

COPY AL

RECEIVED

JUN 09 1997

DIVISION OF AIR RESOURCES MANAGEMENT

XC: CLAIR
Mike He
6/9

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PASCO COUNTY BOARD OF
COUNTY COMMISSIONERS, and
OGDEN MARTIN SYSTEMS OF
PASCO, INC.,

Petitioners,

vs.

OGC CASE NO. 97-0507

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Respondent.

RECEIVED

JUN 09 1997

BUREAU OF AIR REGULATION

ORDER ESTABLISHING INFORMAL PROCEEDING

On March 13, 1997, the Department of Environmental Protection (the Department) received a Petition for Informal Administrative Hearing challenging a letter from the Department's Director of the Division of Air Resources Management dated February 6, 1997. See Exhibit 1. This letter was written by the Division Director in response to a request by the Petitioners concerning the interpretation of the term "municipal solid waste" as that term is utilized in the Prevention of Significant Deterioration ("PSD") permit for the Pasco County Resource Recovery Facility (PSD-FL-127).

Under Section 120.57(2), F.S. and Rule 28-5.501 through 28-5.503, F.A.C., I establish the following procedure for an informal proceeding to consider and determine the pertinent issues of law raised by the Petition for Informal Administrative Hearing.

1. I appoint Pat Comer, Assistant General Counsel, as the Hearing Officer in this proceeding. The Hearing Officer's mailing address is Department of Environmental Protection, Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

2. An informal hearing will be scheduled by the Hearing Officer after consulting with the parties. The hearing will be conducted at a time and place to be announced. The purpose of the informal hearing is to allow the parties the opportunity to present written and oral evidence concerning the issues raised in the Petition for Informal Administrative Hearing.

3. At the informal hearing, the Hearing Officer may:

- (a) administer oaths and affirmations;
- (b) rule upon offers of proof and receive relevant evidence;
- (c) regulate the course of the hearing;
- (d) enter any order to carry out the purpose of Chapter 120, F.S.; and
- (e) make and receive offers of settlement, stipulation and adjustment.

4. The parties shall arrange to have all witnesses and evidence present at the time and place of hearing. Any party to this proceeding has the right, at his, her or its own expense, to be represented, and advised by counsel. A party's failure to appear at the scheduled hearing may be grounds for the entry of an order of dismissal.

5. The Petitioners shall file and serve on counsel of record a written memorandum of law in support of its position no later than twenty (20) days before the scheduled hearing. The memorandum of law shall contain all argument in support of the Petitioner's position. Failure to file the memorandum of law may be grounds for entry of an order of dismissal.

6. The Department may file written responses to the memorandum of law submitted by the Petitioner no later than ten days after Petitioner's memorandum is filed with the Department.

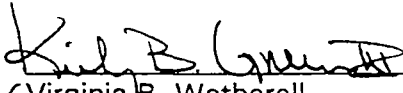
7. A copy of any statement, pleading or other paper filed with the Hearing Officer by any party to this proceeding shall be served on each party. Service shall be made upon the party or his/her representative by delivering a copy or by mailing it to the last known address.

8. The Hearing Officer shall issue a Final Order in compliance with the requirements of Section 120.569, F.S.

9. If during the course of this informal proceeding a party raises an issue which involves a disputed issue of material fact the Department will forward this matter to the Division of Administrative Hearings for the assignment of an administrative law judge to conduct a formal hearing.

DONE and ORDERED this 29th day of May, 1997 in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

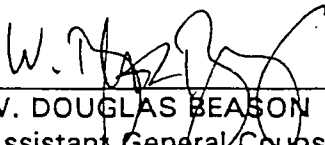

for Virginia B. Wetherell
Secretary

Douglas Building
3900 Commonwealth Boulevard
Tallahassee, FL 32399-3000
Telephone: (904) 488-4805

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was mailed on this 5th day of June ~~May~~ 1997, to:

Mary F. Smallwood, Esq.
P.O. Box 10888
Tallahassee, Florida 32302



W. DOUGLAS BEASON
Assistant General Counsel
Florida Bar No. 279239

Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, FL 32399-3000
Telephone: (904) 488-9730

RECEIVED

MAR 13 1997

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Dept. of Environmental Protection
Office of General Counsel

PASCO COUNTY, BOARD OF
COUNTY COMMISSIONERS, and
OGDEN MARTIN SYSTEMS OF
PASCO, INC.

Petitioners,

v.

Case No. _____

DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Respondent.

