

*See
ERP*

**Florida Department of
Environmental Protection**

Memorandum

RECEIVED

AUG 14 2000

BUREAU OF AIR REGULATION

CENTRAL DISTRICT

TO: Vivian F. Garfein
Director of District Management

FROM: L. T. Kozlov, P. E. *LTK*
Program Administrator
Air Resources Management

DATE: February 18, 2000

SUBJECT: Samsula Landfill and Yancey's Landclearing
OGC FILE NO. 00-0210

The information and allegations set forth in the subject Consent Order have been reviewed with respect to the requirements of Chapter 403, Florida Statutes, and Florida Administrative Code Chapter 62.

The information contained within is complete and accurate to the best of my knowledge, information, and belief.

Received DEP
FEB 24 2000
Central Dist. ERP

∞
LTK/cs
Attachment

COPY

DEP CERTIFIED MAIL NO.: P 248 041 823

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 Loblolly 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.

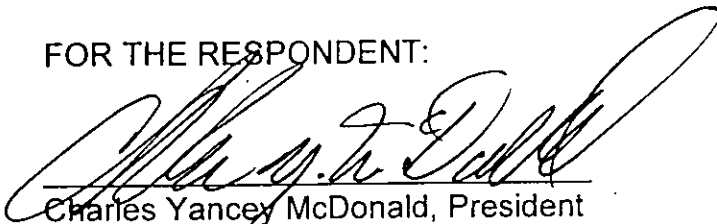
28. In the event of a sale or conveyance of the facility or of the property upon which the facility is located, if all of the requirements of this Consent Order have not been fully satisfied, Respondents shall, at least 30 days prior to a sale or conveyance of the property or facility, (1) notify the 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:

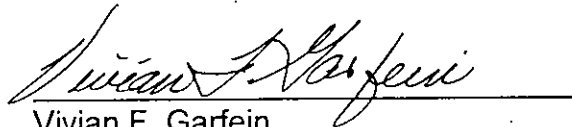


Charles Yancey McDonald, President
Yancey's Land Clearing, Inc.
Samsula Landfill, Inc.

2-18-00
Date

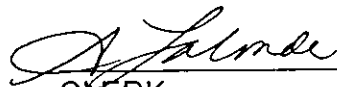
Done and ordered this 22nd day of February, 2000 in Orange County, Florida.

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.

