

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

QUINN PROPERTIES, INC.
d/b/a **HIDDEN HARBOUR MARINA,**

Petitioner,

OGC CASE NO.: 97-1842

vs.

**STATE OF FLORIDA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION and
FLORIDA POWER AND LIGHT CORPORATION,**

Respondents.

PETITION FOR FORMAL ADMINISTRATIVE HEARING

Petitioner, **QUINN PROPERTIES, INC.**, d/b/a **HIDDEN HARBOUR MARINA** (hereinafter "HHM"), by and through its undersigned attorney and pursuant to F.S. §120.569 and 120.57, hereby files this Petition for Formal Administrative Hearing against Respondents, **FLORIDA POWER AND LIGHT CORPORATION** (hereinafter "FPL") and **STATE OF FLORIDA, DEPARTMENT OF ENVIRONMENTAL PROTECTION** (hereinafter "DEP"), and in support would show as follows:

PARTIES

1. The Petitioner is **QUINN PROPERTIES, INC.**, d/b/a **HIDDEN HARBOUR MARINA**. The Petitioner's address is 4370 Carroway Place, Sanford, Florida 32771. Petitioner is represented in this action by and through the undersigned counsel.
2. The Applicant is **FLORIDA POWER AND LIGHT CORPORATION**. The Applicant's address is Sanford Plant, P.O. Box 471088, Lake Monroe, Florida 32757-

1088, c/o Robert B. Bergstrom, Esq., FP&L Law Dept., 700 Universe Boulevard, Juno Beach, Florida 33408, Permit File #1270009-001-AV. The County in which project is located in Volusia County.

3. The Permitting Agency is **STATE OF FLORIDA, DEPARTMENT OF ENVIRONMENTAL PROTECTION**, Bureau of Air Regulation whose address is 111 South Magnolia Drive, Suite 4, Tallahassee, Florida 32301, c/o Office of General Counsel, State of Florida, Department of Environmental Protection, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000.

RECEIPT OF NOTICE OF PERMITTING AUTHORITY'S PROPOSED ACTION

4. Via U.S. Mail, FPL provided Petitioner with a copy of the DEP's Draft Title V Air Operations Permit and "Intent to Issue Title V Air Operation Permit" for the FPL Sanford Plant. Petitioner received the notice of DEP's proposed action on October 3, 1997. Petitioner timely requested an extension of time to file its petition with DEP on October 14, 1997. DEP has granted an extension of time to file this petition until February 28, 1998.

PETITIONER IS A SUBSTANTIALLY AFFECTED PARTY

5. Petitioner operates a marina facility within close proximity to FPL's Sanford Plant. Petitioner's marina is located on a neighboring parcel south and west of the Sanford Plant immediately across the St. Johns River. Petitioner obtains income through the rental of approximately 504 boat slips and dry berths at its facility.
6. The Sanford Plant currently operates under an FDEP permit which addresses the permissible types and amounts of discharges which the Sanford Plant may expel in to the air and

surrounding environment. As set forth below Petitioners have suffered direct and ongoing damage as a result of discharges from the Sanford Plant.

STATEMENT OF FACTS

7. In October of 1996 and August of 1997, the Sanford Plant discharged an enormous and excessive amount of soot, believed to be sulphur compounds and sulphur oxides (SOX), as well as other substances from its smoke stacks, apparently during "start up operations". In each instance, a strong northeast wind was blowing. Due to the fact that Petitioner's marina is south and west of the Sanford Plant, a large portion of the pollutant discharge was deposited directly on and over Petitioner's marina. The result being that, aside from pollutants being deposited over the entire marina property, virtually every boat moored in Petitioner's rental slips and berths, as well as several automobiles, were covered in a layer of pollutants.

8. The pollutant discharges pose significant health risks to boat slip renters, marina personnel and the general public as a result of exposure to the pollutant discharges.

9. The pollutant discharges have and will also cause damages to the outstanding reputation which Petitioner has developed over the years. Petitioner is already aware that as a result of the prior two incidents alone, the marina is becoming stigmatized. In addition, approximately 20 large yachts have left Petitioner's marina as a result of the pollutant discharges and Petitioner estimates that another 20 vessels may have already opted not to rent slips at the marina for fear of future pollutant discharges.

