

Mitchell, Bruce

From: Leffler, William
Sent: Thursday, February 15, 2001 11:05 AM
To: Mitchell, Bruce
Subject: FW: Samsula Recycling

-----Original Message-----

From: Beason, Doug
Sent: Thursday, February 15, 2001 9:14 AM
To: Glenn, Lisa
Cc: Leffler, William
Subject: Samsula Recycling

Lisa, could we expedite the order closing file?

Bill, go ahead and issue and mail the final permit (it should be identical to permit as originally noticed. The entry of the order closing file is ministerial at this juncture).

Douglas Beason

Mitchell, Bruce

From: Beason, Doug
Sent: Wednesday, January 31, 2001 10:23 AM
To: Mitchell, Bruce
Cc: Glenn, Lisa
Subject: Samsula

Bruce, I got your message. The 90 day clock was satisfied when we issued the intent to issue. there is no default b/c we have issued the intent. the 90 day clock does not restart when the petition is dismissed. the DEP must enter a final order. the point is don't do anything until ogc releases the permit. for the time being you can forget about samsula b/c for the time being you have done what you needed to do.

Douglas Beason



Department of Environmental Protection

Jeb Bush
Governor

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

David Struhs
Secretary

VIA FACSIMILE

January 31, 2001

Donald R. Alexander
Administrative Law Judge
Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, Florida 32399-2602

Re: Baker v. Samsula Recycling, Inc. and Department of Environmental Protection, DOAH Case Nos. 00-4594 and 00-1797

Dear Judge Alexander:

The Department is in receipt of a Stipulation for Dimissal of Petition for Formal Administrative Hearing executed by Counsel for the Petitioners and Counsel for Samsula Recycling, Inc. The stipulation requests in part that "the Division of Administrative Hearings relinquish jurisdiction to the Department upon acknowledging that the Permit be issued subject to the terms of this Stipulation."

Please note the Department is not a party to the above-referenced stipulation. I was not involved in drafting the document so I am uncertain as to what this language seeks to accomplish. However, please note the Department will not enter a Final Order directing that the terms and conditions of the stipulation be incorporated in the Department's air construction permit. The terms and conditions of the stipulation are, as a matter of law, beyond the Department's regulatory jurisdiction. Counsel for respective parties are already aware of the Department's position.

Please feel free to contact my office should you have any questions.

Sincerely,

W. Douglas Beason, Esq.

cc: Counsel f Record

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ROBERT H. BAKER, ZETTA M.
BAKER, WILLIAM D. TOWNER, and
GEORGIA M. TOWNER,

Petitioners,

vs.

Case No. 00-4594

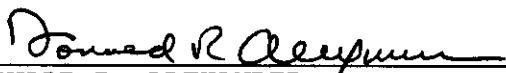
DEPARTMENT OF ENVIRONMENTAL
PROTECTION and SAMSULA
RECYCLING, INC.,

Respondents.

AMENDED ORDER CLOSING FILE

The Order Closing File entered on January 30, 2001, is amended in the following respect. Because the Stipulation for Dismissal of Petition for Formal Administrative Hearing was executed only by Petitioners and the applicant, and not by the agency, jurisdiction in this matter is relinquished to the agency for consideration of the settlement agreement.

DONE AND ORDERED this 2nd day of February, 2001, in Tallahassee, Leon County, Florida.


DONALD R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of February, 2001.

COPIES FURNISHED:

J. A. Jurgens, Esquire
J. A. Jurgens, P.A.
505 Wekiva Springs Road, Suite 500
Longwood, Florida 32779

Christopher W. Wickersham, Sr., Esquire
Wickersham & Bowers, P.A.
Post Office Box 2250
Daytona Beach, Florida 32115-2250

W. Douglas Beason, Esquire
Department of Environmental Protection
3900 Commonwealth Boulevard
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Tallahassee, Florida 32399-3000

State of Florida
 Department of Environmental Protection
OFFICE OF GENERAL COUNSEL
 Waste/Air Section
 3900 Commonwealth Blvd. - MS35
 Tallahassee, FL 32399-3000
 facsimile: 850-921-3000



