

Buckeye Lime Kiln
#4
PSD-FL-232

8/8/96

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOSEPH L. CUTTER,

Petitioner,

vs.

OGC CASE NO. 96-1772

BUCKEYE OF FLORIDA,
a Limited Partnership, and
STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Respondents.

FINAL ORDER

This cause has come before the State of Florida Department of Environmental Protection ("Department") upon receipt of an Amended Petition for Administrative Hearing filed by Petitioner, JOSEPH L. CUTTER. See Exhibit 1.

On June 6, 1996, the Department received a Petition for Administrative Hearing from Petitioner JOSEPH L. CUTTER. The petition challenged the Department's decision to issue Permit No. 123000-04-AC, PSD-FL-232 to BUCKEYE FLORIDA, LIMITED PARTNERSHIP, to increase the permitted production rate of the No. 4 Lime Kiln and to change the throughput rate of two Causticizing Lime Bins located at the Buckeye, Florida Limited Partnership Foley Mill in Taylor County. In response to that request, the Department, on July 2, 1996, entered an order denying the request as untimely as it was received one (1) day late. The order gave Petitioner leave to amend its request to show why the request should be

excusable neglect and thus, its failure to prepare and file a timely petition is not legally justified. Therefore,

IT IS ORDERED:

The amended request for a petition for administrative proceeding is DENIED and the petition is DISMISSED.

Any party to this Order has the right to seek judicial review of the Order pursuant to Section 120.68, Florida Statutes, 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, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400; 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 this Order is filed with the clerk of the Department.

DONE AND ORDERED on this 6th day of August, 1996 in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

FILING AND ACKNOWLEDGEMENT
FILED, on this date, pursuant to S120.52
Florida Statutes, with the designated
Department Clerk, receipt of which
is hereby acknowledged.

Rebecca P. 8/6/96
Clerk Date

W.H. Cuthbert
VIRGINIA B. WETHERELL
Secretary

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, FL 32399-2400
Telephone: (904) 488-9730

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing Final Order has been
mailed to:

Joseph L. Cutter
Route 1, Box 1130
Perry, FL 32347

Terry Cole, Esq.
Daniel W. Hartman, Esq.
OERTEL, HOFFMAN, FERNANDEZ
& COLE, P.A.
Post Office Box 6507
Tallahassee, Florida 32314-6507

on this 6th day of August, 1996.

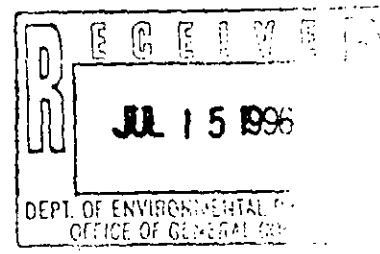
STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



W. DOUGLAS BEASON
Florida Bar No. 379239
Assistant General Counsel

3900 Commonwealth Boulevard
Tallahassee, FL 32399-3000
Telephone: (904) 488-9730

LOP,



STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOSEPH L. CUTTER,
PETITIONER,

OBC CASE NO. 94-1772

VS.

BUCKEYE OF FLORIDA, A
LIMITED PARTNERSHIP, AND
THE DEPARTMENT OF ENVIRONMENTAL
PROTECTION,
RESPONDENT,

AMENDED PETITION FOR ADMINISTRATIVE HEARING

THE PETITIONER IS FILING THIS AMENDED PETITION AS SO DIRECTED IN THE ORDER DATED JULY 2, 1996. IN A TIMELY MANNER. IN 62-106.155 (3)(b) OF FLORIDA ADMINISTRATIVE CODE DOES NOT SPECIFY ABOUT "LEGAL HOLIDAYS". THE PETITIONER WAS NOT AWARE THAT LEGAL HOLIDAYS WERE COUNTED AS DAYS FOR FILING IN A TIMELY MANNER, OTHERWISE THE FIRST PETITION WOULD HAVE BEEN FILED ON JUNE 5, 1996.

