

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

In re:	)	
Application for	)	
Power Plant Site Certification	)	CASE NO. 87-5337
of Pasco County Solid Waste	)	(LAND USE HEARING)
Resource Recovery Facility	)	

RECOMMENDED ORDER

Pursuant to notice, an administrative hearing was held before Diane D. Tremor, Hearing Officer with the Division of Administrative Hearings, on February 16, 1988 at the Pasco-Hernando Community College in New Port Richey, Pasco County, Florida. In accordance with Section 403.508(2), Florida Statutes (1987), the sole issue for determination during this portion of the proceeding is whether the site selected for Pasco County's proposed solid waste resource recovery facility and ashfill is consistent and in compliance with existing applicable land use plans and zoning ordinances.

APPEARANCES

For Pasco County:	David S. Dee Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A. Post Office Drawer 190 Tallahassee, Florida 32302
For the Department of Environmental Regulation:	Richard T. Donelan, Jr. Twin Towers Office Building 2600 Blair Stone Road Tallahassee, Florida 32399
For the Department of Community Affairs:	C. Lawrence Keesey Rhyne Building 2740 Centerview Drive Tallahassee, Florida 32399
For the Southwest Florida Water Management District:	Edward B. Helvenston 2379 Broad Street Brooksville, Florida 34609-6899

#### INTRODUCTION

On November 17, 1987, Pasco County filed an application for approval of a solid waste resource recovery facility and landfill/ashfill, pursuant to the Florida Electrical Power Plant Siting Act (Act), Sections 403.501 et seq., Florida Statutes (1987). The Act requires that a land use hearing and a site certification hearing be held to evaluate the County's application. The land use hearing addresses only the issue of whether the proposed site is consistent and in compliance with existing applicable land use plans and zoning ordinances.

In support of its application, Pasco County presented the testimony of five witnesses: Robert Hauser, Jr., a consulting engineer who was accepted as an expert concerning the siting and permitting of solid waste disposal facilities, including landfills and resource recovery facilities; Frederick J. Lowndes, the Chief Planner of the Pasco County Planning Department, who was accepted as an expert concerning zoning and land use planning; Kenneth W. Baginski, the Pasco County Zoning Administrator, who was accepted as an expert concerning Pasco County's zoning code; Samuel Steffey, II, the Planning Director for the Pasco County Planning Department, who was accepted as an expert concerning zoning and land use planning, including Pasco County's zoning ordinance and comprehensive plan; and Hamilton S. Oven, Jr., the Administrator of the Siting Coordination Section for the Department of Environmental Regulation.

Pasco County's Exhibits 1 through 23 were received into evidence without objection, but with the limitation that such

exhibits, particularly Exhibit 19, be utilized only to determine compliance with the local land use regulations and zoning ordinances. The County's exhibits were not offered or received for the purpose of resolving environmental issues which will be addressed at the later site certification hearing.

The Florida Department of Environmental Regulation (DER), the Florida Department of Community Affairs (DCA), the Florida Public Service Commission (PSC), and the Southwest Florida Water Management District (SWFWMD) are parties to this proceeding, pursuant to Section 403.508, Florida Statutes. The DER, DCA and SWFWMD did not call any witnesses or proffer any exhibits at the land use hearing. The Florida Public Service Commission did not attend or otherwise participate at the land use hearing.

After the presentation of the applicant's evidence, non-party members of the general public were invited to comment on land use issues. The eight witnesses who testified were Linda Economos, Irwin Siegel, Edward A. Cooper, Robert Logan, John Bragg, Carol Mathis, I. McDonald and Marie Peters. Public Exhibit 1 was received into evidence.

Subsequent to the hearing, only Pasco County submitted proposed findings of fact and proposed conclusions of law. To the extent that the County's proposed findings of fact are not included in this Recommended Order, they are rejected for the reasons set forth in Appendix A hereto.

#### FINDINGS OF FACT

Upon consideration of the oral and documentary evidence presented at the hearing, the following relevant facts are found:

1. In 1984, the citizens of Pasco County approved a "straw ballot" proposal providing for the establishment of a resource recovery facility financed with non-ad valorem revenue bonds for the purpose of disposing of the County's solid waste in lieu of utilizing sanitary landfills as a primary disposal method. The Board of County Commissioners of Pasco County thereafter commissioned the consulting engineering firm of Camp Dresser and McKee (CDM) to perform a resource recovery feasibility study and to identify a site for the facility. CDM concluded that a resource recovery facility was an economically feasible approach to solid waste management for Pasco County. After evaluating seven sites for such a facility, CDM recommended a 751-acre site on Hays Road in western Pasco County. The County purchased the site at a cost of approximately three million dollars. In 1987, the Legislature adopted a Special Act, Chapter 87-441, Laws of Florida, establishing a solid waste disposal and resource recovery system within Pasco County and giving the County exclusive control over the collection and disposal of solid waste generated or brought within the area affected by the Act.

