



Department of
INTEROFFICE MEMORANDUM
Environmental Protection

Jeb Bush
Governor

Date: 11-Aug-2000 01:12pm

Twin Towers Office Building John B. Turner ORL 407/894-755
2600 Blair Stone Road TURNER_JB@a1.depor1.dep.state.fl.us
Tallahassee, Florida 32399-2400 David B. Scahls
Secretary

Tel No:

To: Bruce Mitchell TAL (MITCHELL_B@A1)
CC: Caroline Shine ORL (SHINE_C@a1.depor1.dep.state.fl.us)
CC: William Leffler TAL (LEFFLER_W@A1)
CC: Clair Fancy TAL (FANCY_C@A1)
CC: Leonard Kozlov ORL (KOZLOV_L@a1.depor1.dep.state.fl.us)

Subject: Samsula Rock Crusher

I will mail you copies of relevant compliance and enforcement info. found in files of solid waste and ERP, along with their contact names and numbers. It will go in interoffice mail today.

- RFC-822-headers:

Received: from epic50.dep.state.fl.us ([199.73.169.50])

by mail.epic1.dep.state.fl.us (PMDF V5.2-33 #37976)

with ESMTP id <01JSUFJCL3AO0015Z8@mail.epic1.dep.state.fl.us>; Fri,

11 Aug 2000 13:12:16 EDT

Received: from deporl.dep.state.fl.us ([199.73.202.11])

by mail.epic50.dep.state.fl.us (PMDF V5.2-32 #31508)

with ESMTP id <01JSUFJ9ELIC001YXS@mail.epic50.dep.state.fl.us>; Fri,

11 Aug 2000 13:12:11 -0400 (EDT)

Received: from a1.deporl.dep.state.fl.us by mail.deporl.dep.state.fl.us

(PMDF V5.2-33 #37974) id <01JSUFJ5KGAM0005i7@mail.deporl.dep.state.fl.us>;

Fri, 11 Aug 2000 13:12:06 -0400 (EDT)

DEP CERTIFIED MAIL NO.:

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION)	IN THE OFFICE OF THE CENTRAL DISTRICT
)	
Complainant,)	
)	
vs.)	OGC FILE NO: 00-0210
)	
SAMSULA LANDFILL, INC., and YANCEY'S LAND CLEARING, INC.,)	
)	
Respondents .)	
)	

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department") and Samsula Landfill, Inc., and Yancey's Land Clearing, Inc., ("Respondents") to reach settlement of certain matters at issue between the Department and Respondents .

The Department finds:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Part IV of Chapters 373 and 403, Florida Statutes, and the

rules promulgated thereunder, Florida Administrative Code ("F.A.C.") Title 62. The Department has jurisdiction over the matters addressed in this Consent Order.

2. Respondents are corporations doing business in Florida and are registered with the Florida Division of Corporations. Each Respondent is a "person" within the meaning of Sections 373.019(12) and 403.031(5), Florida Statutes. The Respondent Samsula Landfill, Inc., owns and operated a stationary air curtain incinerator located at a Department permitted construction and demolition Landfill. The location of the landfill is 363 State Road 415, Volusia County, Florida, Latitude 28° 59' 24" N and Longitude 81° 04 ' 10" W. The Respondent Samsula Landfill, Inc., was issued Department Air Construction Permit 1270154-001-AC for the air curtain incinerator. The Respondent Yancey's Land Clearing, Inc., was issued Department Solid Waste Permit S064-275715 for the landfill ("Facility").

3. Inspections conducted by Department personnel on November 10, 1999 and January 27, 2000 revealed the Respondents have operated a rock crusher at the Facility without a Department permit. The crusher has a design capacity of 250 tons per hour and is subject to Part 40 Code of Federal Regulation, Section 60.670. The Respondents' operation of the rock crusher is a violation of Section 403.161(1)(b) and 403.087(1), Florida Statutes, and Rules 62-4.030 and 62-210.300, Florida Administrative Code.

