



**ENVIRONMENTAL SERVICES**  
4014 NW THIRTEENTH STREET  
GAINESVILLE, FLORIDA 32609  
352/377-5822 • FAX/377-7158

**PROJECT: 519-02-01**

**FAX TRANSMITTAL FORM**

**TO: Quaid Noor, FDEP** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FAX NO.:** 813 744 6458

**FROM: Max Lee, Koogler and Assoc.** \_\_\_\_\_

**DATE:** 11/6/2002      **SENT BY:** M.L.

The text being transmitted consists of 4 page(s) PLUS this one. If you do not receive all of the pages or if there are difficulties with this transmission, please call (352) 377-5822.

**REMARKS:**

Mr. Noor,

Enclosed is a copy of the letter to dismiss the petition regarding the CW Roberts proposed asphalt plant near Wildwood. Please note that 14 days from October 23, 2002 is November 6. I will call Doug Beason to ask if OGC has received an amended petition.

Max Lee

**Tel 352 377 5822, Fax- 352 377 7158, email mlee@kooglerassociates.com**

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STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

RECEIVED  
OCT 24 2002

JANE E. MILLER,

Petitioner,

v.

OGC Case 02-1186

C.W. ROBERTS CONTRACTING, INC.,  
and DEPARTMENT OF ENVIRONMENTAL  
PROTECTION,

Respondents.

ORDER DISMISSING PETITION WITH LEAVE TO AMEND

On August 8, 2002, the Department of Environmental Protection (Department) received a Petition for Administrative Hearing ("Petition") from the Petitioner, Jane E. Miller. The Respondent, C.W. Roberts Contracting, Inc. ("Roberts") has applied to the Department for an air construction permit authorizing the construction of its relocatable asphalt concrete plant in Wildwood, Sumter County, Florida. The Petition challenges the Department's Intent to Issue Air Construction Permit for the relocatable plant (Department File No. 7775176-001-AC).

The Petition alleges that "Approximately 350 people in our neighborhood signed the enclosed petition opposing the proposed asphalt plant." The Petition also alleges, in pertinent part, that "We request that an administrative hearing take place and that the permit not be issued." However, the Petitioner is the only signator to the Petition.

Attached to the Petition are thirty-one separate documents each of which is styled a "Petition Against the Proposed Project Wildwood Asphalt Plant." Each document provides, in pertinent part, that "We the undersigned residents of Sumter County . . . do hereby request that you oppose the granting of the permit for the above listed project." Each document appears to contain the name, address and phone number of local residents who oppose the proposed project. Each document alleges the proposed project is "within 1,000 yards of a residential area that houses both children and elderly whose quality of life could be compromised by emissions of this plant."

The Petitioner is apparently requesting an administrative hearing on behalf of all of those individuals who signed the documents attached to the Petition. However, this request by the Petitioner is problematic because the attached documents do not expressly request an administrative hearing to challenge the Department's proposed agency action. The documents do not expressly authorize the Petitioner to request an administrative hearing on behalf of the signators. Rather, the documents simply provide that "We the undersigned residents of Sumter County . . . do hereby request that you oppose the granting of the permit for the above listed project." Although it is clear the signators to the documents expressed generalized opposition to the project, the Department cannot simply assume that the signators intended to request an administrative hearing to challenge the Department's proposed agency action. The Department also cannot assume that the signators authorized the Petitioner to act on their behalf in requesting an administrative proceeding.

The Department can only assume that the Petitioner is acting on her own behalf in requesting an administrative proceeding. However, even assuming the Petitioner is acting on her own behalf, the Petition does not comply with Rule 28-106.201(2), Florida Administrative Code, or the notice provided to Petitioner, which explain what must be included in a petition for an administrative proceeding. Therefore, the Petition does not contain sufficient information to determine whether a formal administrative proceeding should be held. Specifically, the request does not include:

- (a) The telephone number of the Petitioner;
- (b) An explanation of how the Petitioner's substantial interests are or will be affected by the Department's decision to issue an air construction permit for the relocatable asphalt concrete plant; and
- (c) A concise statement of the ultimate facts alleged, including a statement of the specific facts that the Petitioner contends warrant reversal or modification of the Department's proposed decision to issue the air operating permit;

Without this information, the Petition must be dismissed as required by Rule 28-106.201(4), Florida Administrative Code.

IT IS THEREFORE ORDERED:

A. The petition for hearing is DISMISSED, without prejudice to amend the petition to provide the information listed above.

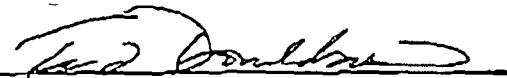
B. The amended petition must be filed (received) in the Office of General Counsel, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within fourteen (14) days after the date set forth in the certificate of service on the last page of this order.

C. 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 the date this order is filed with the clerk of the Department.

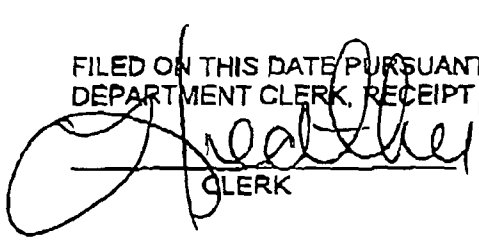
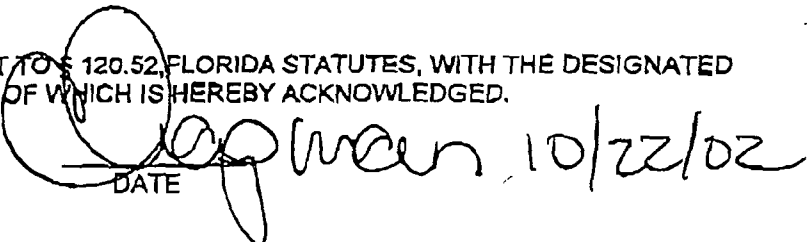
DONE AND ORDERED this 21 day of October, 2002, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

  
TERI L. DONALDSON  
General Counsel

3900 Commonwealth Boulevard - MS 35  
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52, FLORIDA STATUTES, WITH THE DESIGNATED DEPARTMENT CLERK, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.

 CLERK  
 DATE 10/22/02

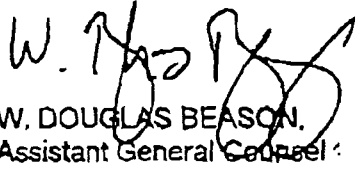
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U. S. Mail this 23<sup>rd</sup> day of October, 2002, to:

Jane E. Miller  
4833 C.R. 114  
Wildwood, FL 34785

Mr. Charles W. Roberts  
C.W. ROBERTS CONTRACTING  
Hwy. 20 East  
Hosford, FL 32334

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



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