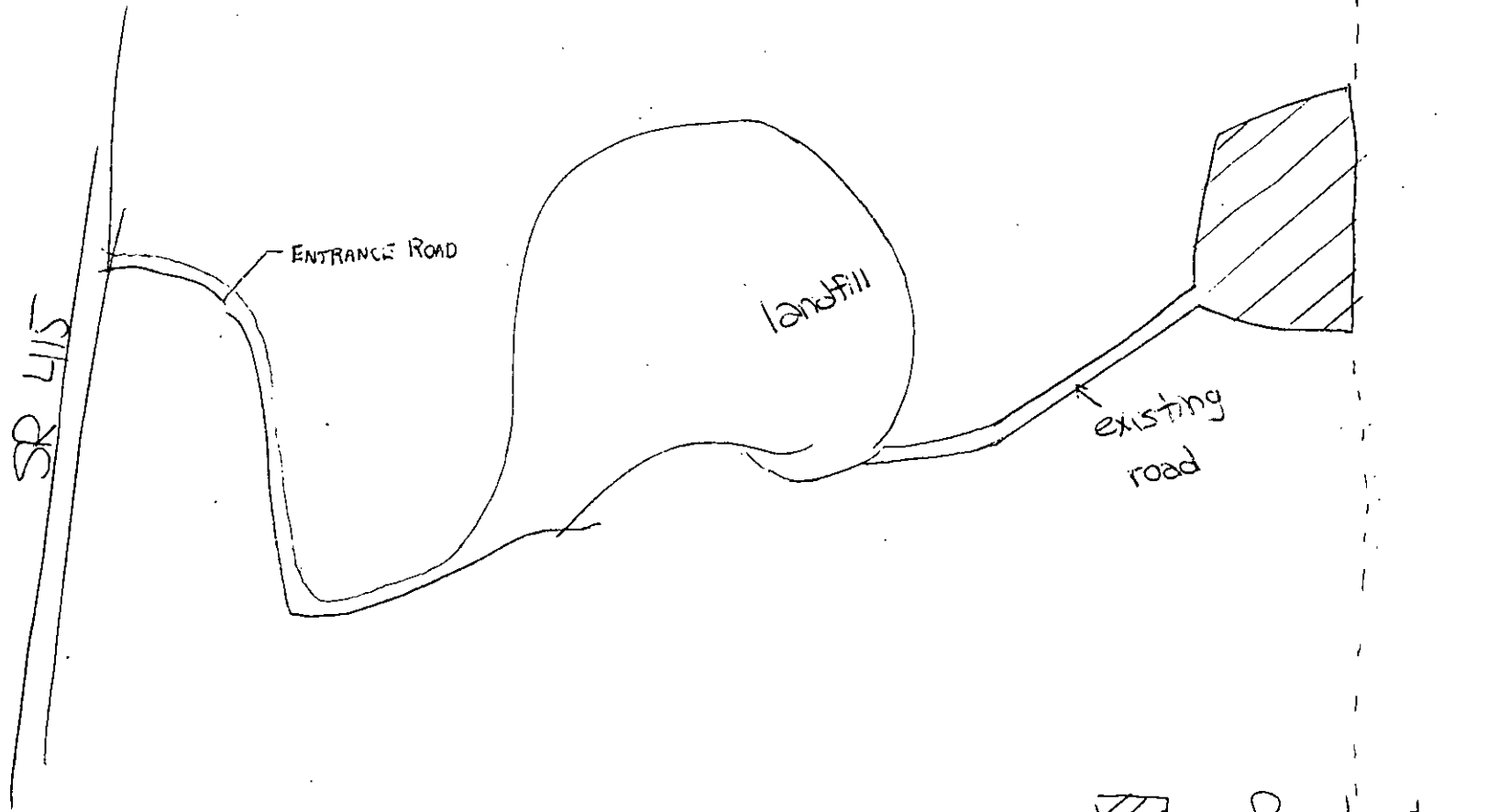

CLERK 2/22/00
Date

cc: Larry Morgan

Samsula Landfill
OGC File

No. 00-0210

exhibit A.



 = Restoration Area
APPROX SIZE: 1.7 ACRES

NOT TO SCALE - DIMENSIONS EXTRACTED FROM AERIAL PHOTO DATED 12/26/95



AAR → S.I.L. → F.L.

Department of Environmental Protection

Received DEP

FEB 1 1 2000

Central Dist. ERP

Jeb Bush
Governor

CERTIFIED LETTER

P 248 041 851

Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

David B. Struhs
Secretary

OWL-AP-00-468

Charles Yancey McDonald, President
Samsula Landfill, Inc.
2455 Tomoka Farms Road
Daytona Beach, Florida 32124

Volusia County - AP
Air Curtain Incinerator and Rock Crusher

Dear Mr. Yancey:

The purpose of this letter is to advise you of possible violations of law for which you may be responsible, and to seek your cooperation in resolving the matter. A Department field inspection and file review of your facility located at 363 SR 44, New Smyrna Beach, Volusia County, Florida indicates that violations of Florida Statutes and Rules may exist at the above described facility. The following was observed:

The Department has determined the rock crusher located at your facility should have Department Air permit for operation.

Section 403.161(1)(b), Florida Statutes, provides that it shall be a violation of this chapter, and it shall be prohibited for any person to fail to obtain any permit required by this chapter or by rule or regulation, or to violate or fail to comply with any rule, regulation, order, permit, or certification adopted or issued by the Department pursuant to its lawful authority.