4. An inspection by Department personnel on December 6, 1999 revealed the air curtain incinerator and fill had been placed within wetlands without a valid permit from the Department. The activity was conducted on the property referenced in paragraph 2 within the landward extent of Spruce Creek, surface waters as defined by

Florida Law, Latitude 28° 59' 28" N and Longitude 81° 03' 58" W . The filling of the wetland without an appropriate Department or Water Management District permit, or without having first obtained an appropriate exemption is a violation of Section 373.430, Florida Statutes and Rule 40C-4.041(1), Florida Administrative Code. The Respondents do not agree that this area is a wetland area or that they have violated Florida Statutes and Rules.

5. The Department informed the Respondents of the Respondents' violations of Florida Statutes, and applicable Department Rules in Warning Letter OWL AP-00-468, dated February 11, 2000, and during an informal meeting held at the Department's Orlando office on February 11, 2000 between the Respondents' representatives and the Department. At the meeting, the Respondents' representatives informed the Department that they had previously dismantled the air curtain incinerator and put the parts in storage.

6. Having reached a resolution of the matter, the Department and the Respondents mutually agree and it is,

ORDERED:

7. Commencing immediately upon the effective date of this Consent Order, the Respondents shall not re-construct or operate the Facility's air curtain incinerator within the wetland areas described in paragraph 4 of this Consent Order.

8. The Respondents must notify the Department in writing 15 days in advance of the air curtain incinerator being moved and re-constructed in an upland portion of its Facility. The air curtain incinerator must comply with Rule 62-296.401(7), F.A.C., to specifically include depth and width requirements.

9. The Respondents shall not re-construct the air curtain incinerator at a location outside of this Facility without having first obtained an appropriate Department Air Pollution Permit for the construction and operation outside of the Facility. The air curtain incinerator must comply with Rule 62-296.401(7), F.A.C., to specifically include depth and width requirements.

10. If Respondents obtain the permits described in paragraph 9 of this Consent Order or if Respondents relocate the air curtain incinerator to an upland portion of Facility as discussed in Paragraph 8, upon initial operation of the air curtain incinerator the Respondents shall conduct a DEP Method 9 Visible Emissions Observation in accordance with Rule 62-297.401, F.A.C. The Respondents shall notify the Department of the observation test, in writing, at least 15 days prior to the observation. The results of the observation shall be submitted to the Department within 7 days of the completion of the observation.

11. If the results of the observation referenced in paragraph 10 of this Consent Order do not demonstrate compliance with 62-296.401, F.A.C., and applicable permits, the Respondents shall notify the Department in accordance with paragraph 10, above, and immediately cease operation of the air curtain incinerator until repairs are made and the air curtain incinerator is retested to demonstrate compliance. Any retest must follow the procedures described in paragraph 10 of this Consent Order. The Respondents shall demonstrate compliance with Rule 62-296.401 F.A.C., and applicable permits prior to continued operation of the Facility's air curtain incinerator.

12. If Respondents' wish to use the rock crusher referenced in Paragraph 3 of this Consent Order, Respondents must submit an appropriate permit application for

Department consideration. The Respondents shall not operate the rock crusher without first having been issued an appropriate Department Air permit.

13. Respondents shall implement and complete the Restoration Actions listed below in the manner specified within 15 days of the effective date of this Consent Order:

a. Turbidity barriers such as staked hay bales and staked silt screen shall be installed at the edge of the Restoration Area, depicted in Exhibit A, to control turbidity during all restoration activities.

b. Remove all fill from within Restoration Area, depicted in Exhibit A, down to the natural, undisturbed, adjacent wetland grade. All fill removed from the restoration area shall be placed in a contained upland location which will not discharge to surface waters

c. Replant the Restoration Area, depicted in Exhibit A, with at least 80 (eighty): Sweet Gum (Liquidambar styraciflua), Red Maple (Acer rubrum), Sweet Bay (Magnolia virginiana), Blackgum (Nyssa sylvatica), Pond Pine (Pinus serotina) or Lobolly Bay (Gordonia lasianthus) in minimum one gallon container on 6 foot centers.

