



APAC, Inc., 900 Ashwood Parkway, Suite 700 Atlanta, Georgia 30338-4780, 770/392-5368, Fax 770/392-5305

LAW DEPARTMENT FACSIMILE TRANSMITTAL
FACSIMILE NUMBER: 770/392-5305

1 Pages (including this cover page)

DATE: February 7, 1997

TO: Doug Beason, Esquire **FROM:** M. Craig Hall, Esquire
770/392-5368

COMPANY: Department of Environmental
Protection

FAX NO.: (904) 487-4938 **CC:** K. Dalton
D. Donofrio

W. Hanks (904) 922-
6979 (w/petition) (5 pages)

MESSAGE: Re: Macasphalt Air Permit

Thank you for providing me with the information pertaining to the above matter. Be advised, however, that the request for an administrative hearing pertains to permit # 7770249-001-AO. The permit which you are refusing to approve, however, is permit # 7770073-004-AO. These permits are for different divisions of APAC-Florida, Inc., and they pertain to work in entirely different counties. As such, I request that you immediately authorize Macasphalt's permit # 7770073-004-AO in accordance with Florida law. Your failure to authorize this permit in a timely fashion will result in extensive costs to Macasphalt. Thank you for your assistance. Please contact me immediately with questions.

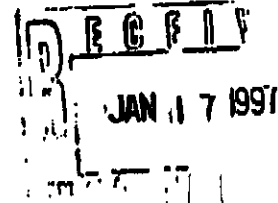
To verify receipt of or to report problems with this transmittal, please call Norma Kirkland at 770/392-5320.

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Lake Awesome Development Corporation
899 Knights Trail Road
Nokomis, FL 34275

January 12, 1997

Office of General Counsel of the Department
3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, FL 32399-3000



To Whom It May Concern,

We ask that you except this letter as our formal request for an administrative hearing on a petition for modification of operating hours by:

Mr. David A. Donofrio, P.E.
President
APAC-Florida, Inc.
1451 Myrtle Street
Sarasota FL, 34234
Sarasota County.

As the petitioner we would like to address the items as required in the Intent to Issue publication pursuant to sections 120.569 and 120.57 of the Florida Statutes.

(a)

- Lake Awesome Development Corp.
899 Knight's Trail Road
Nokomis, FL 34275
- DEP Permit file # 1150249-01-AO
- Owners: Mr. Bill Morse
Mr. Steele Boring
- Phone: 941 485-1800
- Agent: Mr. B. Douglas Fraley II
- Phone: 941-322-2490
- Sarasota County

(b)

Applicants petition for modification of hours was discovered in their file at the Sarasota County Department of Natural Resource's Pollution Control Office, while obtaining information for a January 7, 1997 public hearing to be held by the Sarasota County Board of County Commissioner, on the issue of nighttime hours of operation of the APAC asphalt plant located on Gene Green Rd. in Laurel Fl.

(c)

The existing hours of operation for the applicant's asphalt plant were locally ~~extended~~ in August of 1996 with the inclusion of Saturdays as an extra day of operation. At that time we, and other adjoining property owners, at a public hearing, agreed to a compromise letting APAC have Saturdays in lieu of any extended daytime hours or any nighttime hours of operations.

Lake Awesome is a Recreational Vehicle Park and APAC's asphalt plant is located just 200 ft from our property line which is a detriment to the residents of our park. Sarasota County, APAC, and independent sound consultant have recorded sound levels at or exceeding 65dBA during daytime operating hours of APAC's plant. This is the maximum allowed by the Sarasota County Noise Ordinance.

At the recent January 7, 1997 public hearing the Board of County Commissioners granted APAC the right to operate at nighttime, and to be exempt from the County noise ordinance while working on County or State road projects. This action alone by the Board is and will be an increased health threat to the residents of our park. The additional noise levels and dust created by both the plant and truck traffic at night will greatly affect the health and well being of those residents just 200 ft. from the plant and only 50 ft. from the haul route of the asphalt plant.

Any consideration by The Department of Environmental Protection for extension, or in this case elimination of, operating hours for this plant would certainly not be considered an act of protection but instead an expansion of an existing Environmental hazard and threat to the citizens living next to this plant.

(d)

The material facts, some of which were stated above are:

- APAC's days/hours of operations were just recently expanded.
- APAC was just granted a large expansion of their borrow pit, which is an additional to the existing noise and dust pollution problem.
- APAC was recently granted the right to operate, and exceed County Noise Pollution levels at night on County and State road work.