2. The solid waste disposal and resource recovery system proposed by the County will convert solid waste into electrical power through a process of combustion, utilizing a mass-burn technology, followed by landfilling of the ash residue.

Initially, the "waste-to-energy" facility will have three combustion/steam generation units, which will dispose of 900 tons of refuse each day and produce approximately 22 megawatts of electricity. A fourth combustion unit may be added in the future, thus allowing the facility to dispose of 1,200 tons of refuse each day and produce 29 megawatts of electricity. The resource recovery facility and landfill/ashfill is designed with the purpose of complying with all applicable environmental regulations. Best available control technology will be utilized to minimize the emissions of air pollutants. The facility will use a baghouse with fabric filters to control particulate emissions and a dry scrubber to control acid gas emissions. The landfill will have two synthetic liner systems and two leachate collection systems to maximize the protection of groundwater resources. Stormwater on the site will be treated in retention/detention basins, and there will be no discharges of wastewater on the site. Ferrous metals in the solid waste will be recovered and recycled.

3. The undeveloped 751 acre parcel of land owned by the County is located in an unincorporated area of northwest Pasco County. It is approximately two and a half miles north of Highway 52 and about four to five miles west of Route 41. The site is accessible by Hays Road, which forms its southern and western boundaries. Shady Hills Road runs to the east of the site and Blue Bird Lane runs along the northern perimeter. The parcel is bisected by Florida Power Corporation power lines, which run in a north/south direction. All development on the

site relating to the proposed resource recovery facility will be east of the power lines.

4. The site primarily consists of grasslands and wooded areas. Most of the areas near the site boundaries are wooded. An access road from Hays Road would be constructed to lead to the resource recovery facility, and the site would also contain a landfill/ashfill and several stormwater retention ponds. The resource recovery facility will be located on the southeastern portion of the site, approximately 4,600 feet from the site's northern boundary. The facility will be approximately 2,400 feet from the nearest residence, which is located on Hays Road. There will be at least 250 feet of buffer area between the resource recovery facility and the property boundaries. There will be at least 700 feet of buffer area between the landfill and the northern boundary of the site. The ashfill portion of the project would be developed over a 25 to 35 year period.

5. The areas surrounding the site consist of agricultural and very low density residential developments. The areas to the east, southeast, and southwest are very sparsely populated. There is scattered low density residential development to the north, northeast and northwest, and some scattered residences south and southwest of the site. The subject parcel of land lies within the Pasco County Zoning Code's A-C Agricultural District.

6. According to the Pasco County Zoning Code, Ordinance No. 75-21, the purpose of the A-C Agricultural District is to preserve the rural and open character of various lands

within Pasco County. The principal permitted uses within this District include agriculture, general farming and horticulture; single family dwellings; duplexes; home occupations; public and private parks and playgrounds; mineral extraction activities; and residential treatment and care facilities. Accessory uses include private garages and parking areas, private swimming pools and cabanas, and signs. Special exemption uses within the A-C Agricultural District include country club and golf courses, aircraft landing fields, cemeteries, animal hospitals, sanitary landfills and public buildings and public utility facilities which do not cause an undue nuisance or adversely affect existing structures, uses and residents.

7. Ordinance Number 82-04, Section 2, amended the Pasco County Zoning Code to exempt from its provisions "development and other activities conducted by Pasco County." (Exhibit No. 3) It was the opinion of Pasco County's Zoning Administrator that the proposed resource recovery facility and landfill/ashfill were exempt from the County's Zoning Code. The County's present Planning Director concurred with this opinion. It was further the opinion of the Zoning Administrator that even if the project were subject to the requirements of the Zoning Code, it could be built as a special exemption use in the A-C Agricultural District.

8. Pasco County has an ordinance, known as the New Development Fair Share Contribution for Road Improvements Ordinance, which requires developers to pay impact fees for transportation purposes. According to the County Planning

Director, this ordinance expressly excludes County projects from its provisions.

9. It was the opinion of the County's land use planning and zoning experts that the use of the site for a resource recovery facility would be compatible with surrounding land uses. The project will be designed so as to be barely visible from surrounding areas and to give as pleasing an aesthetic appearance as possible to the site. When a detailed site plan for the facility is prepared, the project will be evaluated by the Pasco County Development Review Committee, composed of County employees from various departments, to ensure that the project is consistent with existing regulations and compatible with surrounding land uses.

10. The Pasco County comprehensive land use plan was adopted in 1982 and is currently being revised. It is a policy document containing various planning elements, with goals, objectives, policies and recommendations. It does not currently include a land use map that specifically identifies the permissible land uses for the site of the proposed resource recovery facility. In the process of updating its comprehensive plan, the County will adopt a future land use map. The Chief Planner for the Pasco County Planning Department testified that the land use map to be submitted for future adoption will designate the proposed site as a resource recovery site.

