



Florida Department of Environmental Protection

Southwest District Office
13051 North Telecom Parkway
Temple Terrace, Florida 33637-0926

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

October 8, 2008

Sarasota County Board of County Commissioners
c/o Mr. Frank Coggins, Manager
Sarasota County Solid Waste Operations
4000 Knights Trail Road
Nokomis, FL 34275

RE: Executed Consent Order, OGC Case No. 08-1728
Central County Solid Waste Disposal Complex (CCSWDC)
Class I Landfill Permit No. 130542-002-SO
Permit No. 231674-001-SO
Sarasota County

Dear Mr. Coggins:

Enclosed please find an original signed and executed copy of the Consent Order for the above-referenced case. The effective date is October 8, 2008.

Please pay particular attention to the activities and deadlines specified in paragraphs 9 through 14, and paragraph 18 of the Consent Order.

The Department appreciates your cooperation towards resolution of this matter. If you have any questions, you may contact me at telephone number (813) 632-7600, extension 451.

Sincerely,

Stephanie Watson
Solid Waste Section
Southwest District

Enclosure
cc w/o enc (email):

William Kutash, P.G., SWD FDEP
Susan Pelz, P.E., SWD FDEP
Steve Morgan, SWD FDEP
John Morris, P.G., SWD FDEP

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BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

IN THE OFFICE OF THE
SOUTHWEST DISTRICT

Complainant.
vs.

OGC FILE NO. 08-1728

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION
SEP 30 2008
SOUTHWEST DISTRICT
TAMPA

BOARD OF COUNTY COMMISSIONERS,
SARASOTA COUNTY, FLORIDA

Respondent.

_____ /

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department") and the Sarasota County Board of County Commissioners ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and the Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapters 403 and 376, Florida Statutes, and Chapters 62-701 and 62-780, Florida Administrative Code. The Department has jurisdiction over the matters addressed in this Consent Order.
2. Respondent is a person within the meaning of Section 403.031(5), Florida Statutes.
3. Respondent owns property located at 4000 Knights Trail Road in Nokomis, Sarasota County, Florida, 27 degrees, 12 minutes, 6.57 seconds latitude and 82 degrees, 23 minutes, 34.07 seconds longitude, Section 3 Township 38S Range 19 E.
4. Respondent operates the Central County Solid Waste Disposal Complex Class I Landfill ("Facility") under Permit No. 130542-002-SO ("Permit"). Respondent's operations

include the operation, monitoring, and maintenance of a Class I Landfill, a leachate storage tank, and a special waste management area. The Permit authorizes Respondent to dispose of class I waste in a lined disposal unit within a permitted landfill footprint that includes a ground water monitoring system. The zone of discharge for the Facility extends horizontally 100 feet from the limits of the landfill liner or to the property boundary, whichever is less, and extends vertically to the bottom of the surficial aquifer, according to Specific Condition E.2. of the Permit.

Respondent is in evaluation monitoring in accordance Specific Condition E.7 of the Permit for exceedances of the Department’s ground water standard for arsenic in detection wells MW-8A, MW-9, MW-10R, and MW-11R, which are located around the landfill footprint of Phase I.

5. Respondent performed initial sampling of compliance wells CW-8A, CW-9, CW-10R, and CW-11R on February 26 and 27, 2008 and elected to resample on March 19, 2008. Respondent submitted the initial sampling results to the Department in a document entitled “Addendum to Responses to Request for Additional Information No. 4. Construction/Operation Permit Application. Central County Solid Waste Disposal Complex. Phase II Expansion,” dated April 7, 2008 (received April 8, 2008), prepared by HDR Engineering, Inc., which included the document entitled, “Sampling of Selected Existing Detection Wells and Four New Compliance Wells (MW-1R, MW-8A, CW-8A, MW-9, CW-9, MW-10R, CW-10R, MW-11R, and CW-11R).” prepared by PBS&J. The following contaminants were detected and confirmed in compliance wells in concentrations that exceed both background levels and Department water quality standards and criteria:

a. Based on the results for the February 26 and 27, 2008 initial sampling event:

