

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



In Re: The City of Tampa's )  
Request for a Variance )  
for the City's McKay Bay )  
Refuse-To-Energy Facility )  
and Hillsborough County's )  
Southeast Landfill )  
\_\_\_\_\_ )

**THE CITY OF TAMPA'S PETITION FOR A VARIANCE  
FROM SECTION 403.708(13)(c), F.S., AND  
SECTION 62-701.300(8)(c), F.A.C.**

Petitioner, the City of Tampa ("City"), by and through its undersigned attorneys, hereby petitions the Florida Department of Environmental Protection ("DEP") to grant a variance to the City and Hillsborough County ("County"), pursuant to Section 403.201(1), Florida Statutes ("F.S."), because the City and County would suffer a significant hardship if they were required to comply with Section 403.708(13)(c), F.S., and Section 62-701.300(8)(c), Florida Administrative Code ("F.A.C."), under the conditions described in this petition. In support of this petition, the City says:

Preliminary Matters

1. Petitioner, the City of Tampa, is a political subdivision of the State of Florida. Correspondence concerning this petition may be sent to the City in care of Ms. Nancy McCann at 305 East Jackson Street, 5N, Tampa, Florida 33602. Ms. McCann's phone number is 813/274-8090.

2. The City is represented in this proceeding by the law

firm of Landers & Parsons, P.A. Correspondence concerning this petition should be sent to Landers & Parsons in care of Mr. David S. Dee at P.O. Box 271, Tallahassee, Florida 32302. Mr. Dee's phone number is 850/681-0311.

3. Hillsborough County is a political subdivision of the State of Florida. Correspondence concerning this petition may be sent to the County in care of Mr. Daryl Smith, Hillsborough County Solid Waste Management Department, Post Office Box 1110, Tampa, Florida 33601. Mr. Smith's phone number is 813/272-5680.

#### Factual Background

4. The City of Tampa owns the McKay Bay Refuse-to-Energy Facility ("Facility"), which is located at 107 North 34th Street, Tampa, Florida. The Facility receives and processes approximately 1,000 tons of municipal solid waste ("MSW") each day. The MSW is incinerated in four municipal waste combustor ("MWC") units, each of which can process approximately 250 tons per day ("tpd") of MSW. The Facility is operated in compliance with a DEP solid waste permit (No. 34662-001-SO).

5. The City owns a solid waste transfer station (the "Transfer Station"), which is adjacent to the McKay Bay Refuse-To-Energy Facility. The Transfer Station is operated in compliance with a DEP general permit (DEP Permit No. SO29-236548). Solid waste that cannot be processed at the Facility is diverted to the Transfer Station and then transported to Hillsborough County's Southeast Landfill for disposal.

6. The City owns and operates the Manhattan Brush Site, where citizens can deliver segregated yard trash for recycling. The City's Transfer Station also accepts segregated yard trash for recycling. Further, the City provides curbside collection of yard trash in approximately one-third of the City.

7. The Southeast Landfill ("Landfill") is located at 15960 County Road 672, Picnic, Florida. The Landfill includes a lined, Class I landfill that receives:

- (a) ash residue from the City's Facility;
- (b) "nonprocessable waste" (i.e., those types of waste that cannot be processed in the Facility); and
- (c) "bypassed waste" (i.e., the quantity of waste that exceeds the Facility's processing capacity).

The Landfill is operated in compliance with DEP Permit No. S029-256427.

8. The City must install new air pollution control ("APC") equipment and make other improvements at the Facility to comply with the requirements of 40 CFR 60, Subpart Cb, which have been adopted by reference in DEP Rule 62-204.800(8)(b), F.A.C. These requirements also are contained in the DEP air construction permit for the Facility (DEP Permit No. 0570127-002-AC; PSD-FL-086(A)).

9. The construction and installation of the new APC equipment (i.e., "the Retrofit") will occur in two phases. Initially, the City may need to shut down the four MWC units at the Facility for approximately two weeks. The City then will restart and operate Units 1 and 2, while construction occurs on

Units 3 and 4. After the new APC equipment and other improvements are completed on Units 3 and 4, the City may shut down the entire Facility for a few days. Thereafter, the City will restart and operate Units 3 and 4, while work commences on the improvements to Units 1 and 2.