(e)

The above statements reference facts, that would warrant The Department of Environmental Protection not grant the requested deletion of hours of operation. In addition to those facts We would like to point out that:

- APAC, at their own choosing, without any formal action pending or any public requests choose to shut down their Myrtle Street plant and their other operations in the adjoining county and locate their new plant adjacent to Lake Awesome Development RV Park.
- We objected to their relocation but still agreed to let them operate on Saturdays, in lieu of no nighttime hours. They then greatly expanded their borrow pit, which we did not oppose, as well since it was located a thousand feet or so on the other side of the asphalt plant.
- APAC is now requesting a self induced need for a variance from their permit at the expense of the health and well being of the people living within earshot of their plant.
- It is now obvious to us that it has been and is their intent to continue to do whatever is necessary to gradually expand their operations at this site to compensate for the shutting down of their other plants at the expense of their neighbors.
- This is a self induced hardship and does not warrant any special considerations for The Department of Environmental Protection.
- Any additional hours of operation of the asphalt plant would and has already affected the viability and economic impact on the immediate community.
- Additional permitted hours of operation will not only add to the existing maximum level of noise pollution allowed but will also obviously add to the heavy truck traffic on the haul route which runs for ½ mile along side of Lake Awesome RV Park

- (f) Florida Statutes sections 120.569 and 120.57 provides for *Persons whose substantial interest will be affected by such a modified final decision of The Department of Environmental Protection Agency have a right to petition for an Administrative Hearing ... and that 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 As stated above, the applicants request to waive the hours of operation is a demonstration of a self induced economic hardship. Case history will clearly show that both self induced and economic hardships are not substantial grounds for granting this or similar request of this nature especially those that have an impact on the health and well being of those persons affected.*
- (g) It is our request that you deny the Permit Amendment requested by APAC-Florida of Specific Condition No. 2 of Permit Number 7770249-001-AC as requested, and that you also deny the Permit Amendment requested by APAC-Florida of Specific Condition No. 5 of Permit Number 7770249-001-AO . Both of which are in The Department of Environmental Protection Agency file Number 1150249-001-AO.

Thank you for your time and consideration to this very important matter.

Sincerely,

B. Douglas Fraley II
Agent for Lake Awesome

cc: Steele Boring
cc: Bill Morse
cc: APAC- Florida



APAC-Florida, Inc.

Macasphalt Division

P.O. Box 1819

Winter Haven, FL 33882-1819

Office 941/967-0646 ■ Fax 941/967-6829



Macasphalt
Division

Certified Mail

January 13, 1997

Florida Department of
Environmental Protection
New Source Review Section
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

RECEIVED

JAN 16 1997

BUREAU OF
AIR REGULATION

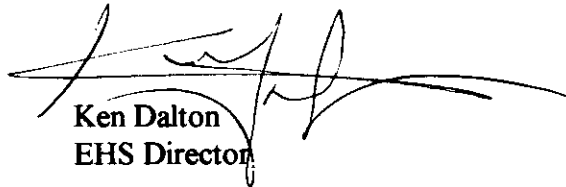
RE: Permit Amendment No. 7770073-004-AO
Portable Drum Mix Asphalt Plant

Dear A. A. Linero, P.E.

Enclosed please find a copy of the proof of publication from the Lakeland Ledger. The Lakeland Ledger circulates throughout the Frostproof area.

Should there be any additional questions, please do not hesitate to contact me at (941) 967-0646.

Sincerely,



Ken Dalton
EHS Director



EQUAL
OPPORTUNITY
EMPLOYER

AFFIDAVIT OF PUBLICATION

THE LEDGER Lakeland, Polk County, Florida

Case No

STATE OF FLORIDA)
COUNTY OF POLK)

Before the undersigned authority personally appeared Nelson Kirkland, who on oath says that he is Classified Advertising Manager of The Ledger, a daily newspaper published at Lakeland in Polk County, Florida; that the attached copy of advertisement, being a

Notice Of Intent

in the matter of

Permit Amendment No. 7770073-004-AO

in the

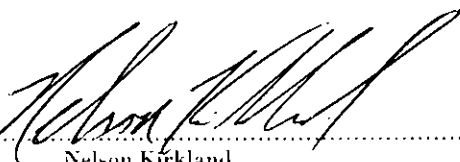
Court, was published in said newspaper in the issues of

January 7;

1997.

Affiant further says that said The Ledger is a newspaper published at Lakeland, in said Polk County, Florida, and that the said newspaper has heretofore been continuously published in said Polk County, Florida, daily, and has been entered as second class matter at the post office in Lakeland, in said Polk County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Signed



Nelson Kirkland
Classified Advertising Manager


By Nelson Kirkland who is
personally known to me

7th

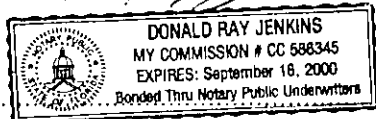
Sworn to and subscribed before me this

day of January, A.D. 19 97.