10. As a result of the prior two pollutant discharges, Petitioner has and will continue to lose business. Any further pollutant discharges may eventually force Petitioner to close down the marina, as a direct and proximate result of the pollutant discharges at the Sanford Plant.

11. DEP has proposed the issuance of a permit which fails to include reasonable assurances that the Sanford Plant operations will not cause pollution directly impacting Petitioner's through property damage, health impacts, and reduction of environmental quality.

12. The proposed permit at Condition III A 10 requires that the Applicant follow "best operational practices" to minimize emissions during allowed periods of excess emissions. The proposed permit does not specify any such best operational practices and specifically does not include any permit conditions to limit the discharge of pollutants to Petitioner's facility.

STATUTES AND RULES WHICH ENTITLE PETITIONER TO RELIEF

13. The proposed permit constitutes a violation of Section 403.161(1)(a) which prohibits any person from causing pollution so as to injure human health or welfare, or to injure property. The Applicant's ongoing operations have caused pollution which has injured Petitioner's welfare and property. The permit does not contain the provisions necessary to limit any future pollution in violation of Section 403.161.

14. Rule 62-210.700(2), Florida Administrative Code, requires that permittees follow best operational practices to minimize emissions during periods of excess emissions. The proposed permit fails to comply with this rule by omitting any specific operational practices which would minimize the emissions which have impacted Petitioners.

15. The proposed permit fails to comply with applicable U.S. EPA guidance including, but not limited to EPA policies against automatic exemptions from continuous emission limits; EPA requirements that compliance with opacity limits be continuous; EPA requirements that permit conditions be practicably enforceable and EPA policies that permits not allow emissions which cause direct damage to persons or property.

16. Rule 62-210.700(4), Florida Administrative Code, prohibits excess emissions which are caused by poor maintenance, poor operation or any other failure which may reasonably be prevented. The proposed permit does not contain reasonable assurances the Applicant will comply with this rule.

17. DEP has not required adjustment of emission factors to take into account reasonable and practicable regulatory controls consistent with the public interest (i.e., the direct impact of the Sanford Plant emissions on Petitioner) as provided for in Rule 62.210.700(5), F.A.C.

REQUEST FOR ATTORNEY FEES

18. Petitioner is a small business party within the meaning of Section 57.111, Florida Statutes, and shall seek payment of any and all costs and attorney fees upon prevailing in this action.

WHEREFORE, Petitioner seeks modification of the proposed permit to include specific, enforceable operational conditions which will prevent future emissions adversely impacting Petitioner's property. Such additional conditions include, but are not limited to, additional ambient air monitoring detailed modeling of past and future emissions requiring all boiler startups and shutdowns to be conducted with natural gas only limiting operation of units so as to achieve driest possible flue gas by controlling the Cold Air Bypass dampers to achieve optimum APH gas exit temperature limiting all soot blowing to times when wind direction and speed will prevent damage to Petitioner requiring regularly scheduled maintenance and washing of boilers, gas duct work, stacks and fans at least every six months requiring APH/dust collector and unit 30 fan washes every month with a 30 minute drying time for each side reduction of the opacity alarm to 20% with required response to avoid excess emissions when the alarm is

triggered and such other relief as may be appropriate or in the alternative, cease operation of the Sanford plant and apply for permits to operate the facility as a new source.

Respectfully submitted,



Thomas K. Maurer, Esq.
Florida Bar No. 0331147
Foley & Lardner
111 N. Orange Avenue, Suite 1800
Orlando, Florida 32801
(407) 423-7656

Dan Brodersen, Esq.
Parker, Burke, Landerman, et. al.
108 E. Hillcrest Street
Orlando, Florida 32801
(407) 425-4910

William E. Guy, Esq.
55 East Ocean Boulevard
Stuart, Florida 34995-3386
(561) 286-7372

Reed Zars, Esq.
2020 Grand Avenue, Suite 522
Laramie, Wyoming 82070
(307) 745-7979

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and a copy of the foregoing was forwarded by UPS Next Day Mail to Cathy Carter, State of Florida, Department of Environmental Protection, Office of General Counsel, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, with a copy delivered via U.S. Mail to Robert B. Bergstrom, Esq., FP&L Law Dept., 700 Universe Boulevard, Juno Beach, Florida 33408 this 26 day of February, 1998.



Thomas K. Maurer, Esq.