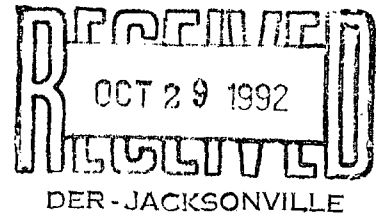


STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

NORTHEAST DISTRICT



DARRELL SPERRY,

Petitioner,

vs.

OGC CASE NO. 92-0489

DOAH CASE NO. 92-1758

TRAIL RIDGE LANDFILL, INC. and
STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION

10/24/92

Respondents.

FINAL ORDER

On March 17, 1992, the State of Florida Department of Environmental Regulation ("Department") received a Petition for Formal Administrative Hearing from Petitioner, Darrell Sperry. The Petition challenged the Department's decision to issue permit modifications. On June 8, 1992, the Department received an Order dismissing Division of Administrative Hearings file due to Petitioner's failure to appear and participate concerning the Motion in Opposition to Petition. (Exhibit 1) On October 5, 1992, a second Order was received closing Division of Administrative Hearings file denying Motion for Costs and Attorneys Fees. (Exhibit 2) There being no further matters to consider,

IT IS ORDERED:

The petition is hereby dismissed and Case No. 92-0489 is CLOSED.

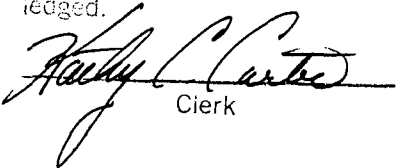
Any party to this Order has the right to seek judicial review of the Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32301; 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 30 days from the date this Order is filed with the clerk of the Department.

DONE AND ORDERED this 24th day of October, 1992, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION

FILING AND ACKNOWLEDGEMENT

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


Clerk

10.26.92
Date

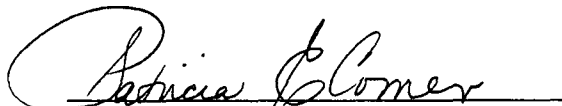
 for

CAROL M. BROWNER
Secretary
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400
Telephone: (904) 488-4805

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copies of the foregoing have been sent by Hand-delivery to the Clerk, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550; and by U.S. Mail to William D. Preston, Esquire, Thomas M. DeRose, Esquire, HOPPING, BOYD, Et al., Post Office Box 6526, Tallahassee, Florida 32314-6526 and to Mr. Darrell Sperry, 7799 U.S. Highway 301, Jacksonville, Florida 32234, on this 27th day of October, 1992.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION


WILLIAM H. CONGDON

Deputy General Counsel
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400
Telephone: (904) 488-9730

RECEIVED
JUN 8 1992

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

Dept. of Environmental Reg.
Office of General Counsel

DARRELL SPERRY,
Petitioner,
vs.
TRAIL RIDGE LANDFILL, INC. and
DEPARTMENT OF ENVIRONMENTAL
REGULATION,
Respondents.

CASE NO. 92-1758

ORDER

THIS CAUSE comes before the undersigned Hearing Officer upon Respondent, Trail Ridge Landfill, Inc.'s Motion in Opposition to Petition. The Petitioner has failed to respond to the Motion, which was duly served upon the Petitioner, according to Respondent's counsel's certificate of service, at the last known address of record of the Petitioner, on April 2, 1992. Nonetheless, a hearing was held on the Motion by telephonic conference call on April 27, 1992, at 3:00 p.m. The Petitioner was not available for that telephonic conference call and motion hearing; and by Respondent, Trail Ridge's Supplemental Memorandum in Opposition to Petition, it has been sufficiently demonstrated that the Petitioner had appropriate notice of the telephonic conference call hearing on the Motion. Exhibits A, B and C, attached and incorporated by reference in that Supplemental Memorandum, demonstrate that the Notice of Hearing for the telephonic conference call hearing on the Motion was duly delivered to the Petitioner on April 20, 1992, as evidenced by the delivery record maintained by Federal Express, a copy of

~~EXHIBIT 1~~

which was attached to the Supplemental Memorandum and incorporated by reference as "Exhibit B". That Supplemental Memorandum, including its attachments named above, shows clearly that the Petitioner had appropriate notice of the telephonic conference call motion hearing. Thus, the undisputed facts on the face of the pleadings in this case, concerning the Motion, show that the Petitioner had adequate notice of the motion hearing and failed to appear and participate. That being the case and the Motion in Opposition to Petition being based upon sufficient and undisputed grounds, appearing on the face of that Motion, which are accepted, it is, therefore

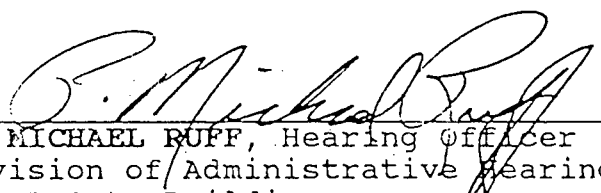
ORDERED that:

1. The Motion in Opposition to Petition be and the same is hereby GRANTED.

2. This cause is hereby DISMISSED.

3. The case file of the Division is hereby CLOSED.

DONE AND ORDERED this 5th day of June, 1992, at Tallahassee, Leon County, Florida.


P. MICHAEL RUFF, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the Division
of Administrative Hearings this 5th
day of June, 1992.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DARRELL SPERRY,

Petitioner,

vs.

CASE NO. 92-3777F

TRAIL RIDGE LANDFILL, INC., and
DEPARTMENT OF ENVIRONMENTAL
REGULATION,

Respondents.

RECEIVED

OCT 5 1992


Dept. of Environmental Re
Office of General Counsel

ORDER

THIS CAUSE comes before the undersigned Hearing Officer upon Respondent, Trail Ridge Landfill, Inc.'s Motion for Costs and Attorneys Fees. The Hearing Officer has reviewed the Motion, the Response thereto, and has considered the circumstances delineated in those pleadings and involved in the Petition and the Motion to Dismiss the Petition. Having considered these matters and the authority cited in the Motion and the language and intent of Subsection 120.59(6), Florida Statutes, and being advised in the premises, it is concluded that the circumstances in this cause do not justify an award of costs and attorneys fees. Accordingly, it is

ORDERED that the Motion for Costs and Attorneys Fees is hereby DENIED, and Case No. 92-3777F is hereby CLOSED.

DONE AND ORDERED this 1ST day of October, 1992, at
Tallahassee, Leon County, Florida.


MICHAEL RUFF, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the Division
of Administrative Hearings this 2nd
day of October, 1992.

Copies furnished to:

William D. Preston, Esq.
Thomas M. DeRose, Esq.
HOPPING, BOYD, ET AL.
P.O. Box 6526
Tallahassee, FL 32314-6526

William H. Congdon, Esq.
Department of Environmental Regulation
2600 Blair Stone Road
Tallahassee, FL 32399-2400

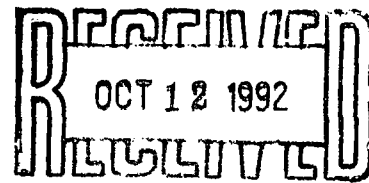
Mr. Darrell Sperry
7799 U.S. Highway 301
Jacksonville, FL 32234

Trail Ridge Landfill, Inc.
5110 U.S. Highway 301
P.O. Box 548
Baldwin, Florida 32234
904/289-9100



A Waste Management Company

NORTHEAST DISTRICT



DER-JACKSONVILLE

October 12, 1992

Mr. Ernest E. Frey, P.E.
Director of District Management
Florida Department of Environmental Regulation
Northeast District
Suite B-200
7825 Baymeadows Way
Jacksonville, FL 32256

Re: Trail Ridge Landfill Warning Letter, dated
September 24, 1992

Dear Mr. Frey,

I was somewhat surprised that your Department issued a warning letter as a follow-up to a quarterly inspection that already identified a few practices which Mr. Neal Newton of your staff called into question. I have had the opportunity to discuss those points referenced in the inspection report with your staff and concluded that we had satisfied their concerns. Consequently, I was troubled by the receipt of the warning letter since I have not experienced that type of procedure in five years of working with other Department Districts in Florida.

Nonetheless, I am pleased to report that each of the comments contained in your letter can be satisfactorily explained or remedied and this letter constitutes that response and rationale.

Comment 1 - Waste Tire Processing. The rule provision referenced under Chapter 17-711 requires that an existing solid waste management facility which maintains a waste tire site and processes such waste tires should submit an existing solid waste management facility permit to the Department for modification authorizing such activity. Trail Ridge was not subject to this regulatory provision since this facility was not permitted by the Department until December, 1991 after filing its permit application in the summer of 1990, which activities occurred more than a year after the July 1, 1989 date referenced in the applicable rule. In fact, the Trail Ridge DER permit, which incorporates the terms and conditions of the permit application, recognizes that a portable tire shredder will be operated on the site to shred tires on a periodic basis. Page 7-3 of the permit application (copy attached) specifies such activity. Furthermore, the Department is aware of this permit provision because Trail Ridge submitted a permit minor modification request related to the waste tire storage area in March of this year.

However, in further discussions with your staff, it was decided that Trail Ridge would nonetheless submit a more extensive permit modification application addressing waste tire shredding. That application was submitted on September 18, your staff was in receipt of it when the warning letter was issued, and no further tire processing has occurred pending approval of the waste tire processing permit application. Trail Ridge is currently preparing and will shortly submit a response to Ms. Mary Nogas' October 2 letter to me. Consequently, Trail Ridge believes that its operations and activities at the site pertaining to waste tire storage and processing are currently in accordance with its Department permit.


Comment 2 - Stormwater/Leachate Mixing. In accordance with the design and engineering referenced in the permit application, Trail Ridge has utilized a simple but effective system to minimize the amount of stormwater which would be considered as leachate. Mr. Newton noted that a berm should be located between the landfill working face and the stormwater collection area. As I explained to him, Trail Ridge does utilize a berm in this exact area but that in accordance with the permit operations plan, this berm is routinely relocated as the working face of the landfill progresses. At the time of Mr. Newton's inspection, this relocation process was occurring and a new berm at the base of the working face was under construction. Construction was completed on the day after the site inspection before any rainfall event occurred. This same activity will take place many times during the construction and operation of the landfill. The Department has not identified any problem with this procedure in previous inspections and Trail Ridge will continue to utilize this berm and others to be constructed in the future as the working face progresses during disposal operations so that stormwater which may come into contact with the solid waste present on the working face will be properly routed to the leachate collection system. Consequently, we believe that the Department's concerns on this point have been adequately addressed. Furthermore, the drainpipe mentioned in the inspection report is designed to handle only stormwater at a future date. The pipe is not intended for service until the outside side slope has been extended high enough to place an intermediate side slope ditch to direct water into the pipe. Because of the use of the working face toe berms described above, it is unlikely that any leachate-contaminated stormwater could enter or exit this particular pipe. However, based upon Mr. Newton's concerns, I have elected to seal the invert of this pipe until it is ready for service as an additional safeguard at this time.

Comment 3 - Initial Cover. We have a discrepancy between your letter and Mr. Newton's report. The inspection report simply states that some areas need addressing, and in conversation with Mr. Newton he acknowledged that cover had been applied but had been diminished due to traffic and/or rain. Your letter states that cover had not been applied in accordance with F.A.C. Rule 17-

701.050 (5) (m). This was not the case. Initial cover had been applied. What we are dealing with here is your staff's policy for maintaining initial cover. The rules do not address maintenance of initial cover except by reference to vector and litter control. It does make reference to minimizing unnecessary cover material and the 1988 Florida Waste Act was passed with the primary purpose of maximizing Class I landfill space. In order for me to operate this facility to your staff's policy concerning maintenance of initial cover would be in direct conflict with the stated requirements in the above cited references. Initial daily cover is applied at Trail Ridge as per F.A.C. 17-701.050 (5) (m). During the normal course of operation, this initial cover may diminish. This may occur particularly because of the very high rainfall events which have occurred at the site and throughout Northeast Florida in recent days. When this happens, additional cover is applied to control vectors and/or blowing litter. Therefore, I believe that this item has also been satisfactorily handled. However, if you or your staff feel that this procedure as outlined above is not in keeping with the rule requirement referenced, I would like to know the basis for this position.

It is hoped that this response answers your concerns associated with the September 17, 1992 inspection of this facility. I would hope that in the future, I would be able to address any other concerns which you or your staff may have concerning the operation of the Trail Ridge Landfill without the need of the preparation of a warning letter and the required formal response which we would subsequently develop. I need to state that Trail Ridge Landfill does not concur with the allegations contained in your warning letter that any violations of either law or rules occurred at the site as referenced in the inspection report. This response is not to be considered an admission that any such violations were or are present. Nonetheless, I am always available to discuss concerns which you or your staff might have now or in the future. If you feel that a meeting is warranted to further discuss those matters set forth in your warning letter, I would be happy to accommodate you.

Sincerely,



Tom Nelson
General Manager

TN:mm
enclosure

cc: Harold Jorski
John Ray
Mike Slattery
Allen Williams

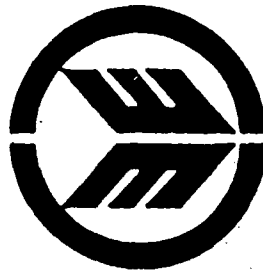
PERMIT DOCUMENTS

FOR

TRAIL RIDGE

LANDFILL

PLAN A
VOLUME I



SUBMITTED BY
TRAIL RIDGE LANDFILL, INC.
Jacksonville, Florida



England-Thimly & Miller, Inc.

Consulting & Design Engineers
3131 St. Johns Bluff Road So. Jacksonville, FL 32216

Date: JULY, 1990

Project No.: E89-113-09

7. Special Drainage Devices

Drainage structures which connect to down comer piping have been designed with baffles to prevent stormwater from exiting the structures.

8. Fencing

The site will be fenced as shown on the Site Plan.

9. Equipment Facilities

Facilities for equipment maintenance and storage have been provided adjacent to the administration building.

10. Additional Uses

a. Tire Shredder

A portable tire shredder will be operated on the site on a periodic basis. Tires will be temporarily stored adjacent to the white goods storage area. When sufficient tires have accumulated, approximately monthly, the portable shredder will be brought to the site to shred the tires with the shredded remains being landfilled.

b. Temporary Storage

Additional special wastes which maybe accepted and temporarily stored for off-site processing include batteries, waste oil, used tires, and abandoned automobiles. These special wastes will be temporarily stored at the white goods storage area shown on the plans.

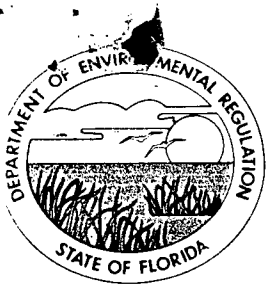
c. Future Uses

Substantial upland areas exist on the northern half of the site. These areas maybe used in the future as borrow areas and/or composting facilities. Additional Florida Department of Environmental Regulation permits will be obtained prior to pursuing any activities in this area. No future wetland impacts are proposed.

D. Report

1. Population

This facility is designed to serve a portion of the solid waste disposal needs of Duval County. The current population of Duval County is 659,000 and the 2010 population projection is 781,000.



Florida Department of Environmental Regulation

Northeast District • Suite B200, 7825 Baymeadows Way • Jacksonville, Florida 32256-7577

Lawton Chiles, Governor

Carol M. Browner, Secretary

September 24, 1992

CERTIFIED - RETURN RECEIPT

Mr. Tom Nelson
Trail Ridge Landfill, Inc.
Post Office Box 548
Baldwin, Florida 32234

Dear Mr. Nelson:

Warning Letter No. WL92-0215SW16NED
Trail Ridge Landfill
Duval County - Solid Waste Enforcement

This letter is a follow-up to an inspection by Department personnel on September 17, 1992. The inspection revealed that Trail Ridge Landfill may be violating the terms of Permit No. SC16-184444 and Florida Administrative Code Chapter 17-701. The following is a narrative of the violations:

"24. Proper control and disposal of asbestos and other special wastes? 17-701.040(8)"

Comment: The processing (shredding) of waste tires at the landfill requires a permit modification pursuant to FAC Rule 17-711.300(4).

"29. Retention and/or detention ponds/ditches, culverts, berms maintained? 17-701.050(5)(g), (h)"

"36. Mixing of leachate and stormwater prevented or minimized? 17-701.050(6)(h)"

Comment: Stormwater or other surface water that comes into contact with the solid waste or mixes with leachate is leachate. The lack of a berm along the base of the working face in Phase I and the placement of a corrugated HDPE pipe that drains from the lined cell to a stormwater drain, would allow stormwater and leachate to mix and discharge to the roadside ditch. Landfills shall provide for the collection, control, and treatment of surface water runoff from the site as necessary to meet the applicable standards of FAC Chapters 17-3, 17-4, and 17-25.

Mr. Tom Nelson
September 24, 1992
Page two

6
"40. Frequency, amount, and quality of initial cover, as required? 17-701.050 (5)(m)"

Comment: Initial cover is not being applied in accordance with FAC Rule 17-701.050(5)(m) for the Class I landfill. Initial soil cover of six (6) inches shall be applied at the end of each day with exception to the working face when waste is to be applied within 18 hours. Adequate initial cover was not being maintained in areas on top of the waste cell.