1. THE PETITIONER REQUEST FOR ADMINISTRATIVE HEARING, UNDER ADMINISTRATIVE PROCEEDING IS STILL IN ACCORDANCE WITH SECTION 120.57, FLORIDA STATUES. IT HAS BEEN FILED IN A TIMELY MANNER AS SO DIRECTED IN THE JULY ORDER RECEIVED ON JULY 5, 1996.
2. THE PETITIONER'S SUBSTANTIAL INTEREST HAS BEEN AFFECTED BY THE PRESENT DEPARTMENTS ACTION, UNDER SECTION 62-209.200 (1).
3. THE PETITIONER URGES YOU, THE DEPARTMENT TO CONTINUE TO PROTECTING THE HEALTH OF US WHO HAVE TO BREATH BAD AIR.
4. THE RELIEF SOUGHT BY THE PETITIONER IS; FOR THE DEPARTMENT TO ENFORCE 62-209.200 (1), SECTION 62-209(1,2,3, a,b,c,d,e,4.a, b,c, TO BE STRICTER OR MORE EXTENSIVE THAN THOSE IMPOSED BY CHAPTER 609, FLORIDA STATUES, OR THE AIR POLLUTION CONTROL

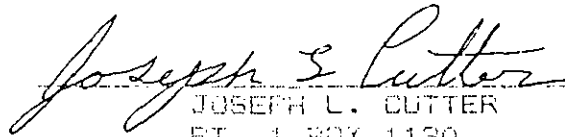
RULES OF THE DEPARTMENT, 62-209.500, (1), 2, 3, 4, 5, 6, 7, 8, 9, 10,
-14, AND ALSO 62-209.700.

5. THE VERY FACT THAT WE ARE BEING DENIED THIS UNDER SECTION
62-200. (1).

6. "YOU", THE DEPARTMENT NEEDS TO NOTIFY THE PROPOSED ACTION
FOR LESS EMISSIONS AND THE OUTFALL LIKE ASH RESIDUE FALLING.
WHEN A PRIVATE CITIZEN CAN SEE GREEN CLOUDS RISING INTO THE
AIR AT THE MILL SIGHT AND THEN ASH COMING FROM THE AIR ALL
OVER THE AREA.

7. (b) YOU NEED TO MODIFY THE PROPOSED ACTION FOR LESS
EMISSIONS UNDER SECTION 62-209-700 AND 62-209-200 (2).

THIS AMENDED PETITION IS BEING FILED WITHIN THE TIMELY MANNER, AS SO STATED IN THE ORDER RECEIVED ON JULY 5, 1996. DATED THIS 12th DAY OF JULY 1996.



JOSEPH L. CUTTER
RT. 1 BOX 1180
FERRY, FL. 32847

(904) 584-8518

I CERTIFY THAT THE ORIGINAL, AND A COPY WAS SENT BY U.S. MAIL TO GENERAL COUNCIL FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION, 2600 BLAIRSTONE ROAD, TALL. FL. 32899-2400, AND TERRY COLE COUNCIL FOR BUCKEYE L.P., P.O. BOX 6507, TALL. FL. 32814-6507 ON THIS ____ DAY OF JULY 1996.

7/22/96

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOSEPH L. CUTTER,
Petitioner,

vs.

OGC CASE NO. 96-1772

BUCKEYE OF FLORIDA,
a Limited Partnership, and
STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Respondents.

_____ /

ORDER DISMISSING PETITION WITH LEAVE TO AMEND

On June 6, 1996, the Florida Department of Environmental Protection (Department) received a Petition for Administrative Hearing from Petitioner, JOSEPH L. CUTTER. See Exhibit 1. The petition challenged the Department's decision to issue Permit No. 1230001-04-AC, PSD-FL-232 to Buckeye of Florida, to increase the production rate for the No. 4 Lime Kiln and the change in throughput rate of two (2) Causticizing Lime Bins located at the Buckeye Florida, Limited Partnership Foley Mill in Taylor County.

Petitioner states that he received notice of the Department's action on May 22, 1996. Florida Administrative Code rule 62-103.155 and the notice provided Petitioner in the Department's Notice requires that persons whose substantial interests are affected by the agency's decision must file a petition for an administrative determination (hearing) in the Department's Office of General Counsel within fourteen days of

receipt of publication or receipt of notice, whichever occurs first.

Section 62-103.155(3)(b) of the Florida Administrative Code provides:

(b) Failure to timely file a petition within the applicable time period after receipt of notice of agency action or receipt of notice of proposed agency action, whichever notice first occurs, shall constitute a waiver of any right to request an administrative proceeding under Chapter 120 of the Florida Statutes.