(Seal)



Notary Public



My Commission Expires

Order#611676

L

R866

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DRAFT Permit Amendment
No. 7770073-004-AO
Frostproof, Polk County

The Department of Environmental Protection (Department) gives notice of its intent to issue an air operation permit amendment to APAC-Florida, Inc., Macasphalt Division, that will allow the operation of a drum mix asphalt plant at a site in Polk County near Frostproof that is approximately 2 miles northwest of the intersection of U.S. Highways 27 and 98. The plant is permitted to emit 8.68 pounds per hour and 11.72 tons per year particulate matter. A Best Available Control Technology (BACT) determination pursuant to Rule 62-212.400, F.A.C. and 40 CFR 52.21, Prevention of Significant Deterioration (PSD) was not required for this operation permit amendment. The amendment will not result in an increase in any emissions from the facility, and will not cause a violation of any state or federal ambient air quality standards or increments. The expected date of operation at the Frostproof site is March, 1997. The applicant's name and address are: APAC-Florida, Inc., Macasphalt Division, Post Office Box 1819, Winter Haven, Florida 33882-1819.

The Department will issue the FINAL Permit Amendment in accordance with the conditions of the DRAFT Permit Amendment unless a response received in accordance with the following procedures results in a different decision or significant change of terms or conditions.

The Department will accept written comments concerning the proposed DRAFT Permit Amendment issuance action for a period of 14 (fourteen) days from the date of publication of this Notice. Any written comments should be provided to the Department's Bureau of Air Regulation, 2600 Blair Stone Road, Mail Station #5505, Tallahassee, Florida 32399-2400. Any written comments filed shall be made available for public inspection if written comments received result in a significant change in this DRAFT Permit Amendment, the Department shall issue a Revised DRAFT Permit Amendment and require, if applicable, another Public Notice.

The Department will issue FINAL Permit Amendment with the conditions of the DRAFT Permit Amendment unless a timely petition for an administrative hearing is filed pursuant to Sections 120.569 and 120.57 F.S. or a party requests mediation as an alternative remedy under Section 120.573 before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for petitioning for a hearing are set forth below, followed by the procedures for requesting mediation.

A person whose substantial interests are affected by the Department's 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, 3900 Commonwealth Boulevard, Mail Station #35, Tallahassee, Florida 32399-3000, telephone: 904/488-9370, fax: 904/487-4938. Petitions must be filed within fourteen days of publication of the public notice or within fourteen days of receipt of this notice of intent, whichever occurs first. A petitioner must 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 (or a request for mediation, as discussed below) 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 the 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 28-5.207, of the Florida Administrative Code.

A petition must contain the following information: (a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Permit File Number and the county in which the project is proposed; (b) A statement of how and when each petitioner received notice of the Department's action or proposed action; (c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of the facts that the petitioner contends warrant, reverse or modification of the Department's action or proposed action; (f) A statement identifying the rules or statutes that the petitioner contends require reversal or modification of the Department's action or proposed action; and (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take with respect to the Department's action or proposed action addressed in this notice of intent.

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 notice of intent. 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, a party to the proceeding must:

A person whose substantial interests are affected by the Department's proposed permitting decision, may elect to pursue mediation by asking all parties to the proceeding to agree to such mediation and by filing with the Department a request for mediation and the written agreement of all such parties to mediate the dispute. The request and agreement must be filed in (received by) the Office of General Counsel of the Department, 3900 Commonwealth Boulevard, Mail Station #35, Tallahassee, Florida 32399-3000, by the same deadline as set forth above for the filing of a petition.

A request for mediation must contain the following information: (a) The name, address, and telephone number of the person requesting mediation and that person's representative, if any; (b) A statement of the

APAC

preliminary agency action; (c) A statement of the relief sought; and (d) Either an explanation of how the requester's substantial interests will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that the requester has already filed, and incorporating it by reference.

The agreement to mediate must include the following: (a) The names, addresses, and telephone numbers of any persons who may attend the mediation; (b) The name, address, and telephone number of the mediator selected by the parties or a provision for selecting a mediator within a specified time; (c) The agreed allocation of the costs and fees associated with the mediation; (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation; (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen; (f) The name of each party's representative who shall have authority to settle or recommend settlement; and (g) The signatures of all parties or their authorized representatives.

As provided in Section 120.573 F.S., the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57 F.S. for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57 F.S. remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

A complete project file is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at:

Department of Environmental Protection
Bureau of Air Regulation
111 S. Magnolia Drive, Suite 4
Tallahassee, Florida 32301
Telephone: 904/488-1344
Fax: 904/922-6979

Department of Environmental Protection
Southwest District
3804 Coconut Palm Drive
Tampa, Florida 33619
Telephone: 813/744-6100
Fax: 813/744-6458

Department of Environmental Protection
Central District
3319 Maguire Blvd., Suite 232
Orlando, Florida 32803-3767
Telephone: 407/894-7565
Fax: 407/897-2966

The complete project file includes the Draft Permit Amendment, the application, and the information submitted by the responsible official, exclusive of confidential records under Section 403.111, F.S. Interested persons may contact the Administrator, New Resource Review Section at 111 South Magnolia Drive, Suite 4, Tallahassee, Florida 32301, or call 904/488-1344, for additional information.

R-866-1-7: 1997

CC: W. Hanks, BAR