You are requested to respond to this Warning Letter, in writing, within ten (10) days from receipt thereof. This written response should include:

- (a) an explanation for each item of violation;
- (b) a description of the steps that have been or are being taken to comply with each requirement and to prevent recurrence of the violations; and
- (c) a schedule for correcting the violations and bringing the site into full compliance.

The Department will be reinspecting the landfill within fifteen (15) days from receipt of this letter to verify compliance with Permit No. SC16-184444 and FAC Chapter 17-701.

If these violations have not been corrected by the reinspection date, the Department may initiate formal enforcement action including penalties pursuant to the Department's Solid Waste Penalty Policy.

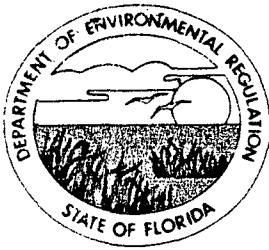
If you have any questions, please contact Neal Newton at the letterhead address or telephone (904)448-4320.

Sincerely,

Michael J. Fitzsimmons
fa Ernest E. Frey, P. E.
Director of District Management

EEF:nnl

cc: Allan Williams, P. E., City of Jacksonville



Florida Department of Environmental Regulation

Northeast District • Suite B200, 7825 Baymeadows Way • Jacksonville, Florida 32256-7577

Lawton Chiles, Governor

Carol M. Browner, Secretary

September 17, 1992

CERTIFIED - RETURN RECEIPT

Mr. Douglas C. Miller, P. E.
England-Thims & Miller, Inc.
3131 St. Johns Bluff Road South
Jacksonville, Florida 32216

Dear Mr. Miller:

Trail Ridge Landfill
Permit No. SC16-184444
OGC Case No. 92-0851
Duval County - Solid Waste

The Department has reviewed the following documents submitted in accordance with the permit and Emergency Final Order referenced above:

1. Phase I "As-Built" of Trail Ridge Landfill, prepared by Sunshine State Surveyors, Inc., received on September 14, 1992; and
2. Certificate of Construction Completion for Trail Ridge Landfill Phase I-Stormwater and Leachate Storage System, prepared by Douglas C. Miller, P. E., received on September 14, 1992 and revised on September 15, 1992.

Please be advised that all applicable submissions required for the stormwater management system and leachate storage system to serve Phases IA and IB have been received and found acceptable. Therefore, the interim operation and stormwater control plan is no longer necessary for the subject landfill.

If you have any questions, please contact me.

Sincerely,

Mary C. Nogas, P. E.
Solid Waste Supervisor

MCN:ml

cc: Tom Nelson, Trail Ridge Landfill, Inc.
Allan E. Williams, City of Jacksonville

Administration 448-4300
Air 448-4310
Waste Management 448-4320



Water Facilities 448-4330
Water Management 448-4340
FAX 448-4366



Florida Department of Environmental Regulation

Northeast District • Suite B200, 7825 Baymeadows Way • Jacksonville, Florida 32256-7577

Lawton Chiles, Governor

Carol M. Browner, Secretary

NORTHEAST DISTRICT - JACKSONVILLE

TO: Mary Nogas

THROUGH: Jeremy Tyler *JT*

FROM: Jai Prasad *JP*

DATE: September 16, 1992

SUBJECT: MSSW connected with Trail Ridge Landfill
Permit No. SC16-184444
O.G.C. Case No. 92-0851 dated May 15, 1992
Duval County

The MSSW/Stormwater section has reviewed the following documents in accordance with the permit and Emergency Immediate Final Order as referenced above:

1. Phase I As-Built drawings of Trail Ridge Landfill, prepared by Sunshine State Surveyors, Inc., received on September 14, 1992; and
2. Certificate of Construction Completion for Trail Ridge Landfill Phase I MSSW System, prepared and certified by Douglas C. Miller, P.E., received on September 14, 1992 and revised on September 15, 1992, as per my request to include the review clause.

All the applicable submissions with regard to the MSSW System to serve Phases IA and IB have been received and found acceptable.

JPP/eml

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL REGULATION)	NORTHEAST DISTRICT
)	
Complainant,)	
)	OGC FILE NO. 92-0725
vs.)	9/3/92
)	
TRAIL RIDGE LANDFILL, INC.,)	
THE HASKELL COMPANY, AND)	
BARCO-DUVAL ENGINEERING INC.)	
)	
Respondents)	
)	

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Regulation ("Department"), and Barco-Duval Engineering Inc., c/o C. H. Barco, President, 7587 Wilson Boulevard, Jacksonville, FL 32210 ("Respondent Barco") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and Respondent Barco, while neither admitting nor denying culpability, acknowledges the following:

1. The Department is the administrative agency of the State of Florida charged with the duty to protect Florida's air and water resources and to administer and enforce Chapter 403, Florida Statutes, and the rules promulgated thereunder, Florida Administrative Code Title 17. The Department has jurisdiction over the matters addressed in this Consent Order.

2. Respondent Barco is a person within the meaning of Section 403.031, Florida Statutes.

3. Respondent Trail Ridge Landfill, Inc., is the owner of property located at latitude 30°13'20"N and longitude 82°02'30"W. Respondent Trail Ridge's affidavit of ownership is certified in DER Permit #161821182.

4. Respondents Trail Ridge, Haskell and Barco, conducted the activities described in paragraph 5 below.

5. Inspections by Department personnel on February 14 and 17, 1992 revealed the following deviations from DER Permit No. 161821182: (1) Turbid discharge into a tributary of Deep Creek which elevated the receiving water to 74.5 Nephelometric Turbidity Units (NTU's) above natural background, and (2) Erosion, siltation, and scouring within adjacent wetland areas caused by the February 13, 1992 discharge (See Attachment I). The activity was conducted on the above described property within the landward extent of Deep Creek, waters of the State, as defined by Florida Law.

6. The Respondent does not admit, by signature of this Order or otherwise, that it has violated any statute or rules promulgated thereunder. The parties are entering into this Consent Order to enable the activities described in or authorized by this Consent Order to be implemented without resort to litigation, which could delay such implementation. Neither this Consent Order nor actions taken hereunder shall constitute an admission by the Respondent of liability for any

wrongdoing regarding any of the events leading up to the signing of this Consent Order, nor shall this Consent Order or actions taken pursuant to its provisions be admissible as evidence in any administrative or judicial proceedings except for proceedings initiated pursuant to the terms of this Consent Order.

Having reached a resolution of the matter, pursuant to Florida Administrative Code Rule 17-103.110(3), Respondent Barco and the Department mutually agree and it is:

ORDERED:

7. Within 30 days of execution of this Consent Order, Respondent Barco shall pay the Department \$700.00 in settlement of the matters addressed in this Consent Order. This amount includes a civil penalty of \$550.00 for alleged violations of Section 403.913, F.S., and of the Department's rules and \$150.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. Payment shall be made by cashier's check or money order. The instrument shall be made payable to the "Department of Environmental Regulation" and shall include thereon the OGC number assigned to this Order and the notation "Pollution Recovery Fund".

8. With the exception of the activities described in Attachment II and DER Permit No. 161821182, effective immediately and henceforth, Respondent Barco shall not conduct any dredging, filling or construction activities on or within

the landward extent of waters of the state.

9. Respondent Barco shall implement the Maintenance and Monitoring Actions attached hereto as Attachment II in the manner and within the time frames specified therein.

10. Respondent Barco agrees to pay the Department stipulated penalties in the amount of \$50.00 per day for each and every day Respondent Barco fails to timely comply with any of the requirements of paragraph 6 of this Order. A separate stipulated penalty shall be assessed for each violation of this Order. Within 30 days of written demand from the Department, Respondent Barco shall make payment of the appropriate stipulated penalties to the "The Department of Environmental Regulation" by cashier's check or money order and shall include thereon the OGC number assigned to this Order and the notation "Pollution Recovery Fund." 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. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 6 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.

11. If any event occurs which causes delay, or the

reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent Barco shall have the burden of proving that the delay was, or will be, caused by the circumstances beyond the reasonable control of Respondent Barco and could not have been or cannot be overcome by due diligence. Changed economic circumstances shall not be considered circumstances beyond the control of Respondent Barco, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractual imposed deadlines be a cause beyond the control of Respondent Barco, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing or upon becoming aware of a potential for delay, Respondent Barco shall promptly notify the Department orally and shall, with seven days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken, or to be taken, to prevent or minimize the delay, and the timetable by which Respondent Barco intends to implement these measures. If the parties can agree that the delay or anticipated has been, or will be, caused by circumstances beyond the reasonable control of Respondent Barco the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable

measures necessary to avoid or minimize delay. Failure of Respondent Barco to comply with the notice requirements of this paragraph in a timely manner shall constitute a waiver of Respondent Barco's right to request an extension of time for compliance with the requirements of this Consent Order.

12. Respondent Barco is hereby advised that Florida law states: "No person shall commence any excavation, construction or other activity involving the use of sovereign or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund or the Department of Natural Resources under Chapter 253, until such person has received from the Board of Trustees of the Internal Improvement Trust Fund, the required lease, license, easement or other form of consent authorizing the proposed use." If such work is done without consent, a fine for each offense in an amount of up to \$10,000.00 may be imposed.

13. Entry of this Order does not relieve Respondent Barco of the need to comply with applicable federal, state or local laws, regulations or ordinances.

14. The terms and conditions as set forth in the 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.

15. Respondent Barco is fully aware that a violation of

the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties of up to \$10,000 per offense, and criminal penalties.

16. Persons who are not parties to this Consent Order but whose interests are affected by this Consent Order have a right, pursuant to Section 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, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400; 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 Section 120.57, F.S.

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 the 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 Section 120.57, F.S., 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 28-5.207, F.A.C.

17. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit the violation of applicable statutes, or the rules promulgated thereunder. In the event that the Department initiates such legal action pursuant to this paragraph, Respondent reserves

all of its rights and defenses to challenge or respond to such action as is appropriate.

18. The Department, for and in consideration of the complete and timely performance by Respondent Barco 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. Respondent Barco waives its right to an administrative hearing pursuant to Section 120.57, Florida Statutes of the terms of this Consent Order. Respondent Barco acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes, but waives that right upon signing this Consent Order.

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

20. The provisions of this Consent Order shall apply to and be binding upon the parties, their officers, their 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.

21. All plans, surveys, monitoring and restoration reports, penalties, stipulated penalties, costs and expenses, or other documents required by this Consent Order to be submitted to the Department shall be sent to Lisa Adams, 7825 Baymeadows Way, Suite B-200, Jacksonville, FL 32256-7577.

22. This Consent Order is final agency action of the Department pursuant to Section 120.69, Florida Statutes, and Florida Administrative Code Rule 17-103.110(3), 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 timely filing of a petition this Consent Order will not be effective until further order of the Department.

3104

DONE AND ORDERED this 26 day of August,
1992 in Duval Co. Florida.

FILING AND ACKNOWLEDGEMENT.

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

Elizabeth M. Lea 9-3-92
Clerk Date

FOR THE RESPONDENT:

Charles Barco
Barco-Duval Engineering Inc.
c/o C. H. Barco
President
7587 Wilson Boulevard
Jacksonville, Florida 32210
Telephone: (904) 772-1313

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL REGULATION

Ernest E. Frey
Ernest E. Frey, P.E.
Director of District Management
Northeast District
7825 Baymeadows Way, Suite B-200
Jacksonville, Florida 32256-7577
Telephone: (904) 448-4300

Copies furnished to:

Larry Evans - U.S. Army Corps of Engineers
Carolyn Wirz - St. Johns River Water Management District
Mary Nogas - DER ✓
Larry E. Paylor - The Haskell Company
Trail Ridge Landfill, Inc. - Luke DeBock
England, Thims & Miller, Inc. - Douglas C. Miller, P.E.

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL REGULATION)	NORTHEAST DISTRICT
)	
Complainant,)	
)	OGC FILE NO. 92-0725
vs.)	8/27/92
)	
TRAIL RIDGE LANDFILL, INC.,)	
THE HASKELL COMPANY, AND)	
BARCO-DUVAL ENGINEERING INC.)	
)	
Respondents)	

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Regulation ("Department"), and The Haskell Company, c/o Larry E. Paylor, Chief Specialty Operations Officer, The Haskell Building, 111 Riverside Avenue, Jacksonville, FL 32202 ("Respondent Haskell") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and Respondent Haskell, while neither admitting nor denying culpability, acknowledges the following:

1. The Department is the administrative agency of the State of Florida charged with the duty to protect Florida's air and water resources and to administer and enforce Chapter 403, Florida Statutes, and the rules promulgated thereunder, Florida Administrative Code Title 17. The Department has jurisdiction over the matters addressed in this Consent Order.

2. Respondent Haskell is a person within the meaning of Section 403.031, Florida Statutes.

3. Respondent Trail Ridge Landfill, Inc., is the owner of property located at latitude 30°13'20"N and longitude 82°02'30"W. Respondent Trail Ridge's affidavit of ownership is certified in DER Permit #161821182.

4. Respondents Trail Ridge, Haskell and Barco, conducted the activities described in paragraph 5 below.

5. Inspections by Department personnel on February 14 and 17, 1992 revealed the following deviations from DER Permit No. 161821182: (1) Turbid discharge into a tributary of Deep Creek which elevated the receiving water to 74.5 Nephelometric Turbidity Units (NTU's) above natural background, and (2) Erosion, siltation, and scouring within adjacent wetland areas caused by the February 13, 1992 discharge (See Attachment I). The activity was conducted on the above described property within the landward extent of Deep Creek, waters of the State, as defined by Florida Law.

6. The Respondent does not admit, by signature of this Order or otherwise, that it has violated any statute or rules promulgated thereunder. The parties are entering into this Consent Order to enable the activities described in or authorized by this Consent Order to be implemented without resort to litigation, which could delay such implementation. Neither this Consent Order nor actions taken hereunder shall constitute an admission by the Respondent of liability for any

wrongdoing regarding any of the events leading up to the signing of this Consent Order, nor shall this Consent Order or actions taken pursuant to its provisions be admissible as evidence in any administrative or judicial proceedings except for proceedings initiated pursuant to the terms of this Consent Order.

Having reached a resolution of the matter, pursuant to Florida Administrative Code Rule 17-103.110(3), Respondent Haskell and the Department mutually agree and it is:

ORDERED:

7. Within 30 days of execution of this Consent Order, Respondent Haskell shall pay the Department \$700.00 in settlement of the matters addressed in this Consent Order. This amount includes a civil penalty of \$550.00 for alleged violations of Section 403.913, F.S., and of the Department's rules and \$150.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. Payment shall be made by cashier's check or money order. The instrument shall be made payable to the "Department of Environmental Regulation" and shall include thereon the OGC number assigned to this Order and the notation "Pollution Recovery Fund".

8. With the exception of the activities described in Attachment II and DER Permit No. 161821182, effective immediately and henceforth, Respondent Haskell shall not conduct any dredging, filling or construction activities on or

within the landward extent of waters of the state.

9. Respondent Haskell shall implement the Maintenance and Monitoring Actions attached hereto as Attachment II in the manner and within the time frames specified therein.

10. Respondent Haskell agrees to pay the Department stipulated penalties in the amount of \$50.00 per day for each and every day Respondent Haskell fails to timely comply with any of the requirements of paragraph 6 of this Order. A separate stipulated penalty shall be assessed for each violation of this Order. Within 30 days of written demand from the Department, Respondent Haskell shall make payment of the appropriate stipulated penalties to the "The Department of Environmental Regulation" by cashier's check or money order and shall include thereon the OGC number assigned to this Order and the notation "Pollution Recovery Fund." 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. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 6 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.

11. If any event occurs which causes delay, or the

reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent Haskell shall have the burden of proving that the delay was, or will be, caused by the circumstances beyond the reasonable control of Respondent Haskell and could not have been or cannot be overcome by due diligence. Changed economic circumstances shall not be considered circumstances beyond the control of Respondent Haskell, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractual imposed deadlines be a cause beyond the control of Respondent Haskell, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing or upon becoming aware of a potential for delay, Respondent Haskell shall promptly notify the Department orally and shall, with seven days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken, or to be taken, to prevent or minimize the delay, and the timetable by which Respondent Haskell intends to implement these measures. If the parties can agree that the delay or anticipated has been, or will be, caused by circumstances beyond the reasonable control of Respondent Haskell, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable

measures necessary to avoid or minimize delay. Failure of Respondent Haskell to comply with the notice requirements of this paragraph in a timely manner shall constitute a waiver of Respondent Haskell's right to request an extension of time for compliance with the requirements of this Consent Order.

12. Respondent Haskell is hereby advised that Florida law states: "No person shall commence any excavation, construction or other activity involving the use of sovereign or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund or the Department of Natural Resources under Chapter 253, until such person has received from the Board of Trustees of the Internal Improvement Trust Fund, the required lease, license, easement or other form of consent authorizing the proposed use." If such work is done without consent, a fine for each offense in an amount of up to \$10,000.00 may be imposed.