PETITION FOR INFORMAL ADMINISTRATIVE HEARING

Pursuant to Section 120.57(2), Florida Statutes, and Rule 62-103.55, Florida Administrative

Code, Petitioners, Pasco County, Board of County Commissioners and Ogden Martin Systems of Pasco, Inc. (hereafter the "Petitioners"), file this Petition for Informal Administrative Hearing and state:

1. Petitioners names, addresses and telephone numbers are as follows:

Pasco County, Board of County Commissioners
7530 Little Road
New Port Richey, Florida 34654
(813) 847-8100

Ogden Martin Systems of Pasco, Inc.
14230 Hays Road
Spring Hill, Florida 34610
(813) 856-2917

2. Petitioner Pasco County, Board of County Commissioners, (hereafter the "County") owns and operates the Pasco County Resource Recovery Facility (Units 1, 2, and 3) (hereafter the "Facility") located in Pasco County, Florida, under the terms of Department Permit No.: PSD-FL-127 and the Conditions of Certification issued under the Power Plant Siting Act in Case No.: PA 87-23. Petitioner Ogden Martin Systems of Pasco, Inc. (hereafter "Ogden") operates the Facility on behalf of the County under the terms of a service agreement with the County.

3. By letter dated December 30, 1996, to Howard Rhodes, Director, Division of Air Resources Management, Department of Environmental Protection (hereafter "DEP"), a copy of which is attached hereto as Exhibit I, Petitioners requested an interpretation of the permit and conditions of certification that would allow the Facility to burn "supplemental waste" as the term is described in that letter.

4. On February 24, 1997, Petitioners' counsel received notice by certified mail, return receipt requested, a copy of which is attached hereto as Exhibit II, of DEP's determination construing the language of the permit and certain regulations of the U.S. Environmental Protection Agency to prohibit the burning of supplemental waste at the Facility without a modification of the permit and/or conditions of certification. That correspondence states that "The Subpart E definition of 'solid waste' would . . . be the controlling reference for interpreting the above permit conditions."

5. It is the Petitioners' position that the terms of the permit and conditions of certification presently allow the use of supplemental waste as fuel at the Facility and that there are no statutory or regulatory prohibitions to the burning of supplemental fuel at the Facility, especially in light of the DEP's clarification that the definition in Subpart E controls the interpretation of what waste streams are acceptable. As discussed below, the permit provides that the Facility shall be

fueled by "municipal solid waste" and the conditions of certification provide that the Facility shall be fueled by "refuse."

6. Permit No. PSD-FL-127 provides, in part:

SPECIFIC CONDITIONS:

1.e. The [Facility] shall be fueled with *municipal solid waste* only. Other wastes shall not be burned without specific prior written approval of [DEP].

(Emphasis added).

7. The Conditions of Certification in Case No. PA 87-23 provide, in part:

B. The [Facility] shall utilize *refuse such as garbage and trash* (as defined in Chapter 17-7, FAC) as its fuel. Use of alternative fuels except for distillate fuel oil or natural gas in start-up burners would necessitate modification of these Conditions of Certification. Refuse as fuel shall not include "hazardous waste" as defined in Chapter 17-30, FAC.

(Emphasis added).

-
8. 40 CFR Part 60, Subpart E defines "solid waste" as follows:

refuse, more than 50 percent of which is municipal type waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustibles, and noncombustible materials such as glass and rock.

(Emphasis added).

9. There are no disputed issues of fact relative to this matter. The relevant facts are those set forth in the permit, conditions of certification, the application to DEP to construct the Facility, Exhibit I, and other materials submitted to DEP at the time of the meeting between Petitioners and DEP on November 25, 1996. Those other materials include: (1) Ogden Waste Treatment Services - An Overview and (2) Material Characterization Forms And Instructions For Waste Generators.

10. The application for construction of the Facility identified the fuel stream as "municipal solid waste," specifically including residential wastes, commercial wastes, institutional wastes, and industrial wastes. These are the same materials, although described using different terms, as the "municipal type waste" referred to in Subpart E.

11. Applicable Law:

a. The DEP statutes and regulations in effect at the time of issuance of the permit and conditions of certification, including, but not limited to Chapter 403, Florida Statutes, and Chapters 17-4 and 17-7, Florida Administrative Code, govern the construction of the relevant terms used in the permit and conditions of certification. Those statutes and regulations did not define the terms "municipal solid waste" or "refuse."

b. As stated in the Department's correspondence dated February 6, 1997, 40 CFR Part 60, Subpart E applies to the Facility. Those provisions do not define the terms "municipal solid waste" or "refuse."