10. The Retrofit of the Facility is expected to begin in July 1999. The City anticipates that it will take 24 to 36 months to complete the Retrofit and resume normal operations at the Facility.

#### DEP Requirements for the Disposal of Yard Trash

11. Section 403.508(13)(c), F.S., and DEP Rule 62-701.300(8)(c), F.A.C., prohibit the disposal of yard trash, except in unlined landfills. However, Section 403.508(13)(c), F.S., also states that:

The Department recognizes that incidental amounts of yard trash may be disposed of in lined landfills. In any enforcement action taken pursuant to this paragraph, the Department shall consider the difficulty of removing incidental amounts of yard trash from a mixed solid waste stream.

12. In at least two instances, the Department has provided guidance to the regulated community concerning the proper interpretation of Section 403.508(13)(c), F.S., and Rule 72-701.300(8)(c), F.A.C. On July 15, 1992, DEP issued an interoffice memorandum regarding "yard trash disposal," which indicates that the Department will not take enforcement action against the owner of a landfill if the owner "is taking all practical measures to keep yard trash out of the mixed solid

waste stream. . . ." DEP's 1992 memorandum was supplemented by a March 2, 1998 letter to Broward County, which states:

enforcement generally will not be taken [by DEP] if a County is making a good faith effort to keep yard waste out of its lined landfill either through incineration or through separate collection with a yard waste, composting, or mulching program.

Copies of DEP's 1992 memorandum and 1998 letter are attached hereto as Exhibits "A" and "B," respectively.

#### The City's Yard Trash Management Practices

13. The City's normal solid waste management practices are very effective at keeping segregated loads of yard trash out of the Landfill. As noted above, the City has two sites (i.e., the Transfer Station and the Manhattan Brush Site) that accept segregated yard trash for recycling. One third of the City also enjoys the use of a curbside program for the collection of yard trash, which is recycled. The City's yard trash sites and collection program will continue to be used to recycle yard trash during the Retrofit.

14. In addition to the City's programs for recycling segregated yard trash, the City's normal solid waste management practices are very effective at keeping mixed loads of yard trash and MSW out of the Landfill. Approximately 95% of the City's solid waste disposal is via incineration at the Facility. The materials burned at the Facility include yard trash that has been mixed with and contaminated by other types of MSW. Only about 5% of the City's MSW is taken to the Landfill for disposal. With

regard to this portion of the City's waste stream, the solid waste is manually sorted at the Transfer Station so that yard trash can be removed from the MSW and then incinerated at the Facility.

15. During most of the period when the Retrofit is underway, approximately 50% of the City's MSW will be incinerated and 50% will be taken to the Landfill. For at least two brief periods during the Retrofit, 100% of the City's MSW may be taken to the Landfill.

16. It will be physically impossible to hand-sort the portion of the City's waste stream (i.e., 500 or 1,000 tons per day) that will be taken to the Landfill during the Retrofit. The City does not have the staff or the facilities to conduct a manual sorting operation of this magnitude.

17. It would be counterproductive to remove yard trash from the MSW during the Retrofit. The City will have no excess capacity in the Facility during the Retrofit. If any yard trash is removed from the mixed MSW and then taken to the Facility for incineration, the yard trash will displace an equal amount of MSW (e.g., garbage), which will need to be sent to the Landfill.

18. There are no cost-effective options available to reduce the amount of mixed yard trash that will be taken to the Landfill during the Retrofit. Theoretically, the City could expand its curbside yard trash collection program and make it mandatory, but it would take a significant amount of time, effort and money to expand the City's yard trash collection program in this manner.

This effort could not be completed before July 1999. It would not make sense to undertake such a major effort in this case because the new collection program would only be needed on a temporary basis. After the Retrofit is completed, the Facility will resume operations at 1,000 tpd and the City will resume its current yard trash management practices. Even if the City expanded its yard trash collection program, it is debatable whether the City could use or give away all of the recycled yard trash that would be produced with the new program. For all of these reasons, the City believes it is inappropriate to pursue new yard waste collection or separation programs during the time when the Facility is being upgraded.