Section 403.087(1), Florida Statutes, provides that no stationary installation which will reasonably be expected to be a source of air or water pollution shall be operated, maintained, constructed, expanded, or modified without an appropriate and currently valid permit issued by the Department, unless exempted by Department rules.

Rule 62-4.030, Florida Administrative Code, General Prohibition, provides that any stationary installation which will reasonably be expected to be a source of pollution shall not be operated, maintained, constructed, expanded, or modified without the appropriate and valid permit issued by the Department, unless the source is exempted by Department rule.

Rule 62-210.300, F.A.C. Permits Required provides: The owner or operator of any emissions unit which emits or can reasonably be expected to emit any air pollutant shall

"Protect, Conserve and Manage Florida's Environment and Natural Resources"

RECORD OF TELEPHONE COMMUNICATION



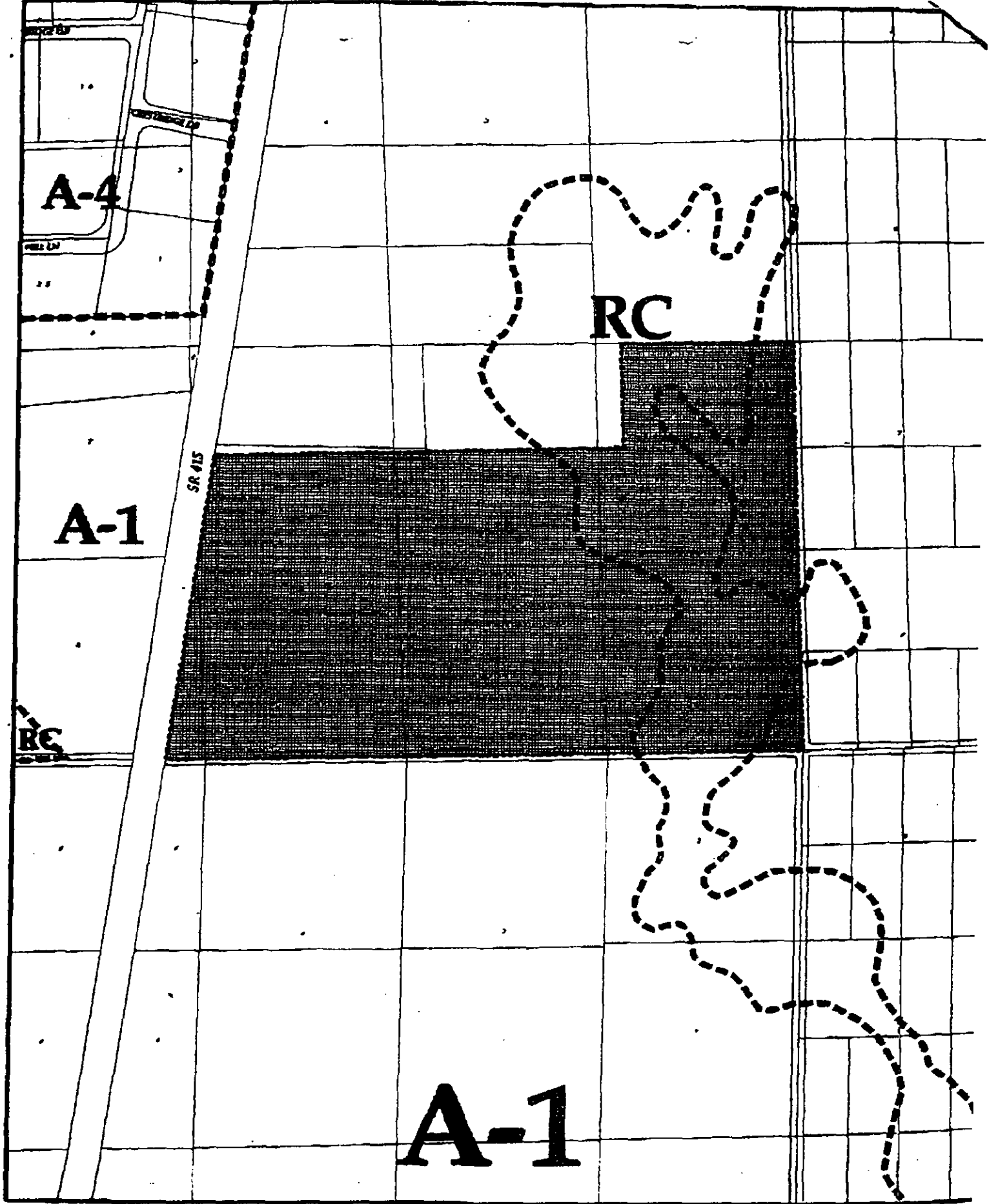
PERSON CALLING: _____ PHONE: _____
PERSON CONTACTED: *Mike Stokes* _____ PHONE: *(904) 423-6769* _____
FILE/CASE NAME/#: *Sansulla Landfill* _____ COUNTY: *Volusia* _____
TIME From: *0950* _____ To: *1005* _____ DATE: *15 Feb 00* _____

