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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE:)
ADMINISTRATIVE)

Application for)
Power Plant Site Certification)
of Pasco County Solid Waste)
Resource Recovery Facility)

CASE NO. 87-5337
(Site Certification Hearing)

PASCO COUNTY'S PROPOSED RECOMMENDED ORDER

Pasco County, by its undersigned counsel, respectfully submits the following proposed recommended order to the Hearing Officer for her consideration. This proposed recommended order contains findings of fact and conclusions of law concerning the issues that were addressed at the site certification hearing conducted on April 11 and 12, 1988 in New Port Richey, Florida. Citations to the transcript of the site certification hearing shall be shown as "T __," with the appropriate page number in the blank space. Citations to Pasco County's exhibits shall be shown as "Ex. __ at __," with the appropriate exhibit and page numbers, respectively, in the blank spaces.

Respectfully submitted this 20th day of May, 1988

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TABLE OF CONTENTS

	Page
Preface to Pasco County's Proposed Order.....	3
APPEARANCES.....	3
INTRODUCTION.....	4
FINDINGS OF FACT.....	6
Project History.....	6
The Site and Surrounding Areas.....	7
Project Description.....	9
Project Benefits.....	13
Geotechnical Investigation and Sinkholes.....	15
Air Quality Issues and PSD Permit.....	19
Intervenor's Concerns About Air Quality.....	24
Alternatives.....	31
Agency Reviews and Comments.....	31
Public Comments.....	35
Notice.....	35
CONCLUSIONS OF LAW.....	36
RECOMMENDATION.....	39

Preface to Pasco County's Proposed Order

Pursuant to notice, a formal administrative hearing was held before Diane D. Tremor, Hearing Officer with the Division of Administrative Hearings, on April 11 and 12, 1988 in New Port Richey, Pasco County, Florida. The issue for determination at the hearing was whether Pasco County's proposed resource recovery facility, landfill/ashfill, and associated facilities should be approved by the Governor and Cabinet, sitting as the Siting Board, pursuant to the Florida Electrical Power Plant Siting Act, Sections 403.501 et seq., Florida Statutes (1987).

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INTRODUCTION

On November 17, 1987, Pasco County filed an application for approval of a resource recovery facility, landfill/ashfill, and associated facilities ("the Project") pursuant to the Florida Electrical Power Plant Siting Act (Act), Sections 403.501 et seq., Florida Statutes (1987). The Act requires that a land use hearing and a site certification hearing be held to evaluate the County's application. The land use hearing was conducted on February 16, 1988. The land use hearing addressed only the issue of whether the proposed Site is consistent and in compliance with existing applicable land use plans and zoning ordinances. On March 25, 1988, the undersigned Hearing Officer entered a Recommended Order finding that the use of the Site chosen by Pasco County for the proposed Project is consistent and in compliance with the applicable land use regulations.

On April 11 and 12, 1988, a site certification hearing was conducted to evaluate the other aspects of the County's proposed Project. The site certification hearing was a formal administrative proceeding conducted in conformance with the requirements of Section 120.57(1), Florida Statutes. In support of its application, Pasco County presented the testimony of six witnesses: (1) Robert Hauser, Jr., a consulting engineer and expert concerning solid waste disposal, including the use of landfills and resource recovery facilities; (2) Donald Elias, an expert concerning air pollution, including the air emissions from resource recovery facilities; (3) Walter R. Niessen, an expert concerning resource recovery facilities, including dioxin

emissions from resource recovery facilities; (4) Clair Fancy, the Deputy Bureau Chief of the DER Bureau of Air Quality Management, and an expert in the area of air pollution and the regulation of air pollution; (5) Hamilton S. Oven, Jr., the Administrator of the DER Siting Coordination Section; and (6) Suheil "Jim" Jammal, a geotechnical engineer and an expert concerning geotechnical investigations, including investigations of sinkholes. All of the expert witnesses were accepted as experts without objection. Pasco County also introduced its exhibits 1-19, 22 A-E, and 24 into evidence without objection. T 28, 47, 48, 107, 157, 158, 197, 329, 331, 334, 350.

The Florida Department of Environmental Regulation (DER), the Florida Department of Community Affairs (DCA), the Florida Public Service Commission (PSC), and the Southwest Florida Water Management District (SWFWMD) are parties to this proceeding pursuant to Section 403.508, Florida Statutes. DER called one witness, Clair Fancy, and introduced DER exhibits 1-4 into evidence without objection. T 213. The DCA and SWFWMD did not call any witnesses or proffer any exhibits at the site certification hearing. The PSC did not attend or otherwise participate at the site certification hearing.

On March 25, 1988, the Shady Hills Park and Civic Association, Inc. (Intervenor), filed a motion to intervene in this proceeding pursuant to Section 403.508(4)(b), Florida Statutes. The motion was granted during a prehearing conference conducted by telephone conference call on April 1, 1988. Intervenor participated at the site certification hearing and

called four witnesses: (1) Dwight Adams, an expert concerning physics; (2) John Parker, an expert concerning geology; (3) John Gallagher, the Pasco County Administrator; and (4) Edward Kooper, an expert concerning foundries. Intervenor also introduced the deposition testimony of Gardner Strasser into evidence without objection.

On April 11, 1988, after the presentation of part of the County's case-in-chief, non-party members of the general public were invited to comment at a public hearing which was held in the evening at the Pasco-Hernando Community College. Thirty-nine public witnesses testified during the evening session and two other witnesses were allowed to testify at other times during the proceeding. Three public exhibits were proffered and received, subject to the County's hearsay objections.

After the hearing, Pasco County and the Intervenor submitted proposed findings of fact and conclusions of law. The rulings on the proposed findings of fact are set forth in Appendix A, which is attached hereto.

FINDINGS OF FACT

Upon consideration of the oral and documentary evidence presented at the site certification hearing, the following relevant facts are found:

Project History

1. Pasco County has been investigating alternative methods of solid waste disposal for nearly seven years. Ex. 2 at ES-1 and 3-1; T 477, 479, 485, 486. The County's studies indicated

that a mass burn resource recovery (refuse to energy) system is the most prudent long-term method of solid waste disposal for Pasco County. Ex. 2 at ES-1, 1-1, 3-3; T 60, 88-91, 486. In 1984, the citizens of Pasco County overwhelmingly approved a "straw ballot" proposal providing for the establishment of a resource recovery system financed with non-tax supported bonds in lieu of utilizing sanitary landfills as a primary disposal method. Ex. 2 at 3-1. The Board of County Commissioners thereafter hired a national firm of consulting engineers (Camp, Dresser, & McKee or CDM) to identify an appropriate site for a landfill and resource recovery facility. T 478. CDM conducted an extensive analysis of potential sites and ultimately recommended a 751 acre area on Hays Road in western Pasco County. Ex. 2 at 3-2, 8-1, 8-2. CDM also conducted a feasibility study that evaluated resource recovery, recycling, and other technologies. T 60, 61.