FACSIMILE TRANSMITTAL

January 31, 2001

To: Donald R. Alexander, Administrative Law Judge Facsimile: 921-6847

cc: J. A. Jurgens, Esq. Scott Price, Esq. J.A. JURGENS, PA Facsimile: 407-722-2278

Christopher W. Wickersham, Sr. WICKERSHAM & BOWERS Facsimile: 904-239-5133

Michael Stokes Samsula Recycling Inc. Facsimile: 904-423-1436

From: Doug Beason 5 pages including cover sheet

Sender: Lisa Glenn Original will will not follow
 Phone: 850-921-9678 via US Mail Federal Express

RE: Baker & Towner v. Samsula Recycling & DEP
 DOAH Case No. 00-4594

Please find faxed Mr. Beason's cover letter, together with a copy of the Stipulation for Dismissal of Petition.

with a courtesy copy to:

William Leffler, PE
 Bruce Mitchell, Eng. IV
 DEP - Air Res. Mgt.

Facsimile 922-6979

The information contained in this facsimile message is attorney privileged and confidential, intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify sender by telephone and return the original message to us at the above address via U.S. Postal Service.



Department of Environmental Protection

Jeb Bush
Governor

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

David B. Struna
Secretary

VIA FACSIMILE

January 31, 2001

Donald R. Alexander
Administrative Law Judge
Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, Florida 32399-2602

Re: Baker v. Samsula Recycling, Inc. and Department of Environmental Protection, DOAH Case Nos. 00-4594 and 00-1797

Dear Judge Alexander:

The Department is in receipt of a Stipulation for Dismissal of Petition for Formal Administrative Hearing executed by Counsel for the Petitioners and Counsel for Samsula Recycling, Inc. The stipulation requests in part that "the Division of Administrative Hearings relinquish jurisdiction to the Department upon acknowledging that the Permit be issued subject to the terms of this Stipulation."

Please note the Department is not a party to the above-referenced stipulation. I was not involved in drafting the document so I am uncertain as to what this language seeks to accomplish. However, please note the Department will not enter a Final Order directing that the terms and conditions of the stipulation be incorporated in the Department's air construction permit. The terms and conditions of the stipulation are, as a matter of law, beyond the Department's regulatory jurisdiction. Counsel for respective parties are already aware of the Department's position.

Please feel free to contact my office should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Douglas Beason". The signature is stylized and somewhat cursive.

W. Douglas Beason, Esq.

cc: Counsel of Record

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**ROBERT H. BAKER, ZETTA M.
BAKER, WILLIAM D. TOWNER,
AND GEORGIA M. TOWNER,**

**DOAH CASE NO.: 00-4594
00-1797**

Petitioners,

v.

**SAMSULA RECYCLING, INC. AND
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,**

Respondents.

**STIPULATION FOR DISMISSAL OF PETITION FOR FORMAL
ADMINISTRATIVE HEARING**

Petitioners, ROBERT H. BAKER and ZETTA M. BAKER ("Baker") and WILLIAM D. TOWNER and GEORGIA M. TOWNER ("Towner"), and Respondent, SAMSULA RECYCLING, INC. ("Samsula"), by and through their respective undersigned counsel, hereby stipulate to the following as grounds for the dismissal of the Petition for Formal Administrative Hearing currently before this Division of Administrative Hearings as follows:

1. The Department of Environmental Protection air construction and operating permit ("Permit") for the subject rock crusher is subject to the following specific conditions for which the subject Petition shall be considered dismissed without any further action required by any party:

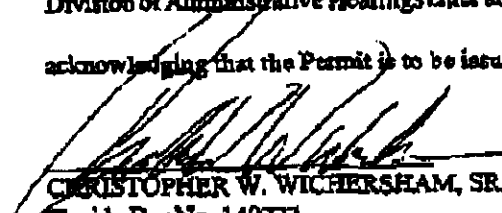
- (a) The subject rock crusher will not be operated at the current facility located at 363 S.R. 415, New Smyrna Beach, Florida 32168, in an area more than 200 feet North of the current South property line and outside of the area which was indicated as the location of the rock crusher in Figure 1 of

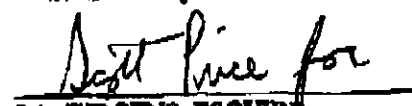
Samsula's May 23, 2000 response to the Department's request for additional information.