SUMMARY : Called Mike to review the language we were writing into the consent order. Mike was concerned with the use of the word "wetland" and wanted to replant with "Slash Pines." I read the consent order language Sue had typed to Mike. The Language included wetland and we had included among others "Pond Pine" as a FACW choice option for him. Mike seemed delighted with the choices and did not object to the use of wetlands as per the conversation to date. I did however remind him that the county could be more constraining and he would have to work the them. I offered help and or assistance in the future. At the close of the conversation Mike seemed pleased and willing to sign the consent order as read to him this date.

ACTION REQUIRED Send the approved language of the consent order (CO) to Caroline Shine (Air Section) for inclusion into the final draft of the CO to be signed on Thursday.

CC: _____

SIGNED: *Mark Bond* DATE: *15 FEB 00*



SPECIAL EXCEPTION

FROM: A-1 & RC
TO: N/A



REQUEST AREA



CASE NUMBER
S-99-095

BEFORE THE STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

ROBERT H. AND ZETTA M BAKER,
WILLIAM D. AND GEORGIA M. TOWNER,
& ARTHUR DREWRY,
Plaintiffs,

v.

YANCEY'S LAND CLEARING, INC.,
SAMSULA LANDFILL, INC., &
STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Defendants.

VERIFIED COMPLAINT

Plaintiffs, Robert H. and Zetta M. Baker ("Bakers"), William D. and Georgia M. Towner ("Townners"), and Arthur Drewry ("Drewry") submit this verified complaint pursuant to Section 403.412 (2)(c), Florida Statutes, and state as follows:

- 1 This is a verified complaint pursuant to Section 403.412 (2)(c), Florida Statutes, alleging that DEP has failed to enforce its rules and regulations enacted to protect the air, water and other natural resources of the State by allowing Yancey's Land Clearing, Inc ("Yancey's") and Samsula Landfill, Inc. ("Samsula") to illegally operate a construction and demolition debris ("C & D") landfill and an associated rock crusher.