13. Entry of this Order does not relieve Respondent Haskell of the need to comply with applicable federal, state or local laws, regulations or ordinances.

14. The terms and conditions as set forth in the 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.

15. Respondent Haskell is fully aware that a violation of

the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties of up to \$10,000 per offense, and criminal penalties.

16. Persons who are not parties to this Consent Order but whose interests are affected by this Consent Order have a right, pursuant to Section 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, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400; 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 Section 120.57, F.S.

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 the 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 Section 120.57, F.S., 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 28-5.207, F.A.C.

17. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit the violation of applicable statutes, or the rules promulgated thereunder. In the event that the Department initiates such legal action pursuant to this paragraph, Respondent reserves

all of its rights and defenses to challenge or respond to such action as is appropriate.

18. The Department, for and in consideration of the complete and timely performance by Respondent Haskell 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. Respondent Haskell waives its right to an administrative hearing pursuant to Section 120.57, Florida Statutes of the terms of this Consent Order. Respondent Haskell acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes, but waives that right upon signing this Consent Order.

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

20. The provisions of this Consent Order shall apply to and be binding upon the parties, their officers, their 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.

21. All plans, surveys, monitoring and restoration reports, penalties, stipulated penalties, costs and expenses, or other documents required by this Consent Order to be submitted to the Department shall be sent to Lisa Adams, 7825 Baymeadows Way, Suite B-200, Jacksonville, FL 32256-7577.

22. This Consent Order is final agency action of the Department pursuant to Section 120.69, Florida Statutes, and Florida Administrative Code Rule 17-103.110(3), 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 timely filing of a petition this Consent Order will not be effective until further order of the Department.

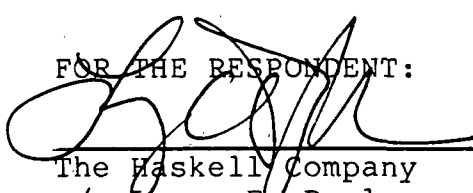
DONE AND ORDERED this 26 day of AUG.,
1992 in JACKSONVILLE, Florida.

FILING AND ACKNOWLEDGEMENT


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

Elizabeth M. Lea 8-27-92
Clerk Date

FOR THE RESPONDENT:


The Haskell Company
c/o Larry E. Paylor
Chief Specialty Operations Officer
The Haskell Building
111 Riverside Avenue
Jacksonville, Florida 32202-4950
Telephone: (904) 791-4500

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL REGULATION


Ernest E. Frey, P.E.
Director of District Management
Northeast District
7825 Baymeadows Way, Suite B-200
Jacksonville, Florida 32256-7577
Telephone: (904) 448-4300

Copies furnished to:

Larry Evans - U.S. Army Corps of Engineers
Carolyn Wirz - St. Johns River Water Management District
Mary Nogas - DER ✓
C. H. Barco - Barco-Duval Engineering Inc.
Trail Ridge Landfill, Inc. - Luke DeBock
England, Thims & Miller, Inc. - Douglas C. Miller, P.E.

Mary H. Jones

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL REGULATION,)	NORTHEAST DISTRICT
)	
Complainant,)	OGC FILE NO. 92-0725
)	7/27/92
vs.)	
)	
TRAIL RIDGE LANDFILL, INC.,)	
THE HASKELL COMPANY, AND)	
BARCO-DUVAL ENGINEERING, INC.)	
)	
Respondents.)	
_____)	

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Regulation ("Department"), and Trail Ridge Landfill, Inc., c/o Warren N. Smith, Vice President, 500 Cypress Creek Road, West, Suite 300, Ft. Lauderdale, Florida 33309 ("Respondent Trail Ridge") to reach settlement of certain matters at issue between the Department and Respondents.

The Department finds and Respondent Trail Ridge, while neither admitting nor denying culpability, acknowledges the following:

1. The Department is the administrative agency of the State of Florida charged with the duty to protect Florida's air and water resources and to administer and enforce Chapter 403, Florida Statutes (F.S.), and the rules

promulgated thereunder, Florida Administrative Code Title 17. The Department has jurisdiction over the matters addressed in this Consent Order.

2. Respondent Trail Ridge is a person within the meaning of Section 403.031, F.S.

3. Respondent Trail Ridge Landfill, Inc., is the owner of property located at latitude 30°13'20"N and longitude 82°02'30"W. Respondent Trail Ridge's affidavit of ownership is certified in DER Permit #161821182.

4. Respondents Trail Ridge, The Haskell Company ("Haskell") and Barco-Duval Engineering, Inc. ("Barco") conducted the activities described in paragraph 5 below.

5. Inspections by Department personnel on February 14 and 17, 1992, revealed the following deviations from DER permit No. 161821182: (1) Turbid discharge into a tributary of Deep Creek which elevated the receiving water to 74.5 Nephelometric Turbidity Units (NTU's) above natural background, and (2) Erosion, siltation, and scouring within adjacent wetland areas caused by the February 13, 1992 discharge (See Attachment I). The activity was conducted on the above-described property within the landward extent of Deep Creek, waters of the State, as defined by Florida Law.

6. The Respondent does not admit, by signature of this Order or otherwise, that it has violated any statute or

rules promulgated thereunder. The parties are entering into this consent order to enable the activities described in or authorized by this consent order to be implemented without resort to litigation, which could delay such implementation. Neither this consent order nor actions taken hereunder shall constitute an admission by the Respondent of liability for any wrongdoing regarding any of the events leading up to the signing of this consent order, nor shall this consent order or actions taken pursuant to its provisions be admissible as evidence in any administrative or judicial proceedings except for proceedings initiated pursuant to the terms of this consent order.

Having reached a resolution of the matter, pursuant to Florida Administrative Code Rule 17-103.110(3), Respondent Trail Ridge and the Department mutually agree and it is:

ORDERED:

7. With the exception of the activities described in Attachment II and DER Permit No. 161821182, effective immediately and henceforth, Respondent Trail Ridge shall not conduct any dredging, filling, or construction activities on or within the landward extent of waters of the state.

8. The Respondent Trail Ridge shall implement the Maintenance and Monitoring Actions attached hereto as Attachment II in the manner and within the time frames specified therein.

9. If any event occurs which causes delay, or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent Trail Ridge shall have the burden of proving that the delay was, or will be, caused by the circumstances beyond the reasonable control of Respondent Trail Ridge and could not have been or cannot be overcome by due diligence. Changed economic circumstances shall not be considered circumstances beyond the control of Respondent Trail Ridge, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractual imposed deadlines be a cause beyond the control of Respondent Trail Ridge, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent Trail Ridge shall promptly notify the Department orally and shall, within seven days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken, or to be taken, to prevent or minimize the delay, and the timetable by which Respondent Trail Ridge intends to implement these measures. If the parties can agree that the delay or anticipated delay has been, or will be, caused by

circumstances beyond the reasonable control of Respondent Trail Ridge, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent Trail Ridge to comply with the notice requirements of this paragraph in a timely manner shall constitute a waiver of Respondent Trail Ridge's right to request an extension of time for compliance with the requirements of this Consent Order.

10. Respondent Trail Ridge shall allow authorized representatives of the Department access to the property at reasonable times for purposes of determining compliance with this Order and the rules and regulations of the Department.

11. Respondent Trail Ridge is hereby advised that Florida law states: "No person shall commence any excavation, construction or other activity involving the use of sovereign or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund or the Department of Natural Resources under Chapter 253, until such person has received from the Board of Trustees of the Internal Improvement Trust Fund, the required lease, license, easement or other form of consent authorizing the proposed use." If such work is done without consent, a fine for each offense in an amount of up to \$10,000.00 may be imposed.

12. Entry of this Order does not relieve Respondent Trial Ridge of the need to comply with applicable federal, state or local laws, regulations or ordinances.

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

14. Respondent Trail Ridge is fully aware that a violation of the terms of this Consent Order may subject Respondent Trial Ridge to judicial imposition of damages, civil penalties of up to \$10,000 per offense, and criminal penalties.

15. Persons who are not parties to this Consent Order but whose interests are affected by this Consent Order have a right, pursuant to Section 120.57, F.S., 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, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400; 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 Section 120.57, F.S.

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 Section 120.57, F.S., 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 28-5.207, F.A.C.

16. The Department hereby expressly reserved the right to initiate appropriate legal action to prevent or prohibit the violation of applicable statutes, or the rules promulgated thereunder.

17. The Department, for and inconsideration of the complete and timely performance by Respondent Trail Ridge 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. Respondent Trial Ridge waives its right to an administrative hearing pursuant to Section 120.57, F.S., of the terms of this Consent Order. Respondent Trial Ridge acknowledges its right to appeal to the terms of this Consent Order pursuant to Section 120.68, F.S., but waives that right upon signing this Consent Order.

18. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both Respondent Trail Ridge and the Department.

19. The provisions of this Consent Order shall apply to and be binding upon the parties, their officers, their 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.

20. All plans, surveys, monitoring and restoration reports, penalties, stipulated penalties, costs and expenses, or other documents required by this Consent Order to be submitted to the Department shall be sent to Lisa Adams, 7825 Baymeadows Way, Suite B-200, Jacksonville, FL 32256-7577.

21. If all of the requirements of this Consent Order have not been fully satisfied, Respondent Trail Ridge shall not sell or convey the above-described property without, at least 14 days prior to such sale or conveyance, (1) notifying the Department of such sale or conveyance, and (2) providing a copy of this Consent Order with all attachments to the new owner.

23. This Consent Order is final agency action of the Department pursuant to Section 120.69, F.S., and Florida Administrative Code Rule 17-103.110(3), 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, F.S. Upon timely filing of a

petition this Consent Order will not be effective until further order of the Department.

DONE AND ORDERED this 24th day of July, 1992
in Ft. Lauderdale, Florida.
JACKSONVILLE

FOR THE RESPONDENT:

By: Warren N. Smith
Warren N. Smith
Vice President
TRAIL RIDGE LANDFILL, INC.
500 Cypress Creek Road, West
Suite 300
Ft. Lauderdale, FL 33309
(305) 771-9850

FILING AND ACKNOWLEDGEMENT
FILED, on this date, pursuant to S120.52, Florida
Statutes, with the designated Department Clerk,
receipt of which is hereby acknowledged.

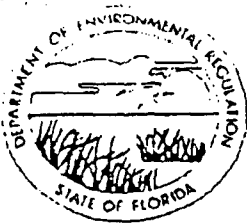
Elizabeth M. Lea 7-27-92
Clerk Date

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL REGULATION

By: Ernest E. Frey
Ernest E. Frey, P.E.
Director of District Management
Northeast District
7825 Baymeadows Way, Suite B-200
Jacksonville, FL 32256-7577
(904) 448-4300

Copies furnished to:

Larry Evans - U.S. Army Corps of Engineers
Carolyn Wirz - St. Johns River Water Management District
Mary Nogas - DER, Jacksonville
The Haskell Company - Preston Haskell
Barco-Duval Engineering - Charles H. Barco



Florida Department of Environmental Regulation

Northeast District • Suite B200, 7825 Baymeadows Way • Jacksonville, Florida 32256-7577

Lawton Chiles, Governor

Carol M. Browner, Secretary

February 18, 1992

CERTIFIED - RETURN RECEIPT

Trail Ridge Landfill, Inc.
c/o Douglas C. Miller, P.E.
England, Thims & Millers, Inc.
3131 St. Johns Bluff Road South
Jacksonville, FL 32216

Barco-Duval Engineering, Inc.
c/o Charles H. Barco, President
7587 Wilson Boulevard
Jacksonville, FL 32210

The Haskell Company
c/o Preston Haskell, President
Haskell Building
Riverside Ave.
Jacksonville, FL 32231-4100

Gentlemen:

Warning Letter No. WN-92-0019-DF16NED
DER Permit Nos. 161821182 and SC16-184444
Duval County - Surface Water Management Permit Compliance

Chapter 403, Florida Statutes, authorizes and directs the Department of Environmental Regulation to control and prohibit pollution of air and water.

Field inspections conducted on February 14, 1992 and February 17, 1992 of the Trail Ridge Landfill Project, indicates that a violation of Chapter 403, Florida Statutes, and the rules promulgated thereunder may exist at the property. Department personnel observed the following at the site.

1. Turbid discharge into a tributary of Deep Creek which elevated the receiving water to 74.5 Nephelometric Turbidity Units (NTU's) above natural background.
2. Erosion, siltation, and scouring within adjacent wetland areas caused by the February 13, 1992 discharge.

Administration 448-4300
Air 448-4310
Waste Management 448-4320

Water Facilities 448-433
Water Management 448-434
FAX 448-436

Attachment I

You may be in violation of the following permit conditions:

1. General Conditions Nos. 5 and 6 of permits #161821182 and SC16-184444.

General Condition #5: This permit does not relieve the Permittee from liability for harm or injury to human health or welfare, animal plant or aquatic life or property and penalties therefore caused by the construction or operation of this permitted source, nor does it allow the Permittee to cause pollution in contravention of Florida Statutes and Department rules, unless specifically authorized by an order from the Department.

General Condition #6: The Permittee shall at all times properly operate and maintain the facility and systems of treatment and control (and related appurtenances) that are installed or used by the Permittee to achieve compliance with the conditions of this permit, as required by Department rules. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit and when required by Department rules.

2. Specific Conditions Nos. 5 and 15 of Permit #161821182.

Specific Condition #5: The project shall comply with applicable State Water Quality Standards, namely:
17-302.500 - Minimum Criteria for All Waters at All Times and All Places.
17-302.510 - Surface Waters: General Criteria.
17-302.560 - Criteria - Class III Waters - Recreation, Propagation and Management of Fish and Wildlife: Surface Waters.

Specific Condition #15: All wetland areas or water bodies which are outside the specific limits of construction authorized by this permit must be protected from erosion, siltation, scouring or excess turbidity or dewatering.

3. Specific Conditions Nos. 7, 9, 14 and 55 of Permit #SC16-184444

Specific Condition #7: Surface water runoff and/or diversion controls included in the plans and/or this permit shall be installed and operational prior to construction of the disposal areas. Surface water runoff shall be controlled during the construction stage and shall comply with F.A.C. Chapter 17-3(now 17-302) at the site boundary.

Trail Ridge Landfill, Inc.
Barco-Duval Engineering, Inc.
The Haskell Company
Page Three
February 18, 1992

Specific Condition #9: Turbidity controls shall be utilized throughout the project to contain any turbidity generated that exceeds State water quality standards.

Specific Condition #14: The Permittee is responsible for the selection, implementation, and operation of all erosion and sediment controls on-site and to prevent violations of water quality standards in Chapters 17-3(now 17-302) and 17-4, F.A.C. The Permittee is encouraged to use the appropriate Best Management Practices described in the Florida Land Development Manual: A guide to Sound Land and Water Management (DER 1988).

Specific Condition #55: All wetland areas or water bodies which are outside the specific limits of construction authorized by this permit must be protected from erosion, siltation, scouring or excess turbidity or dewatering.

Portions of the Florida Statutes and Rules which the Department believes you have violated, or are now violating, are identified below. A written response to each violation is required.

Chapter 403, Florida Statutes, Environmental Control

403.161 Prohibitions, violation, penalty, intent. -

- (1) It shall be a violation of this chapter, and it shall be prohibited:

* * * *

- (b) 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.

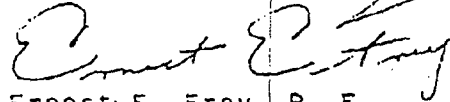
You are advised that any activity at your facility that may be contributing to violations of the above described statutes and rules should be ceased immediately. Operation of a facility in violation of state statutes or rules may result in liability for damages and restoration, and the judicial imposition of civil penalties up to \$10,000 per violation per day pursuant to Sections 403.141 and 403.161, Florida Statutes.

Trail Ridge Landfill, Inc.
Barco-Duval Engineering, Inc.
The Haskell Company
Page Four
February 18, 1992

You are requested to contact Jack Dunphy or Lisa Adams of this office at (904) 448-4340 within 15 days of receipt of this Warning Letter to arrange a meeting with Department personnel to discuss the issues raised in this Warning Letter. You may wish to consult an attorney and to have the attorney attend the meeting with the Department.

PLEASE BE ADVISED that this Warning Letter is part of an agency investigation preliminary to agency action in accordance with Section 120.57(4), Florida Statutes. The purpose of this letter is to advise you of potential violations and to set up a meeting to discuss possible resolutions to any potential violations that may have occurred for which you may be responsible. If the Department determines that an enforcement proceeding should be initiated in this case, it may be initiated by issuing a Notice of Violation or by filing a judicial action in accordance with Section 403.121, Florida Statutes. If the Department issues a Notice of Violation, and you are named as a party, you will be informed of your rights to contest any determination made by the Department in the Notice of Violation. The Department can also resolve any violation through voluntary entry into a Consent Order.

Sincerely,



Ernest E. Frey, P. E.
Director of District Management

JT
EEF:jd/eml

cc: Mike Fitzsimmons - DER
Mike Eaton - DER
Larry Evans - Army Corps of Engineers
Gary Howalt - Environmental Services, Inc.