14. With the exception of the activities described in the Restoration Actions, effective immediately and henceforth, Respondents shall not conduct any dredging, filling, or construction activities on or within the landward extent of surface waters without first obtaining a valid Department permit or written notification from the Department that the activities as proposed appear to be exempt from Department permitting requirements.

15. Commencing immediately upon the effective date of this Consent Order, the Respondents shall operate the Facility according to the Landfill Operation Plan approved by the Department. The Operation Plan is contained in Attachment B of the document entitled *Supporting Documentation, General Permit Modification, Samsula Landfill, Volusia County, Florida, Permit No. SO64-275715*. Respondent shall take the necessary precautions to control any dust at the landfill as specified in Section 18.0, Page B1-2 of the Operation Plan. Respondents notified the Department on December 30, 1999 of its amendment to the Operation Plan, which notification changed its hours of operation to 6:00 a.m. to 6:00 p.m.

16. Respondents shall control access to the Facility during the hours that the facility is not operating. Respondents shall close and lock the gate when the facility is not in operation.

17. Respondents agrees to pay the Department stipulated penalties in the amount of \$200.00 per day for each and every day the Respondent fails to timely comply with any of the requirements of paragraphs 7-16 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Consent Order. Within 20 days of written demand from the Department, Respondents shall make payment of the appropriate stipulated penalties to "The Department of Environmental Protection" by cashier's check or money order and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund." Payment shall be sent to the Department of Environmental Protection, Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767. The Department may make demands for payment at any time after

violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Consent Order. If the Department is required to file a lawsuit to recover stipulated penalties under this paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this paragraph.

18. Persons who are not parties to this Consent Order but whose substantial interests are affected by this Consent Order have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:

(a) The name, address, and telephone number of each petitioner; the Department's Consent Order identification number and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of the Consent Order; (c) A statement of how each petitioner's substantial interests are affected by the Consent Order; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or

modification of the Consent Order; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order; (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

Meditation is not available to petitioners in this case.

19. Entry of this Consent Order does not relieve Respondents of the need to comply with the applicable federal, state or local laws, regulations or ordinances.

20. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Florida Statutes. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.161(1)(b), Florida Statutes.

21. Respondents are fully aware that a violation of the terms of this Consent Order may subject Respondents to judicial imposition of damages, civil penalties up to \$10,000.00 per offense and criminal penalties.

22. Respondents shall allow all authorized representatives of the Department access to the property and Facility at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the Department.

23. All plans, applications, penalties, stipulated penalties, costs and expenses, and information required by this Consent Order to be submitted to the Department should be sent to Florida Department of Environmental Protection, Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767.

24. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed by the

25. The Department, for and in consideration of the complete and timely performance by Respondents of the obligations agreed to in this Consent Order, hereby waives its right to seek judicial imposition of damages or civil penalties for alleged violations outlined in this Consent Order. Respondents acknowledge but waive their right to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, on the terms of this Consent Order. Respondents acknowledge their right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes, but waive that right upon signing this Consent Order.

26. The provisions of this Consent Order shall apply to and be binding upon the parties, its officers, its directors, agents, servants, employees, successors, and assigns and all persons, firms and corporations acting under, through or for them and upon those persons, firms and corporations in active concert or participation with them.

27. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both of the Respondents and the Department.

28. In the event of a sale or conveyance of the facility or of the property upon which the facility is located, if all of the requirements of this Consent Order have not been fully satisfied, Respondents shall, at least 30 days prior to a sale or conveyance of the property or facility, (1) notify the Department of such sale or conveyance, (2) provide the name and address of the purchaser, or operator, or person(s) in control of the facility, and (3) provide a copy of this Consent Order with all attachments to the new owner. The sale or conveyance of the facility, or the property upon which the facility is located shall not relieve the Respondents of the obligations imposed in this Consent Order.

29. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law.

30. This Consent Order is a final order of the Department pursuant to Section 120.52(7), Florida Statutes, and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with

Chapter 120, Florida Statutes. Upon the timely filing of a petition this Consent Order will not be effective until further order of the Department.