Bill Bowen
218-9738
slc

PARTIES

- 3 Defendants Yancey's and Samsula operate a C & D landfill located at 363 S.R. 415,
New Smyrna Beach, FL 32168.
- 4 Plaintiffs, Bakers, are applying as natural persons and citizens of the State and may
maintain this action as provided for in Section 403.412 (2)(a), Florida Statutes
Plaintiffs, Bakers, own and live at property located at 353 S.R. 415, New Smyrna
Beach, FL 32168. The Bakers' property is immediately adjacent to the subject
C & D landfill and consequently they have interests which are adversely affected by
DEP's failure to require Defendants Yancey's and Samsula to operate its landfill and
rock crusher in compliance with the environmental laws of Florida
- 5 Plaintiffs, Towners, are applying as natural persons and citizens of the State and may
maintain this action as provided for in Section 403.412 (2)(a), Florida Statutes.
Plaintiffs, Towners, own and live at property located at 355 S.R. 415, New Smyrna
Beach, FL 32168. The Towners' property is adjacent to the subject C & D landfill
and consequently they have interests which are adversely affected by DEP's failure
to require Defendants Yancey's and Samsula to operate its landfill and rock crusher
in compliance with the environmental laws of Florida.
- 6 Plaintiff, Drewry, is applying as a natural person and citizen of the State and may

maintain this action as provided for in Section 403.412 (2)(a), Florida Statutes. Plaintiff Drewry owns property located at 2885 S.R. 415, New Smyrna Beach, FL 32168. Plaintiff Drewry's property is adjacent to the subject C & D landfill and consequently has interests which are adversely affected by DEP's failure to require Defendants Yancey's and Samsula to operate its landfill and rock crusher in compliance with the environmental laws of Florida.

7. Defendant, DEP, is responsible for the enforcement of environmental statutes in Chapter 403, Florida Statutes, and environmental regulations contained in Florida Administrative Code, Chapter 62

JURISDICTION AND VENUE

8. Pursuant to Section 403.412 (6), Florida Statutes, jurisdiction and venue for the instant action is in Volusia County because that is where the subject C & D landfill and related violations are located.

PRELIMINARY STATEMENT

9. Pursuant to Section 403.412 (2)(a)(1.), Florida Statutes, Plaintiffs, Bakers, Towners, and Drewry, seek to maintain an action for injunctive relief against DEP to compel DEP to enforce the laws of the State of Florida contained in Chapter 403, Florida

Statutes, and environmental regulations promulgated pursuant thereto and contained in Title 62, Florida Administrative Code.

10. Pursuant to Section 403.412 (2)(a)(2.), Florida Statutes, Plaintiff's Bakers, Towners, and Drawry, further seek to maintain an action for injunctive relief against Defendants Yancey's and Samsula to enjoin them from violating laws of the State of Florida contained in Chapter 403, Florida Statutes, and Title 62, Florida Administrative Code.

ENVIRONMENTAL LAWS AND REGULATIONS AT ISSUE

11. Section 403.087, Florida Statutes, prohibits the construction, operation, maintenance, or expansion of any stationary installation that is reasonably expected to be a source of air or water pollution without an appropriate and currently valid Department permit.
12. The subject C & D landfill and the associated rock crusher are "stationary installations" as used in Section 403.087, Florida Statutes, and "installations" as defined by Section 403.031(4), Florida Statutes.
13. Section 403.708 (1)(a), Florida Statutes, prohibits any person from placing or depositing any solid waste in or on the land or waters located within the State except in a manner approved by the Department.

14. Samsula and Yancey's operate the subject C & D landfill pursuant to DEP permit number SO64-275715.
15. The operation of the subject C & D landfill is subject to DEP regulations found in Rule 62.701.730, Florida Administrative Code ("FAC").

ILLEGAL OPERATION OF A PERMITTED LANDFILL

16. Rule 62-701.730 (7), FAC, requires owners and operators of C & D landfills to submit an operating plan describing the operation and maintenance, emergency and contingency plans, and types of equipment that will be used at the C & D landfill. All activities at the C & D landfill are required by this rule to be performed in accordance with the plan as submitted to DEP. A true and correct copy of the plan submitted to DEP as required by this rule is attached hereto and incorporated herein by reference as Exhibit "A." Hereinafter this plan shall be referred to as "operational plan."
17. The operational plan restricts the operation of the subject C & D landfill to the hours of 7:00am-5:30pm, Monday-Saturday.