PARAMETERS	Standard	MW-1R	CW-8A	CW-9	CW-10R	CW-11R
Primary Standard						
Arsenic (mg/L)	0.01	0.00132	0.0479	0.116	0.049	0.0598
Secondary Standard						
Iron (mg/L)	0.3	13.7	48.8	61.2	39.7	35.4
TDS (mg/L)	500	520	480	860	830	1100
Minimum Criteria						
Ammonia (mg/L)	2.8	0.13	4.6	15	1.5	1.9

b. Based on the results for the March 19, 2008 re-sampling event:

PARAMETERS	Standard	MW-1R	CW-8A	CW-9	CW-10R	CW-11R
Primary Standard						
Arsenic (mg/L)	0.01	NS	NS	0.115	0.0339	0.0813
NS=not sampled						

On April 25, 2008, the Department received a document entitled “Proposed Contamination Evaluation Plan.” (“CEP”) dated April 23, 2008, prepared by PBS&J on behalf of the Respondent, which confirmed that, based on the results of the Facility’s evaluation monitoring around Phase I, “there may be impacts to groundwater quality beyond the zone of discharge within the proposed Phase II construction and operation footprint.”

6. The Department met with Respondent and its consultants on May 13, 2008 to discuss the CEP and the pending Construction and Operation Permit Applications for Phase II, #130542-006-SC and #130542-007-SO, respectively. Subsequently, the Respondent submitted a revised CEP (“Revised CEP”) dated June 5, 2008, and received by the Department on June 6, 2008. The Department reviewed the Revised CEP and does not object to the implementation of the activities described therein.

7. The Department finds that the following violations occurred:

a. Contaminants have been detected in groundwater at levels that exceed the water quality standards and criteria for groundwater at the Facility’s zone of discharge in violation of Fla. Admin. Code Rule 62-522.300(1).

b. Ground water at the Facility is classified as Class G-II, and does not meet the primary and secondary drinking water quality standards at the zone of discharge for public water systems established pursuant to the Florida Safe Drinking Water Act, in violation of Fla. Admin. Code Rule 62-520.420(1).

c. Ground water at the Facility is not free from domestic, industrial, agricultural, or other man-induced non-thermal components of discharges, in violation of Fla. Admin. Code Rule 62-520.400(1).

8. Having reached resolution of the matter the Department and the Respondent mutually agree and it is.

ORDERED:

9. Immediately upon execution of this Consent Order, the Respondent shall commence a Site Assessment in accordance with Fla. Admin. Code Rule 62-780.600. The Department acknowledges that some provisions of Chapter 62-780 do not apply to the site assessment at the Facility. Respondent may consult with the Department at any time during the assessment process to determine which provisions do not apply. Within 270 days from the execution of this Consent Order, the Respondent shall submit a Site Assessment Report ("SAR") to the Department in accordance with Fla. Admin. Code Rule 62-780.600(8). The Department will review and process the SAR in accordance with Fla. Admin. Code Rule 62-780.600(9).

10. Upon Department approval of the SAR, the Respondent shall commence and complete all further tasks required by Chapter 62-780, Fla. Admin. Code in accordance with the requirements and time schedules identified therein.

11. Respondent shall continue evaluation monitoring in accordance with Rule 62-701.510(7)(a)7, Fla. Admin. Code and may resume routine monitoring only upon the Department's written approval of the SAR required in paragraph 9.

12. If contaminants are detected and confirmed in any additional compliance wells at the Facility, in concentrations that exceed both background levels and Department water quality standards or criteria, the Respondent shall notify the Department within 14 days of this finding and shall initiate corrective actions in accordance with the applicable provisions of Chapter 62-780, Fla. Admin. Code.

13. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department \$1,500.00 in settlement of the matters addressed in this Consent Order. This amount includes \$500.00 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, county check, or money order. The instrument shall be made payable to the "Department of Environmental Protection" and shall include thereon the OGC

number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund."

14. Respondent agrees to pay the Department stipulated penalties in the amount of \$200 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraphs 9 through 13 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Consent Order. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to "The Department of Environmental Protection" by cashier's check or money order and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund." Payment shall be sent to the Department of Environmental Protection, Attn: Sandra Wilson, 13051 North Telecom Parkway, Temple Terrace, Florida 33637-0926. 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 13 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.