FOR THE RESPONDENT:

Charles Yancey McDonald, President
Yancey's Land Clearing, Inc.
Samsula Landfill, Inc.

Date

Done and ordered this _____ day of _____, 2000 in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

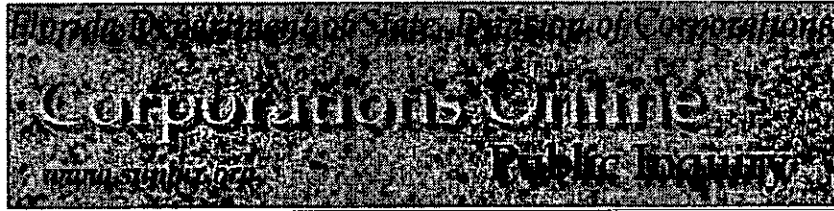
Vivian F. Garfein
Director of District Management
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

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

CLERK

Date

cc: Larry Morgan



Florida Profit

SAMSULA RECYCLING, INC.

PRINCIPAL ADDRESS

363 STATE ROAD 415
NEW SMYRNA BEACH FL 32168

MAILING ADDRESS

363 STATE ROAD 415
NEW SMYRNA BEACH FL 32168

Document Number
P99000087738

FEI Number
593613117

Date Filed
10/04/1999

State
FL

Status
ACTIVE

Effective Date
NONE

Registered Agent

Name & Address
FRIEBIS, DANIEL S 3890 TURTLE CREEK DRIVE SUITE B-1 PORT ORANGE FL 32127

Officer/Director Detail

Name & Address	Title
MCDONALD, CHARLES Y 363 STATE ROAD 415 NEW SMYRNA BEACH FL 32168	D
MCDONALD, JANET K 363 STATE ROAD 415 NEW SMYRNA BEACH FL 32168	D

Annual Reports

Report Year	Filed Date	Intangible Tax
2000	03/21/2000	

P99000087738



ACCOUNT NO. : 072100000032

REFERENCE : 392064 7138741

AUTHORIZATION : *Patricia Pizeto*

COST LIMIT : \$ 70

ORDER DATE : September 29, 1999

ORDER TIME : 10:50 AM

ORDER NO. : 392064-005

CUSTOMER NO: 7138741

100003004831--7

CUSTOMER: Mr. Daniel S. Friebis
MR. DANIEL S. FRIEBIS
MR. DANIEL S. FRIEBIS
Suite B-1
3890 Turtle Creek Drive
Port Orange, FL 32127

DOMESTIC FILING

NAME: SAMSULA RECYCLING, INC.

EFFECTIVE DATE:

XX ARTICLES OF INCORPORATION
 CERTIFICATE OF LIMITED PARTNERSHIP

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

 CERTIFIED COPY
XX PLAIN STAMPED COPY
 CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Christine Lillich

EXAMINER'S INITIALS:

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
99 OCT -4 AM 10:46

RECEIVED
99 OCT 11 3:11
STATE OF FLORIDA
DIVISION OF CORPORATIONS
MILLER ST. SE
TALLAHASSEE, FLORIDA

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
99 OCT -4 AM 10:46

ARTICLES OF INCORPORATION

OF

SAMSULA RECYCLING, INC.

The undersigned incorporator hereby forms a corporation under Chapter 607 of the laws of the State of Florida.

ARTICLE I. NAME

The name of the corporation shall be:

SAMSULA RECYCLING, INC.

The address of the principal office of this corporation shall be 363 State Road 415, New Smyrna Beach, Florida 32168, and the mailing address of the corporation shall be the same.

ARTICLE II. NATURE OF BUSINESS

This corporation may engage or transact in any or all lawful activities or business permitted under the laws of the United States, the State of Florida or any other state, country, territory or nation.

ARTICLE III. CAPITAL STOCK

The maximum number of shares of stock that this corporation is authorized to have outstanding at any one time is 1,000 shares of common stock having no par value per share.

