

I N T E R O F F I C E M E M O R A N D U M

Date: 09-Jun-1994 03:55pm EST
From: Steve Morgan TPA
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Dept: Southwest District Offi
Tel No: 813/744-6100
SUNCOM:

TO: Mary Jean Yon TAL

(YON_MJ @ A1 @ DER)

CC: Chris McGuire TAL

(MCGUIRE_C @ A1 @ DER)

CC: Robert Butera TPA

(BUTERA_R@A1@TPA1)

Subject: Manatee County Variance

Mary Jean:

I made a couple of suggested changes to tighten some things up, but I really didn't see any glaring holes in your draft. The paragraph on request for extention is a modification of the standard paragraph used in Consent Order. I suppose you have to do it, but allowing the County to comment on the draft only invites an opportunity to further delay positive action by the County. I will be in the office tommorrow, hopefully with all the ash shook off my shoes.

Steve

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of a request
for variance by:

Honorable Stan E. Stephens, Chairman
Board of County Commissioners
Manatee County
Post Office Box 1000
Bradenton, Florida 34206

File No. SWV 91-7
Manatee County

NOTICE OF INTENT TO GRANT VARIANCE

The Department has reviewed a petition for renewal of variance filed on behalf of Manatee County, pursuant to Chapter 403.201(1), Florida Statutes (F.S.). The petitioner seeks a variance from the provision of Section 403.708(15)(c), F.S., which prohibits the disposal of yard trash in lined landfills after January 1, 1992. The Department hereby gives notice of its intent to grant a variance for Manatee County's Lena Road Class I Landfill. The Department finds that a variance is necessary to prevent undue hardship to the petitioner, for the reasons stated in the petition and subsequent correspondence. This variance will allow Manatee County to continue to dispose of the unsegregated portion of its yard trash in a lined landfill for a limited period of time while it constructs a waste reduction/recycling facility.

The variance is subject to the following conditions:

1. Except as noted below, this variance is valid until April 17, 1995. During this time the Petitioner shall negotiate a contract with the selected vendor, finalize the design of the waste reduction/recycling facility, obtain all appropriate Department permits and begin construction of the facility. When

the facility is completed, the Petitioner shall cease disposal of yard trash in the Class I facility. Unless this variance is extended in accordance with Paragraph 6 below, any disposal of yard trash in the lined Class I landfill after April 17, 1995, shall constitute a violation of Section 403.708(15)(c), F.S.

2. By September 1, 1994, the Petitioner shall have participated in a pre-application meeting with the Department's Southwest District staff for the purpose of discussing the proposed design and permitting requirements for the waste reduction/recycling facility. If this deadline is not met, this variance shall become voided effective September 1, 1994, in which case any disposal of yard trash in the lined Class I landfill after that date shall constitute a violation of Section 403.708(15)(c), F.S.

3. By October 1, 1994 the Petitioner shall have submitted the appropriate solid waste permit application to the Southwest District office needed to construct the waste reduction/recycling facility. If this deadline is not met, this variance shall become voided effective October 1, 1994, in which case any disposal of yard trash in the lined Class I landfill after that date shall constitute a violation of Section 403.708(15)(c), F.S.

4. By April 17, 1995, the Petitioner shall have obtained all Department permits needed to construct the waste reduction/recycling facility and shall have commenced construction.

5. The Petitioner shall submit monthly progress reports, no later than the 5th of each month, to the Department of Environmental Protection, Solid Waste Section Administrator, 2600

Blair Stone Road, Tallahassee, Florida 32399-2400, and shall also submit copies of these reports to the Department of Environmental Protection, Southwest District, Waste Program Administrator, 3804 Coconut Palm Drive, Tampa, Florida 33619.

6. If all of the above referenced dates are met and adhered to by the Petitioner, the Department will be willing to negotiate additional project time lines and extend the variance an additional year to April 17, 1996.

7. If this variance is voided for failure to meet the deadlines established in paragraphs 2 through 5 above, no further variance extentions will be considered. any-of-the-above referenced-dates-are-not-met,-then-this-variance-will-be considered-voided-and-will-not-be-extended-and-tThe Petitioner shall immediately comply with the requirements of Section 403.708(15)(c) regarding the disposal of yard trash. The petitioner may also contact will-be-directed-to-the Department's Southwest District office in order to negotiate a Consent Order in accordance with F.A.C. Chapter 17-103.110(3) to resolve any Violation of Section 403.708(15)(3) cover which it may anticipates during the remaining time period for the design, construction and startup/testing of the waste reduction/recycling facility.