2. The State of Florida has encouraged the use of resource recovery systems instead of landfills. Ex. 2 at 1-2; Ex. 10 at 3, 4, 18; see Chapter 84-198, Laws of Florida. In 1987, the Legislature adopted a special act (Chapter 87-441, Laws of Florida) which authorized a solid waste disposal and resource recovery system within Pasco County and gave the County exclusive control over the collection and disposal of solid waste generated or bought within the area affected by the special act. Ex. 1.

The Site and Surrounding Areas

3. The County's 751 acre parcel of land ("the Site") is located in an unincorporated portion of northwest Pasco County.

T 35, 36; Ex. 2 at 2-1. It is approximately 2½ miles north of Highway 52 and 4 miles west of Route 41. Ex. 2 at Figure 2-1. The Site is accessible by Hays Road, which forms part of its southern and western boundaries. T 36. The Site is bisected by a Florida Power Corporation (FPC) electric transmission line corridor which runs in a north/south direction. T 37.

4. The Site is undeveloped and primarily consists of unimproved grass lands and planted pine trees. T 37; Ex. 2 at 2-1. There are several isolated ponds west of the FPC transmission line. The Site has been used as a tree farm, but substantial portions of the Site were cleared within the past few years. T 37; Ex. 2 at 2-54.

5. The Site has been extensively disturbed and its value as wildlife habitat has been greatly reduced. Ex. 2 at 2-63. The Site has been inspected several times for the presence of threatened or endangered plant or animal species. T 42, 78, 79. CDM's biologist spent more than 50 hours at the Site looking for evidence of such species. T 78, 79; Ex. 2 at 2-56. A representative of the Florida Game and Fresh Water Fish Commission also inspected the Site. T 78, 79. Although threatened and endangered species may be present in the areas near the Site, no evidence was found to indicate that such species are present on the Site. T 42; Ex. 10 at 31. No competent substantial evidence was proffered at the certification hearing to prove that such species are present.

6. The Site does provide habitat for a species of special concern, the gopher tortoise. Ex. 2 at 4-13. The Florida Game

and Fresh Water Fish Commission recommends that the tortoises be relocated to the southwest corner of the Site, which will be designated as a preserve for the gopher tortoises. T 42, 43, 78, 79; Ex. 10 at 26.

7. The areas around the Site consist primarily of vacant grass lands, small farms and low density residential areas. Ex. 2 at 2-1, 2-15. There is an existing recreational park near the north boundary of the Site. Ex. 2 at Figure 2-5. Existing and proposed schools and parks are located within five miles of the Site. Ex. 2 at 2-31. Relatively few people live within one mile of the proposed resource recovery building and only about 18,000 people live within five miles of the Site. T 49.

Project Description

8. The County's Project will include a mass burn resource recovery (refuse-to-energy) facility, a landfill/ashfill, four stormwater retention ponds, an access road, and two wells. Ex. 2 at Figure 2-6, and pages 3-3 through 3-7. All of these facilities, except the two wells and one retention pond, will be located east of the FPC transmission line corridor. Ex. 2 at Figure 2-6. The resource recovery facility will be located on the southeastern portion of the Site and it will be approximately 4,600 feet from the Site's northern boundary. T 38. The resource recovery facility will be approximately 2,400 feet from the nearest home, which is located on Hays Road. T 38. There will be at least 700 feet of buffer between the ashfill and the northern boundary of the Site. T 38.

9. The County's resource recovery system will convert solid

waste into electrical power through a combustion process that utilizes a mass burn technology. T 34, 35. There will not be any significant preprocessing of refuse at the facility prior to combustion. Ex. 2 at 3-4. The incineration process will heat water and produce steam that will turn a turbine generator and produce electricity. The ash from the combustion process will be landfilled. T 34, 35. Ferrous metals will be recovered and recycled. T 34, 35.

10. The County is seeking approval of an ultimate site generating capacity of 29 megawatts and an ultimate disposal capacity of 1200 tons per day. T 44. The County initially intended to build a 900 ton per day (tpd) facility consisting of three 300 tpd combustion units. Prior to the site certification hearing, the County amended its application and proposed an initial facility with three 350 tpd units and a combined capacity of 1,050 tpd. T 44. Although the County's amended application increased the size of the initial facility, the County did not increase the ultimate site capacity of 1,200 tpd and 29 megawatts.

11. All of the County's environmental analyses for the Project evaluated the impacts of a facility with an ultimate site capacity of 1,200 tpd. T 44, 45, 117; Ex. 10 at 35. The undisputed testimony demonstrated that the accuracy of those analyses was not affected by the County's plan to increase the initial facility size from 900 to 1,050 tpd. T 44, 45, 117.

12. During normal operations of the resource recovery facility, all of the facility's cooling water will be treated

effluent drawn from the Hudson subregional wastewater treatment plant. T 43; Ex. 2 at 3-18. The effluent will receive secondary treatment, chlorination, and filtration. T 76, 77, 100, 101. Treated effluent is routinely used in the cooling towers at resource recovery facilities in Florida and the United States. T 86. This practice is encouraged by DER and EPA because it conserves potable water. T 86.

13. All of the wastewater created at the resource recovery facility will receive pretreatment, if necessary, and then it will be pumped by pipeline to the Hudson plant for treatment and disposal. T 43, 44, 77, 87, 96, 97; Ex. 2 at 3-18, 5-9, 5-17. None of the process water from the resource recovery facility will be discharged directly to surface or groundwaters. T 43, 44.

14. The County will use a small on-site well to supply potable water to the resource recovery facility. T 43. In the event of an emergency, the County will use a second on-site well to provide an alternative source of cooling water. T 43.