ARTICLE IV. REGISTERED AGENT

The street address of the initial registered office of the corporation shall be 3890 Turtle Creek Drive, Suite B-1, Port Orange, Florida 32127, and the name of the initial registered agent of the corporation at that address is Daniel S. Friebis.

ARTICLE V. TERM OF EXISTENCE

This corporation is to exist perpetually.

ARTICLE VI. DIRECTORS

All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of its Board of Directors, subject to any limitation set forth in these Articles of Incorporation. This corporation shall have two Directors, initially. The names and addresses of the initial members of the Board of Directors are:

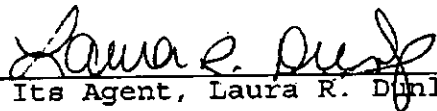
Charles Y. McDonald Dir.	363 State Road 415 New Smyrna Beach, Florida 32168
Janet K. McDonald Dir.	363 State Road 415 New Smyrna Beach, Florida 32168

ARTICLE VII. INCORPORATOR

The name and street address of the incorporator to these Articles of Incorporation:

The Company Corporation
1013 Centre Road
Wilmington, Delaware 19805

The undersigned incorporator has executed these Articles of Incorporation on October 4, 1999.


Its Agent, Laura R. Dunlap

crl

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
99 OCT -4 AM 10:46

ACCEPTANCE OF REGISTERED AGENT
DESIGNATED IN THE ARTICLES OF INCORPORATION

Daniel S. Friebis, an individual residing in this state, having a business office identical with the registered office of the corporation named below, and having been designated as the Registered Agent in the above and foregoing Articles of Incorporation of:

SAMSULA RECYCLING, INC.

Daniel S. Friebis is familiar with and accepts the obligations of the position of Registered Agent under Section 807.0505, Florida Statutes.

By: 

Typed Name: Daniel S. Friebis

P99000087738



ACCOUNT NO. : 072100000032

REFERENCE : 392064 7138741

AUTHORIZATION : *Patricia Pizito*

COST LIMIT : \$ 70

ORDER DATE : September 29, 1999

ORDER TIME : 10:50 AM

ORDER NO. : 392064-005

CUSTOMER NO: 7138741

100003004831--7

CUSTOMER: Mr. Daniel S. Friebis
MR. DANIEL S. FRIEBIS
MR. DANIEL S. FRIEBIS
Suite B-1
3890 Turtle Creek Drive
Port Orange, FL 32127

DOMESTIC FILING

NAME: SAMSULA RECYCLING, INC.

EFFECTIVE DATE:

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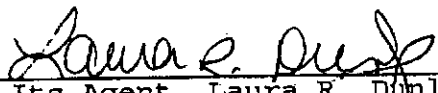
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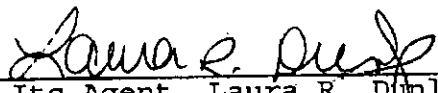
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Typed Name: Daniel S. Friebis

P99000087738



ACCOUNT NO. : 072100000032

REFERENCE : 392064 7138741

AUTHORIZATION : Patricia Pignato

COST LIMIT : \$ 70

ORDER DATE : September 29, 1999

ORDER TIME : 10:50 AM

ORDER NO. : 392064-005

CUSTOMER NO: 7138741

100003004831--7

CUSTOMER: Mr. Daniel S. Friebis
MR. DANIEL S. FRIEBIS
MR. DANIEL S. FRIEBIS
Suite B-1
3890 Turtle Creek Drive
Port Orange, FL 32127

DOMESTIC FILING

NAME: SAMSULA RECYCLING, INC.

EFFECTIVE DATE:

XX ARTICLES OF INCORPORATION
 CERTIFICATE OF LIMITED PARTNERSHIP

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

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ARTICLES OF INCORPORATION
OF
SAMSULA RECYCLING, INC.