ATTACHMENT II

MAINTENANCE AND MONITORING ACTIONS

Effective immediately and henceforth, Respondent shall utilize all approved methods to insure the compliance of Specific Conditions 5 and 15 of DER Permit #161821182.

Specific Condition #5: The project shall comply with applicable State Water Quality Standards, namely:

- 17-302.500 - Minimum Criteria for All Waters at All Times and All Places.
- 17-302.510 - Surface Waters: General Criteria.
- 17-302.560 - Criteria - Class III Waters - Recreation, Propagation and Management of Fish and Wildlife: Surface Waters.

Specific Condition #15: All wetland areas or water bodies which are outside the specific limits of construction authorized by this permit must be protected from erosion, siltation, scouring or excess turbidity or dewatering.

File *File*
HOPPING BOYD GREEN & SAMS

ATTORNEYS AND COUNSELORS

123 SOUTH CALHOUN STREET

POST OFFICE BOX 6526

TALLAHASSEE, FLORIDA 32314

(904) 222-7500

FAX (904) 224-8551

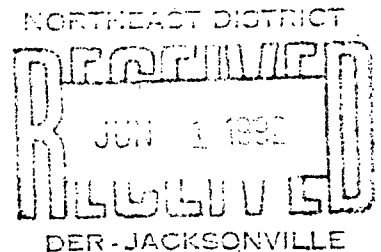
CARLOS ALVAREZ
JAMES S. ALVES
BRIAN H. BIBEAU
KATHLEEN BLIZZARD
ELIZABETH C. BOWMAN
WILLIAM L. BOYD, IV
RICHARD S. BRIGHTMAN
PETER C. CUNNINGHAM
THOMAS M. DE ROSE
WILLIAM H. GREEN
WADE L. HOPPING
FRANK E. MATTHEWS
RICHARD D. MELSON
WILLIAM D. PRESTON
CAROLYN S. RAEPPEL
GARY P. SAMS
ROBERT P. SMITH
CHERYL G. STUART

C. ALLEN CULP, JR.
RALPH A. DEMEO
JAMES C. GOODLETT
RICHARD W. MOORE
ANGELA R. MORRISON
MARIBEL N. NICHOLSON
LAURA BOYD PEARCE
GARY V. PERKO
MICHAEL P. PETROVICH
DOUGLAS S. ROBERTS
JULIE B. ROME
KRISTIN C. RUBIN
CECELIA C. SMITH

OF COUNSEL
W. ROBERT FOXES

May 28, 1992

Mr. Ernest E. Frey, P.E.
Director, District Management
Department of Environmental Regulation
7825 Baymeadows Way
Suite 200B
Jacksonville, FL 32256-7577



Re: Proposed OGC Consent Order No. 92-0725
DER vs. Trail Ridge Landfill, Inc., The Haskell
Company and Barco-Duval Engineering, Inc.

Dear Mr. Frey:

I represent and this letter is written on behalf of Respondent Trail Ridge Landfill, Inc. (Trail Ridge), in connection with the above-referenced matter. Your May 6, 1992 correspondence to Mr. Douglas Miller, an agent for Trail Ridge, included a draft Consent Order designed to resolve the above-referenced case and requested that such document be executed and returned to your office.

Trail Ridge feels that the substance of the resolution as contained within the draft consent order is acceptable and consistent with the position stated by Trail Ridge in Mr. Miller's letter of April 3, 1992 to Ms. Lisa Adams on your staff. However, Trail Ridge does wish to modify certain of the "legal" provisions of the draft consent order in a fashion which I believe you and the Department attorney assigned to this matter should find acceptable. Those requested changes are as follows:

1. On page 1, change the lead-in to the factual representations as follows:

The Department finds and the Respondent, while neither admitting nor denying culpability, acknowledges the following:

2. Amend paragraph 5 as follows:

Inspections by Department personnel on February 14 and 17, 1992, revealed the following potential deviations from DER permit No. 161821182: (1) Turbid discharge into a tributary of Deep Creek which elevated the receiving water to 74.5 Nephelometric Turbidity Units (NTU's) above natural background, and (2) Erosion, siltation, and scouring within adjacent wetland areas caused by the February 13, 1992 discharge (See Attachment I). The alleged activity was conducted on the above described property within the landward extent of Deep Creek, waters of the State, as defined by Florida Law.

These changes reflect the fact that the Department Warning Letter of February 18, 1992, itself notes that there "may" have been a violation of applicable permit conditions or statute/rule requirements.

3. Insert a new paragraph 6 immediately after paragraph 5 on page two of the consent order and renumber subsequent paragraphs as follows:

6. The Respondent does not admit, by signature of this Order or otherwise, that it has violated any statute or rules promulgated thereunder. The parties are entering into this consent order to enable the activities described in or authorized by this consent order to be implemented without resort to litigation, which could delay such implementation. Neither this consent order nor actions taken hereunder shall constitute an admission by the Respondent of liability for any wrongdoing regarding any of the events leading up to the signing of this consent order, nor shall this consent order or actions taken pursuant to its provisions be admissible as evidence in any administrative or judicial proceedings except for proceedings initiated pursuant to the terms of this consent order.

Mr. Ernest E. Frey, P.E.
May 28, 1992
Page 3

4. Strike paragraph No. 10. This same language is found in Specific Condition 1 of the dredge and fill DER Permit No. 161821182 previously issued for the Trail Ridge Landfill.

5. Add the following at the end of paragraph No. 15:

In the event that the Department initiates such legal action pursuant to this paragraph, Respondent reserves all or its rights and defenses to challenge of respond to such action as is appropriate.

6. The signature block for Respondent Trail Ridge Landfill, Inc. should reflect an execution by a representative of that company, instead of by Douglas Miller with the firm of England-Thims and Miller. I will have that person's name and title shortly.

I believe that you or other Department representatives will find the modifications requested above to be self-explanatory and straightforward. However, since the proposed modifications do relate to non-technical provisions of the proposed consent order, as noted above, I have also taken the liberty of forwarding a copy of this letter to Ms. Claire Lardner, who I understand may be the appropriate attorney within the Office of General Counsel to review this matter, if needed. Please feel free to contact me with any questions that you may have. If these revisions are acceptable to the Department, I will arrange to have an original executed document returned to your office as soon as I receive notice of concurrence from your staff.

Sincerely,

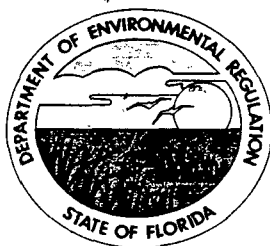
HOPPING BOYD GREEN & SAMS

By: 

William D. Preston

Attorneys for Trail Ridge
Landfill, Inc.

WDP/cla
cc: Claire Lardner, Esq.
Lisa Adams
Doug Miller



Florida Department of Environmental Regulation

Northeast District • Suite B200, 7825 Baymeadows Way • Jacksonville, Florida 32256-7577

Lawton Chiles, Governor

Carol M. Browner, Secretary

May 27, 1992

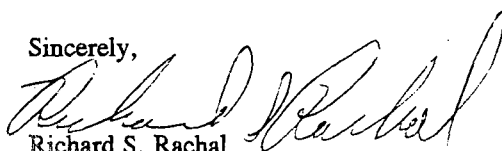
Mr. Scott McCallister
Manager, Environmental Programs
Waste Management of North America, Inc.
Suite 300
500 Cypress Creek Road, West
Fort Lauderdale, Florida 33309-6127

SUBJECT: Trail Ridge Landfill
Duval County, Florida
Groundwater Monitoring Program Wells

Dear Mr. McCallister,

Your request to be allowed to postpone replacement of the damaged monitoring well at the Trail Ridge landfill for several weeks is acceptable, provided the well is replaced no later than June 15, 1992. All wells that are included in the phases of the monitoring program are subject to the notification and replacement requirements of the existing permit, regardless of current sampling or measurement requirements.

Sincerely,


Richard S. Rachal
Waste Cleanup

c.c. B. Cheary, Ph.D.
M. Nogas, P.E.
file



Florida Department of Environmental Regulation

Northeast District • Suite B200, 7825 Baymeadows Way • Jacksonville, Florida 32256-7577

Lawton Chiles, Governor

Carol M. Browner, Secretary

May 15, 1992

HAND DELIVERED

Mr. Douglas C. Miller, P. E.
England-Thims & Miller, Inc.
3131 St. Johns Bluff Road South
Jacksonville, Florida 32216

Dear Mr. miller:

Trail Ridge Landfill Phase IA
Permit No. SC16-184444
OGC Case No. 92-0851
Duval County - Solid Waste

The Department has reviewed the following documents submitted in accordance with the permit and Emergency Final Order referenced above:

1. Construction Quality Assurance Monitoring of the Geosynthetic Lining System for the Trail Ridge Landfill Phases IA and IB - Final Report (Volumes I, II, III, and IV), prepared by Geosyntec Consultants, received on May 13, 1992, and supplemented on May 15, 1992;
2. Report of Soils Quality Assurance Testing Phase IA and IB Trail Ridge Landfill, prepared by Law Engineering, received on May 13, 1992 and supplemented on May 15, 1992;
3. Liner System As-Built for Trail Ridge Landfill, Sheets 1 and 2, prepared by Sunshine State Surveyors, Inc., received on May 13, 1992; and
4. Certificate of Construction Completion for Phase IA, Trail Ridge Landfill, prepared by Douglas C. Miller, P. E., received on May 15, 1992.

Administration 448-4300
Air 448-4310
Waste Management 448-4320



Water Facilities 448-4330
Water Management 448-4340
FAX 448-4366

Mr. Douglas C. Miller
May 15, 1992
Page two

Please be advised that all applicable submissions required for Phase IA have been received and found acceptable. Therefore, Trail Ridge Landfill, Inc. may begin accepting waste in Phase IA of the subject landfill.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "MC Nogas".

Mary C. Nogas, P. E.
Supervisor, Solid Waste

MCN:ml

cc: J. D. Igou, Waste Management, Inc.
Allan E. Williams, City of Jacksonville

RECEIVED

MAY 15 1992

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

Dept. of Environmental Reg.
Office of General Counsel

In re:

Petition of CITY OF JACKSONVILLE
and TRAIL RIDGE LANDFILL, INC.,
for an Emergency Final Order

OGC CASE NO. 92-0851

5/15/92

EMERGENCY IMMEDIATE FINAL ORDER

Pursuant to Section 120.59(3), Florida Statutes (F.S.), the State of Florida Department of Environmental Regulation (the Department) enters the following Emergency Final Order to Petitioners City of Jacksonville (the City) and Trail Ridge Landfill, Inc., (Trail Ridge) allowing the City to continue to operate its North landfill Phase IIIB until Trail Ridge Landfill opens or until May 25, 1992, whichever occurs first, and allowing Trail Ridge to open a section of the Trail Ridge Landfill.

FINDINGS OF FACT

1. On May 8, 1992, the Department received a petition filed jointly by the City and Trail Ridge for an Emergency Final Order in which Petitioners sought authorization to continue to operate the City's North landfill Phase IIIB until seven days after Trail Ridge Landfill opens, and to open a section of the currently unbuilt Trail Ridge Landfill, which is currently under construction, ahead of schedule. (Exhibit A) Petitioners presented detailed facts and justifications and argued that such

an Order is necessary to avoid an immediate danger to the public health, safety and welfare.

2. The City currently disposes of approximately 2000 tons of solid waste per day in Phase IIIB of its North Landfill. This amount has been significantly reduced in the past several years through recycling, waste reduction and diversion, and it is unreasonable to expect that it can be further reduced in the immediate future.

3. Phase IIIB of the City's North Landfill is the only permitted Class I landfill currently accepting waste in Duval County. It is also the only lined landfill in the county.

4. Department Permit Number SC16-152966 allows the City to accept waste at Phase IIIB of the North Landfill only until its design elevation of 110 feet is reached.

5. The City estimates that even with every practical measure to reduce and compact waste, it will reach the design elevation of 110 feet on or around May 15, 1992. At that point, under its permit conditions, it is required to close.

6. Trail Ridge has received Department Permit Number SC16-184444 to construct and operate a new landfill, known as the Trail Ridge Landfill. Consistent with the plans and specifications made a part of such permit, Trail Ridge is to construct the landfill in phases with the construction of an 18 acre disposal area known as Phases IA and IB to be constructed and operated first within Phase I.

7. Trail Ridge Landfill is currently under construction and is scheduled to begin operation in August of 1992. While it is possible that construction in accordance with all permit conditions could be completed before then, the landfill cannot be constructed in accordance with all permit conditions and ready to accept waste by May 15, 1992, even with every practical measure to accelerate construction.

8. The City has investigated the possibilities of exporting its solid waste to another county. Such action would entail costs of several million dollars, and would require the use of equipment and transportation services which are not readily available.

9. The City has investigated the possibility of reopening portions of the North Landfill which do not currently receive waste, either for disposal or for temporary storage of solid waste. However, these portions are unlined, and such action would pose an unacceptable environmental risk due to the increased potential for groundwater contamination.

10. The City has also investigated the possibility of vertically expanding Phase IIIB of the North Landfill. The City's investigation has shown that a vertical expansion sufficient to accommodate the solid waste to be generated would require a final design elevation of approximately 172 feet. The weight of this much solid waste would pose an unacceptable risk to the integrity and functioning of the leachate collection system underlying Cells 1 and 2 of Phase IIIB.

11. If the City is forced to close its only landfill before the Trail Ridge Landfill is operational, the lack of a site to dispose of the approximately 2000 tons per day of solid waste generated can reasonably be expected to cause an environmental and public health emergency. Such a situation will result in both improper storage of large amounts of putrescible solid waste and uncontrolled dumping of solid waste throughout the county. If the collection service has nowhere to take the solid waste, no pick-up will occur, and raw garbage and other putrescible wastes will rapidly pile up at the generator's establishment in an uncontrolled manner, increasing the presence of disease vectors such as rats and insects and causing odors and other nuisances. Also, the lack of a proper site for disposal of the raw garbage and other wastes will result in uncontrolled open dumping throughout the county. As well as these public health problems, open dumping will cause environmental problems such as ground water and surface water contamination, air pollution as a result of open burning, and excessive litter.

12. If this Emergency Final Order is not issued, the City will be without a permitted, lined landfill for disposal of solid waste generated by all citizens of Duval County for up to three months.

13. Trail Ridge has developed an interim operation and stormwater control plan that would allow it to open a portion of Phase I of the Trail Ridge Landfill, known as Phase IA, sometime in May of 1992. This interim operation and stormwater control

plan is attached as Exhibit B and is incorporated herein. In order to implement this plan, certain conditions of Permit Number SC16-184444 must be superseded, on a temporary basis, by the terms of this Order. This Order does not authorize or create conditions likely to result in violations of any Department standards, and is not expected to lead to any adverse environmental or public health impacts.

14. Trail Ridge's construction permit authorizes it to accept up to 1800 tons per day (monthly average) of solid waste, in conformance with the plans submitted. Trail Ridge has requested a modification of these plans to accept up to 2600 tons per day (monthly average) of solid waste, with corresponding operation revisions, in order to accommodate all of the solid waste to be landfilled in the City. A final decision on this modification request has been delayed by pending administrative proceedings which have been initiated under Chapter 120, F.S. If Trail Ridge is not allowed to accept all of the City's solid waste, many of the problems set forth in paragraph 12 above will occur.

15. The City has applied for a closure permit for Phases I, II, and IIIA of the North Landfill but has not yet responded to the Department's outstanding request for additional information. Accordingly, these phases have not yet received a closure permit from the Department and have not yet been closed in accordance with applicable Department rules. In addition, these phases have exceeded their design height in violation of their permit

conditions. The City and the Department have entered into a Consent Order which requires the City to correct this problem at Phases I and II.

CONCLUSIONS OF LAW

The Department has the authority to issue an Emergency Final Order if it is found that an immediate danger to the public health, safety or welfare requires such an Order, pursuant to Section 120.59(3), F.S.

Based upon the Findings of Fact herein, it is determined that an immediate danger to the public health, safety and welfare will exist if the City closes the North Landfill when the design elevation is reached on or around May 15, and if Trail Ridge is not authorized to open a portion of Phase I earlier than is envisioned or allowed under its existing permit.

Based upon the Findings of Fact herein, it is determined that an immediate danger to the public health, safety and welfare will exist if Trail Ridge is not allowed to accept for disposal all of the solid waste currently landfilled in the City at the Trail Ridge Landfill.

Accordingly, it is ORDERED:

A. The City is authorized to continue to dispose of solid waste at Phase IIIB of the North Landfill, even though it may exceed the permitted design elevation, under the following schedule. The City may not dispose of solid waste above Cells 1 and 2 of Phase IIIB. The City will comply with all other permit conditions, including the permit conditions relating to ground

water monitoring and the ground water monitoring system, during and after this period. The City will also continue its recycling, waste reduction and diversion efforts at least at the current level to minimize the amount of solid waste that requires disposal in the North Landfill.

