

DEC 29 2008

Southwest District

**THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,**

Complainant,

v.

OGC FILE NO.: 08-2376

**SUMTER COUNTY, FLORIDA,
a subdivision of the State of Florida**

Respondent.

PETITION FOR FORMAL ADMINISTRATIVE PROCEEDING

COMES NOW, SUMTER COUNTY ("SUMTER"), a subdivision of the State of Florida, and, despite the absence of a proper Notice of Violation, and in an abundance of caution as a result of the language of the proffered "Notice of Rights" served upon it, brings a Petition for Formal Administrative Proceeding pursuant to Sections 120.569 and 120.57 Florida Statutes, and in furtherance thereof states as follows:

1. The agency affected by this Petition is the State of Florida Department of Environmental Protection ("DEP"), c/o Debora A. Getzoff, District Director, Southwest District, 13051 N. Telecom Parkway, Temple Terrace, Fl. 33637.
2. Petitioner SUMTER's address is 910 North Main Street, Bushnell, Florida, 33513.
3. Petitioner SUMTER's phone number is (352) 793-0200.
4. Petitioner SUMTER is represented by Derrill L. McAteer, Esq. of The Hogan Law Firm, 20 S. Broad Street, Brooksville, FL 34601.
5. Petitioner SUMTER's substantial interests will be affected by this matter as Petitioner SUMTER is named in correspondence as a prospective party respondent to DEP case number 08-2376, and DEP has threatened to impose

\$3,500.00 in administrative penalties and investigative costs against Respondent/Petitioner SUMTER, a subdivision of the State of Florida.

6. Petitioner SUMTER has received multiple letters and a proffered consent order in the above styled matter. With those letters was a “Notice of Rights” instead of a proper “Notice of Violation”. While the “Notice of Rights” appears to apply only to third parties who may claim interest in the consent order, in an abundance of caution, Sumter files this pleading to avoid any allegation of waiver of its right to an administrative hearing.
7. Petitioner SUMTER disputes material facts alleged in the correspondence accompanying the consent order, including the allegation that the leachate collection system was not operated in a manner consistent with the Florida Administrative Code. No leachate material has ever com in to contact with soil or any other permeable surface. Moreover, SUMTER is spending substantial amounts of money to modernize and mitigate the handling of leachate at its facility. SUMTER finds it incredible that an agency supported by the taxpayer’s of the State of Florida would attempt to extract money from a state subdivision, also supported by taxpayer funds, given the circumstances surrounding this matter.
8. This petition for administrative hearing is offered in an abundance of caution. SUMTER has not received a proper Notice of Violation. Moreover, SUMTER does not waive any rights in the filing of this cautionary petition, and requests that DEP either refrain from future prosecution of this matter or serve a clear Notice of Violation from which SUMTER may respond.

9. The Board of County Commissioners of Sumter County has authorized the undersigned to litigate this matter through the formal hearing phase and to circuit court if necessary.

10. SUMTER reserves the right to amend this petition if necessary.

WHEREFORE, in an abundance of caution, Petitioner SUMTER demands and exercises its right to due process and requests a formal hearing in the above styled matter, notes that no known rights are being waived or relinquished, and further respectfully requests that the proposed allegations, penalties, and action(s) be outlined in a proper Notice of Violation, or, in the alternative, that DEP refrain from prosecuting this action in order to prevent a further waste of taxpayer monies.

Respectfully submitted this 24 day of December, 2008.

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Dept. of Environmental Protection

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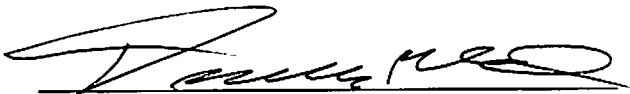
Southwest District



Derrill L. McAteer, Esquire
Florida Bar No. 0628972
Counsel for SUMTER

CERTIFICATE OF SERVICE

I hereby certify that the original above was served on the Florida Department of Environmental Protection, Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, FL 32399 via FedEx overnight delivery; and a copy by regular U.S. Mail to: State of Florida Department of Environmental Protection c/o Debora A. Getzoff, District Director, Southwest District, 13051 N. Telecom Parkway, Temple Terrace, Florida 33637, this 24 day of December, 2008.


Derrill L. McAteer Esquire