19. The City and County recognize there will be an increase in the amount of mixed yard trash and MSW placed in the Landfill during the Retrofit. Nonetheless, the City and County believe that the City is making a "good faith effort" and using "all practical" means to minimize the amount of mixed yard trash placed in the County's Landfill. Given the City's efforts to manage yard trash, the City and County agree that the Department should not take any enforcement action against either one of them under Section 403.708(13)(c), F.S., or Rule 62-701.300(8)(c), F.A.C. Although a variance should not be required in this case, the City and County are requesting a variance to ensure there will be no dispute in the future about their compliance with DEP's regulations. Indeed, the Department's staff has encouraged the City to seek a variance in this case.

20. Granting a variance in this case will not result in any environmental harm. Instead, a variance will allow the City to avoid an economic hardship that would result as an unintended consequence of the City's efforts to comply with the new air quality regulations imposed on the City by DEP. A variance also will allow the City and County to avoid unnecessary disputes with DEP concerning the intent of the Department's 1992 memorandum and 1998 letter.

21. If a variance is granted in this case, the variance should become effective on July 1, 1999. A variance will not be needed prior to this date.

22. If a variance is granted in this case, the variance should state that the variance serves as an automatic modification to the permits for the Facility, Transfer Station and Landfill. The Department's staff has indicated that, even if the City requests and receives a variance, the City and County will need to request and receive permit modifications after the variance is issued. The City and the County would like to avoid the additional expense, paperwork, and delay associated with a permit modification. Accordingly, the City and County would like DEP's ruling on this petition for a variance to include DEP's grant of the necessary permit modifications, if any, to the City's permits and the County's permit.

WHEREFORE, in light of the facts set forth herein, the City of Tampa respectfully requests the Department of Environmental Protection to grant a variance to the City and the County,



pursuant to Section 403.201, F.S., and thereby provide relief from the requirements of Section 403.708(13)(c), F.S., and Section 62-701.300(8)(c), F.A.C., during the time when the City is completing the improvements to the City's McKay Bay Refuse-to-Energy Facility.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of March, 1999.

LANDERS & PARSONS, P.A.

A handwritten signature in cursive script, appearing to read "D. S. Dee". The signature is written in dark ink and is positioned above a horizontal line.

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David S. Dee  
Florida Bar No. 281999  
Post Office Box 271  
Tallahassee, Florida 32302  
Phone: (850) 681-0311  
FAX: (850) 224-5595

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing, and the City's check (No. 00074279) in the amount of \$2,000, has been furnished by hand delivery to the Clerk, Department of Environmental Protection, 3900 Commonwealth Boulevard, Douglas Building, 6th Floor, Tallahassee, Florida, and copies of this petition have been served by United States Mail to those listed below on this 4th day of March 1999:

Mary Jean Yon  
Department of Environmental Protection  
Room 351  
Twin Towers Office Building  
Tallahassee, Florida 32399

John Ruddell  
Department of Environmental Protection  
Room 425  
Twin Towers Office Building  
Tallahassee, Florida 32399

Chris McGuire  
Department of Environmental Protection  
Office of General Counsel, 6th Floor  
2600 Blair Stone Road  
Twin Towers Office Building  
Tallahassee, Florida 32399

Dr. Richard Garrity  
Department of Environmental Protection  
3804 Coconut Palm Drive  
Tampa, Florida 33619

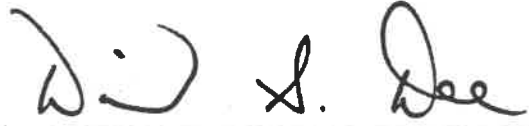
Kim Ford  
Department of Environmental Protection  
3804 Coconut Palm Drive  
Tampa, Florida 33619

Daryl Smith  
Hillsborough County Department of Solid Waste  
Post Office Box 1110  
Tampa, Florida 33601

Nancy McCann  
Urban Environmental Coordinator  
Office of Environmental Coordination  
306 E. Jackson Street,  
City Hall Plaza, 5N  
Tampa, Florida 33602

Mike Salmon  
Coordinator  
Department of Environmental Services  
Public Works Projects  
306 E. Jackson Street, City Hall Plaza  
Tampa, Florida 33602