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Mr. William Leffler
Page 1
July 12, 2000

J. A. Jurgens	J. A. JURGENS, P.A. Attorneys at Law 505 Wekiva Springs Road Suite 500	Of Counsel: Brickley Smolker & Bolves, P.A.
Scott M. Price	Longwood, Florida 32779 Telephone: (407) 772-2277	500 E. Kennedy Blvd.
Albert E. Ford II	Facsimile (407) 772-2278	Suite 200 Tampa, Florida 33602

July 13, 2000

VIA FEDERAL EXPRESS W/ ENCLOSURES
VIA FACSIMILE W/OUT ENCLOSURES
850-922-6979

William Leffler, P.E.
Professional Engineer II
Florida Department of Environmental
Protection
Air Resource Management
2600 Blair Stone Road
MS 5500
Tallahassee, FL 32399

**Re: Application of Samsula Recycling, Inc.-Relocatable, Concrete and Construction
Debris Crusher**

Dear Mr. Leffler:

As you know, this firm represents Arthur Drewry, Robert H. and Zeta M. Baker, and William D. and Georgia M. Towner, homeowners and property owners on State Road 415, New Smyrna Beach, Florida 32168, adjacent to the proposed location of the subject crusher. Based on the following comments and concerns, the Department is urged to issue a Notice of Intent to Deny to Samsula Recycling, Inc. in response to their permit application.

I. Applicant's History of Violation of Department Rules and Standards.

As you know Rule 62-4.070, FAC, 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. Rule 62-4.070 (5), FAC, further requires that the Department take into consideration a permit applicant's violation of any Department rules at any installation when making its reasonable assurance determination. Given the applicant's long history of repeated violations of Department rules and standards, the Department must conclude that the applicant has failed to provide reasonable assurances to the Department as required for issuance of the permit.

The applicant, Samsula Recycling, Inc., Samsula Landfill, Inc. and Yancey's Land Clearing, Inc. are companies with the same principal, Charles Yancey McDonald, and manager, Michael Stokes. Thus, for purposes of Rule 62-4.070 (5), FAC, Department administrative precedent requires that the Department consider the violations of Yancey's Land Clearing, Inc., Samsula Landfill, Inc., and those of Charles Yancey McDonald as though they were those of the applicant, Samsula Recycling, Inc. This precedent was established by DEP in the Suwannee American Cement Company, Inc. record of decision for an air permit application, wherein the Department denied Suwannee American's permit application based on the poor environmental record of Anderson Columbia, Inc. because the two companies' principals were the same.

The environmental records of Yancey McDonald and the companies of which he is a principal contain a litany of violations of DEP rules, all of which are a matter of record of DEP. On January 17, 2000, a Verified Complaint filed with the Department against Yancey's Land Clearing, Inc. and Samsula Landfill, Inc. by this firm on behalf of Drewry, Bakers and Towners details a lengthy history of environmental violations by Yancey McDonald and his companies. The Department's response to this Verified Complaint was the entry of a Consent Order on February 22, 2000 with Samsula Landfill, Inc. and Yancey's Land Clearing, Inc., wherein the Department made specific findings of fact that numerous significant violations of Department rules and statutes had been committed by Yancey McDonald's companies and related entities, corporate and personal.

Moreover, as documented by the attached correspondence and documents from the Department, in less than sixty days of entering into the Consent Order, Samsula Landfill,

Inc., directly violated the Consent Order by moving the rock crusher to another county without informing the Department and operating and continuing to operate it without first obtaining a Department Air Permit as required by paragraph twelve of the Consent Order. Even after receiving a Department Warning Letter, Samsula Landfill, Inc. continued its unpermitted operation of the crusher, offering as an excuse only an undated and meaningless lease proposal from an individual that does not even have a permit for the specific crusher at issue, copy attached. Yesterday, it was established by DEP inspector Tom Mulligan that the applicant again surreptitiously moved the crusher to a new location in a third county and then attempted to dismantle and remove the crusher to conceal the unpermitted operation in expectation of a Department inspection. These most recent willful violations coupled with a long history of similar types of violations of DEP rules and other agencies demonstrates that the applicant has not provided reasonable assurances to the Department for the issuance of the applied for permit.