(1) The City may continue to dispose of all solid waste which is currently allowed under its existing permit until May 18, 1992, or until its design elevation of 110 feet is reached, whichever is later.

(2) To allow for a gradual startup period at the Trail Ridge Landfill, the City may continue, at Phase IIIB, to dispose of up to two-thirds of the amount of solid waste which is currently being disposed of until May 25, 1992. Daily records of the total solid waste tonnage accepted at the North Landfill will be submitted to the Department the following business day.

(3) The Director of District Management of the Department's Northeast District may extend either of these two dates for up to one week for good cause. Good cause shall mean an unavoidable delay in the completion and opening of Trail Ridge Landfill's Phase 1A due to weather conditions, mechanical breakdowns, or other reasonably unavoidable delays.

B. Trail Ridge is authorized to construct and begin operation of Phases 1A and 1B of the Trail Ridge Landfill. The following specific conditions of Permit Number SC16-184444 are superseded as follows during the interim operating period, which is defined as 120 days from the date of this Order. The interim

operation and stormwater control plan (Exhibit B) is incorporated into the permit during the interim operation period.

(1) Specific Condition #1. The first sentence is modified as follows:

Construction of the Trail Ridge "Plan A" Landfill shall be in conformance with plans, specifications, and contract drawings submitted in support of the application received July 27, 1990 and the additional information provided on September 12 and October 10 and 11, 1990, except as modified by the interim operation and stormwater control plan and this Order.

(2) Specific Condition #3. The second sentence is modified as follows:

Proof that the financial assurance mechanism is funded in accordance with FAC Rule 17-701.076 shall be submitted to the Department by June 6, 1992. ~~sixty-(60)-days-prior-to-the acceptance-of-any-solid-waste-at-the-facility-[17-701-076(2)]-~~

(3) Specific Condition #5. The third sentence is modified as follows:

The final design shall be implemented by Permittee prior to the end of the interim operating period. ~~during-construction, prior-to-the acceptance-of-any-waste-~~

(4) Specific Condition #6. The third sentence is modified as follows:

The final design of the berm system shall be implemented prior to the end of the interim operating period. ~~The-final design-shall-be-implemented-by-Permittee-during-construction, prior-to-the-acceptance-of-any-waste-~~

(5) Specific Condition #11. The first sentence is modified as follows:

For each phase of the surface water management system, except for the stormwater control system described in the interim operation and stormwater control plan, the Permittee shall submit, within 30 days after completion of construction, a "Certification of Completion of Construction."

(6) Specific Condition #15. The first sentence is modified as follows:

Except for the control system described in the interim operation and stormwater control plan, the operation phase of the stormwater management system shall not become effective until the following criteria have been met:

(7) Specific Condition #19. The last sentence is modified as follows:

The facility shall not be operated or accept solid waste until the Department has notified the Permittee in writing that all applicable submissions required by ~~for~~ the permit and this Order, including financial responsibility documentation have been received and found acceptable.

(8) ~~Specific Condition~~ #20.

The facility shall not be operated or accept solid waste until the Department has notified the Permittee, in writing, that the applicable certification, attesting that the surface water management system has been constructed in accordance with the permitted design, has been received and approved. However,

during the interim operating period the Permittee may operate and accept solid waste using the control system described in the interim operation and stormwater control plan.

(9) Specific Condition #21.

Following notification that the Department has found the submittals acceptable, the Permittee shall operate the facility in conformance with the criteria contained in FAC Rule 17-701.050, any other applicable DER rules, any applicable permits, and the operation plan submitted with the permit application, except as specifically modified by the interim operation and stormwater control plan or this Order.

(10) Specific Condition #38(b)(1). The seventh paragraph is modified as follows:

Approval of the proposed additional wells to be utilized as part of the ground water monitoring plan, as needed, during Phase I of the facility's operation will be obtained from the Department. For wells required to be constructed, initial sampling, sample analysis and analysis results shall be submitted to the Department within 120 days of the Department's written request ~~thirty-(90)-days-prior-to-the-acceptance-of-waste-by-the facility.~~

(11) Specific Condition 48 I.(f).

The wetland stormwater discharge system shall be completed and operational prior to the end of the interim operation period. ~~excepting-any-waste-in-the-Phase-I,-Class-I-Landfill-~~

C. The superseding specific conditions set forth in paragraph B above are effective for not more than 120 days from the date of this Order. After such date, Trail Ridge shall comply with all conditions and provisions in Permit Number SC16-184444, unless modified by appropriate procedures. During this interim period and thereafter, Trail Ridge shall comply with all permit conditions not specifically superseded by this Order.

D. Trail Ridge is authorized to accept up to 2600 tons per day (monthly average) with peak individual days of up to 3000 tons per day of solid waste, with the corresponding operation revisions requested, until and unless the Department issues a subsequent Final Order denying the request to so modify the permit. Between the time Trail Ridge Landfill opens and the North Landfill ceases accepting waste, Trail Ridge will provide to the Department daily reports of the tonnage of solid waste accepted by the end of the following business day.

E. Within 15 days of the date of this Order, the City shall submit a complete response to the Department's request for additional information for its closure permit application for Phases I, II, and IIIA of the North Landfill. Within 30 days of the date of this Order, the City shall submit a closure permit application for Phase IIIB, and shall thereafter submit complete responses to any requests for additional information within 30 days of receipt. Upon obtaining each closure permit, the City shall initiate physical closure of the landfill within 30 days of

final issuance of the permit and shall expeditiously close the landfill in accordance with that permit.

F. The City shall, by December 30, 1992, reduce the height of Phases I, II, and IIIA of the North Landfill to a maximum elevation (sufficient to include final cover) not to exceed 75 feet NGVD. The reduction and regrading shall be performed in accordance with the construction procedures contained in the September 16, 1991, additional information submitted as part of the closure permit application for Phases I, II, and IIIA. Any excess solid waste that can not be redistributed within the existing footprint shall be disposed of in a lined, permitted Class I landfill. If the City wishes to modify this condition, it shall submit a draft amendment to the Consent Order referenced in paragraph 15 above to the Jacksonville City Council no later than June 23, 1992, which includes payment to the Department of a civil penalty and in-kind payments for the past exceedances of design elevations at Phases I, II, and IIIA of the North Landfill. If a final amendment to the Consent Order modifying this condition is not signed by the City by July 15, 1992, the City shall immediately begin the reduction and regrading process.

G. The City is required by specific condition 22 of Department Permit Number SC16-152966 to submit a closure permit application for Phase IIIB of the North Landfill at least 90 days before it stopped accepting waste. Under the terms of its permit and this Order, the City appears to have violated this condition. Entry of this Order does not limit the Department's authority to

take appropriate enforcement action, which may include seeking civil penalties, for this apparent violation.

H. The City and Trail Ridge shall retain a copy of this Order and the interim operation plan at their respective landfills for at least 120 days from the date of this Order.

I. Those portions of this Order which require certain actions by either of the Petitioners shall not be construed as imposing any substantive requirements on the other Petitioner. The failure of either Petitioner to comply with any part of this Order shall not be considered a violation on the part of the other Petitioner.

J. All submittals required by this Order shall be submitted to the Waste Program Administrator in the Department's Northeast District Office, Suite B200, 7825 Baymeadows Way, Jacksonville, Florida 32256-7577.

NOTICE OF RIGHTS

A party who is adversely affected by this Emergency Final Order is entitled to Judicial Review pursuant to Section 120.68, F.S. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the Agency Clerk of the Department of Environmental Regulation and a second copy, accompanied by filing fees prescribed by law, with the First District Court of Appeal or with the District Court of Appeal in the Appellate District where the party resides. The Notice of

Appeal must be filed within 30 days of rendition of the Order to be reviewed.

DONE AND ORDERED this 15 day of May, 1992, in Tallahassee, Florida.

FILING AND ACKNOWLEDGEMENT

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

Paul A. Litcher 5/15/92
Clerk Date

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION

Carol M. Browner
CAROL M. BROWNER, Secretary
2600 Blair Stone Road
Tallahassee, FL 32399-2400
(904) 488-4805

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Emergency Final Order has been furnished this 15th day of May, 1992, by U.S. Mail to:

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Department of Public Utilities
City of Jacksonville
219 Newnan Street
Jacksonville, Florida 32202

and by hand delivery to:

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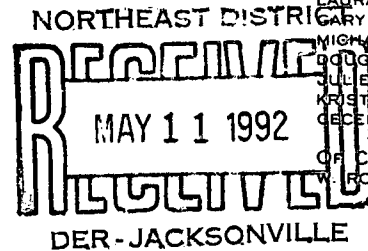
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May 8, 1992



BY HAND DELIVERY

The Honorable Carol Browner, Secretary
Office of the Secretary
Department of Environmental
Regulation
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Re: Trail Ridge Landfill
Duval County, Florida

Dear Ms. Browner:

For your consideration and review, the City of Jacksonville and Trail Ridge Landfill, Inc. hereby file the attached Petition for Immediate/Emergency Final Order regarding the above-referenced facility.

HOPPING BOYD GREEN & SAMS

By: 
William D. Preston

ATTORNEYS FOR TRAIL RIDGE
LANDFILL, INC.

and by

Allan E. Williams, P.E.
City of Jacksonville
Director, Department of
Public Utilities

WDP/cia
Enclosure

cc (w/encl.): William H. Congdon, Esq. (By Hand Delivery)
Ernest E. Frey, DER, Jacksonville (By Federal Express)

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

COASTAL ENVIRONMENTAL SOCIETY,
INC., AND BALDWIN-MAXVILLE
COALITION, INC.,

Appellants,

vs.

TRAIL RIDGE LANDFILL, INC., AND
STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION,

Appellees.


1st DCA CASE NO. 91-3840

OGC CASE NO. 90-1635

ANSWER BRIEF OF THE
DEPARTMENT OF ENVIRONMENTAL REGULATION

On Appeal of Final Order of the Department of
Environmental Regulation, DER Case Nos. 90-1635
and 90-1688.

Respectfully submitted,


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PREFACE

Throughout this Brief, the parties will be referred to as follows: Appellants, Coastal Environmental Society, Inc. and Baldwin-Maxville Coalition, Inc., will be referred to as "Appellants"; Appellee, Florida Department of Environmental Regulation, will be referred to as "DER" or "Department"; Appellee, Trail Ridge Landfill, Inc., will be referred to as "Trail Ridge" or "Applicant". Citations to the transcript of the proceedings below shall be "T. Page" and citations to the Record on Appeal, other than the transcript, shall be "R. Page".

STATEMENT OF THE CASE AND FACTS

The Department hereby adopts the Statement of the Case and Facts filed by Trail Ridge in its Answer Brief.

SUMMARY OF ARGUMENT

The groundwater monitoring plan and hydrogeological survey submitted with Trail Ridge's landfill application included all the information required by the Department's regulations. The Hearing Officer, relying upon Appellants' expert witness, found that additional monitoring wells would improve the plan. He recommended issuance of the permit, conditioned upon augmentation of the submitted groundwater monitoring plan with additional wells. Recommending modifications to a proposed project, or a portion thereof, is one of the functions of a Hearing Officer. Here, the Hearing Officer did not violate Appellants' procedural due process rights by requiring that additional monitoring wells be included in the groundwater monitoring plan.

The groundwater monitoring plan and associated hydrogeological survey submitted by Trail Ridge was not sealed by a professional engineer registered in the state of Florida. Appellants' interpret the Department's regulations to require such signing and sealing and suggest that permit denial is the appropriate remedy for failure to do so. The Department disagrees. The Department's interpretation of its own rules is entitled to great deference. Even if the Department's interpretation of its regulations is incorrect, error occasioned by failure to seal the groundwater monitoring plan was harmless, since Appellants were able to cross-examine the professional engineer who prepared the plan and were able to offer expert testimony of their own concerning any inadequacies of the plan.

It was also harmless error for the Department to fail to transmit a copy of Trail Ridges's landfill application to the St. Johns River Water Management District as required by Section 403.707(4), Florida Statutes, and Rule 17-701.030(7), Florida Administrative Code. The Department, through an interagency agreement with the St. Johns River Water Management District, processes Management and Storage of Surface Water ("MSSW") permits for landfills within the jurisdiction of the St. Johns River Water Management District. Therefore, unlike landfill projects in other water management districts, there is no need for the St. Johns River Water Management District to provide the Department with an advisory report concerning the impacts of a landfill. At Hearing, Appellants were able to fully litigate the issue of whether the criteria for MSSW issuance had been met. Therefore, they suffered no prejudice as a result of the Departments failure to comply with the cited authority.

The Department's regulations prohibit the disposal of solid waste "in an area open to public view from a major thoroughfare without proper screening" if such screening can be practically provided. The proposed Trail Ridge landfill is at least 1 1/4 miles away from the nearest major thoroughfare, U.S. Highway 301. Unless all of the timber between U.S. 301 and the footprint of the proposed landfill is clear-cut, there will be a visual screen between the landfill and the highway. Even if complete clear-cutting did occur, Trail Ridge could plant pine trees or other vegetation to serve as a visual screen. Therefore, it is not reasonably anticipated that the Department's prohibition will be violated.

ARGUMENT

I. THE GROUNDWATER MONITORING PLAN, AS MODIFIED BY THE HEARING OFFICER, PROVIDES REASONABLE ASSURANCES.

The Applicant submitted, as part of its application, the groundwater monitoring plan and associated hydrogeological survey required by Rule Chapter 17-701, Florida Administrative Code. The submitted groundwater monitoring plan met the rule submittal requirements¹ of one unaffected background well, two downgradient wells and "such other wells as are dictated by the complexity of the hydrogeology of the site," by including a total of 42 monitoring wells. The submitted hydrogeological survey included, as required by Rule 17-28.700(6)(d)1., Florida Administrative Code, "hydrogeological, physical and chemical data for the site, including: a. Direction and rate of groundwater flow." (Emphasis added)

Although the submitted groundwater monitoring plan and associated hydrogeological survey provided the information for the site required by the Department's rules, the Hearing Officer determined the plan and survey to be insufficiently detailed with regard to the location of and number of monitoring wells. (R. 698-701) He based this determination upon the testimony of Dr. Motz, which he credited over the testimony of the Applicant's

1. Rule 17-701.050(6)(a)1. requires monitoring wells to be located as specified in Rule 17-28.700, Florida Administrative Code. Rule 17-28.700(6)(g) Florida Administrative Code requires monitoring wells to be located as described in the text above.

expert. (Compare Appellants' Proposed Recommended Order at ¶ 116-136, R. 531-534 to Applicant's Proposed Recommended Order at ¶¶ 44-47, R. 588-592) Appellants' expert, and therefore the Hearing Officer, was concerned about the absence of deep-zone wells in the surficial aquifer upgradient (to the west) of the landfill and intermediate or deep-zone monitoring wells to the north and south of the landfill. (T. 1453-1455)

The Hearing Officer corrected the groundwater monitoring plan's shortcomings by finding that

Since there is groundwater flow to the north and to the south from the Class I Landfill, intermediate and deep monitoring wells in addition to shallow wells, should be located along the west, north and south sides of the landfill. (R. 701)

He concluded that

if necessary conditions . . . are imposed as delineated in the above Findings of Fact, concerning the groundwater monitoring wells and plan, then groundwater monitoring requirements of applicable rules will be assured to be achieved. . . . reasonable assurances have been proven in the de novo evidentiary hearing context . . . provided the groundwater monitoring well installation and monitoring program is done in accordance with the above-found conditions." (R. 745)

Appellants first argue that this Court should disregard the Hearing Officer's rectifying modifications to the groundwater monitoring plan because they are inconsistent with another statement of the Hearing Officer. However, the apparent inconsistency suggested by Appellants is easily explained.

The alleged inconsistency involves the Hearing Officer's finding that the groundwater monitoring plan is "insufficient to

support a determination of where monitoring wells should be located". (R. 701) When read in conjunction with the other Findings of Fact and Conclusions of Law relating to additional wells in the Recommended Order, it is clear that the determination referred to in the quoted phrase is a determination as to the exact location of some of the additional monitoring wells. It is not a separate determination that even more wells, beyond those suggested in the Recommended Order, are necessary. If the Hearing Officer were undecided as to whether even more wells were necessary, he would have said so, and his recommendation would not have been for permit issuance.

Appellants' second argument relates to the power and authority of the Hearing Officer to make the changes in the proposed groundwater monitoring plan. They accurately point out that the groundwater monitoring plan and associated hydrogeological survey, as submitted, did not contain enough detail, in certain areas, to satisfy the Hearing Officer.

However, by positing the appellate issue as whether "[t]he Department of Environmental Regulation erred in rejecting the Appellants' Exception that the groundwater monitoring plan submitted with Trail Ridge Landfill, Inc.'s application violated the Department's rules," Appellants ignore the fact that an Administrative Hearing is a de novo proceeding in which evidence submitted at hearing can supplement the application and, subject to due process considerations, correct perceived deficiencies in application submittals. Citing Hopwood v. Department of Environmental Regulation, 402 So.2d 1296 (Fla. 1st DCA 1981),

they argue that the Hearing Officer's modifications to the groundwater monitoring plan amount to wholesale reengineering of the project and are therefore inappropriate.