WHEREFORE, Petitioners respectfully request that the Department:

1. Appoint a hearing officer to take argument in this matter;
2. Enter an order holding that Permit No. PSD-FL-127 and Conditions of Certification Case No. PA 87-23 authorize the permittee to utilize supplemental waste as a fuel at the Facility;
3. Grant such other relief as may be appropriate.

Respectfully submitted, this 13th day of March, 1997.

RUDEN, McCLOSKEY, SMITH,
SCHUSTER & RUSSELL, P.A.

BY: Mary F. Smallwood for

Mary F. Smallwood (FBN 242516)

215 South Monroe St., Suite 815

Tallahassee, FL 32301

(904) 681-9027

Attorney for Petitioners

Pasco County, Board of County

Commissioners, and Ogden Martin

Systems of Pasco, Inc.

CERTIFICATE OF SERVICE

The original and one copy of this Petition for Informal Hearing have been filed with the Agency Clerk, Office of General Counsel, Department of Environmental Protection, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000 by hand delivery this 13th day of March, 1997.

Mary F. Smallwood for
MARY F. SMALLWOOD

RUDEN
MCCLOSKY
SMITH
SCHUSTER &
RUSSELL, P.A.
ATTORNEYS AT LAW

215 SOUTH MONROE STREET
SUITE 815
TALLAHASSEE, FLORIDA 32301

POST OFFICE BOX 10888
TALLAHASSEE, FLORIDA 32302

TELEPHONE: (904) 681-9027
FAX: (904) 224-2032

E-MAIL: MFS@RUDEN.COM

December 30, 1996

VIA HAND DELIVERY

Howard Rhodes, Director
Division of Air Resources Management
Department of Environmental Protection
Suite 24, Magnolia Courtyard
Tallahassee, FL 32301

Re: Pasco County Resource Recovery Facility

Dear Howard:

As we discussed at our meeting of November 25, 1996, please accept this letter as our request ~~for an interpretation from the Department of Environmental Protection (DEP) of the conditions of~~ the power plant certification and the Prevention of Significant Deterioration (PSD) permit for the Pasco County Resource Recovery Facility (the "Facility") related to the type of fuel that may be burned at the Facility.

Ogden Corporation (Ogden), through its subsidiary Ogden Waste Treatment Services USA, Inc. (OWTS), has long had a "supplemental waste" program at many of the waste to energy facilities around the country. We have previously provided you with copies of the company's internal procedures for handling such wastes and describing the types of materials that would fall within the supplemental waste program in the form of two documents: (1) Ogden Waste Treatment Services: An Overview and (2) Material Characterization Forms and Instructions for Waste Generators. The Overview includes a comprehensive listing of the types of waste streams that are commonly part of the supplemental waste program. We believe these documents, together, should give you a good perspective on the precautions OWTS and the individual facilities take in managing supplemental wastes.

In July, 1996, the Pasco County Commission entered into a service agreement modification with Ogden Martin Systems of Pasco, Inc. (Ogden Martin). This agreement contains the commercial arrangement between the County and Ogden Martin under which the Facility would begin participating in Ogden's supplemental waste program. This agreement more specifically identifies the types of supplemental wastes that the County will allow to be processed at the Pasco Facility.

The Southwest District office of DEP has suggested that Ogden Martin and the County seek an interpretation of the relevant permit conditions. We believe that a review of those provisions will confirm that the existing conditions of the power plant certification and PSD permit for the Facility

have always authorized the County to process supplemental waste at the Facility. The County has not previously chosen to exercise this authority granted to it.

At our November 25 meeting, we referred you to the conditions of the PSD permit (Paragraph 3.3.1) which provided that the Facility would burn "municipal solid waste," defined in the permit as all solid waste except hazardous and pathogenic wastes and sludges. The waste stream was identified in the permit application as (1) residential waste, (2) commercial waste, (3) institutional waste, and (4) industrial waste. There is no definition of "municipal solid waste" in DEP's present regulations or in the regulations that were in effect at the time of permit issuance. However, the permit, itself, in conjunction with the application, clearly defined the type of materials that could be burned at the Facility. As you can see from the OWTS Overview, the materials included in the company's supplemental waste program are the types wastes typically generated by commercial and industrial enterprises.