15. The landfill/ashfill has been designed to meet or exceed all of the applicable environmental regulations, including guidelines that have been proposed by the United States Environmental Protection Agency. T 40. The landfill/ashfill will utilize a state-of-the-art design that includes two separate synthetic liners, two leachate collection systems, and sixteen separate cells. T 40; Ex. 2 at 3-27. In accordance with DER and EPA recommendations, the landfill/ashfill will be operated as a monofill--i.e., unprocessed refuse will be placed in cells where

it can be kept apart from the incinerator ash. T 40, 501. It will be built over a period of 30 years or more. Ex. 2 at 3-27.

16. The two liner systems will provide two layers of protection for groundwater resources beneath the Site. T 505, 506; Ex. 2 at Figure 3-7. The liner systems have been designed to last for an indefinite period of time. T 73, 93, 503, 505. The manufacturers of the liner material will provide a two or three year warranty for materials, workmanship, and installation. T 73, 504. The liner material, however, has been carefully selected and it will be resistant to all of the types of material that might come in contact with it. T 73, 504, 505, 510, 511.

17. The two leachate collection systems will collect and remove any fluids that drain through the refuse. T 502, 505, 506. When the landfill is closed, each cell will be capped so that rainfall cannot enter the cell. T 506, 507. With time, the production of leachate will be reduced and ultimately eliminated. T 506, 507.

18. Hazardous wastes will not be allowed at the landfill or resource recovery facility. T 55, 56; Ex. 2 at 5-19. Vehicles entering the landfill or resource recovery facility will be inspected. T 54. If hazardous wastes are found, the wastes will be segregated and promptly removed from the Site. T 55-56. Small quantities of pesticides or volatile organic compounds may enter the waste stream, but the County's Project has been designed to handle small quantities of such wastes. T 54. If these materials enter the incinerator, they will be destroyed by

the combustion process. T 92, 194.

19. A stormwater management system with four retention ponds will be built at the Site. Ex. 2 at 3-24, §3.8. The system has been designed to comply with the requirements of Chapters 17-25 and 40D-4, Florida Administrative Code, which provide for the collection and detention of the stormwater with infiltration in 72 hours. T 41; Ex. 3 at Appendix 10.11. Additionally, the system was designed to ensure that the post-development peak rate of run-off from the 25 year, 24 hour design storm will not exceed the predevelopment runoff rate from the same storm. Ex. 2 at 3-26.

20. The construction and operation of the Pasco County Project will have minimal impacts on the flora and fauna on the Site. Ex. 2 at 4-12; Ex. 10 at 31. Approximately 65% of the Site will be left as open areas or buffer zones. Ex. 2 at 2-3. No wetlands areas will be destroyed or affected by the Project. T 41.

21. The County has not requested any variances from any applicable standards or regulations of any agency for the construction or operation of its Project. Ex. 10 at 72.

Project Benefits

22. The County's Project will provide significant local, regional, and statewide benefits. Ex. 10 at 3, 4, 28. First, the combustion of municipal solid waste at the resource recovery facility will reduce the volume of waste to be landfilled by 70%. Ex. 2 at 5-17. The County's resource recovery facility will reduce the County's need for landfill capacity by 13.5

million cubic yards over a 24 year period. Ex. 2 at 5-17. By reducing the volume of waste for landfilling, the County will extend the life of the Site's landfill/ashfill by three times.

23. A second benefit of the resource recovery facility is the generation of a minimum of 182 million kilowatt hours of electricity per year. Approximately 3.7 billion kilowatt hours will be generated over the minimum 20 year life of the facility. Ex. 2 at 5-42, 7-2.

24. Thirdly, by using solid waste instead of crude oil to generate electricity, the County and state will decrease the use of crude oil by 352,000 barrels per year or a minimum of 7 million barrels of oil over the life of the facility. Ex. 2 at 7-3. The decreased dependence on crude oil will save \$6.3 million per year or \$127 million over 20 years. Ex. 2 at 7-3.

25. Fourth, electricity will be produced at the resource recovery facility by using materials that otherwise would be buried in a landfill. Ex. 2 at 5-42.

26. Fifth, the local economy will benefit from the construction and operation of the resource recovery facility. Approximately 1,000 workers will be employed during the course of construction. Ex. 2 at 7-3. A significant amount of materials and hardware supplies will be purchased from local companies. Approximately \$390 million in regional economic benefits will result from the construction of the facility. Ex. 2 at 7-5. The facility's annual payroll of approximately \$3 million will contribute \$40 million (in present worth dollars) to the local economy during 20 years of operations. A total of \$4.75 million

in annual economic benefits will be enjoyed in Pasco County as a direct result of this facility.

27. Sixth, the facility will provide an environmentally sound method of solid waste disposal for the County's 233,000+ residents. Ex. 2 at 2-19, 7-2.

Geotechnical Investigation and Sinkholes

28. Pasco County hired Jammal & Associates to conduct a geotechnical investigation of the subsurface conditions at the Site. Ex. 2 at 2-42; Ex. 5 at Attachment 2. The investigation was coordinated by Jim Jammal, an engineer with 27 years of professional experience with geotechnical investigations. T 344. Jammal is one of Florida's foremost experts on sinkholes. T 440, 441; Intervenor's Ex. 1 at 48.

29. In 1985, Jammal conducted a preliminary investigation which included a review of the scientific literature and the installation of 13 borings at the Site. T 352; Ex. 2 at 2-42, 2-43. Jammal conducted a subsequent investigation which included a continuing review of the literature, an analysis of aerial photographs, soil testing, and an extensive boring program throughout the entire Site. T 353, 360, 361; Ex. 5 at Attachment 2, pp. 13-15. The borings initially were placed in a grid pattern on 800 foot centers, but the borings were placed at 400 foot intervals in the area where the landfill is to be located. T 353, 354; Ex. 2 at 2-43. A total of 88 borings were installed at the Site. T 355, 371.

30. These borings were supplemented with the use of ground penetrating radar (GPR). Ex. 5 at Attachment 2, pp. 15-16. A

GPR survey was conducted in a grid pattern which covered the Site. T 356. The 7½ miles of GPR survey identified 18 anomalies--areas where something appeared to be different, unusual, or out of the ordinary. T 356, 359. All of these areas were explored with borings to more accurately evaluate their specific characteristics. T 358, 370. The borings demonstrated that the potential anomalies identified by GPR either are not anomalies or are not significant. T 370; Intervenor's Ex. 1 at 48; Ex. 2 at 2-45.