A Section 120.57 Administrative Hearing is a "de novo proceeding . . . 'intended to formulate agency action, not to review action taken earlier and preliminarily' [citation omitted]." Fla. Dep't. of Transp. v. JWC Co., Inc., 396 So.2d 778, 786-87 (Fla. 1st DCA 1981); McDonald v. Dep't of Banking and Finance, 346 So.2d 569 (Fla. 1st DCA 1977). Hearing Officers should "freely consider relevant evidence of changing . . . conditions and other current circumstances external to the application" rather than "lock in" participants to the evidentiary status quo as of the time of preliminary agency action. Id. at 584; DeCarion v. DER, 445 So.2d 619 (Fla. 1st DCA 1984). It is proper, and in fact necessary, for a Hearing Officer to consider the most recent data, to assist him in recommending a course of action which may improve the proposed project under consideration. Cases underscoring this principle are numerous.

In Reedy Creek Improvement District v. DER, 486 So.2d 642, 649 (Fla. 1st DCA 1986), the Court concluded that the Department has a "continuing obligation to consider all current circumstances which would have an impact on the issuance of the permit." In an earlier case, Szkolny v. State Awards Committee, 395 So.2d 1290, 1293-94 (Fla. 1st DCA 1981), the Court ruled that "all matters up to the point of hearing may be considered. Section 120.57(1) proceedings do not perform a review function;

rather, this proceeding is utilized to formulate agency action." In an even earlier case, Couch Construction Co. v. Department of Transportation, 361 So.2d 172, 176 (Fla. 1st DCA 1978), the Court emphasized "[Florida's] APA hearing requirements are designed to give affected parties an opportunity to change the agency's mind. That being so, the agency's Final Order must defend its decision on the basis of what it knows at the time the Order is entered." (Emphasis added)

The Couch Construction court held that both the Hearing Officer's and the Agency's failure to comply with this principle was an error. The Final Order, first, "conspicuously failed[ed] to evaluate the Department's . . . rejection of bids in the light of the facts shown at the §120.57 hearing." (Emphasis added) Id. at 176. Second, the Hearing Officer and the agency erred in "trying to justify the decision on the basis of what was thought, known, and believed, by Department officials [months ago]." Id. Finally, "such an effort is not in accord with Section 120.57 procedures as we described them in McDonald [citation omitted]: 'Section 120.57 proceedings are intended to formulate final agency action, not to review action taken earlier and preliminarily.'" Id.

Modification of a proposed project is not appropriate if the change is "such a major or substantial change . . . as to result in a due process violation." Manatee County v. DER, 429 So.2d 360, 362 (Fla. 1st DCA 1983). This is also the holding of Hopwood, although Hopwood dealt with procedural due process from the standpoint of the agency. In Hopwood the Court found that

In view of . . . the hearing officer's numerous favorable findings of fact which were adopted in toto by DER, we are unable to conclude that the hearing officer's suggested modifications regarding an enlargement of the proposed culvert system constitutes such a substantial deviation from the original permit application. Indeed, DER itself initially agreed that some degree of culvert system be put in to place. For it to now argue that the hearing officer's proposed modifications are beyond the parameters of the original permit application thus seems a bit ingenious.

Hopwood, supra at 1299. Here Appellants' witnesses suggested changes to an existing groundwater monitoring plan. Thus, Appellants should not now be heard to claim that the monitoring well recommendations were of sufficient surprise to amount to a lack of procedural due process.

Dr. Motz's view of the severity of the submitted groundwater monitoring plan's inadequacies flies in the face of the Appellants' due process argument:

To me, it is not a big deal to add a few more wells to increase or improve the credibility of the monitoring plan. All I'm saying is that there should be some upgradient wells in the deeper zones. I don't think that's a big deal.

(T. 1489) In light of their expert's statements and remedial suggestions, Appellants' argument here, as was the Department's argument in Hopwood, is disingenuous and should be disregarded.

II. FAILURE TO SEPARATELY SEAL THE GROUNDWATER MONITORING PLAN, IF ERROR AT ALL, WAS HARMLESS, AS WAS FAILURE TO PROVIDE A COPY OF THE LANDFILL APPLICATION TO THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT.

The groundwater monitoring plan submitted with Applicant's landfill application was prepared and signed by a professional engineer having a Master's degree in hydrogeology. (T. 503-504; Trail Ridge Exhibit 5-B) However, the engineer was not registered in Florida and he did not seal the plan. Appellants, asserting that the groundwater monitoring plan submitted with a landfill application must be sealed by a professional engineer registered in the State of Florida, argue that Trail Ridge's application was therefore incomplete and that the landfill permit must be denied. Appellants also assert that failure of the Department to provide a copy of the landfill application to the St. Johns River Water Management District warrants denial of the landfill and other associated permits.

A. Failure of a Professional Engineer to seal the Groundwater Monitoring Plan.

This issue was not specifically raised in Appellants' petitions, nor was it specifically raised in the parties Prehearing Stipulation. (R. 74-103 and Record on Appeal Volume XXV) It was initially raised at hearing, through the questioning of witnesses. The basis for Appellants' argument is Rule 17-701.030(4), Florida Administrative Code, and Rule 17-701.030(5)(d), Florida Administrative Code.

Rule 17-701.030(4), Florida Administrative Code, requires a landfill applicant to submit

. . . 6 copies each of a permit application, engineering plans, and all supporting data and reports for the proposed construction, operation, and closure of the facility prepared by a Professional Engineer registered in the State of Florida in accordance with provisions of Chapter 471, F.S.

Rule paragraph 17-701.030(5)(d) states, in pertinent part:

Engineer seal. Data presented in support of the application shall be sealed in accordance with requirements Section 471.025, F.S. by a registered professional engineer authorized to practice in the State of Florida.

(Emphasis added) Appellants interpret these two provisions together and literally, suggesting that every document submitted with a landfill application must be prepared and sealed by a professional engineer registered in the Florida. They read Rule 17-701.030(5)(d), Florida Administrative Code, to "specifically require the engineer to sign and seal all information submitted in support of the application." (Underlining in Appellants' Initial Brief, bolding supplied) (Appellants Initial Brief at p. 16) Appellants find this meaning by interpreting the word "data" in rule paragraph 17-701.030(5)(d) to encompass "all information submitted in support of the application," including groundwater monitoring plans. (Appellants Initial Brief at p. 16) A reading of paragraph 17-701.030(5)(d) in pari materia with paragraphs 17-701.030(5)(f) and (g) discloses the fallacy of Appellants' argument.

Rule 17-701.030(5)(f) requires a landfill application to include "[a]ll construction, operation, closure, and groundwater monitoring plans, data, drawings, photographs and reports to support the application." Rule 17-701.030(5)(g), Florida Administrative Code, in pertinent part, states

[a]ll maps, plan sheets, drawings, isometrics, cross-sections, or area photographs shall be legible and:

1. Signed and sealed by the registered professional engineer responsible for their preparation;

Clearly, "data" and "groundwater monitoring plans" are separate items under Rule 17-701.030(5)(f). Just as clearly, under Rule 17-701.030(5)(g), a professional engineer is to seal only the documents he is responsible for preparing rather than all information submitted with the landfill application.

Administrative rules and regulations are governed by the rules of construction which apply to statutes. Florida v. Atlantic C.L.R. Co., 56 Fla. 617, 47 So. 969 (1908). A cardinal rule of statutory interpretation requires "a rational, sensible construction" rather than "one which would produce unreasonable consequences." Realty Bond & Share Co. v. Engler, 104 Fla. 329, 143 So. 152, 156 (1932). In addition, language which is part of a statute must be construed with reference to the statute as a whole. St. Petersburg v. Earle, 109 So.2d 388 (Fla. 2nd DCA 1959). Similarly, intent is to be inferred from a statute as a whole, as apposed to any single part of it. Florida Hialeah, Inc. v. Lake Howell Water and Reclamation District, 274 So.2d 522 (Fla. 1st DCA 1973).

The Department interprets the cited regulations as not requiring a professional engineer to sign and seal a groundwater monitoring plan. An agency's interpretation of its own rules is entitled to great deference and should not be overturned unless clearly erroneous. B.B. McCormick & Sons, Inc. v. City of Jacksonville, 559 So.2d 252, 257 (Fla. 1st DCA 1990); Reedy Creek Improvement Dist. v. State Dept. of Env'tl. Regulation, (Fla. 1st DCA 1986); and State Dept. of Env'tl. Regulation v. Goldring, 477 So.2d 523, 534 (Fla. 1985). Permissible interpretations of agency regulations should be upheld, even though other interpretations may, according to some views, be preferable. Retail Grocers Ass'n of Florida Self Insurers Fund v. Dept. of Labor & Employment Security, 474 So.2d 379, 383 (Fla. 1st DCA 1985); Little Munyon Island v. State Dept. of Env'tl. Regulation, 492 So.2d 735, 737 (Fla. 1st DCA 1986).

Reading the provisions of Rules 17-701.030(4) and (5), Florida Administrative Code, together, it is clear that Appellants' interpretation of these regulations is wrong. Thus, the fact that the Applicant's groundwater monitoring plan was not sealed by a professional engineer is of no consequence. Even if a Florida professional engineer's seal is required for groundwater monitoring plans, failure in this regard, in the context of a de novo administrative proceeding, is, as discussed in Part C below, harmless error.

B. Failure to Transmit the Landfill Application to the St. Johns River Water Management District.

Section 403.707(4) Florida Statutes, and Rule 17-701.030(7), Florida Administrative Code, require the Department to provide a copy of a landfill application to the appropriate water management district² and the water management district, in return, to advise the Department of the impact of the proposed landfill on water resources. The Department admittedly did not adhere to the requirement of these provisions.

Clearly, an agency should follow the law and its own regulations. See, Gadsden State Bank v. Lewis, 348 So.2d 343 (Fla. 1st DCA, 1977). To be in compliance with the statute and rule, the Department should have sent the landfill application to the District, regardless of an understanding between DER and the District as to their respective duties when the Department was responsible for landfill MSSW permitting. Absent "sufficient statutory criteria expressed in the statute," (and in Section 403.707(4), Florida Statutes, there are none) DER and the District should not have, by agreement, waived the statutory requirements. See Booker Creek Preservation Association v. Southwest Florida water management district, 534 So.2d 419, 423

2. Florida is divided into five separate water management district Section 373.069(1), Florida Statutes. With regard to the instant application, the proposed location of the landfill is within the jurisdiction of the St. Johns River Water Management District ("District"). The Department and this particular water management district have entered into an interagency agreement whereby the Department, when a landfill permit is involved, is to process the associated Management and Storage of Surface Water ("MSSW") permit, without the necessity of the District's involvement. (R. 929; T. 960-961)

(Fla. 5th DCA 1988). Thus, the issue is not one of error, but whether the error is harmless.

C. Harmless Error.

Generally, harmless error is that which is

. . . trivial, formal, or merely academic, and not prejudicial to the substantial rights of the party assigning it, and where it in no way effects the final outcome of the case; it is prejudicial and grounds for reversal only when it effects the final result of the case and works adversely to a substantial right of the party assigning it

5 Am. Jur. 2d, Appeal Error, §776. Florida follows the general rule, requiring actual prejudice to the complaining party. Prince v. Aucilla River Naval Stores, Co., 1931, 103 Fla. 605, 137 So. 886; Brace v. Reynolds, 414 So.2d 1081 (Fla. 4th DCA 1982) the test of prejudice is "whether, but for the error complained of, a different result would have been reached" by the finder of fact. Anthony v. Douglas, 201 So.2d 917, 919 (Fla. 4th DCA 1967). Errors held to be harmless include "mere technical errors and minor irregularities in procedure." See, 3 Fla. Jur. 2d Appellate Review §361.

The doctrine of harmless error as applied to administrative proceedings has been codified in Section 120.68(8), Florida Statutes. Thus, "statutory harmless error" is the standard of review for alleged error in this case:

The Court shall remand the case for further agency action if it finds that either the fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or if failure to follow prescribed procedure

(Emphasis added) Section 120.68(8), Florida Statutes. Measured against this standard, it is clear that remand and permit denial are not appropriate.

The statute and rule requiring transmittal do not impose any specific sanctions for failure to transmit the application to the water management district. Neither does the alleged requirement for sealing groundwater monitoring plans. Therefore, for error to be material, there must be prejudice to Appellants resulting from the error.

With regard to the engineers seal, Appellants allege no prejudice. Rather, recognizing that a minor technical error such as failure to seal a document would ordinarily be considered harmless, Appellants argue that the engineer's seal is mandatory, and mere noncompliance is, in and of itself, material error. In support of this proposition, Appellants cite Humhosco Inc. v. Department of Health and Rehabilitative Services, 561 So.2d 388 (Fla. 1st DCA 1990).

Humhosco involved a Certificate of Need ("CON") application. By statute, a CON letter of intent must contain the resolution of the Board of Directors of the CON applicant authorizing certain actions, including the expenditure of funds necessary to finish the proposed project. In addition, a separate statute required a CON application to contain certain specified financial statements. Humhosco's letter of intent did not contain the necessary resolution and its CON application did not have the specified financial statements.

After a \$120.57 hearing, the Hearing Officer recommended denial of the application, concluding that failure to include the

required documents was a material defect in the application. His recommendation was followed by HRS. In upholding the agency decision, the First District Court of Appeal found the importance of the Board of Directors resolution to be "self-evident" and noted that

[f]ailure to submit the financial statements of the applicant prevents competing applicants and other substantially interested parties from meaningfully reviewing and testing the financial feasibility of the proposed project and the financial ability of the applicant to implement the project.

Id. at 319. Clearly, the Court determined, as did the Hearing Officer and the agency, that the application omissions were material. Humhosco does not, as Appellants suggest, stand of the proposition that failure to comply with a statutory (or rule) requirement is per se a material defect.

With regard to the application transmittal, Appellants, in order to avoid application of the harmless error doctrine, characterize the statute and rule having both a procedural and substantive aspect, with the substantive aspect coming into play after the Department completes the procedural requirement of furnishing the application to the water management district. The "substantive" aspect of the statute and rule are suggested to be somehow embodied in the Water District's advisory report. The absence of the report, they claim, "is, in itself, material." (Appellants' Initial Brief at p. 24) If the water management district's advisory report was a clear requirement for permit issuance, Appellants argument would be more persuasive. However, permitting requirements are separate from and independent from

the advisory report and Appellants' argument is therefore without merit.

It is well settled that the Department, in issuing permits, can consider only those permitting requirements contained in its own regulations; it can not consider the permitting requirements of other governmental entities. Taylor v. Cedar Key Special Water and Sewerage District and DER, 590 So.2d 481 (Fla. 1st DCA 1991); Counsel of the Lower Keys v. Charlie Toppino & Sons, Inc., 429 So.2d 67 (Fla. 3rd DCA 1983). The absent water management district report is to advise the Department "as to the impact on water resources [of the project proposed in the application and] recommendations about the disposition of the application." Section 403.707(4), Florida Statutes, and Rule 17-701.030(7), Florida Administrative Code. water management districts regulate "water resources" through the issuance of consumptive use permits (§§ 373.203--373.249), the regulation of wells (§§ 373.302--373.342) and the issuance of MSSW permits (§§ 373.403--373.4596). Consumptive use permits and well regulation are not at issue in this case. Of the areas of water management district regulation, only MSSW permitting is at issue.

Appellants note that the Final Order authorizes the issuance of three different permits, thus suggesting that in commenting upon the impact of the landfill to water resources, the District would review all three permits. (Appellants Initial Brief at p. 22-23) This suggestion is misleading. Two separate Intents to Issue, covering three permits, were consolidated for purposes of

hearing. (R. 1--46; 47--73; 137) Accordingly, the Final Order discusses all three permits. Clearly, a landfill requires a landfill permit (Rule 17-701.030(1), Florida Administrative Code) and it requires an MSSW permit (See Rule 17-701.050(5)(g), Florida Administrative Code). However, where landfills and associated access roads and structures are built completely in uplands, no dredge and fill permit is required. Section 403.913(1), Florida Statutes. Even if a dredge and fill permit is required for a landfill, there is no requirement that it be forwarded to the appropriate water management district for comments.

In a situation where two governmental entities permit the same project, it makes sense for one to advise the other of an active application. This would hopefully avoid the permitting and perhaps construction (along with the associated costs) of something that did not meet the permitting requirements of the other governmental unit. Cf. DelCampo v. Department of Environmental Regulation, 452 So.2d 1004 (Fla. 1st DCA 1984) [Failure of DER to consider certain impacts of a proposed project could lead to "vast sums of time, energy, labor and capital [being wasted] should DER or other governmental entities refuse" to issue additional necessary permits. As described in footnote 2, by agreement, landfill MSSW permitting within the boundaries of the St. Johns River Water Management District is by only one governmental unit--the Department. Therefore, there is no need to make sure that two governmental regulators concur on the design of a project.