ILLEGAL OPERATION OUTSIDE OF PERMITTED HOURS

18. Despite the clear restrictions of hours of operation between 7:00 am-5:30 pm imposed by the operational plan and, consequently, Rule 62-701.730(7), FAC, the Defendants, Samsula and Yancey's, have operated and continue to operate by allowing trucks to dump waste as early as 5:30-6:00 in the morning and in operating well past 5:30 pm. This illegal operation of the C & D Landfill substantially affects the Plaintiffs Bakers, Towners, and Drewry because said operation is potentially harmful or injurious to human health and/or welfare and it unreasonably interferes with their enjoyment of life and property.

ILLEGAL FAILURE TO CONTROL ACCESS

19. The operational plan and Rule 62-701.730 (7)(c), FAC, require that access to the subject C & D landfill be restricted to prevent disposal of solid waste other than C & D debris. Despite the clear requirements of the operational plan and Rule 62-701.730 (7)(c), FAC, Defendants, Samsula and Yancey's, have not restricted access to the C & D Landfill by virtue of not locking the gate to said landfill and/or having no gate at all. Plaintiffs, Bakers, Towners, and Drewry, are affected by this illegal operation by Defendants Samsula and Yancey's because of the substantial threat to the environment that exists in the potential for disposal of solid wastes other than that allowed by DEP regulations at the subject C & D landfill

ILLEGAL DISPOSAL OF SOLID WASTE

20. Defendant, Yancey's and Samsula, are only permitted to store and dispose of C & D debris at the subject C&D Landfill. Storage and disposal of any other solid waste is prohibited by Sections 403.707(1) and 403.708(1)(a), Florida Statutes, and Rules 62-701-730 (4)(c), (6) and (7)(d), FAC. Despite these clear prohibitions in Sections 403.707(1) and 403.708(1)(a), Florida Statutes, Rules 62-701-730 (4)(c), (6) and (7)(d), FAC, and the clear limitations of Defendant Yancey's permit, Defendants, Samsula and Yancey's, have been and continue to illegally dispose of solid wastes other than C&D debris. The illegal disposal of prohibited solid wastes includes, but is not limited to, vegetative wastes and yard wastes. Plaintiffs, Bakers, Towners, and Drewry, are affected by these violations of DEP rules and subject permit because of the environmental threats and human health concerns related to the illegal disposal of solid wastes.

ILLEGAL FAILURE TO CONTROL DUST

21. Paragraph 18.0 of page B1-2 of the operational plan requires that Defendant, Yancey's, water the road leading into the subject C & D landfill in order to control dust. Despite the clear requirements prescribed by the operational plan and, consequently, Rule 62-701.730(7), FAC, Defendant, Yancey's, has failed to water the roads to control dust. This failure to water the roads has resulted in the

production of large dust clouds that leave the subject C & D landfill and settle onto Plaintiffs', Bakers, Towners, and Drewry, adjacent property. Defendants, Bakers, Drewry and Towners, are affected by this illegal failure to control dust because of the obvious threats to human health and environment and unreasonable interference with the enjoyment of life and property that these dust clouds cause

ILLEGAL OPERATION OF A ROCK CRUSHER

22. Without a valid permit from DEP for the operation of a rock crusher, Defendants, Samsula and Yancey's, have been and continue to operate a rock crusher at the subject C & D landfill that emits concrete dust and other fugitive emissions and produces high levels of noise pollution and vibrations. Pursuant to Section 403.037, Florida Statutes, and Chapter 62-210, FAC, the operation of a rock crusher of this type requires a DEP permit. Plaintiffs, Bakers, Towners, and Drewry, are affected by this illegal operation of a rock crusher by Defendant, Samsula and Yancey's, because of the substantial threats to the environment and human health and unreasonable interference with the enjoyment of life and property caused by the concrete dust and fugitive emissions from the rock crusher. Also, the high levels of noise pollution and vibrations produced by the rock crusher have been and continue to cause damage to Plaintiff Bakers' home including undermining the foundation and causing cracks in the wall structures of their home

ILLEGAL FILLING OF WETLANDS

23. As evidenced by a May 12, 1999 letter from Volusia County, a true and correct copy of which is attached hereto and incorporated herein by reference as "Exhibit B," Defendant, Samsula, has located an air curtain incinerator ("ACI") and associated fill in designated wetlands without a DEP permit in violation of Chapter 62-312 and other wetlands regulations promulgated pursuant to Chapter 373, Florida Statutes. DEP was mailed a copy of said letter by Volusia County as a carbon copy recipient on May 12, 1999.