Petitioner's Petition for Administrative Hearing was received on June 6, 1996, 15 days after public notice was given, and one (1) day late. Thus, the Petition was not timely filed. Petitioner's failure to timely file constitutes such a waiver of his right to request an administrative proceeding under rule 62-103.155 Chapter 120 of the Florida Statutes.

In addition, the petition filed by Petitioner does not comply with Florida Administrative Code rule 62-103.155(2), or the notice provided to Petitioner, which explain what must be included in a petition for an administrative proceeding. Therefore, the petition does not contain sufficient information to determine whether a formal administrative proceeding should be held. Specifically, the request does not include:

(a) A statement of how Petitioner's substantial interests are affected by the Department's action or proposed action;

(b) A statement of the material facts (i.e., those facts upon which the Department's action or proposed action is based) disputed by Petitioner, if any;

(c) A statement of the facts that Petitioner contends warrant reversal or modification of the Department's action or proposed action;

(d) A statement of which rules or statutes Petitioner contends require reversal or modification of the Department's action or proposed action; or

(e) A statement of the relief sought by Petitioner, stating precisely the action Petitioner wants the Department to take with respect to the Department's action or proposed action.

Without this information, Petitioner's petition must be dismissed as required by Florida Administrative Code rule 62-103.155. Therefore,

IT IS ORDERED:

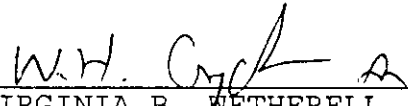
The petition for hearing filed by JOSEPH L. CUTTER is DISMISSED. Such dismissal is without prejudice to Joseph L. Cutter to amend his petition to show why it should be considered timely. Any amended petition must also contain the information listed above.

The amended petition must be filed (received) in the Office of General Counsel, Department of Environmental Protection, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000 within 15 days from the date set forth in the certificate of service on the last page of this order. This order constitutes final agency action of the Department unless a timely amended petition is filed in conformance with this order.

Any party to this Order has the right to seek judicial review of the Order pursuant to Section 120.68, Florida Statutes, 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, 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 this Order is filed with the clerk of the Department.

DONE AND ORDERED this 26th day of June, 1996, in Tallahassee, Florida.

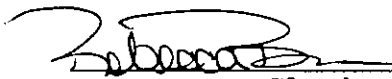
STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



VIRGINIA B. WETHERELL
Secretary

Marjorie Stoneman Douglas
Building
3900 Commonwealth Boulevard
Tallahassee, FL 32399-3000
Telephone: (904) 488-1554

FILING AND ACKNOWLEDGMENT:
FILED, on this date, pursuant to
Section 120.52, Florida Statutes,
with the designated Department
Clerk, receipt of which is hereby
acknowledged.



Clerk

7/1/96
Date

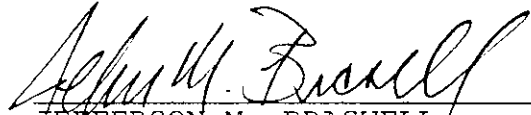
CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was mailed to:

Joseph L. Cutter
Route 1, Box 1130
Perry, FL 32347

Terry Cole, Esq.
Daniel W. Hartman, Esq.
OERTEL, HOFFMAN, FERNANDEZ
& COLE, P.A.
Post Office Box 6507
Tallahassee, Florida 32314-6507

on this 2nd day of July, 1996.



JEFFERSON M. BRASWELL
Assistant General Counsel
Florida Bar No. 800996

3900 Commonwealth Boulevard
Tallahassee, FL 32399-3000
Telephone: (904) 488-9730

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

A PETITION FOR ADMINISTRATIVE HEARING

UNDER ADMINISTRATIVE PROCEEDING (HEARING) IN ACCORDANCE
WITH SECTION 120.57, F.S.

THIS PETITION UNDER THIS SECTION IS BEING FILED IN A TIMELY
MANNER.