- (b) Within sixty (60) days of issuance of the permit, Samsula shall construct and maintain an earthen berm commencing 100 feet east of the intersection of the current Northern and Western property lines and continuing to the full length of the permitted landfill's North boundary line. Said earthen berm shall be constructed and maintained at height of at least 25 feet above the natural land surface.

2. All parties shall bear their own attorney's fees and costs related to this Petition.


WHEREFORE, Petitioners Bakers and Towners and Respondent, Samsula, request that the Division of Administrative Hearings enter an order relinquishing jurisdiction to the Department upon acknowledging that the Permit is to be issued subject to the terms of this Stipulation.


CHRISTOPHER W. WICKERSHAM, SR., ESQUIRE
 Florida Bar No. 149722
 Wickersham & Bowers
 501 North Grandview Avenue, Suite 115
 Suntrust Executive Center
 Daytona Beach, Florida 32115-2250
 Telephone (904) 252-3000
 Facsimile (904) 239-5133
 Attorneys for Respondent Samsula


J.A. JURGENS, ESQUIRE
 Florida Bar No. 637165
 J.A. JURGENS, P.A.
 505 Wekiva Springs Road, Suite 500
 Longwood, Florida 32779
 Telephone (407) 772-2277
 Facsimile (407) 772-2278
 Attorneys for Petitioners

CERTIFICATE SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument has been furnished via U.S. Mail, postage prepaid, to: W. Douglas Beason, Esquire, Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000 and Christopher W. Wickersham, Sr., Esquire, Wickersham & Bowers, P.A., P.O. Box 2250, Daytona Beach, Florida 32115-2250 this 30 day of January, 2001.



J.A. JURGENS, ESQUIRE
Florida Bar No. 068586
J.A. JURGENS, P.A.
505 Wckiva Springs Road, Suite 500
Longwood, Florida 32779
Telephone (407) 772-2277
Facsimile (407) 772-2278
Attorneys for Petitioners

Received Event (Event Succeeded)

Date: 1/30/01

Time: 2:50 PM

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JA JURGENS PA

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PAGE 02

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ROBERT H. BAKER, ZETTA M.
BAKER, WILLIAM D. TOWNER,
AND GEORGIA M. TOWNER.

DOAH CASE NO.: 00-4594
00-1797

DRA

Petitioners,

v.

SAMSULA RECYCLING, INC. AND
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Respondents.

STIPULATION FOR DISMISSAL OF PETITION FOR FORMAL
ADMINISTRATIVE HEARING

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- (a) The subject rock crusher will not be operated at the current facility located at 363 S.R. 415, New Smyrna Beach, Florida 32168, in an area more than 200 feet North of the current South property line and outside of the area which was indicated as the location of the rock crusher in Figure 1 of

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Date: 1/30/01

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Pages: 4

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J A JURGENS PA

PAGE 83

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904 239-5133
JA JURGENS PA

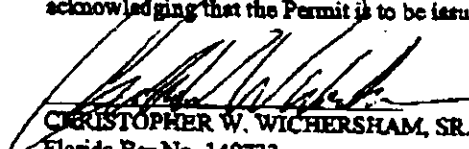
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PAGE 83

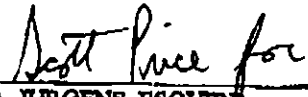
Samsula's May 25, 2000 response to the Department's request for additional information.

- (b) Within sixty (60) days of issuance of the permit, Samsula shall construct and maintain an earthen berm commencing 100 feet east of the intersection of the current Northern and Western property lines and continuing to the full length of the permitted landfill's North boundary line. Said earthen berm shall be constructed and maintained at height of at least 25 feet above the natural land surface.

2. All parties shall bear their own attorney's fees and costs related to this Petition.

WHEREFORE, Petitioners Bakers and Towners and Respondent, Samsula, request that the Division of Administrative Hearings enter an order relinquishing jurisdiction to the Department upon acknowledging that the Permit is to be issued subject to the terms of this Stipulation.