ILLEGAL LOCATION AND MAINTENANCE OF INCINERATOR

24. Besides being illegally located in jurisdictional wetlands, the ACI does not have an operational permit as required by DEP construction permit # 1270154-001-AC, a true and correct copy of which is attached hereto and incorporated herein by reference as "Exhibit C." In paragraph 15 of said permit, Defendant, Samsula, was clearly required to submit an application for an operating permit within 6 months of receiving the referenced construction permit. Approximately three months have passed since this deadline and no such permit application has been submitted. The failure to timely submit an application for an operating permit as provided for in the DEP permit is a violation of the permit and Section 403.161, Florida Statutes. Plaintiffs, Bakers, Towners, and Drewry, are affected by this illegal ACI being

maintained by Defendant, Samsula, because of the substantial and potential threats to the environment and human health caused by maintaining an unpermitted air pollution source in illegally filled wetlands.

25. DEP should immediately file for a temporary and permanent injunction requiring Defendant, Samsula, to immediately remove the ACI from the wetlands and forthwith apply for an operating permit after or simultaneous with the removal from the wetlands or, in the alternative, dismantle and remove the ACI from Defendants' property.

HISTORY OF ENVIRONMENTAL VIOLATIONS

26. Besides the violations just described, Defendant, Yancey's, and the officer of said company, Yancey McDonald, have a lengthy history of environmental violations at the subject C & D facility.
27. The first record of an environmental violation at the subject C & D landfill known to Plaintiffs at this time is found in records of the St. Johns River Water Management District in the file of record No. 94-1447, a Consent Order entered against Yancey McDonald. In this record, the St. Johns River Water Management District details how 5 to 7 acres of wetlands at the subject C & D landfill were cleared and excavated under Yancey McDonald's ownership and control in 1992. The record further details how, despite repeated warnings from the St. Johns River Water Management District in 1992 and 1993 that permits were required before further excavation could

continue, Yancey McDonald continued to excavate and clear wetlands without the required permits in 1993 and 1994.

28 The record of DEP reveals a similar pattern of violations by Defendant, Yancey's, including repeat violations after warning from DEP. The record of DEP reveals that on May 14, 1998, Gloria DePradine, a DEP solid waste inspector, discovered that Defendant, Yancey's, was placing land clearing debris in a dewatered pit in violation of DEP rules. The operator/manager was instructed to cease this violation both at the time of the inspection and in a follow-up letter. A follow-up inspection by DEP revealed that the same manager was again putting waste in the dewatered pit despite the clear warnings from DEP to the contrary. These inspections also revealed that Defendant, Yancey's, was performing work that illegally impacted wetlands. DEP entered a Consent Order against Defendant, Yancey's, OGC File No. 98-2097, that details these violations that resulted in the issuance of a civil penalty and the requirement for restoration work. Plaintiffs also have a reasonable basis to believe that the dewatering activity was performed without the required consumptive use permit from the St. Johns Water Management District.

29. Defendant, Yancey's and Samsula, also had and continue to have numerous environmental violations with Volusia County. These include wetlands violations and solid waste violations. Just in the last week, Volusia County Environmental Management has sent Defendant, Yancey's, and Yancey McDonald two separate Notices of Violation, true and correct copies of which are attached hereto and

incorporated herein by reference as "Exhibit D."

