiver for the petitioner;
- (g) The reason why the variance or waiver would serve the purposes of the underlying statute (implemented by the rule); and,
- (h) A statement whether the variance or waiver is permanent or temporary and, if temporary, a statement of the dates showing the duration of the variance or waiver requested.

The Department will grant a variance or waiver when the petition demonstrates both that the application of the rule would create a substantial hardship or violate principles of fairness, as each of those terms is defined in Section 120.542(2), F.S., and that the purpose of the underlying statute will be or has been achieved by other means by the petitioner.

Persons subject to regulation pursuant to any federally delegated or approved air program should be aware that Florida is specifically not authorized to issue variances or waivers from any requirements of any such federally delegated or approved program. The requirements of the program remain fully enforceable by the Administrator of EPA and by any person under the Clean Air Act unless and until the Administrator separately approves any variance or waiver in accordance with the procedures of the federal program.

This Order constitutes final agency action unless a petition is filed in accordance with the above paragraphs.

#### RIGHT TO APPEAL

Any party to this Order has the right to seek judicial review of the Order pursuant to Section 120.68, F.S., by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, MS35, Tallahassee, Florida 32399-3000; and, by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date the Notice of Agency Action is filed with the Clerk of the Department.

DONE AND ORDERED this 27<sup>th</sup> day of March, 1999, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



HOWARD L. RHODES, Director  
Division of Air Resources Management  
Twin Towers Office Building  
Mail Station 5500  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400  
850/488-0114

**CERTIFICATE OF SERVICE**

The undersigned duly designated deputy agency clerk hereby certifies that this order and all copies were sent by certified mail before the close of business on 3/30/99 to the person(s) listed:

Mr. E. David Fernandez, City of Key West  
Ms. Marie Whitman Mahan, P.E.  
Mr. Phil Barbaccia, P.E., DEP/SD

Clerk Stamp

**FILING AND ACKNOWLEDGMENT FILED**, on this date, pursuant to Section 120.52(7), Florida Statutes, with the designated agency Clerk, receipt of which is hereby acknowledged.

Barbara J. Portwell      3/30/99  
(Clerk)                                      (Date)

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- Addressee's Address
  - Restricted Delivery
- Consult postmaster for fee.

P 263 585 201

US Postal Service  
**Receipt for Certified Mail**  
 No Insurance Coverage Provided.  
 Do not use for International Mail (See reverse)

Sent to Mr. E. David Fernandez	
Street & Number P.O. Box 1409	
Post Office, State, & ZIP Code Key West, Florida 33041-1409	
Postage	\$
Certified Fee	
Special Delivery Fee	

Thank you for using Return Receipt Service.

P 263 585 202

US Postal Service  
**Receipt for Certified Mail**  
 No Insurance Coverage Provided.  
 Do not use for International Mail (See reverse)

Sent to Ms. Marie Whitman Mahan	
Street & Number 2503 Del Prado Boulevard	
Post Office, State, & ZIP Code Cape Coral, FL 33904	
Postage	\$
Certified Fee	
Special Delivery Fee	

Thank you for using Return Receipt Service.

P 263 585 203

US Postal Service  
**Receipt for Certified Mail**  
 No Insurance Coverage Provided.  
 Do not use for International Mail (See reverse)

Sent to Mr. Phil Barbaccia	
Street & Number 5 Victoria Avenue	
Post Office, State, & ZIP Code Myers, Florida 33902-3381	
Postage	\$
Certified Fee	
Special Delivery Fee	
Postmark or Date	3/30/99
City of Key West-Southernmost Waste to Energy Facility Facility ID#0870047-001-AV	

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

3. Article Addressed to:  
 Mr. E. David Fernandez  
 Utilities Director  
 City of Key West  
 P.O. Box 1409  
 Key West, Florida 33041-1409

4a. Article Number  
P 263 585 201

4b. Service Type  
 Registered  Certified  
 Express Mail  Insured  
 Return Receipt for Merchandise  COD

7. Date of Delivery  
4-1-99

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)  
 X *Kurt Bish*

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994 102595-97-B-0179 Domestic Return Receipt

3. Article Addressed to:  
 Ms. Marie Whitman Mahan  
 Camp Dresser & McKee, Inc.  
 2503 Del Prado Boulevard  
 Suite 200  
 Cape Coral, Florida 33904

4a. Article Number  
P 263 585 202

4b. Service Type  
 Registered  Certified  
 Express Mail  Insured  
 Return Receipt for Merchandise  COD

7. Date of Delivery  
4-5-99

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)  
 X *Marie Whitman Mahan*

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994 102595-97-B-0179 Domestic Return Receipt

3. Article Addressed to:  
 Mr. Phil Barbaccia  
 Florida Department of Environmental Protection  
 2295 Victoria Avenue  
 Suite 364  
 Fort Myers, Florida 33902-3381

4a. Article Number  
P 263 585 203

4b. Service Type  
 Registered  Certified  
 Express Mail  Insured  
 Return Receipt for Merchandise  COD

7. Date of Delivery  
4-1-99

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)  
 X *Phil Barbaccia*

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994 102595-97-B-0179 Domestic Return Receipt