CHRISTOPHER W. WICKERSHAM, SR., ESQUIRE
 Florida Bar No. 149722
 Wickersham & Bowers
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 Daytona Beach, Florida 32115-2250
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 Attorneys for Respondent Samsula


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 Facsimile (407) 772-2278
 Attorneys for Petitioners

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01750/2001 14.56 4877722278

J A JURGENS PA

PAGE 04

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I HEREBY CERTIFY that a true and correct copy of the foregoing instrument has been furnished via U.S. Mail, postage prepaid, to: W. Douglas Beason, Esquire, Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000 and Christopher W. Wickersham, Sr., Esquire, Wickersham & Bowers, P.A., P.O. Box 2250, Daytona Beach, Florida 32115-2250 this 30 day of January, 2001.



J.A. JURGENS, ESQUIRE

Florida Bar No. 068586

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505 Wekiva Springs Road, Suite 500

Longwood, Florida 32779

Telephone (407) 772-2277

Facsimile (407) 772-2278

Attorneys for Petitioners

**CHRISTOPHER W. WICKERSHAM, SR.
WICKERSHAM & BOWERS
Post Office Drawer 2250
Daytona Beach, FL 32115
(904) 252-3000
FAX: (904) 239-5133**

TELECOPY TRANSMITTAL

TO: William A. Leffler, Esq.
RE: Baker and Towner vs. DEP and Samsula
FROM: Christopher W. Wickersham, Sr., Esq.
DATE: January 26, 2001
FAX/PHONE NUMBER: 850-922-6979

TOTAL NUMBER OF PAGES TRANSMITTED: 5

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CONTACT THE UNDERSIGNED AS SOON AS POSSIBLE AT (904) 252-3000.

NAME: Lee

Mr. Leffler: Per your conversation with Mike Stokes, following is a copy of the proposed Stipulation for Dismissal of Petition for Formal Administrative Hearing.

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

Leffler, William

From: Beason, Doug
Sent: Thursday, January 25, 2001 11:54 AM
To: 'wickersham@msn.com'
Cc: Leffler, William
Subject: Samsula Recycling

I have reviewed the proposed stipulation. Although I'm encouraged the parties may be able to amicably resolve their differences, the Department cannot incorporate the terms of the stipulation into the air construction permit. The terms and conditions of an air construction have the force and effect of federal law. As such, the terms and conditions of an air construction permit must be authorized under the provisions of the Clean Air Act. There is no regulatory authority for the type of conditions contemplated under the proposed stipulation.

Douglas Beason

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ROBERT H. BAKER; ZETTA M.)
BAKER; WILLIAM D. TOWNER; and)
GEORGIA M. TOWNER,)
)
Petitioners,)
)
vs.) Case No. 00-4594
)
DEPARTMENT OF ENVIRONMENTAL)
PROTECTION and SAMSULA)
RECYCLING, INC.,)
)
Respondents.)
_____)

ORDER


This matter came before the undersigned on Petitioners' Motion for Clarification. By the motion, Petitioners seek clarification as to the issues to be tried at the final hearing now scheduled on February 1 and 2, 2001.

The Notice of Hearing in this matter identifies the only issue to be tried as whether the applicant should be issued an air construction permit. In their amended filing, however, Petitioners have also requested that the agency initiate rulemaking "within 30 days for purposes of adopting rulemaking regarding the regulation of excessive and unnecessary noise."

The process for a citizen to petition an agency to initiate rulemaking is described in Section 120.54(7), Florida Statutes (2000). The process does not contemplate that such a request is subject to a hearing under Sections 120.569 and 120.57(1),

Florida Statutes (2000). Accordingly, the undersigned has construed the referral of Petitioners' "combined" petition from the agency as including only that portion of the petition which relates to the permitting issue, while the agency continues to retain jurisdiction over the rulemaking matter. The issue to be tried at hearing is as previously noticed.

DONE AND ORDERED this 5th day of January, 2001, in Tallahassee, Leon County, Florida.


DONALD R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of January, 2001.

COPIES FURNISHED:

J. A. Jurgens, Esquire
J. A. Jurgens, P.A.
505 Wekiva Springs Road, Suite 500
Longwood, Florida 32779

Christopher W. Wickersham, Sr., Esquire
Wickersham & Bowers, P.A.
Post Office Box 2250
Daytona Beach, Florida 32115-2250

W. Douglas Beason, Esquire
Department of Environmental Protection
3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, Florida 32399-3000