II. Industrial Wastewater Permit Requirement.

Rule 62-620.300 (2), FAC, prohibits any industrial wastewater facility or activity which will reasonably be expected to be a source of water pollution, from being operated constructed or modified without a DEP Industrial Wastewater Permit. Heavy reliance is placed on the use of water suppression equipment to control the emissions of particulate matter (APM) throughout the subject application and response to the RAI. See, e.g., paragraphs three and four, Page 1-1 of permit application. The wastewater resulting from this proposed industrial activity will reasonably be expected be a source of water pollution in the form of significant changes in the pH, BOD, DO and total suspended solids of the contact water. Thus, an industrial wastewater permit from the Department should be required for this proposed industrial activity. By failing to address this issue, the applicant has failed to provide the Department reasonable assurances that the proposed activity can be conducted without violating Department standards and rules.

III. Particulate Matter Emission Limits.

The applicants assurance that they will be able to control the PM emissions is highly

suspect at best. The Bakers who are immediately adjacent to the former location of the operation of the crusher, and their neighbors, the Towners, have been inundated and, at times, overwhelmed by the PM generated by the operation of the rock crusher. As part of the Verified Complaint, Mr. Towner provided the Department photographic evidence documenting large plumes of PM emitted from the crusher leaving the facility and settling onto the Bakers= and Towners= property. We will be glad to provide you a copy of the video tape for your review. The misery of the Bakers and Towners caused by this uncontrolled particulate matter generated by the operation of the rock crusher contrasts with the statement that ASamsula Recycling, Inc. operates the crushing activity relatively dust free@ (Page 6 paragraph 1 of the permit application), which is wholly inaccurate.

Moreover, there is no mention in the response to the Department=s RAI that the applicant will be able to achieve compliance with the PM standard of 0.05 g/dscm as required by 40 CFR Section 60.672 (a)(1). Given the failure to address this issue and the long history of unconfined PM emissions, the applicant has failed to provide reasonable assurance that it can operate the crusher without violating this air pollution standard.

IV. Noise.

We respectfully must take issue with the statement in paragraph three of your letter to Mr. Barry Appleby of Volusia County concerning the Department=s regulation of noise.

While it is recognized that noise regulation has at times been an issue with the Department, the Department clearly has the authority to impose permit conditions related to noise. This authority is derived from the definition of Apollution@ found in Section 403.031 (7), F.S., and the definition of Air pollution@ found in Rules 62- 204.200 (3) and 62-210.200 (22), FAC. Specifically Anoise@ is defined as a pollutant by Section 403.021 (7), F.S. Further, Rules 62-204.200 (3) and 62-210.200 (2), FAC, define Air pollution@ to include the presence of Apollutants@, which includes noise pursuant to Section 403.031 (7), F.S., in quantities which are or may be harmful to human health or welfare, animal or plant lives or property, or unreasonably interfere with the enjoyment of life or property, including outdoor

recreation. The fact that these definitions of air pollution contained in these rules tracks verbatim that of Section 403.031 (7), F.S., further supports the conclusion that noise is clearly included within the definition of air pollution. In fact, the Palm Beach County circuit court has previously determined that noise is a form of pollution governed under Chapter 403, as specifically referenced in the Verified Complaint under 403.412 against Palm Beach County International Airport. Therefore, the Department has the authority to impose limitations regarding noise within the subject permit application process. It would be recommended under the circumstances that the Department recognize that a violation of Volusia County's Noise Ordinance would be injurious to human health or welfare, animal or plant life, or property, or unreasonably interfere with enjoyment of life or property, including outdoor recreation, and, therefore, require compliance with same.

If it is the Department's position that it does not have standards for the regulation of noise, then this is a violation of Section 403.061 (11), F.S., which clearly requires that the Department promulgate standards for the abatement of excessive and unnecessary noise. Thus, the Department's choice in this instance seems clear. Either interpret its own air pollution control rules to include the control of excessive and unnecessary noise or immediately initiate rule making in order to comply with the requirements of Section 403.061 (11), F.S.