31. Based on his extensive site investigation, Jammal concluded that the County's Site is a good location for the construction of a resource recovery facility and landfill/ashfill. Ex. 5 at Attachment 2, pp. 27-28; T 362, 372, 374. Jammal identified an area of approximately 267 acres that would be acceptable for the construction of the landfill/ashfill. T 362; Ex. 5, Attachment 2 at 27. The County plans to build the landfill/ashfill on approximately 195 acres of the most favorable portions of the Site. Ex. 5, DER Application, p. 7, ¶ 14. These favorable portions of the Site typically have sand overlying at least 5 feet of clay. T 363-5, 370, 371. These areas are stable and relatively uniform. T 362-365, 373, 374, 392-393; Ex. 5 at Attachment 2, pp. 39-43.

32. Jammal also evaluated the Site's ability to provide an adequate foundation to support the landfill and resource recovery facility. T 367-369; Ex. 3 at Appendix 10.9; Ex. 5 at Attachment 2, pp. 30-31. The Site is suitable for these purposes. T 367-369.

33. Based on Jammal's 27 years of professional experience, Jammal does not expect a sinkhole to develop in the landfill area. T 392, 393. Jammal believes the Site has a very low potential for sinkholes. T 373, 392, 393. Even if one occurred, it would not be a large or catastrophic sinkhole. T 373, 438, 439; Ex. 5 at Attachment 2, p. 44. At worst, a sinkhole at the Site would be 10 to 15 feet in diameter and 4 to 6 feet in depth. T 373, 390, 425, 426; Ex. 5 at Attachment 2, p. 44. A sinkhole of this size would not create a problem because the landfill's liner will elongate and accommodate a potential sinkhole of this size. T 72, 390.

34. To minimize the potential for a sinkhole, Jammal recommended that proof rolling should be used in the favorable areas of the Site prior to the construction of the landfill. T 376, 377. Heavy mechanical vibratory rollers will be used to stimulate any unstable conditions in the favorable area. T 376. If part of the favorable area were ready to subside, it would do so before the landfill were built. T 376. After the landfill is built and the liner installed, the liner will reduce the potential that other sinkholes might form. T 373, 375, 439.

35. Jammal concluded that the County's two wells on the Site will not have any affect on the landfill, the resource recovery facility, or the potential for sinkholes to develop on the Site. T 378. The agricultural and potable wells in the area will not affect the development of sinkholes at the Site. T 381-386, 410, 411.

36. Gardner Strasser is a geologist who works in DER's Tampa District Office. Strasser testified by deposition that Jammal's study of the Site was very thorough, complete and a state-of-the-art investigation. Intervenor's Ex. 1 at 48. DER worked with Jammal for approximately 2½ years on all aspects of the geotechnical investigation. Intervenor's Ex. 1 at 47; T 361. Jammal did everything that DER requested in the site investigation. Intervenor's Ex. 1 at 48-49. Strasser agrees that the Site can be developed and used safely for the proposed landfill and resource recovery facility. Intervenor's Ex. 1 at 45, 46, 49.

37. The Southwest Florida Water Management District also concluded that a large or catastrophic sinkhole is not likely to occur at the Site. T 438, 439. If a sinkhole occurred at all, it would only be a small subsidence. T 425, 426. SWFWMD's concerns about this possibility are mitigated because the proposed ashfill/landfill has a state-of-the-art design. T 428; 437. If the landfill performs as designed, the landfill will not leak. T 429. SWFWMD and DER agree that the landfill liner will reduce the likelihood of subsurface erosion or the development of sinkholes beneath the landfill. T 439; Intervenor's Ex. 1 at 49. SWFWMD also encourages the proposed use of proof rolling at the Site because proof rolling is a very effective method of stimulating soft spots and subsidences before construction of the landfill. T 440. SWFWMD also made several recommendations concerning the operation of the landfill to further minimize the risks of subsequent contamination. T 431-432. Those

recommendations have been incorporated in the conditions of site certification and accepted by Pasco County. T 437-438.

38. Intervenor expressed concern about the potential for sinkholes at the Site, but Intervenor presented no competent substantial evidence to substantiate its concerns or overcome the evidence presented by the County.

39. Intervenor expressed concerns about the potential for flooding on the Site, but failed to present competent substantial evidence to substantiate its concern. The evidence shows that all of the areas to be used for the County's facilities are located outside of the 100 year flood plain. Ex. 2 at 4-7. One-half of the soil on the Site is Candler fine sand, which almost never floods. The central portion of the Site is primarily Tavares sand, which rarely floods. Ex. 2 at 2-39. All of the landfill will be built in areas consisting of Candler and Tavares sand. Ex. 2 at Figure 2-15. In light of his geotechnical investigation of the Site, Jammal stated that there is no indication that flooding would occur in the landfill area and he would not expect flooding. T 399.

40. Intervenor also was concerned that the construction of the Project would affect the recharge of rainwater to the Floridan aquifer. The evidence shows, however, that the Project will not change the overall recharge patterns at the Site. T 439, 440. Stormwater will be directed to retention basins where it will infiltrate to the aquifer. T 439, 440.

Air Quality Issues and PSD Permit

41. Pasco County evaluated the proposed Project to

determine whether the Project's airborne emissions would comply with all of the applicable state and federal standards. Ex. 4 at § 2. Among other things, the Project was evaluated in light of the requirements for a Prevention of Significant Deterioration (PSD) permit, which include an analysis of the Best Available Control Technology (BACT). Id.; Ex. 10 at 33, 56.

42. The County worked with DER and EPA to establish an appropriate plan of study and protocol for assessing the Project's air emissions. T 108; Ex. 4, Attachment A; Ex. 10 at 57. Since there were no existing ambient air quality monitors near the Site, DER and EPA agreed that the County could appropriately use data from monitors in other areas. T 108, 109. The data utilized by Pasco County provided a conservative representation of the air quality at the Site. T 108, 109, 199; Ex. 4 at §5.2. The data are conservative because they tend to indicate that the existing air quality at the Site is worse than it actually is. T 108-109; Ex. 4 at 5-14.

43. The County performed a BACT analysis on a pollutant-by-pollutant basis. The County used DER and EPA guidelines that require a balancing of energy, environmental, and economic considerations. T 110; Ex. 4 at 4-1 et seq; Ex. 10 at 37, 38. The analysis considered BACT determinations that have been made for other resource recovery facilities throughout the United States. T 110, 201; Ex. 4 at 4-6 and Table 4-2; Ex. 10 at 38.