- 30 The January 5, 2000 Notice of Violation concerns the operation of the rock crusher in violation of Volusia County's Noise Ordinance.
- 31 The January 5, 2000 Notice of Violation pertains to Defendant, Yancey's, failure to obtain necessary permits for monitoring wells at the subject landfill. The operator for Defendant, Yancey's and Samsula, was warned on May 12, 1999 by Volusia County that permits for the monitoring wells was required. See, Exhibit C. Seven months have passed without Defendants, Yancey's and Samsula, obtaining the required permits from Volusia County
32. These examples show a long and well-established trend of the Defendants, Yancey's and Samsula, operating without the required permits from regulatory agencies even after warnings from said agencies. This negative track record demonstrates the need for DEP to take swift action to secure a temporary and permanent injunction to prevent the continued irreparable harm caused by Defendants', Yancey's and Samsula, illegal environmental acts.
33. DEP has been recently stating publicly that "compliance counts." The Plaintiffs desire that DEP implement this "motto" especially in light of the history of Defendants' long record of environmental violations

WHEREFORE, Plaintiffs, Bakers, Towners and Drewry, respectfully request that DEP immediately file an action seeking a temporary and permanent injunction against Defendants, Yancey's and Samsula, to:

- A. Enjoin Defendants, Yancey's and Samsula, from operating the rock crusher until all appropriate and valid permits are obtained from DEP;
- B. Enjoin Defendants, Yancey's and Samsula, from operating the rock crusher in a manner such that noise, fugitive emissions, or vibrations are produced that cause threats to the environment and human health or an unreasonable interference with Plaintiffs', Bakers, Towners and Drewry, enjoyment of life and property;
- C. Require that Defendants, Yancey's and Samsula, take all necessary steps to prevent fugitive dust and emissions from entering the referenced property of the Plaintiffs, Bakers, Towners and Drewry;
- D. Require that Defendants, Yancey's and Samsula, remove the ACI from the premises;
- E. Enjoin Defendants, Yancey's and Samsula, from conducting further work in wetlands without the required permits;
- F. Enjoin Defendants, Yancey's and Samsula from operating the ACI until all appropriate and valid permits are obtained from DEP and Volusia County; and,
- G. Require that Defendants, Yancey's and Samsula, pay a civil penalty of \$10,000 for each day of each environmental violation that they commit or have committed at the Defendants' property.

Plaintiffs further request that DEP agree to the intervention of Plaintiffs, Bakers, Towners, and

Drewry, as parties to any case filed by DEP against Defendants, Yancey's and Samsula. Should DEP fail to immediately file an action against Defendants, Yancey's and Samsula, then Plaintiffs, Baker, Towners and Drewry, hereby give notice of their intent to proceed with an action against DEP and/or Defendants, Yancey's and Samsula, to obtain such a result themselves pursuant to Section 403 412(2)(a), Florida Statutes.

Dated this 17th day of January, 2000.

We, the undersigned Plaintiffs, Robert H. Baker, Zetta M. Baker, William D. Towner, Georgia M. Towner, and Andrew Drewry have personal knowledge of the facts stated herein and do hereby SWEAR AND AFFIRM that the facts stated herein are true and correct.

Robert H. Baker
Robert H. Baker

Zetta M. Baker
Zetta M. Baker

William D. Towner
William D. Towner

Georgia M. Towner
Georgia M. Towner

Andrew Drewry
Andrew
Arthur

Before me this 17th day of January, 2000, appeared, Robert H. Baker, Zetta M. Baker, William D. Towner, Georgia M. Towner, and Andrew Drewry all of whom are personally known to me or produced identification such as _____, and who swore or affirmed the truth of the foregoing statement and subscribed same in my presence.

Notary Public Lori Williams
Commission Number: CC567086
My Commission expires: 8/31/00



LORI WILLIAMS
My Comm. Exp. 8/31/00
Bonded By Service Ins
No. GC687088
 Personally Known | Other I.D.