

# INTEROFFICE MEMORANDUM

**Date:** 30-Oct-2000 06:57pm  
**From:** Al Ford  
jajurgenspa2@earthlink.net  
**Dept:**  
**Tel No:**

**Subject:** - no subject (01JVVYIXA67SU000495) -

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Content-type: text/html; charset=us-ascii  
Content-transfer-encoding: 7BIT

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<x-tab>&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;&nbsp;</x-tab>I got back from Europe and was surprised to see that the Department had dismissed the Baker/Towner petition for failure to file timely. You can forward this to Beason if you want but I need to have a telephone conference with you and my partner J because, as you know, you told me that the petition would have to wait until publication in a Volusia paper since this was a statewide permit.&nbsp;&nbsp;&nbsp;How could we possibly have standing before a Volusia publication when that is an explicit condition precedent to operation in that county?&nbsp;&nbsp;&nbsp;As an attorney, I am sure you can appreciate how untenable the Department's position is.&nbsp;&nbsp;&nbsp;I am most disappointed that the Department would pull a stunt like this after I explained this to Beason.&nbsp;&nbsp;&nbsp;So do whatever you need to do to talk with us but we need to talk forthwith since a response is due Wednesday.<br>

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<x-sigsep><p></x-sigsep>

Albert E. Ford, II<br>

Attorney at Law<br>

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STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

RECEIVED

OCT 25 2000

BUREAU OF AIR REGULATION

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

Petitioner,

vs.

OGC CASE NO. 00-1797

SAMSULA RECYCLING, INC., and  
STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION,

Respondents.

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**ORDER DISMISSING PETITION WITH LEAVE TO AMEND**

On September 14, 2000, the Florida Department of Environmental Protection (Department) received a combined Petition for Administrative Hearing and to Initiate Rulemaking from the Petitioners. See Exhibit I. The petition challenged the Department's Public Notice of Intent to Issue Air Construction Permit, Draft Permit No. 7775112-001-AC to Samsula Recycling, Inc., to operate a concrete, asphalt, and construction debris crusher in Volusia County.

The Petitioners allege that they received notice of the Department's action on August 31, 2000, by publication of the subject Notice of Intent. However, the Department's records indicate that Counsel for the Petitioners received a copy of the notice of intent via U.S. Mail on August 25, 2000. See Exhibit 2. Florida Administrative Code Rule 62-110.106(3) and the notice provided the Petitioners require that persons whose substantial interests are affected by the agency's decision must file a petition for an administrative hearing in the Department's Office of General Counsel within 14 days

of publication of notice or receipt of notice, whichever occurs first. Failure to file a petition within the applicable time period shall constitute a waiver of any right to request an administrative proceeding under Chapter 120 of the Florida Statutes.

Under Rule 62-110.106(3)(b), the Petitioners' failure to timely file constitutes such a waiver of their right to request an administrative proceeding under Chapter 120 of the Florida Statutes. Therefore,

IT IS ORDERED:

The petition for hearing filed by ROBERT H. and ZETTA M. BAKER, and WILLIAM D. and GEROGIA M. TOWNER, is DISMISSED.

This dismissal is without prejudice to them to amend their petition to show why it should be considered timely.

The amended petition must be filed (received) in the Office of General Counsel, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within ten (10) days after 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 under Section 120.68 of the Florida Statutes by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, 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 thirty days after this Order is filed with the Clerk of the Department.


DONE AND ORDERED this 20 day of October, 2000, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



TERI L. DONALDSON,  
General Counsel  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

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

  
CLERK

10/23/00  
DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by  
U. S. Mail this 23<sup>rd</sup> day of October, 2000 to:

J. A. Jurgens, Esq.  
Scott Price, Esq.  
J.A. JURGENS, PA  
505 Wekiva Springs Road, Suite 500  
Longwood, FL 32779

Michael Stokes  
Samsula Recycling Inc.  
363 State Road 415  
New Smyrna Beach, FL 32168

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



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BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

CASE NO.

Petitioners,

v.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION,  
and SAMSULA RECYCLING, INC.

Respondents.

\_\_\_\_\_ /

COMBINED PETITION FOR FORMAL ADMINISTRATIVE HEARING  
AND TO INITIATE RULEMAKING

Petitioners, ROBERT H. and ZETTA M. BAKER ("Bakers") and WILLIAM D. and GEORGIA M. TOWNER ("Townners"), hereby file this combined Petition for Formal Administrative Hearing and to Initiate Rulemaking in accordance with § 120.536, 120.54(7)(a), 120.569, 120.57 and 120.573, Florida Statutes ("F.S."), and Rules 62-110.103, 62-110.106(3), 28-103.006 and 28-106.201, Florida Administrative Code ("F.A.C."), and a Public Notice of Intent to Issue Air Construction Permit, Draft Permit #7775112-001-AC, Samsula Recycling, Inc., and as grounds therefore, states as follows:

PARTIES

1. Petitioners, Bakers, are natural persons who own and live at property located at 353 S.R. 415, New Smyrna Beach, Florida 32168, telephone number (904)767-2029. Petitioners are represented by undersigned counsel, whose name, address and telephone number appear below.