44. The BACT determination showed that Pasco County should use a dry scrubber for the control of acid gases and a baghouse (fabric filters) for the control of particulate matter. T 110,

110, 198, 199; Ex. 10 at 43, 47. The use of a scrubber and baghouse is encouraged by DER and EPA and it constitutes the most stringent form of pollution control available. T 110, 111, 147, 222; Ex. 10 at 43, 48. Appropriate combustion and operation controls should be utilized as BACT to limit the emissions of other substances. T 110.

45. The County evaluated the dispersion of the air emissions from the proposed facility by using a protocol and sophisticated air quality models that were approved by DER and EPA. T 112, 117; Ex. 4 at 6-1, 6-4, and Attachment A; Ex. 10 at 57. The models predicted the concentrations of pollutants that would occur at ground level under worst case circumstances with a 1,200 tpd facility operating 100% of the time. T 109, 110, 112; Ex. 4 at 6-7, 6-10; Ex. 10 at 59. The modelling analyses showed that the Project will not violate any state or federal guidelines or standards regulating airborne emissions from resource recovery facilities. T 112, 199; Ex. 4 at 6-1.

46. The National Ambient Air Quality Standards (NAAQS) are designed to protect the public health and welfare. T 114; Ex. 4 at §5.1; 42 USC §7409. The primary ambient air quality standards are designed to protect the health of the most susceptible groups of the population, including asthmatic children, the retired, and emphysemics. T 114; 42 USC §7409. Florida's Ambient Air Quality Standards (FAAQS) are the same as the national standards in most instances, but where they differ, Florida's standards are even more restrictive than the national standards. T 112, 114-115.

47. In all instances, the emissions from the Pasco County

resource recovery facility will be substantially less than the Florida Ambient Air Quality Standards. T 113; Ex. 4 at Table 6-8, p. 6-23; Ex. 10 at 66. Pasco County's resource recovery facility will only contribute a very small fraction of the pollutants in the air. T 113-114, 147, 148; Ex. 2 at Figure 5-2; Ex. 4 at 6-27. The emissions from Pasco County's resource recovery facility will contribute less than 2% of the FAAQS for any pollutant. Ex. 4 at 6-27.

48. Pasco also evaluated the facility's emissions of non-criteria pollutants (i.e., those pollutants for which there are no FAAQS or NAAQS). T 116; Ex. 4 at § 6.7. The predicted emissions were compared to different guideline values established by Massachusetts, New York, and the American Conference of Governmental Industrial Hygienists. T 116; Ex. 4 at 6-29 and Table 6-9, p. 6-24. The emissions from the Pasco County facility will be tens or hundreds of times less than any of the guideline values for non-criteria pollutants. T 116, 147, 148; Ex. 4 at Table 6-9, p. 6-24. The emissions of non-criteria pollutants at the Pasco County facility should not pose any health risk. T 116, 147, 148; Ex. 4 at § 6.7.2, p. 6-29; Ex. 10 at 69.

49. Pasco County also considered the potential dioxin emissions from the proposed facility. T 138. The Pasco County facility will control dioxin emissions in two different ways. T 160-163, 172. The majority of the dioxin control will occur in the combustion system. T 160. The County will have a good, well mixed combustion system that will maintain a temperature of 1800 degrees fahrenheit for a minimum of one second. T 160-162,

172. The combustion system will destroy dioxins and the materials that form dioxins. T 160-161; DER Ex. 1 at 9. Secondly, the County will control dioxins with its dry scrubber and baghouse. T 162-163, 172. Dioxins adhere to particulate material. T 162, 163; DER Ex. 1 at 10. The dry scrubber and baghouse will effectively remove particulate matter from the facility's exhaust gases and thereby effectively control dioxins. T 172; DER Ex. 1 at 10, 11.

50. EPA and DER do not have numerical standards establishing an acceptable level of dioxin emissions. T 170. Instead, EPA has addressed dioxin emissions by issuing guidelines for good combustion practices and pollution control. T 171. EPA's recommended practices have been adopted, where appropriate, by Pasco County. T 171, 174-175.

51. In a modern resource recovery facility, like the one proposed by Pasco County, the dioxin emissions will be extremely small and should not be an issue of concern for the public. T 138-141, 163, 172, 173, 206; Ex. 4 at 6-30. Health risk assessments and epidemiological studies have been performed to evaluate the health risks associated with all of the airborne emissions from resource recovery facilities. T 116, 136, 137. EPA has concluded that there is no unacceptable health risk associated with modern well-designed incinerators. T 116, 136, 137, 138-141.

52. DER concluded that the airborne emissions of criteria and non-criteria pollutants from Pasco County's resource recovery facility will not cause any adverse health impacts, even for the

more sensitive groups in the general population. T 202-203. DER also concluded that the dioxin emissions from the County's facility will not create an unacceptable level of risk. T 207. DER's conclusion on this subject is supported by extensive dioxin tests that were performed on the existing 3,000 tpd resource recovery facility in Pinellas County. T 205, 206.

53. The County analyzed the facility's impacts on visibility, soils and vegetation. T 117, Ex. 4 at § 7. The facility passed the most conservative level screening tests for visibility. T 117; Ex. 10 at 66-68. The impacts on soils and vegetation would be minimal. T 117.

54. The Pasco County resource recovery facility will comply with all of the conditions of certification concerning air emissions. T 118.

Intervenor's Concerns About Air Quality

55. Intervenor raised a number of issues concerning air quality and the airborne emissions from the County's resource recovery facility. In most instances Intervenor failed to present any competent substantial evidence, and in all instances Intervenor failed to present the greater preponderance of the evidence, to support its assertions.

56. On the issue of air pollution, Pasco County presented the expert testimony of: Donald Elias, a consultant with 17

years of experience in the study of air pollution; Walter Niessen, a consulting engineer and nationally recognized expert who has more than 20 years of experience with resource recovery facilities; and Clair Fancy, the Deputy Bureau Chief of the DER Bureau of Air Quality Management. Those three experts provided clear and convincing proof that the County's Project is well designed in all regards and will comply with all applicable air quality standards. T 199. All three of these experts agreed that Intervenor's concerns about the Project's airborne emissions were not well-founded. By comparison, Intervenor's only evidence on this issue was the testimony of Dwight Adams, a person who has very limited knowledge about mass burn resource recovery facilities and no practical experience. T 451-455.