V. Other Emissions.

Exception is taken regarding statements made in a response to the RAI in items 8 and 10. There the applicant claims that the loader is not operated continuously to feed the crusher and should not be considered as part of the crusher operation and not included in the permit conditions. To the contrary, the loader must be considered as part of the crusher operation because 40 CFR Section 60.972 (a) provides that discharges to the atmosphere from any transfer point on a belt conveyor is subject to the PM and opacity standards contained in that section. Clearly, there will be discharges into the atmosphere from the transfer point on belt conveyors from the loader unloading concrete debris onto the conveyor point. Therefore, the discharges from these transfers are subject to the standards contained

Mr. William Leffler
Page 6
July 12, 2000

in the referenced section. Applicant=s failure to indicate how or whether these transfers will comply with this requirement indicates that the applicant has failed to provide reasonable assurances that the operation can be conducted in compliance with applicable Department standards. Furthermore, it has been the experience of the Bakers and Towners that the operation of this loader and the associated unloading into the rock crusher has been a highly significant source of PM and this issue must be addressed by the Department.

Thank you for the opportunity to provide comments on this permit application. On behalf of Arthur Drewry, Robert H. and Zeta M. Baker and William D. and Georgia M. Towner, we look forward to your response.

Sincerely yours,

J.A. JURGENS, P.A.

J.A. Jurgens, Esquire

enclosures

JAJ/aer

cc: Douglas Weaver, Esquire, County Attorney=s Office, Volusia County
Mr. Arthur Drewry
Mr. & Mrs. Baker
Mr. & Mrs. Towner
Keith W. Bricklemyer, Esquire
Mr. James Bradner, FDEP, Central District

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Patricia Pizutto

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Port Orange, FL 32127

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NAME: SAMSULA RECYCLING, INC.

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The maximum number of shares of stock that this corporation is authorized to have outstanding at any one time is 1,000 shares of common stock having no par value per share.

ARTICLE IV. REGISTERED AGENT

The street address of the initial registered office of the corporation shall be 3890 Turtle Creek Drive, Suite B-1, Port Orange, Florida 32127, and the name of the initial registered agent of the corporation at that address is Daniel S. Friebis.

ARTICLE V. TERM OF EXISTENCE

This corporation is to exist perpetually.

ARTICLE VI. DIRECTORS

All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of its Board of Directors, subject to any limitation set forth in these Articles of Incorporation. This corporation shall have two Directors, initially. The names and addresses of the initial members of the Board of Directors are:

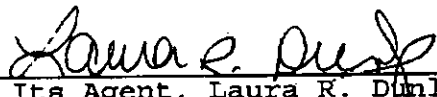
Charles Y. McDonald Dir.	363 State Road 415 New Smyrna Beach, Florida 32168
Janet K. McDonald Dir.	363 State Road 415 New Smyrna Beach, Florida 32168

ARTICLE VII. INCORPORATOR

The name and street address of the incorporator to these Articles of Incorporation:

The Company Corporation
1013 Centre Road
Wilmington, Delaware 19805

The undersigned incorporator has executed these Articles of Incorporation on October 4, 1999.



Its Agent, Laura R. Dunlap

crl

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DIVISION OF CORPORATIONS
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ACCEPTANCE OF REGISTERED AGENT
DESIGNATED IN THE ARTICLES OF INCORPORATION

Daniel S. Friebis, an individual residing in this state, having a business office identical with the registered office of the corporation named below, and having been designated as the Registered Agent in the above and foregoing Articles of Incorporation of:

SAMSULA RECYCLING, INC.

Daniel S. Friebis is familiar with and accepts the obligations of the position of Registered Agent under Section 807.0505, Florida Statutes.

By: 

Typed Name: Daniel S. Friebis

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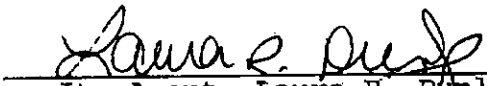
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