2. Petitioners, Towners, are natural persons who own and live at property located at 355 S.R. 415, New Smyrna Beach, Florida 32168, telephone number (904) 427-2517.
3. Respondent, State of Florida Department of Environmental Protection ("DEP"), is an agency of the State of Florida whose principle office address is 3900 Commonwealth Blvd., Tallahassee, Florida 32399-3000.
4. Respondent, Samsula Recycling, Inc. ("Samsula"), is an operator of a C & D Landfill Facility located at 363 S.R. 415, New Smyrna Beach, Florida 32168. Samsula seeks to permit and operate a concrete, asphalt, and construction debris crusher, which is the subject of this Combined Petition.
5. Petitioners reside immediately adjacent to the subject C & D Landfill and the location of the proposed crusher.
6. On January 17, 2000, Petitioners filed with the Department a Verified Complaint pursuant to §403.412(2)(c), F.S., alleging that subsidiaries of Respondent, Samsula, Yancy's Landclearing, Inc. and Samsula Landfill, Inc., were operating the subject rock crusher without the required DEP permit. Yancy's Landclearing, Inc. and Samsula Landfill, Inc. have the same officers, directors, principals and managers as Respondent, Samsula, those are, Charles Yancey McDonald and Michael Stokes. For purposes of the agency action at issue, Samsula Landfill, Inc., Yancy's Landclearing, Inc. and Respondent, Samsula, are the same corporate entity.

#### AGENCY ACTION AT ISSUE

7. The agency action at issue is the Notice of Intent to Issue Air Construction Permit, Draft Permit # 7775112-001-AC and the bases for that Notice, namely, a Technical Evaluation and Preliminary Determination for Draft Air Construction Permit #

7775112-001-AC, signed August 27, 2000 by William Leffler, P.E., DEP ("Technical Evaluation"), and the Draft Permit itself, pages 1-18.

### FACTS AND BACKGROUND

8. Prior to the entry of the Consent Order, OGC File No. 00-0210, referred to above, Respondent, Samsula, by and through its officers, managers and related companies, illegally operated the subject rock crusher, without the required DEP Permit much to the detriment of the Petitioners. In said Consent Order, the Department made specific findings of fact that the Respondent's related companies had violated Department statutes and rules by, among other things, operating the subject rock crusher without the required DEP permit.
9. In paragraph 12 of the Consent Order, Respondent Samsula's related companies were directed not to operate the rock crusher without first obtaining the required DEP permit.
10. In less than 60 days of entering into the subject Consent Order, Respondent, Samsula, and/or its associated companies, officers, managers and directors, operated the subject rock crusher in another county without the benefit of the required Department permit. This was a willful and egregious violation of the Consent Order and is a matter of record in the comments submitted to the Department by Petitioners dated July 13, 2000, and the Department's own records. This violation and the myriad other environmental violations by Respondent, Samsula, and/or its related companies, officers, managers and directors, is documented in the referenced Verified Complaint which is a matter of Department record and thus, will not be reiterated here.



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11. During the operation of the subject rock crusher adjacent to the property of Petitioners, Petitioners were subjected to excessive dust and other particulate emissions and extremely excessive high levels of noise pollution and vibrations. These particulate emissions exceeded Department standards and if the subject permit is issued, these particulate emissions and extremely excessive noise pollution will continue.

#### **WHEN AND HOW NOTICE OF AGENCY ACTION RECEIVED**

12. Petitioners received notice of agency action by publication of the subject Notice of Intent on August 31, 2000.

#### **ULTIMATE FACTS**

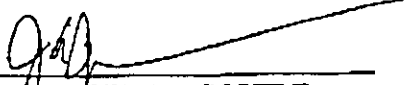
13. Rule 62-4.070, F.A.C., requires the Department to issue a permit "only if the applicant affirmatively provides the Department with reasonable assurance . . . that the construction, expansion, modification, operation, activity of the installation will not [violate] Department standards or rules." Petitioners contend that Respondent, Samsula, has failed to provide the necessary reasonable assurances.

#### **DISPUTED ISSUES OF MATERIAL FACTS**

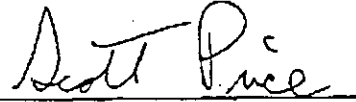
14. The repeated history of violation of Department rules and standards by Respondent, Samsula, and its related companies, officers, managers and directors, is so extensive that the applicant has failed to provide the Department with the required reasonable assurances as provided by Rule 62-4.070(5), F.A.C. The provisions in paragraph 15 of page 5 of 18 of the Draft Permit will not overcome this deficiency.
15. The Department has failed to promulgate required rules regarding noise pollution. If the Department had promulgated these required rules, Respondent, Samsula, would

noise.

Respectfully submitted this 14<sup>th</sup> day of September, 2000.



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