57. Intervenor contends that plastics, metals, glass, and yard clippings should be removed from the waste stream before they are incinerated in the resource recovery facility. Although Pasco County may establish a recycling program in the future (T 90-91, 480, 486, 487), the County's current proposal does not include any plan to separate these materials from the waste stream prior to incineration. The evidence clearly demonstrated that it is unnecessary and inappropriate in this case to adopt Intervenor's proposal of "source separation" of these materials as a BACT requirement. T 125, 127, 128, 147, 178, 179, 183, 200, 201, 214, 228.

58. The incineration of plastics produces hydrochloric acid (HCl), but the County will use a dry scrubber to eliminate at least 90% and probably 95-98% of the HCl in the facility's

emissions. T 214. The HCl emissions from the County's facility will be quite insignificant and will not violate any air quality standards. T 111, 214, 226. Removing plastics from the waste stream could somewhat reduce the already small emissions of HCl, but it would not produce any significant environmental benefits. T 200. Parenthetically, removing plastics from the waste will not reduce dioxin emissions. T 168, 186, 187, 200.

59. The cost of removing plastics from the waste stream would be substantial. T 63, 93. Removing the plastic would not save any expense because the County would still need a resource recovery facility and the facility would still have to be equipped with a scrubber. T 63, 91-93, 226. The County and DER agreed that additional HCl controls were unnecessary and, therefore, any additional costs for a source separation program would be unwarranted. T 111, 214.

60. The mechanical equipment for plastics removal has not been proven to be reliable or cost-effective on a day-to-day basis. T 55. There are no existing plastics removal programs in Florida of the size that would be necessary to serve Pasco County's needs. T 89, 90, 224, 225, 226, 485. As a result, there are significant concerns and potential problems with regard to the feasibility and economics of a plastics removal program. T 89, 90, 224, 225, 226, 480; Ex. 10 at 45.

61. EPA and DER have concluded that at the present time source separation of plastics is still an unfeasible technique for controlling emissions. T 125; Ex. 10 at 45. There are no cases where EPA or a state environmental agency required an

applicant to remove plastics from the waste stream as a BACT requirement. T 111, 201.

62. Moreover, it is somewhat counter productive to remove plastics from the waste stream because plastics are a substantial source of BTU's. Ex. 10 at 46. Plastics aid the combustion process and contribute to the generation of electricity. T 92, 225; Ex. 10 at 45.

63. The removal or source separation of metals also is unwarranted as BACT. The quantity of trace metals in municipal solid waste is relatively small. T 128, 129; Ex. 4 at 4-51. Metals in the waste will have little impact on the facility. T 129, 179, 228. Most metals go through the facility and then they are removed from the ash and recycled. T 179. Some metals are attached to airborne particulate matter, but the County's scrubber and baghouse will be extremely effective at controlling these particulate emissions. T 229; Ex. 10 at 41, 42. Airborne particulate emissions can be reduced by 99% or more with a scrubber and baghouse. Ex. 4 at 4-26; Ex. 10 at 41. As a result, the airborne emissions of metals from Pasco County's facility will be exceptionally small and far below any health-based standard or guideline. Ex. 4 at 4-51. It is perhaps possible that these emissions could be reduced even further by removing metals from the waste stream, but further reductions would not produce any meaningful environmental benefits and would add unnecessary costs. T 228-230.

64. Glass will not burn or otherwise contribute to the air emissions from the facility. T 228. Glass in the refuse will

have little effect on the facility. If anything, glass may provide some marginal benefits in the combustion process by improving the air flow through the refuse. T 180.

65. Yard clippings will contribute to the emissions of oxides of nitrogen (NOx), but even with the yard clippings in the waste stream, the NOx emissions from the County's facility will only be approximately 1% of the the annual standard for NOx. T 122, 226. The County concluded that it would not be feasible at this time to separate yard trash from the waste stream. T 122. No competent substantial evidence was presented to demonstrate that the source separation of yard trash is warranted as a BACT requirement.

66. Intervenor did not introduce any evidence to quantify the environmental benefits, if any, of its proposal. Intervenor did not otherwise demonstrate how its proposal would produce material benefits of any sort. Intervenor also failed to show that its proposal would be economically viable, reliable on a day-to-day basis, socially acceptable, or readily implementable. T 480, 485. Source separation of these materials has not been required by EPA, DER, or any state agency as a BACT requirement. When environmental, economic, and energy factors are considered, the preponderance of the evidence indicates that source separation should not be mandated in this case as a BACT requirement for the Pasco County facility.

67. Intervenor and the public witnesses were concerned about the health risks associated with the Project because there are homes, schools, and parks in the vicinity of the proposed

resource recovery facility. These concerns are not supported by the evidence of record. The evidence shows that many resource recovery facilities have been built in areas adjacent to much larger populations. T 84, 85, 136. Only 18,000 people live within five miles of the Pasco County facility. T 49. More than 150,000 people live within five miles of the resource recovery facilities in Tampa and Pinellas County. T 83, 84. There are large residential populations near resource recovery facilities in Massachusetts, New York, Chicago, and other metropolitan areas. T 84, 85, 136. More significantly, exhaustive studies of resource recovery facilities have been conducted and EPA has concluded that modern facilities pose no unacceptable level of risk to the public. T 116, 136, 137, 138-141.

68. Intervenor was concerned that the County's ambient air quality data might not adequately reflect ambient conditions at the Site because there are particulate emissions from unpaved roads near the Site. However, the undisputed testimony of Elias and Fancy established that the particulate emissions from unpaved roads would not affect the appropriateness or accuracy of the County's data. T 119, 146, 199, 216; see Ex. 4 at 5-11, 5-13.

69. Intervenor also was concerned about the need for additional controls at the resource recovery facility for oxides of nitrogen (NOx). The use of various equipment for NOx control, including selective non-catalytic reduction (SNCR) equipment, was considered and rejected by the County and DER. T 66, 67, 116, 142-145, 227, 228; Ex. 4 at § 4.6.1. The NOx emissions from the proposed facility will be controlled by the design and operation

of the furnaces. Ex. 4 at 4-55. Other forms of NOx control are not normally applied to mass burn systems. Id.

70. The NOx emissions from the County's resource recovery facility will be so small that the cost of additional NOx control equipment could not be justified. T 67, 116, 142-143, 227, 228. The NOx emissions will be only 1% of the annual standard for NOx. T 122, 226. No evidence was presented to demonstrate that further reductions of NOx emissions at the County's facility would provide meaningful environmental benefits.