An MSSW permit application is governed by and subject to the provisions of Chapter 373, Florida Statutes. Section 373.413 and 373.416, Florida Statutes, establish two statutory criteria - "not harmful to the water resources of the District" and "not be inconsistent with the overall objectives of the District" - for evaluating applications for MSSW permits. These statutory sections are implemented by Chapter 40C-4, Florida Administrative Code, and the provisions of Part II of the MSSW Applicant's Handbook, which are adopted by reference in Rule 40C-4.091, Florida Administrative Code. These rules, specifically Paragraphs 40C-4.301(1)(a) and 40C-4.301(2)(a), at Florida Administrative Code, and Sections 9 and 10 of the Applicant's Handbook, which track the rules almost verbatim, set forth the requirements for the construction and operation of a proposed MSSW system.

A review of the MSSW permitting provisions, particularly the extensive provisions in Part II of the Applicant's Handbook, discloses the depth of the review given to potential impacts to water resources. It is these statute and rule provisions that were applied by the Department in processing the MSSW application. It is these statute and rule provisions that were litigated at the administrative hearing. (T. 954; R. 702) It was these provisions that were found to be met by the Hearing Officer. (R. 743-744)

Appellants contend, ultimately, that the application did not comply with Section 403.707(4) and Rule 17-701.030(7), and, therefore, "the applicant has not met its ultimate burden that it

is entitled to the permit." (Applicant's Initial Brief at Page 25) This is patently incorrect. The water management district report required by Section 403.707(4) and Rule 17-701.030(7) is advisory only. The existence of an advisory report can not be a substantive permitting requirement. Thus, failure to obtain such a report is not material error.

The cases reviewing failure to comply with a statutory requirement look at the facts of each case to see if "the fairness of the proceedings or the correctness of the action may have been impaired." Section 120.68(8), Florida Statutes.

For example, Section 120.59(1), Florida Statutes, sets time limits for the rendition of an agency Final Order. In Hyman v. State, Department of Business Regulation, Division of Perry-Mutual Wagering, 399 So.2d 1098 (Fla. 3rd DCA 1981). The District Court held that an agency order rendered after ninety (90) days was unenforceable. This case was in direct conflict with G&B of Jacksonville, Inc. v. The State, Department of Business Regulation, Division of Beverage, 362 So.2d 951 (Fla. 1st DCA 1978), Appeal Dismissed 372 So.2d 468 (Fla. 1979), where the First District Court held that departure from the time limitations of Section 120.59(1) should be reviewed pursuant to Section 120.68(8). Florida Supreme Court, in Department of Business Regulation, Division of Perry-Mutual Wagering v. Hyman, 417 So.2d 671 (Fla. 1982) held that "although the 90-day period prescribed by Section 120.59(1) is mandatory, the consequence of its violation should be determined by Section 120.68(8)." The Court went on to hold that there was no prejudice due to the

delay and no impairment of fairness or correctness of the proceedings.

As another example, Section 120.54(2)(a), in pertinent part, provides

"each agency, prior to the adoption, amendment, or appeal of any rule, shall provide information on its proposed action by preparing a detailed economic impact statement. The economic impact statement shall include"

The Department of Health and Rehabilitative Services ("HRS") appealed a Hearing Officers conclusion, following a Section 120.56 hearing, that one of HRS's rules was improperly promulgated due to inadequate economic impact statement. The District Court, in evaluating the issue noted

the absence or insufficiency of economic impact statement is harmless error if it is established that . . . that the agency fully considered the asserted economic factors and impact. Division of Workers' Compensation v. McKee, 413 So.2d 805, 806 (Fla. 1st DCA 1982); Florida-Texas Freight, Inc. v. Hawkins, [379 So.2d 944 (Fla. 1979)]; Polk v. School Board of Polk County, [373 So.2d 960 (Fla. 1979)]

The Court, in upholding the Hearing Officer, found that "the record does not show that the Department otherwise realistically considered the impact." Id. at 942.

In this proceeding, both the groundwater monitoring plan and the MSSW permit were vigorously contested at hearing. The Appellants, had they so chosen, could have taken discovery depositions of water management district employees and called those persons as witnesses at trial. The assigned Hearing Officer found the failure to seal the groundwatering monitoring plan to be an immaterial defect. (R. 775) He also found the failure to

transmit the landfill application to the District to be immaterial. (R. 775) The Department, in its Final Order, agreed that any error was, indeed, harmless. A review of the record discloses that neither "the fairness of the proceedings or the correctness of the action [was] impaired by a material error in procedure." Therefore, the Appellants' arguments are without merit.

III. THE PROPOSED LANDFILL WILL BE APPROPRIATELY SCREENED FROM VIEW.

Rule 17-701.040(2)(g), Florida Administrative Code, prohibits the disposal of solid waste in an area "open to public view from any major thoroughfare without proper screening where it can practically be provided." (Emphasis added) Appellants ignore the underlined language in the quoted rule and argue that since the proposed landfill might be visible from U.S. Highway 301 (a four lane road between 1 1/4 to 1 1/2 miles from the proposed landfill), permit denial is required.

In its Brief, Appellants incorrectly state, "What evidence there is, indicates if current clear-cutting activities continue, the landfill site would be visible from U.S. 301." (Appellants' Initial Brief at p. 28) No citation to any evidence accompanies this assertion. The claim of "evidence" is premised upon the Hearing Officer's acceptance, in the Appendix to his Recommended Order, of their proposed Finding of Fact 159.

Proposed Finding of Fact 159 states, "Clear-cutting of Hell's Bay Swamp has occurred in the past couple of years and will make the landfill visible from U.S. 301." This finding of fact was

one of four under the heading "Visibility of Landfill" in Appellants Proposed Recommended Order. (R. 538) The Hearing Officer accepted these four findings of fact as a group, rather than individually. (R. 775) It should be noted that of these four proposed findings of fact, finding of fact No. 159 is a compound statement followed by a single citation to the testimony of Mr. Goodowns at page 751 of the transcript.

A review of the transcript discloses that Page 751 supports the first portion of proposed finding of fact 159 but does not, in any way, relate to visibility of the proposed landfill from Highway 301. The testimony relating the visibility of the proposed landfill from Highway 301 is found at transcript page 754, as follows:

Q If that were cut out, do you think you could see it then if you had a scope to look up?

A If everything was clear-cut between here [U.S. 301] and the landfill?

Q Yes.

A Yes.

Thus, the proposed landfill would be visible from U.S. 301 only if all trees between the landfill and the highway were cut down. In this case there is no evidence that such extensive clear cutting will take place, particularly in light of Specific Condition 12 of the draft permit.

Specific Condition 12 of the draft permit provides that "a screen barrier (i.e., trees or other vegetation) shall be installed and maintained to shield landfill operations from

public view in accordance with Florida Administrative Code Rule 17-701.040(2)(h)³." (R. 61) After taking evidence, the Hearing Officer found that "a substantial portion of the proposed site will be left undisturbed and used as a buffer area" (R. 672) The landfill itself abuts the Duval-Baker County line and is therefore, in that geographic area, as far as a Duval County owned landfill could possibly be from U.S. 301. (Trail Ridge Composite Exhibit 62; R. 670) The landfill will not reach its ultimate height for 20 to 25 years. (R. 674) Pine trees that grow at the landfill location grow to harvesting height in twenty years or less. (R. 670, 674) Harvesting height is 50 or 60 feet. (T. 753) Trees of 50 or 60 feet would form a visual screen between the landfill and U.S. 301. (T. 753-54)

Thus, record evidence provides reasonable assurances that "proper screening where it can practically be provided" will be provided at this location. Therefore, it is unlikely that the cited prohibition will be violated in any meaningful way. Accordingly, permit denial is not proper.

3. Florida Administrative Code Rule 17-701.040(2)(h) has been renumbered as Florida Administrative Code Rule 17-701.040(2)(g).

CONCLUSION

As noted by the Fourth District Court of Appeal in another landfill case:

Common sense tells us that few persons will want a prison or a waste disposal facility in their neighborhoods. Government, however, is saddled with the reality that some provision must be made for such facilities. Offending the fewest people may appear to be a cop-out, especially to the "fewest," but that does not change the fact that prisons, waste disposal facilities and other indispensable components of our infrastructure must be located somewhere.

Southwest Ranches Homeowners Ass'n, Inc. v. The County of Broward, 502 So.2d 931, 939 (Fla. 4th DCA 1987), Rev. Denied, 511 So.2d 99 (Fla. 1987). Landfill permitting decisions must be made based upon compliance with the statutes and rules applicable to landfill permits. The Applicant has demonstrated compliance with the applicable regulatory standards for issuance of the three permits at issue. Accordingly, it is respectfully requested that this Court uphold the Department's Final Order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and three copies of the foregoing ANSWER BRIEF OF THE DEPARTMENT OF ENVIRONMENTAL REGULATION in the case COASTAL ENVIRONMENTAL SOCIETY, INC., AND BALDWIN-MAXVILLE COALITION, INC., Appellants vs. TRAIL RIDGE LANDFILL, INC., AND STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION, has been furnished by U.S. Mail to:

Jon S. Wheeler, Clerk
First District Court of Appeal
301 Martin Luther King Jr Blvd
Tallahassee FL 32399-1850

and one copy has been sent to:


Thomas Tomasello, Esq.
Kenneth Hoffman, Esq.
Oertel, Hoffman, Fernandez
and Cole, P.A.
2700 Blair Stone Rd Ste C
Tallahassee FL 32301

and

William D. Preston, Esq.
Hopping Boyd Green & Sams
P O Box 6526
Tallahassee FL 32314

by Hand Delivery on this 24th day of March, 1992.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION



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**BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION**

In Re:

Request of the City of)
Jacksonville and Trail Ridge)
Landfill, Inc. for an Immediate)
Order Allowing Disposal of Solid)
Waste at Phase IIIB of North)
Landfill and Accelerated Opening)
of the Trail Ridge Landfill)
_____)

OGC Case No. _____

3/8/92

PETITION FOR IMMEDIATE OR EMERGENCY FINAL ORDER

Pursuant to Section 120.59(3), Florida Statutes, the City of Jacksonville (the "City") and Trail Ridge Landfill, Inc. ("Trail Ridge"), by and through Trail Ridge's undersigned counsel and a representative of the City, hereby petition the State of Florida Department of Environmental Regulation (the "Department") to find that an immediate danger to the public health, safety and welfare of the citizens of the City is present and to issue an Immediate or Emergency Final Order authorizing the City to temporarily dispose of solid waste at Phase IIIB of the North Landfill beyond its permitted design height, and authorizing Trail Ridge to open a portion of the Trail Ridge Landfill ahead of schedule and subject to modified permit conditions. In support of this Petition, the Petitioners state further and offer the following facts:

Background

1. Trail Ridge Landfill, Inc. is a corporation which was formed in 1989 for the purpose of developing a landfill project and providing waste disposal capacity for the City of Jacksonville. Trail Ridge Landfill, Inc. is a wholly-owned subsidiary of Waste Management of North America, Inc., which in turn is a wholly-owned subsidiary of Waste Management, Inc., a company which is involved in all facets of solid waste collection, management and disposal.

2. The City of Jacksonville is part of a consolidated governmental entity, which includes all of Duval County, charged with the responsibility for ensuring that the solid waste generated by all citizens constituting the consolidated governmental entity is properly disposed of.

3. As more fully set forth below, the City currently operates one sanitary landfill for the disposal of the City's solid waste called the North Landfill. The City has contracted with Trail Ridge to construct and operate a new state-of-the-art sanitary landfill in western Duval County to be known as the Trail Ridge Landfill.

4. Trail Ridge is responsible for obtaining and complying with all necessary permits from the Department in order to authorize construction and operation of the Trail Ridge Landfill. After lengthy proceedings conducted under the provisions of Chapter 120, Florida Statutes, in which the Department's proposed issuance of such permits was contested by

third parties, a Department Final Order was executed on November 1, 1991, approving the issuance of the required permits. A copy of the Final Order is attached hereto as Exhibit 1. Consistent with the Final Order, on November 14, 1991, Department Permit No. 161821182 was issued, and on December 24, 1991, Department Permit No. SC16-184444 was issued. Copies of these permits are attached hereto as Exhibits 2 and 3, respectively.

5. Construction of the Trail Ridge Landfill commenced soon thereafter, pursuant to a schedule under which Trail Ridge anticipates that such landfill will be ready for the acceptance of solid waste and full operation in August, 1992. However, consistent with the engineering design and plans for this installation, the landfill is to be constructed in phases and an initial phase of the landfill could be available for operation sometime in May, 1992, if certain conditions contained in Department Permit No. SC16-184444 are appropriately modified. In the meantime, as further set forth below, the one remaining City solid waste disposal facility, the North Landfill, is scheduled to reach permitted solid waste disposal capacity and to thus cease operation in mid May, 1992.

6. With no reasonable alternative to the authorized disposal of the solid waste generated within Duval County between the time scheduled for the cessation of solid waste disposal operations at the North Landfill and the planned August opening of the new Trail Ridge Landfill, an immediate danger to the

public health, safety and welfare of the citizens of the City is present, unless authorization is received from the Department for the City to vertically expand its North Landfill beyond its permitted design height and for Trail Ridge to open a section of the Trail Ridge Landfill ahead of schedule and subject to certain modified permit conditions and provisions.

City of Jacksonville North Landfill

7. The City currently has only one permitted sanitary landfill with available solid waste disposal capacity which is lined with an approved underliner system intended to protect underlying groundwater resources from potential contamination. The permitted lined capacity is in Phase IIIB of the North Landfill. The North Landfill operates pursuant to Department Permit No. SC16-152966 a copy of which is attached as Exhibit 4. It is impossible to know exactly when the permitted solid waste disposal capacity at the North Landfill will be exhausted, but it is estimated that such capacity limitation will be reached in mid May, 1992. (See letter of W. F. Armentrout, P.E. to Ernest Fry, dated May 7, 1992 with certified calculations and survey,, attached as Composite Exhibit 5).

8. Once Phase IIIB of the North Landfill reaches permitted solid waste disposal capacity at the time referenced above, the City will have no remaining Class I permitted lined landfill capacity for the disposal of solid waste. Because of that, the City has applied to the Department for a permit modification to increase the height of Phase IIIB of the North Landfill, in order

to have permitted space for the City's continuing solid waste stream pending the summer opening of the Trail Ridge Landfill.

9. The Department has indicated a potential inability to approve the requested permit modification pursuant to correspondence from the Director of District Management Ernest E. Frey dated April 13, 1992 to the City's Director of the Department of Public Utilities, Allan Williams. Further, Mr. Frey noted that "any unauthorized exceedance of [the City's] current design height [of the North Landfill] will be considered a serious violation of [the City's] permit conditions." A copy of the Department's letter is attached as Exhibit 6. Pursuant to such correspondence, the Department raised the possibility of an emergency order being issued by that agency and requested the City to provide "sufficient information to justify such an emergency order."

10. Additionally, any Department action on the City's requested permit modification for the vertical expansion of the North Landfill is subject to the administrative hearing procedures set forth in Chapter 120 of the Florida Statutes. Experience has shown that, if initiated, the administrative hearing process typically takes months to complete regardless of the merits of the project; even the time required for proper notice and publication of the Department's intended action could encompass several weeks. There is not sufficient permitted solid waste disposal capacity remaining at the City's North Landfill which would allow for the legal disposal of solid waste during

the time period which would be expected to occur through a normal administrative proceeding initiated under Chapter 120, Florida Statutes, related to the proposed permit modification; neither are there any viable alternatives to the disposal of solid waste at the North Landfill, other than those requested within this Petition. Consequently, if the City depletes its permitted lined landfill capacity and is therefore unable to deposit its solid waste in Phase IIIB of the North Landfill, or in the Trail Ridge Landfill after such time, there will be an immediate danger to the public health, safety and welfare as more fully set forth below.

11. The collection and disposal of solid waste is a necessity of the modern urban environment and, as the Legislature found in Section 403.702(1)(a), Florida Statutes, "inefficient and improper methods of managing solid waste create hazards to public health, cause pollution of air and water resources, constitute a waste of natural resources, have an adverse affect on land values, and create public nuisances."

12. In 1986 the City deposited over 3,000 tons per day of solid waste into its existing sanitary landfills. Since that time, and notwithstanding a steady increase of the City's populace, as a result of aggressive recycling and waste reduction efforts, the City has substantially reduced the amount of solid waste necessary to be disposed of and now deposits an average of approximately 2,000 tons per day into its one remaining operational Class I installation, the North Landfill.

13. The lack of a permitted sanitary landfill operated in full compliance with applicable statutory requirements and Department rules and standards within which to dispose of the approximately 2,000 tons of solid waste per day generated by the citizens of the City can reasonably be expected to cause an environmental and public health emergency. Such a situation will result in both improper storage of large amounts of putrescible solid waste and uncontrolled dumping of solid waste throughout the City. Most residences, business establishments, and other generators of solid waste in the City are served by a solid waste collection service with frequent pickups and, thus, have little storage capacity. If the collection service has nowhere to take the solid waste, no pickup will occur, and raw garbage and putrescible solid waste will rapidly accumulate at the generators' establishments in an uncontrolled manner, increasing the presence of disease vectors such as rats and insects, and causing odors and other nuisances. Also, the lack of a facility at which to dispose of raw garbage and other waste will result in uncontrolled open dumping throughout the City. In addition to the public health problems stated above, open dumping will cause environmental problems such as groundwater and surface water contamination, air pollution as a result of open burning, and excessive litter. (See Affidavit of Anton Vroon, M.D., attached as Exhibit 7).