15. The Department, for and in consideration of Respondent's complete and timely performance 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; provided, however, that should the Department conclude that clean up of the contaminated area to site rehabilitation levels is not feasible; or should the Respondent not completely implement a remedial action plan consistent with the requirements of Rule 62-780, Fla. Admin. Code, as approved by the Department; the Department expressly reserves its right to seek restitution from Respondent for environmental damages. Within 20 days of receipt of Department's written notification of its intent to seek said restitution, Respondent may pay the

amount of the damages or may, if it so chooses, initiate negotiations with the Department regarding the monetary terms of restitution to the state. Respondent is aware that should a negotiated sum or other compensation or environmental damages not be agreed to by the Department and Respondent within 20 days of receipt of Department written notification of its intent to seek restitution, the Department may institute appropriate action, either administrative through a Notice of Violation, or judicial, in a court of competent jurisdiction through a civil complaint, to recover Department assessed environmental damages as provided by law.

16. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes, and waives that right upon signing this Consent Order.

17. With regard to any agency action taken by the Department concerning Respondent's proposals submitted by the Respondent to the Department as required by Rule 62-780, Fla. Admin. Code, the Respondent may file a Petition for Formal or Informal Administrative Hearing. If Respondent objects to the Department's agency action pursuant to Sections 120.569 and 120.57, Florida Statutes, Respondent shall have the burden to establish that the Department's agency action was not reasonable. The petition must contain the information set forth below in paragraph 20 and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of the Department's agency action the Respondent intends to challenge and must conform with the requirements of Florida Administrative Code Rule 28-106.201 or Rule 28-106.301. Failure to file a petition within this time period shall constitute a waiver by Respondent of its right to request an administrative proceeding under Sections 120.569 and 120.57, Florida Statutes. The Department's determination, upon expiration of the 21 day time period if no petition is filed, or the Department's Final Order as a result of the filing of a petition, shall be incorporated by reference into this Consent Order and made a part of it. All other aspects of this Consent Order shall remain in full force and effect at all times. If both parties

agree, the Department and Respondent may mediate the dispute as provided in Section 120.572, Florida Statutes. If the parties agree to mediation, the time for filing a petition pursuant to this paragraph is tolled until such time as the mediation is unsuccessful. Upon notice from the Department that the mediation is unsuccessful, the Respondent shall have 21 days to file its petition as provided herein. If Respondent seeks an administrative proceeding pursuant to this paragraph, the Department may file suit against Respondent in lieu of or in addition to holding the administrative proceeding to obtain judicial resolution of all the issues unresolved at the time of the request for administrative proceeding.

18. Respondent shall publish the following notice in a newspaper of daily circulation in Sarasota County, Florida. The notice shall be published one time only within 15 days after the effective date of the Consent Order by the Department.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF CONSENT ORDER

The Department of Environmental Protection gives notice of agency action of entering into a Consent Order with the Sarasota County Board of County Commissioners pursuant to Section 120.57(4), Florida Statutes. The Consent Order addresses assessment activities for violations of Department ground water quality standards at Central County Solid Waste Disposal Complex Class I Landfill, Permit No. 130542-002-SO, located at 4000 Knights Trail Road in Nokomis, Sarasota County, Florida. The Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, 13051 North Telecom Parkway, Temple Terrace, Florida 33637-0926.

Persons whose substantial interests are affected by this Consent Order have a right to petition for an administrative hearing on the Consent Order. The Petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information: (a) the Department's identification number for the Consent Order and the county in which the subject matter or activity is located; (b) The name, address, and telephone number of each petitioner. The name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes; (c) A statement of how and when each petitioner received notice of the Consent Order; (d) A statement of how each petitioner's substantial interests are affected by the Consent Order; (e) A statement of the material facts disputed by petitioner. If there are none, the petition must so indicate; (f) A statement of which rules or statutes petitioner contends require reversal or

modification of the Consent Order; (g) A statement of facts which petitioner contends warrant reversal or modification of the Consent Order, including an explanation of how the alleged facts relate to the specific rules or statutes; and (h) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under Section 120.573, Florida Statutes, before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement; and
- (g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference.
- (h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

19. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, 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 contractually imposed deadlines be a cause beyond the control of Respondent, 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 shall notify the Department orally within 24 hours or by the next working day and shall, within seven calendar 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 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, 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 to comply with the notice requirements of this Paragraph

in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Consent Order.