71. With SNCR equipment, it would cost \$2,478 for each ton of NOx removed from the facility's emissions. T 144-145. DER found that the installation of SNCR equipment is not cost-effective or reasonable when compared to EPA guidelines. Ex. 10 at 49.

72. The SNCR equipment involves the injection of ammonia into the flue gas. T 142-145. The use of SNCR equipment is only an emergent technology. T 67, 148. There is only one facility operating in the United States with SNCR equipment and it was permitted as "Innovative Technology." T 148; Ex. 4 at 4-57. That facility is located in a non-attainment area, which requires a greater degree of NOx control than in Pasco County. T 148-149. Several technical difficulties have been reported with the use of SNCR. Ex. 4 at 4-57.

73. Thus, the proposed combustion and operation controls constitute BACT for NOx at the Pasco County facility. Other forms of NOx control are not warranted as BACT. T 116, 227, 228; Ex. 4 at §4.6.1.

74. Intervenor suggested that the proposed emission limit for particulate matter should be reduced from 0.015 grains per dry standard cubic foot (gr/dscf) to 0.010 gr/dscf. This suggestion must be rejected. DER believes the emission limit of 0.015 gr/dscf is extremely low. T 220. A limit of 0.010 gr/dscf would be near the frontier of existing technology. T 221, 222. It would be difficult to maintain this level of control (i.e., 0.010 gr/dscf) on a continuous basis. T 221, 222. It would materially increase the cost of the Project. T 221. There is no evidence of record to suggest that it would provide meaningful environmental benefits. Accordingly, an emission limit of 0.010 gr/dscf is rejected as BACT because it does not represent an appropriate balance of energy, environmental and economic factors.

Alternatives

75. DER did not require the County to revise the fundamental design of its facility or consider other forms of resource recovery (e.g., recycling). T 217, 230, 332. DER does not have a rule or policy which requires the applicant to consider alternatives and DER does not normally require an applicant to do so. T 332. The choice of alternatives lies with the applicant. T 230, 332. DER does not dictate how something should be done as long as the proposed project complies with DER rules and regulations. T 332.

Agency Reviews and Comments

76. On February 24, 1987, the County filed a petition with the Florida Public Service Commission (PSC) for a determination

of need for the proposed electrical generating facility. Ex. 6 at 1. The PSC determined that Pasco County's proposed facility meets the relevant criteria for an affirmative determination of need under Section 403.519, Florida Statutes. Although the County's facility is relatively small, the PSC concluded that the facility will contribute to the reliability and integrity of the electric system in peninsular Florida. Ex. 2 at 1-4. The electricity produced at the County's facility will be priced on a cost-effective basis and supplied at reasonable cost. Ex. 6 at 2.

77. The Florida Department of Community Affairs (DCA) evaluated the compatibility of the proposed Project with the goals and policies contained in the State Comprehensive Plan, pursuant to Section 403.507(1)(a), Florida Statutes. Ex. 7. The State Comprehensive Plan is intended to provide long range guidance for the orderly social, economic and physical growth of the state. Ex. 7 at 1, 2. The DCA found that, on balance, the County's proposed Project is consistent and in compliance with the State Comprehensive Plan. Ex. 7 at 16; Pre-Hearing Stipulation, p. 11, ¶C.

78. The Southwest Florida Water Management District evaluated the County's plan to construct and operate two water wells at the southwest corner of the Site. Ex. 8. SWFWMD found that the County's plan satisfied all of the applicable SWFWMD criteria. SWFWMD recommended approval of the proposed wells, subject to certain conditions, which were incorporated into the conditions of certification. Ex. 8 at 5.

79. SWFWMD also evaluated the proposed surface water management system for the control and treatment of stormwater runoff. SWFWMD found that the proposed retention system will maintain existing runoff patterns. Ex. 9 at 3. The proposed stormwater or surface water management system has been designed to meet the requirements of Chapters 40D-4 and 17-25, Florida Administrative Code, with the runoff from the first one inch of rainfall being retained and infiltrating within 72 hours. SWFWMD recommended approval of the stormwater management system, subject to certain conditions which have been incorporated into the conditions of certification. Ex. 9 at 1, 4.

80. The Florida Department of Environmental Regulation also evaluated the proposed Project to determine whether it would be consistent with the Department's rules and regulations. The Project was evaluated by the Department's staff in Tallahassee and Tampa. Ex. 10 at 1. The review was conducted in Tallahassee by DER's Bureau of Permitting, Bureau of Groundwater Protection, Bureau of Air Quality Management, Bureau of Waste Management, Bureau of Laboratories and Special Programs, the Biology section, and other members of the Division of Environmental Permitting. T 329, 330; Ex. 10 at 1. The DER Tampa District Office also evaluated the Project's impacts on groundwater, air quality, solid waste, wastewater, and industrial waste. The Department concluded that the Project should be permitted, subject to various conditions which have been incorporated into the conditions of Site certification. T 334; Ex. 10 at 74.

81. The Florida Department of Commerce reviewed the

County's application and concluded that the Project is consistent with the goals and policies of the Department of Commerce. Ex. 11.

82. The Florida Department of State, Division of Historical Resources reviewed the Project to determine whether it would have any effect on significant archaeological or historical Sites. The Department of State concluded that no significant archaeological lands or historical Sites are recorded for or considered likely to be present within the Site. Ex. 12.

83. The Department of Natural Resources reviewed the application and concluded that the Site "does not appear to have any major problems from a hydrogeologic standpoint." In DNR's opinion, the proposed landfill design includes "excellent features" to safeguard the groundwater. Ex. 13.

84. The Florida Department of Agriculture and Consumer Services found that the Project would have no immediate impact on areas under the management of the Division of Forestry. The Department of Agriculture views the Project favorably because it would reduce the volume of solid waste for landfilling. Ex. 14.

85. The Florida Game and Fresh Water Fish Commission (Commission) evaluated the Project and requested a detailed assessment of the gopher tortoise population on the Site. Ex. 15. The Commission also requested the County to prepare long-term management plans for relocating and ensuring the survival of the tortoises. The Commission recommended the use of certain buffer areas at the Site for these purposes. Ex. 15.

86. The DER, DCA, SWFWMD, and Commission recommended that various conditions of site certification be imposed on the County's proposed Project. All of those recommendations were incorporated into the conditions of certification prepared by DER. The evidence demonstrated that the County will be able to comply with the proposed conditions of certification. T 45, 118. The County has stipulated that it will accept and comply with the proposed conditions of site certification. T 45, 46.