14. Pursuant to the Department's above-referenced letter to the City attached as Exhibit 6, the City has evaluated the

feasibility of temporary storage of solid waste on one or more of the unlined phases of the North Landfill, to be followed by transfer of the solid waste to the Trail Ridge Landfill when it begins its anticipated operation. The City has determined that this proposed solution is undesirable for those reasons more specifically set forth within the letter from Allan Williams dated April 23, 1992 to Department Director of District Management, Ernest E. Frey, a copy of which is attached as Exhibit 8. Consistent with the Department's request, the City has also attempted to determine whether appropriate modifications to the limitations on the total height of solid waste disposed of at Phase IIIB and selected disposal "cells" within such phase of the North Landfill could alleviate the solid waste disposal capacity problem discussed in this Petition. That analysis is also set forth in the City's letter attached as Exhibit 8, and takes into account maximization of the existing capacity at Phase IIIB by filling in the current access road and constructing another. The City's analysis concludes that additional solid waste disposal capacity obtained through increased vertical expansion taking into account the constraint suggested by the Department will be insufficient to satisfy the solid waste disposal needs of the City for the entire period between now and the currently scheduled opening of the Trail Ridge Landfill.

15. Furthermore, the City has rigorously reviewed and evaluated all solid waste disposal alternatives in other counties which have available landfill capacity and has determined that

for those economic and practical reasons also set forth in the City's recent response to the Department in Exhibit 8, there are no alternative solid waste disposal sites outside Duval County reasonably available to the City. (See Affidavit of Allan E. Williams, P.E., attached as Exhibit 8-A, which verifies the facts set forth in paragraphs 7 through 15 above).

Trail Ridge Landfill

16. For at least the past five years the City has been working diligently to permit and construct a new Class I solid waste disposal facility. Efforts to site a new sanitary landfill in the southeast sector of Duval County during that timeframe failed. The City's plan to site a new sanitary landfill on the west side of Duval County, however, has proven successful and, as noted above, the Trail Ridge Landfill is now under construction. Trail Ridge Landfill has been conveyed to and is owned by the City and will be operated by Trail Ridge as the Department permittee and under authority of an operating agreement between the City and Trail Ridge.

17. In order to address the imminent danger to the public health, safety, and welfare of the citizens of Duval County in the event no other alternative to the pending exhaustion of solid waste disposal capacity at the City's North Landfill is available, Trail Ridge has developed a plan to accelerate the construction of Trail Ridge Landfill so that solid waste can be disposed in a portion of Phase I, specifically Phases IA and IB, encompassing approximately 18 acres, as early in May, 1992, as is possible. This plan can only be implemented if certain

conditions and other provisions of Department Permit No. SC16-184444 are modified and if an Interim Operation Plan is approved by the Department for a temporary time. Such an Interim Operation Plan, which includes a depiction of Phases IA and IB, has been prepared by Trail Ridge and is attached as Exhibit 9. Trail Ridge's plan would also necessitate the shifting of significant manpower and resources towards the construction completion of Phases IA and IB. Accordingly, compliance with the conditions of the Department permit would need to be delayed for a time period after the commencement of operations in Phases IA and IB of the landfill.

18. Those permit conditions and other provisions of Department Permit No. SC16-184444 necessary to be modified in order to facilitate the implementation of Trail Ridge's plan for early operation of a portion of the Trail Ridge Landfill are as follows:

(a) To the extent that landfill construction will not be in accordance with the plans, specifications and contract drawings submitted to the Department pursuant to Specific Condition 1 of such permit due to the implementation of the early operation plan, Trail Ridge will instead comply with the modified permit conditions and provisions as specified in this Petition.

(b) To the extent that Specific Condition 3 requires that proof of financial assurance be submitted to the Department 60 days prior to the acceptance of any solid waste, Trail Ridge instead will submit proof of financial assurance no later than 30 days after the acceptance of waste.

(c) Instead of the placement of an oil and grease skimmer for the stormwater control area as required by Specific Condition 5, Trail Ridge will install, prior to the acceptance of any solid waste, a temporary boom to minimize and contain oil and grease that might otherwise enter the stormwater retention area.

(d) Instead of installing a permanent berm system surrounding the leachate truck loading area as required by Specific Condition 6, Trail Ridge will construct a temporary earthen berm around the leachate truck loading area prior to the acceptance of any solid waste.

(e) Specific Conditions 11, 15, 20 and 48 require construction, certification of completion and approval of surface water runoff and/or diversion controls and a wetland stormwater discharge system as described in the permit application. Instead, stormwater discharge will be prevented by the use of the temporary construction stormwater system which is currently in place.

(f) To the extent that Specific Condition 19 may require that construction changes and revisions or applicable Department submissions must be found acceptable by the Department, Trail Ridge will instead commit to construct and operate Phases IA and IB in accordance with and as specified in this Petition, and as authorized by the Department if the relief requested herein is granted.

(g) To the extent that Specific Condition 21 requires operation of the facility in conformance with the permit and the

Operation Plan, the facility will instead be operated in accordance with applicable rules, with the Interim Operation Plan attached as Exhibit 9, and with any other applicable and consistent provisions of the Operation Plan.

(h) Specific Condition 38 requires that for proposed additional monitoring wells, Trail Ridge must submit to the Department, 30 days prior to the acceptance of waste, the results and analyses of samples taken from these wells. Trail Ridge has not proposed any additional wells at this time; however, if additional wells are required, Trail Ridge will instead submit the sample results as soon as practically possible.

19. Pursuant to Permit No. SC16-184444 and the plans referenced therein, the Trail Ridge Landfill may accept up to 1800 tons (monthly average) of solid waste per day. Trail Ridge has requested a minor permit modification from the Department so as to allow the daily operating tonnage rate of receipt to increase to 2600 tons per day (monthly average) with peak individual, along with corresponding operational revisions, days of up to 3000 tons per day in order to accommodate all of the solid waste generated within the City. While the Department has proposed to approve this minor modification (copy attached as Exhibit 10), a final decision on this modification request has been delayed by the initiation of administrative proceedings under Chapter 120, Florida Statutes. If Trail Ridge Landfill is not allowed to accept all of the City's solid waste, many of the problems described in paragraph 13 above will occur.

Reservation of Rights

The City of Jacksonville and Trail Ridge Landfill, Inc. hereby reserve the opportunity to unilaterally withdraw this Petition for Immediate or Emergency Final Order at the the sole election and discretion of either such entity prior to the entry of an immediate or emergency final order entered by the Department in response to this petition. Further, both the City and Trail Ridge likewise reserve all of their respective rights and defenses under Section 120.68, F.S., and any other applicable provisions of law or rule, which may be applicable to them after the entry of an immediate or emergency final order by the Department in this matter.

Request For Relief

For the reasons set forth above, the City of Jacksonville and Trail Ridge Landfill, Inc. respectfully request that the Secretary of the Department invoke the provisions of Section 120.59(3), Florida Statutes, which authorizes an agency to issue an immediate or emergency final order when the agency head finds that there exists an immediate danger to the public health, safety, or welfare, and enter such a final order which:

1. Authorizes the City to continue using Phase IIIB of the North Landfill until no later than seven days after the opening of Phase IA of the Trail Ridge Landfill as authorized below;

2. Authorizes the City to fill the existing access road at Phase IIIB of the North Landfill and to construct the new access road which is described in paragraph 14 herein, in order to

maximize the use of the existing capacity at Phase IIIB of the North Landfill;

3. Authorizes the opening of the Trail Ridge Landfill for the receipt of solid waste within Phases IA and IB, as early as may be possible in May, 1992, provided that operations at such time and thereafter shall comply with the modified permit conditions and provisions set forth in paragraph 18, herein, and provided that such modified conditions and provisions specified under subparagraphs (b) through (h) shall remain in effect for no more than 120 days from the commencement of operations within Phase IA of the Trail Ridge Landfill;

4. Requires that after the time period specified in paragraph 3 above, Trail Ridge shall comply with all conditions and provisions set forth in Department Permit No. SC16-184444, not otherwise modified by the final order, and except as may be subsequently modified by other appropriate and applicable procedures;

5. Authorizes the Trail Ridge Landfill to accept a daily operating tonnage rate of solid waste of up to 2600 tons per day (monthly average) with peak individual days of up to 3000 tons of solid waste per day with corresponding operational revisions, until and unless the Department issues a subsequent final order denying the pending request to so modify Department Permit No. SC16-184444;

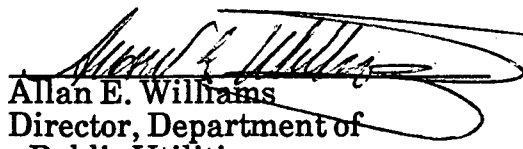
6. Provides such other relief as may be applicable and appropriate.

Respectfully submitted this 8TH day of May, 1992.

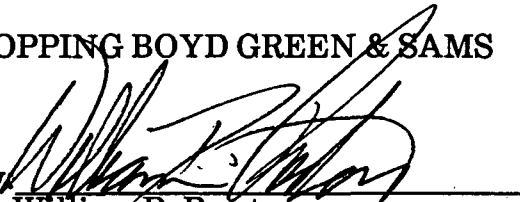
CITY OF JACKSONVILLE

HOPPING BOYD GREEN & SAMS

By:


Allan E. Williams
Director, Department of
Public Utilities
City of Jacksonville

By:


William D. Preston
Thomas M. DeRose
Laura B. Pearce
P. O. Box 6526
123 South Calhoun Street
Tallahassee, FL 32314
(904) 222-7500

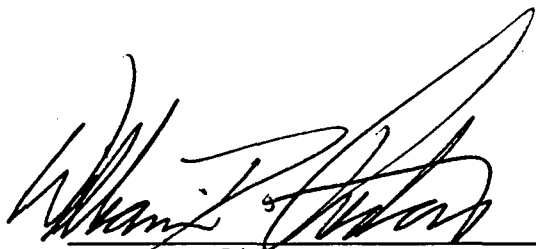
ATTORNEYS FOR TRAIL RIDGE
LANDFILL, INC.

CERTIFICATE OF SERVICE

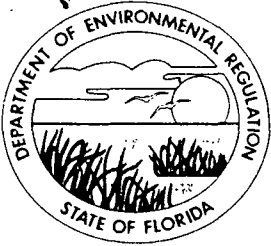
I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by hand-delivery to the following this 8TH day of May, 1992:

Kathy Carter, Agency Clerk
Office of General Counsel
Department of Environmental Regulation
2600 Blair Stone Road
Tallahassee, FL 32399-2400

William H. Congdon, Esq.
Office of General Counsel
Department of Environmental Regulation
2600 Blair Stone Road
Tallahassee, FL 32399-2400



Attorney



Florida Department of Environmental Regulation

Northeast District • Suite B200, 7825 Baymeadows Way • Jacksonville, Florida 32256-7577

Lawton Chiles, Governor

Carol M. Browner, Secretary

February 18, 1992

CERTIFIED - RETURN RECEIPT

Trail Ridge Landfill, Inc.
c/o Douglas C. Miller, P.E.
England, Thims & Millers, Inc.
3131 St. Johns Bluff Road South
Jacksonville, FL 32216

Barco-Duval Engineering, Inc.
c/o Charles H. Barco, President
7587 Wilson Boulevard
Jacksonville, FL 32210

The Haskell Company
c/o Preston Haskell, President
Haskell Building
Riverside Ave.
Jacksonville, FL 32231-4100

Gentlemen:

Warning Letter No. WN-92-0019-DF16NED
DER Permit Nos. 161821182 and SC16-184444
Duval County - Surface Water Management Permit Compliance

Chapter 403, Florida Statutes, authorizes and directs the Department of Environmental Regulation to control and prohibit pollution of air and water.

Field inspections conducted on February 14, 1992 and February 17, 1992 of the Trail Ridge Landfill Project, indicates that a violation of Chapter 403, Florida Statutes, and the rules promulgated thereunder may exist at the property. Department personnel observed the following at the site.

1. Turbid discharge into a tributary of Deep Creek which elevated the receiving water to 74.5 Nephelometric Turbidity Units (NTU's) above natural background.
2. Erosion, siltation, and scouring within adjacent wetland areas caused by the February 13, 1992 discharge.

Administration 448-4300
Air 448-4310
Waste Management 448-4320



Water Facilities 448-4330
Water Management 448-4340
FAX 448-4366

You may be in violation of the following permit conditions:

1. General Conditions Nos. 5 and 6 of permits #161821182 and SC16-184444.

General Condition #5: This permit does not relieve the Permittee from liability for harm or injury to human health or welfare, animal plant or aquatic life or property and penalties therefore caused by the construction or operation of this permitted source, nor does it allow the Permittee to cause pollution in contravention of Florida Statutes and Department rules, unless specifically authorized by an order from the Department.

General Condition #6: The Permittee shall at all times properly operate and maintain the facility and systems of treatment and control (and related appurtenances) that are installed or used by the Permittee to achieve compliance with the conditions of this permit, as required by Department rules. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit and when required by Department rules.

2. Specific Conditions Nos. 5 and 15 of Permit #161821182.

Specific Condition #5: The project shall comply with applicable State Water Quality Standards, namely:
17-302.500 - Minimum Criteria for All Waters at All Times and All Places.
17-302.510 - Surface Waters: General Criteria.
17-302.560 - Criteria - Class III Waters - Recreation, Propagation and Management of Fish and Wildlife: Surface Waters.

Specific Condition #15: All wetland areas or water bodies which are outside the specific limits of construction authorized by this permit must be protected from erosion, siltation, scouring or excess turbidity or dewatering.

3. Specific Conditions Nos. 7, 9, 14 and 55 of Permit #SC16-184444.

Specific Condition #7: Surface water runoff and/or diversion controls included in the plans and/or this permit shall be installed and operational prior to construction of the disposal areas. Surface water runoff shall be controlled during the construction stage and shall comply with F.A.C. Chapter 17-3(now 17-302) at the site boundary.

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Barco-Duval Engineering, Inc.
The Haskell Company
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Specific Condition #9: Turbidity controls shall be utilized throughout the project to contain any turbidity generated that exceeds State water quality standards.

Specific Condition #14: The Permittee is responsible for the selection, implementation, and operation of all erosion and sediment controls on-site and to prevent violations of water quality standards in Chapters 17-3(now 17-302) and 17-4, F.A.C. The Permittee is encouraged to use the appropriate Best Management Practices described in the Florida Land Development Manual: A guide to Sound Land and Water Management (DER 1988).

Specific Condition #55: All wetland areas or water bodies which are outside the specific limits of construction authorized by this permit must be protected from erosion, siltation, scouring or excess turbidity or dewatering.

Portions of the Florida Statutes and Rules which the Department believes you have violated, or are now violating, are identified below. **A written response to each violation is required.**

Chapter 403, Florida Statutes, Environmental Control

403.161 Prohibitions, violation, penalty, intent. -

- (1) It shall be a violation of this chapter, and it shall be prohibited:

* * * *

- (b) 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.

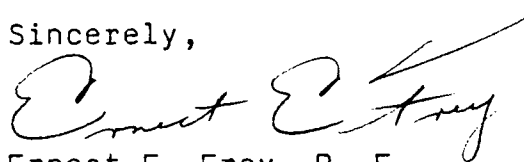
You are advised that any activity at your facility that may be contributing to violations of the above described statutes and rules should be ceased immediately. Operation of a facility in violation of state statutes or rules may result in liability for damages and restoration, and the judicial imposition of civil penalties up to \$10,000 per violation per day pursuant to Sections 403.141 and 403.161, Florida Statutes.

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You are requested to contact Jack Dunphy or Lisa Adams of this office at (904) 448-4340 within 15 days of receipt of this Warning Letter to arrange a meeting with Department personnel to discuss the issues raised in this Warning Letter. You may wish to consult an attorney and to have the attorney attend the meeting with the Department.

PLEASE BE ADVISED that this Warning Letter is part of an agency investigation preliminary to agency action in accordance with Section 120.57(4), Florida Statutes. The purpose of this letter is to advise you of potential violations and to set up a meeting to discuss possible resolutions to any potential violations that may have occurred for which you may be responsible. If the Department determines that an enforcement proceeding should be initiated in this case, it may be initiated by issuing a Notice of Violation or by filing a judicial action in accordance with Section 403.121, Florida Statutes. If the Department issues a Notice of Violation, and you are named as a party, you will be informed of your rights to contest any determination made by the Department in the Notice of Violation. The Department can also resolve any violation through voluntary entry into a Consent Order.

Sincerely,



Ernest E. Frey, P. E.
Director of District Management

JT
EEF:jd/eml

cc: Mike Fitzsimmons - DER
Mike Eaton - DER
Larry Evans - Army Corps of Engineers
Gary Howalt - Environmental Services, Inc.