20. Nothing herein shall be construed to limit the authority of the Department to undertake any action against any Respondent in response to or to recover the costs of responding to conditions at or from the site that require Department action to abate an imminent hazard to the public health, welfare or the environment.

21. The Respondent shall provide within a reasonable time at its expense a permanent safe drinking water supply meeting all drinking water standards set forth in Florida Administrative Code Chapter 62-550 to replace any potable water well that is shown by chemical and hydro-geologic analyses to be contaminated by the Respondent's operations.

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

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

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

25. Respondent shall allow all authorized representatives of the Department access to the property and Facility at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the Department.

26. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes or the rules promulgated thereunder that are not specifically addressed by the terms of this Consent Order, including but not limited to undisclosed releases, contamination or polluting conditions.

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

28. All submittals required by this Consent Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, Attn: Solid Waste Manager, 13051 North Telecom Parkway, Temple Terrace, Florida, 33637-0926.

29. In the event of a sale or conveyance of the Facility or of the property upon which the Facility is located, if all of the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the property or Facility, (1) notify the Department of such sale or conveyance, (2) provide the name and address of the purchaser, or operator, or person(s) in control of the Facility, and (3) provide a copy of this Consent Order with all attachments to the new owner. The sale or conveyance of the Facility, or the property upon which the Facility is located shall not relieve the Respondent of the obligations imposed in this Consent Order.

30. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities, which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law.

31. Respondent shall use all reasonable efforts to obtain any necessary access for work to be performed in the implementation of this Consent Order. If necessary access cannot be obtained, or if obtained, is revoked by owners or entities controlling access to the properties to which access is necessary, Respondent shall notify the Department within (5) business days of such refusal or revocation. The Department may at any time seek to obtain access as is necessary to implement the terms of this Consent Order. The Respondent shall reimburse the Department for any damages, costs, or expenses, including expert and attorneys fees, that the Department is ordered to pay, or that the Department incurs in connection with its efforts to obtain access as is necessary to implement the terms of this Consent Order. Respondent shall

pay these sums to the Department or arrange a payment schedule with the Department within 30 days of written demand by the Department.

32. This Consent Order is a final order of the Department pursuant to Section 120.52(7), Florida Statutes, and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Florida Statutes. Upon the timely filing of a petition this Consent Order will not be effective until further order of the Department.

FOR THE RESPONDENT:

BOARD OF COUNTY COMMISSIONERS,
SARASOTA COUNTY, FLORIDA

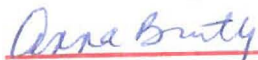
BY: 

SHANNON STAUB, CHAIRPERSON

DATE: 9/24/2008

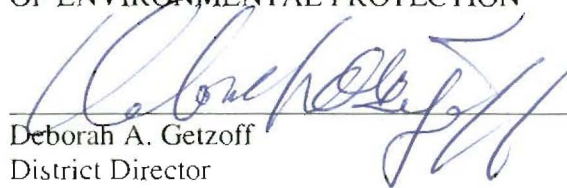
DONE AND ORDERED this 4th day of October, 2008, in Tampa, Florida.

**FILING AND ACKNOWLEDGMENT
FILED, on this date, pursuant to
§120.52(10), Florida Statutes, with the
designated Department Clerk, receipt of
which is hereby acknowledged.**

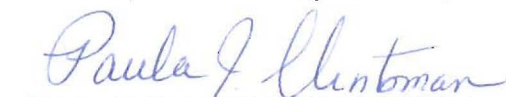

Clerk

10/8/08
Date

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


Deborah A. Getzoff
District Director
Southwest District

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


Deputy Clerk

9/24/2008
Date

Copies furnished to:
Lea Crandall, OGC (executed copy only)
Sandra Wilson, FDEP - Tampa (executed copy only)