Paul Schipfer  
Environmental Protection Commission  
1410 N 21st Street  
Tampa, Florida 33605

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David S. Dee

/tampavar.4



State of Florida  
DEPARTMENT OF ENVIRONMENTAL REGULATION

WM/SWM-03.1

7-15-92

To: _____	Location: _____
By: _____	Location: _____
Date: _____	Date: _____

# Interoffice Memorandum

TO: Directors of District Management  
District Waste Program Administrators

FROM: John M. Ruddell, Director *JMR*  
Division of Waste Management

DATE: July 15, 1992

SUBJECT: Yard Trash Disposal

We have received several questions concerning the disposal of small amounts of yard trash which have been mixed in with the general solid waste stream. Some counties are apparently concerned that the Department will interpret Section 403.708(15)(c), Florida Statutes, very strictly and cite them if any yard trash is found at their lined landfill, no matter how little.

The intent of the yard trash ban was to create an incentive for counties to establish separate collection services and uses for yard trash. The disposal of yard trash in lined landfills poses no particular environmental threat. On the other hand, the Department has no authority to create an exemption from a specific statutory requirement.

Therefore, it will be the Department's policy not to take enforcement action against owners or operators of lined landfills for disposal of incidental amounts of yard trash collected from residences, provided the county has established separate collection services for yard trash from residences and has established composting or mulching operations. What constitutes an incidental amount will be determined on a case-by-case basis. If a county is taking all practical measures to keep yard trash out of the mixed solid waste stream, the small amounts that are not kept out should be considered incidental.

JMR/cmv

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To <i>David Dee</i>	From <i>G. Groteclass</i>
Co.	Co.
Dept.	Phone #
Fax #	Fax #



## Department of Environmental Protection

Lawton Chiles  
Governor

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

Virginia B. Wetzarell  
Secretary

March 2, 1998

Ms. Mary Beth Busutil, Director  
Broward County Solid Waste Operations Division  
201 South Andrews Avenue  
Ft. Lauderdale, Florida 33301-1831

Dear Ms. Busutil:

This letter is a follow-up to our meeting on February 24 when we met to discuss the issue of incidental amounts of yard waste in the Broward Interim Contingency (BIC) Landfill. I appreciate the tour of your operation and the thorough briefing concerning the flow of solid waste in Broward County. In particular, I appreciate all the statistics that you were able to provide concerning yard waste and the steps that the County has taken to keep it out of the BIC Landfill.

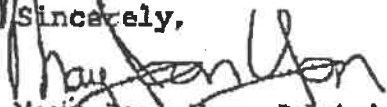
You have referenced a July 15, 1992 Department policy memo that was signed by John Ruddell, the Director of the Division of Waste Management that addresses this concept of "incidental amounts of yard waste." The primary purpose of that memo was to guide both the regulated community and our District offices on the question of whether small, or incidental, amounts of yard waste in a landfill's incoming waste stream could trigger enforcement. As stated at our meeting, the Department's position is that enforcement generally will not be taken if a County is making a good faith effort to keep yard waste out of its lined landfill either through incineration or through separate collection with a yard waste composting or mulching program. We also discussed the concept of trying to define the term "incidental" in such a way as to quantify it. We have not presently done that either by rule or policy declaration and feel that it is not necessary in your situation. Rather, that policy memo and our case-by-case decisions focus on what practical measures a particular county has taken to keep yard waste out of the mixed solid waste stream. In that regard, we feel Broward

Ms. Mary Beth Busutil, Director  
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March 2, 1998

County excels and I hope you will continue the measures you have put in place to collect and mulch what little yard trash is received at the BIC Landfill. It should also be noted that our Southeast District Office has not indicated that this is an issue deserving of enforcement.

I hope you find this determination helpful and I encourage you to keep up the good operation of your landfill. If you have any further questions, please feel free to contact me at 850/921-9976.

Sincerely,

  
Mary Jean Yon, Administrator  
Solid Waste Section

MJY/lr

cc: Chris McGuire  
Lee Hoefert  
W. Joe Moss  
Valerie Fernandez Settles  
Richard Brossard  
Thomas M. Henderson  
Rick Wilkins