Public Comments

87. A total of 41 non-party members of the general public spoke in opposition to the proposed Project. The public comments covered a wide range of issues. In general, many of the citizens were concerned about: zoning; environmental impacts; recycling and composting instead of incineration; the duration of the warranty for the liner; sinkholes; impacts on property values; traffic; dioxins; endangered animals in the vicinity of the Site; the cost of resource recovery; and air pollution. Many of these issues were addressed by the County in its presentation and also were addressed in this Recommended Order. Many others, however, were outside of the proper scope of this proceeding.

Notice

88. Notice of the site certification hearing was published in the Pasco Times newspaper and the Florida Administrative Weekly, Volume 14, Number 10, on March 11, 1988. Ex. 17, 18. DER issued a News Release concerning the site certification hearing on March 10, 1988. Ex. 19. Notice of the DER determination of Best Available Control Technology was published

in the Florida Administrative Weekly, Volume 14, Number 9, on March 4, 1988. Ex. 16. Notice of DER's preliminary decision concerning the PSD permit and BACT determination were given to the Tampa Bay Regional Planning Council, United States Environmental Protection Agency, federal lands manager, and various other persons and organizations that are entitled to notice pursuant to DER's rules. T 334.

CONCLUSIONS OF LAW

1. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings.

2. The notice provided for the site certification hearing was adequate and in compliance with DER Rule 17-17.151(6), Florida Administrative Code. Appropriate notice also was provided for the issuance of the Prevention of Significant Deterioration permit. T 334; §17-2.220(2), F.A.C.

3. This proceeding is governed by the Florida Electrical Power Plant Siting Act, Sections 403.501-403.519, Florida Statutes (1987). In a statement of legislative intent, Section 403.502 of the Act provides:

It is the policy of this state that, while recognizing the pressing need for increased power generation facilities, the state shall ensure through available and reasonable methods that the location and operation of electrical power plants will produce minimal adverse effects on human health, the environment, the ecology of the land and its wildlife, and the ecology of state waters and their aquatic life. It is the intent to seek courses of action that will fully balance the increasing demands for electrical power plant location and operation with the broad interests of the public. Such action will be based on these premises.

(1) To assure the citizens of Florida that operation safeguards are technically sufficient for their welfare and protection.

(2) To effect a reasonable balance between the need for the facility and the environmental impact resulting from construction and operation of the facility, including air and water quality, fish and wildlife, and the water resources and other natural resources of the State.

(3) To provide abundant, low-cost electrical energy.

4. In this proceeding, Pasco County has presented competent substantial evidence to demonstrate that its proposed resource recovery facility, landfill/ashfill, and associated facilities will satisfy the criteria and balancing test established in the Legislature's statement of intent. The Florida Public Service Commission has determined that there is an affirmative need for the electrical energy that will be produced at the proposed resource recovery facility. The evidence has demonstrated that the location, construction, and operation of the project will produce no adverse effects on human health or the environment. Comprehensive conditions of certification have been imposed on this Project and those conditions establish operational safeguards that are technically sufficient to protect the citizens of Florida. If the facility is built and operated in accordance with the terms of the application and the proposed conditions of certification, the Project will not adversely affect the quality or quantity of surface or groundwaters at or near the Site. Similarly, it will comply with all state and federal air quality standards and guidelines. Pasco County has stipulated that it accepts the proposed conditions of

certification and the evidence demonstrated that the facility can comply with those conditions. Thus, there is a favorable balance between the need for the facility, the environmental impacts from the construction and operation of the facility, and the public welfare.

5. All of the reports, studies, and comments required by Section 403.507, Florida Statutes, have been completed and presented to the Department of Environmental Regulation. All of the reports and comments from a wide variety of state and regional agencies recommended the certification of the proposed Project. The Department of Environmental Regulation has recommended certification of the Project at its ultimate generating capacity of 29 megawatts, subject to the conditions of certification that are attached to this Recommended Order. It is concluded that the construction and operation of the resource recovery facility, landfill/ashfill, and associated facilities at the proposed Site will comply with all of the applicable statutes, rules, regulations, and criteria of the State of Florida and, therefore, the Project is entitled to certification, subject to conditions, pursuant to the Florida Electrical Power Plant Siting Act. In addition, DER should simultaneously issue a Prevention of Significant Deterioration (PSD) permit in accordance with Section 403.509(2) of the Act and DER's federally delegated PSD permit program. See §§403.503(17) and 403.509(2), Fla. Stat. (1987).

6. ~~Intervenor and the public raised various issues of~~
concern, but they failed to present competent substantial

evidence to support their apprehensions. After the County presented a prima facie case to demonstrate its entitlement to site certification, the burden of going forward with the evidence shifted to the Intervenor. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So.2d 779, 789 (Fla. 1st DCA 1981). Intervenor, however, was unable to present evidence of equal weight. On all of the disputed issues of fact, the preponderance of the evidence supported the County's position.

RECOMMENDATION

Based upon the entire record in this proceeding and the findings of fact and conclusions of law contained in this Recommended Order, it is RECOMMENDED that:

1. The Governor and Cabinet, sitting as the Siting Board pursuant to the Florida Electrical Power Plant Siting Act, grant site certification for the location, construction, and operation of the proposed Project at its ultimate site capacity of 29 megawatts, subject to the conditions of site certification attached to this Recommended Order as Appendix "A", and

2. The Department of Environmental Regulation issue a Prevention of Significant Deterioration Permit to Pasco County for the location, construction, and operation of the proposed resource recovery facility, subject to the applicable conditions of site certification attached to this recommended order.

Respectfully submitted and entered this _____ day of June,
1988, in Tallahassee, Florida.

Diane D. Tremor
Hearing Officer
Division of Administrative Hearings
Oakland Building
2009 Apalachee Parkway
Tallahassee, Florida 32399
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this ___ day of June, 1988

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May, 1988 the original and one copy of Pasco County's Proposed Recommended Order has been furnished by hand delivery to the Clerk, Division of Administrative Hearings, 2009 Apalachee Parkway, Oakland Building, Tallahassee, Florida 32399 and copies by U.S. Mail to:

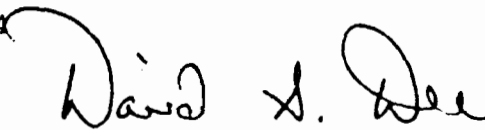
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