8. The Petitioner may request an extension of time to meet any of the deadlines set forth above, however, the Petitioner shall have the burden of proving that the delay was or will be caused by circumstances beyond the reasonable control of the Petitioner and could not have been or can not be overcome by due diligence. Economic circumstances shall not be considered circumstances beyond the control of the Petitioner, 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 Petitioner, unless the cause of the contractor's late performance was also beyond the contractor's control, nor shall the Petitioner's failure to obtain necessary permits from the Department. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, the Petitioner 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 cause of delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which the Petitioner 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 the Petitioner, the time for performance hereunder shall be extended for a period not to exceed 30 days beyond the original deadline date. Such agreement shall be confirmed by letter from the Department. The Petitioner shall adopt all reasonable measures necessary to avoid or minimize delay.~~The Petitioner may request an extension of time to meet any of the deadlines set forth above, but only if the extension is necessitated by events beyond the reasonable control of the Petitioner. In no event will an extension of more than 30 days be granted by the Department.~~

Pursuant to Section 403.815, F.S., and DER Rule 17-103.150, F.A.C., you are required to publish at your own expense the enclosed Notice of Proposed Agency Action. The notice shall be

published one time only within 30 days in the legal ad section of a newspaper of general circulation in the area affected. For the purpose of this rule, "publication in a newspaper of general circulation in the area affected" means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031, F.S., in the county where the activity is to take place. Where there is more than one newspaper of general circulation in the county, the newspaper used must be one with significant circulation in the area that may be affected by the permit. If you are uncertain that a newspaper meets these requirements, please contact the department at the address or telephone number listed below. You must provide proof of publication to the Department at the address listed below within seven days of publication.

The Department's Intent to Grant Variance will become final unless a petition for an administrative proceeding is filed pursuant to the provisions of Section 120.57, F.S. A person whose substantial interests are affected by the Department's proposed action may petition for an administrative proceeding (hearing) in accordance with Section 120.57, F.S. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 2600 Blair Stone Road, Tallahassee, Florida 32399-2400. Petitions filed by the applicant must be filed within 14 days of receipt of this Notice. Petitions filed by other persons must be filed within 14 days of publication of the public notice or within 14 days of receipt of this notice, whichever first occurs. Petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. Failure to file a petition

within this period shall constitute a waiver of any right such person may have to request an administrative determination (hearing) under Section 120.57, F.S.

The Petition shall contain the following information;

(a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Department File Number and the county in which the project is proposed;

(b) A statement of how and when each petitioner received notice of the Department's action or proposed action;

(c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action;

(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 Department's action or proposed action;

(f) A statement of which rules or statutes petitioner contends require reversal or modification of the Department's action or proposed action; and

(g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action.

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

application 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 14 days of publication of this notice in the Office of General Counsel of the Department at the above address. 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.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

John M. Ruddell, Director
Division of Waste Management
2600 Blair Stone Road
Tallahassee, Florida 32399-2400
904/487-3299

CERTIFICATE OF SERVICE

The undersigned duly designated agency clerk hereby certifies that this Intent to Grant Variance and all copies were mailed before the close of business this _____ day of June 1994, to _____, Chairman, Board of County Commissioners, P.O. Box 1000, Bradenton, Florida 34206.

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to §120.52(11), Florida Statutes, with

the designated Department clerk,
receipt of which is hereby
acknowledged.

(Clerk)

(date)

Copies furnished to:
Chris McGuire
Mary Jean Yon
Bill Kutash

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF PROPOSED AGENCY ACTION

The Department of Environmental Protection gives Notice of its Intent to grant a variance pursuant to Section 403.201, Florida Statutes (F.S.), to Manatee County for the Lena Road Class I landfill. The variance is from Section 403.708(15)(c), F.S., which prohibits disposal of yard trash in lined landfills after January 1, 1992.

The Department's file on this matter 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 Division of Waste Management, Solid Waste Section, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

Persons whose substantial interests are affected by the above proposed agency action have a right, pursuant to Section 120.57, F.S., to petition for an administrative determination (hearing) on the proposed action. The petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within 14 days of publication of this notice. A copy of the Petition must also be mailed at the time of filing to the applicant at the address indicated. Failure to file a petition within 14 days constitutes a waiver of any right such person has to an administrative determination (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 applicant's name and address, the Department File

Number and the county in which the project is proposed;

(b) A statement of how and when each petitioner received notice of the Department's action or proposed action;

(c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action;

(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 Department's action or proposed action;

(f) A statement of which rules or statutes petitioner contends require reversal or modification of the Department's action or proposed action; and

(g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action.

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 application 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 14 days of publication of this notice in the Office of General Counsel of the Department at the above address. 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, Florida Administrative Code.