Since the meeting, we have further reviewed the power plant certification conditions authorizing the construction of a resource recovery facility in Pasco County, in particular, Section XIV.B. related to fuel. The conditions of certification provide that the Facility "shall utilize refuse such as garbage and trash (as defined in Chapter 17-7, FAC) as its fuel. . . . Refuse shall not include 'hazardous waste' as defined in Chapter 17-30, FAC." This construction suggests that the meaning of "refuse" is broader than, not limited to, "garbage" and "trash." In fact, the only type of waste specifically precluded from use is hazardous waste.

We have reviewed the Department's regulations in effect in 1988 when the power plant certification was issued for this facility. The term "refuse" was not defined in Chapter 17-7 at that time, nor is it in the present regulations. However, refuse is defined by most dictionaries to mean virtually any discarded materials. The terms "garbage" and "trash" were defined in those rules as follows

"Garbage" means all kitchen and table food waste, animal or vegetative waste that is attendant with or results from the storage, preparation, cooking or handling of food materials.

"Trash" means combinations of yard trash and construction and demolition debris along with other debris such as paper, cardboard, cloth, glass, street sweepings, vehicle tires and other like matter. (Emphasis added.)

While garbage and trash are two examples of the type of fuel that may be used, they are clearly not exclusive definitions. It is probably more helpful to consider the two other definitions in the 1988 regulations with respect to the issue of the type of materials to be burned at the facility. In particular, is the definition of "resource recovery and management facility" which is the specific facility for which the certification was issued. That term was defined as:

any solid waste disposal area, volume reduction plant, or other facility the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste.

In turn, "solid waste" was defined to include "garbage, rubbish, refuse, or other discarded material . . . resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations."

It is clear from a review of the full permit and certification conditions that the original approvals for the Facility anticipated the use of a broad range of fuels. In fact, the only materials which the Facility was prohibited from using were hazardous or infectious wastes. As the use of supplemental waste is not prohibited by rule and the materials are within the definitions of "municipal solid waste" and "refuse," we would appreciate your written concurrence that the Facility can accept supplemental waste under the existing regulatory authority. If you have any questions about the proposal that were not addressed in our meeting or this correspondence, please feel free to contact me.

Sincerely,

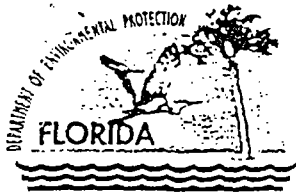
RUDEN, McCLOSKEY, SMITH,
SCHUSTER & RUSSELL, P.A.

Mary F. Smallwood

Mary F. Smallwood

MFS/db

cc: Clair Fancy
Richard D. Garrity
Joe Threshler
Kurt Rieke
Jason Gorrie
Gary Thein



Department of Environmental Protection

Lawton Chiles
Governor

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

Virginia B. Wetherell
Secretary

February 6, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Mary F. Smallwood
Ruden, McClosky, Smith, Schuster & Russell, P.A.
Attorneys at Law
P.O. Box 10888
Tallahassee, Florida 32302

RE: Pasco County Resource Recovery Facility - PSD-FL-127

Dear Ms. Smallwood:

This is in reply to your December 30, 1996 letter requesting an interpretation of the term "municipal solid waste" appearing in Specific Conditions 1.a. and 1.e. of the subject permit.

The permit was issued prior to the effective date of Subpart Ea which applies specifically to municipal waste incinerators rather than the generic "incinerators" regulated under Subpart E. The Subpart E definition of "solid waste" would therefore be the controlling reference for interpreting the above permit conditions. Even though the Subpart E definition of "solid waste" is broader in that it encompasses waste other than municipal type waste, it contains a description of municipal type waste within the solid waste definition as follows: "...municipal type waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustibles...". Since the permit authorizes municipal solid waste only, it is clear that the intent was to limit the fuel to the categories listed under that internal definition, with other wastes requiring prior written approval. It is our opinion that this interpretation should supersede all other references in the Site Certification conditions as to what constitutes "refuse", "garbage", or "trash".

The Department believes that approving supplemental fuels as "other combustibles" on a case by case basis through permit revisions is still the best approach and is consistent with established BACT procedures. Where necessary, the Subpart Ea restrictions on industrial and other wastes not listed as municipal solid waste may provide guidance in making these case by case determinations.

If there are questions regarding the above, please contact Clair Fancy or John Reynolds at (904)488-1344.

Sincerely,

Howard L. Rhodes, Director
Division of Air Resources Management

HLR/jr

c: R. Garrity, SWD
B. Beals, EPA Region IV

Exhibit II

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