RECEIVED

JUN 6 1996

DEPARTMENT OF
ENVIRONMENTAL PROTECTION
OFFICE OF GENERAL COUNSEL

(A) JOSEPH L. CUTTER
RT. 1 BOX 1130
PERRY, FLORIDA 32347
(904) 584-6513

BUCKEYE OF FLORIDA, A LIMITED PARTNERSHIP
RT.3 BOX 260
PERRY, FLORIDA 32347

PERMIT NUMBER 123000-04-AC

PSD-FL-232

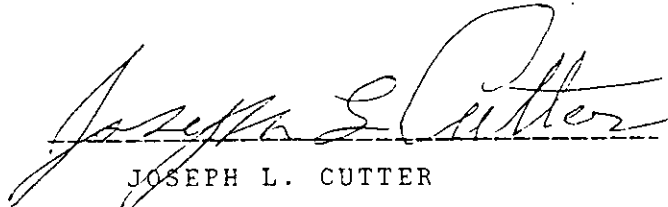
TAYLOR COUNTY

- (B) THE PETITIONER READ THE D.E.P. ACTION BEING TAKEN IN THE
PERRY NEWSPAPER, 5-22-96
- (C) THE PETITIONERS INTEREST WILL BE AFFECTED BY THE DEPT-
MENTS DECISION AND EVERYONE ELSE IN TAYLOR COUNTY.
- (D) THE FACT THAT THE DEPARTMENT OF PROTECTION AIR QUALITY
MONITORING EQUIPMENT WAS NOT AVAILABLE AT THE TIME THE
PROPOSE STUDY OF AIR QUALITY IMPACT ANALYSIS WAS CON-
DUCTED, ACCORDING TO MR. MIKE HOLLEY, FROM D.E.P. AIR
QUALITY CONTROL MANAGER.
- (E) THE PETITIONER CONTENDS THAT THE AIR QUALITY STANDARDS
WILL NOT MEET THE "NEW FEDERAL STANDARDS".
- a. WHERE IS THE EQUIPMENT THAT WAS USED FOR THE AIR QUALITY
IMPACT ANALYSIS?
- b. WHERE WAS IT LOCATED?
- c. WHO CONTROLLED THE TESTING?
- d. WHERE IS THE DATA, AND WHAT WAS IT COMPARED TOO?
- (F) THE PETITIONER FEELS, IN VIEW OF THE FACT THAT D.E.P. HAS
REPEATEDLY ACKNOWLEDGED TO THE PETITIONER THAT THEY WERE
UNABLE TO CONDUCT SUCH A STUDY.
- b. FOR THE PROTECTION OF HEALTH, AND BEING ABLE TO BREATHE
CLEAN AIR FOR THE PEOPLE OF TAYLOR COUNTY.
- (G) THE PETITIONER REQUEST THE DENIAL TO BUCKEYE OF FLORIDA,
A LIMITED PARTNERSHIP, FOR THEIR PERMIT THEY ARE SEEKING
BECAUSE THE AIR STANDARDS HAVE NOT BEEN MET OR VERIFIED.

(ONE OUT OF TWO)

- (G) b. D.E.P. HAS FAILED TO ENFORCE THE LAWS OF THE CLEAN AIR ACT IN THE PAST, WHEN MONITERING EQUIPMENT WAS NOT BEING MAINTAINED IN PROPER MANNOR, ALLOWING THE THE COMPANY TO CONTINUE OPERATING WITH THE MONITERING EQUIPMENT BEING DOWN FOR SEVERAL DAYS.
- c. NO PENALTIES OR ANY ACTION TAKEN BY THE DEPARTMENT TO ENSURE THAT THE AIR STANDARDS WERE BEING MET, TO PROTECT THE CITIZENS OF TAYLOR COUNTY FROM ANY HAZARDOUS SUBSTANCES THAT WERE BEING RELEASED INTO THE AIR UN MONITERED.
- d. THE VERY FACT THAT THIS COMPANY HAS SEVERAL PUFFS OF CHLORINE RELEASED INTO THE AIR EACH DAY PROVES THAT D.E.P. AND THE COMPANY ARE IN VIOLATION OF THE FEDERAL CLEAN AIR LAWS.

I CERTIFY THAT A TRUE COPY OF THIS PETITION WAS SENT BY U.S. MAIL TO BUCKEYE OF FLORIDA, A LIMITED PARTNERSHIP, RT.3 BOX 260, PERRY, FLORIDA, 32347. ON THIS 6th DAY OF JUNE, 1996.



JOSEPH L. CUTTER
RT.1Box 1130
PERRY, FLA. 32347
(904)584-65213

(TWO OUT OF TWO)