11. The County's comprehensive plan contains a solid waste and resource recovery element. The plan recognizes waste disposal as a crucial concern, and the goal of this element is to



dispose of the County's domestic and industrial waste in the safest and least expensive manner. From an engineering perspective, the project will be designed to comply with applicable state and federal requirements pertaining to air and water pollution. The economic feasibility of a resource recovery facility has been studied, with positive results.

12. Other elements of the Pasco County comprehensive plan relevant to the proposed resource recovery facility include the traffic circulation element, the water element, the conservation/coastal zone protection element, the drainage element and the utilities element. A traffic analysis demonstrated that current levels of service on State Road 52 and on Hays Road will not be diminished as a result of project operations. The use of reclaimed water will promote the objective of water conservation. The proposed site has not been designated for preservation or conservation and the project will have minimal impact on wetland areas. The stormwater management system will be designed so that runoff will not be channelized into any natural surface water body. The retention basins will be of sufficient size to allow adequate settling of suspended solids collected with the stormwater. By producing electrical power as a by-product of solid waste disposal, the project will further the objective of the comprehensive plan's utility element of encouraging the conservation of limited resources in the operations of utility systems.

13. On December 31, 1987, notice of the land use hearing was published in the Pasco Times newspaper, a daily

newspaper of general circulation which has been continuously published at Port Richey in Pasco County, Florida, each day for a period in excess of one year preceding the publication of notice in this case. In addition, notice of the land use hearing was published in the Florida Administrative Weekly, Volume 13, Number 53, on December 31, 1987. The Department of Environmental Regulation issued a news release concerning the land use hearing on December 24, 1987. By letters dated December 28, 1987, notice was given by certified mail to the Executive Director of the Tampa Bay Regional Planning Council, the Pasco County Planning Department and the Pasco County Zoning Administrator. Notice of the land use hearing was also posted at the project site.

14. Eight persons, all of whom resided or owned property near the proposed site, testified at the land use hearing as members of the general public. All opposed the construction and operation of a resource recovery facility and landfill/ashfill at that site. Though none of the witnesses claimed to have expertise concerning the subject matter of their testimony, their concerns included the impacts of the proposed project upon the environment; the value and use of their land, homes and businesses; the recreational value of surrounding properties and the general agricultural character and nature of the surrounding land. Concerns were also expressed over the safety features and costs involved in the operation of the facility. These citizens of Pasco County did not believe it was proper for the County to exempt itself from the County's zoning laws and impact fees.

#### CONCLUSIONS OF LAW

The sole issue for determination in this portion of the proceeding is whether the proposed Pasco County resource recovery facility and landfill/ashfill are consistent and in compliance with the applicable portions of the County's existing land use plan and zoning ordinance. Section 403.508(2), Florida Statutes.

Environmental and other issues will be considered during the certification hearing presently scheduled to commence on April 11, 1988. See Section 403.508(3), Florida Statutes.

Pasco County has demonstrated by competent, substantial evidence that the location of its proposed resource recovery project does conform with existing land use plans and zoning ordinances. Even if County projects were not exempt from the provisions and limitations of the Zoning Code, Article V, Section 5.3(H) of that Code expressly provides for "sanitary landfills subject to all local, state and federal regulations" as a special exemption use within the A-C Agricultural District. The County intends to design, construct and operate the facility in accordance with all local, state and federal requirements. Likewise, public utility facilities are permissible as a special exemption use as long as they do not cause an undue nuisance or adversely affect existing structures, uses and residents. See Article V, Section 5.3(C). It appears from the evidence presented that the facility will be designed so as to be aesthetically pleasing, with an extensive natural buffer surrounding the site. If the environmental controls proposed are feasible and effective (the subject of the later certification

hearing), there should be no undue nuisance, and existing structures, uses and residents should not be adversely affected.

The County has also demonstrated conformance of the proposed project at the proposed site with its comprehensive land use plan. The various elements of the plan, particularly the solid waste and resource recovery element, have been studied and reviewed in order to determine the consistency of the project with the individual goals, objectives and policies of the comprehensive plan. Other than the personal preferences of eight landowners near the site, there was no evidence to suggest that the location of the project at that site would be contrary to or inconsistent with the Pasco County comprehensive plan.


Finally, there was a suggestion by a member of the general public that the newspaper notice of the land use hearing was defective because it did not appear in a newspaper "printed" in Pasco County. It is clear from the evidence that the notice of the land use hearing fully complied with the applicable statutory and regulatory requirements. See Section 403.508(1), Florida Statutes, and Rule 17-17.151(4), Florida Administrative Code. With respect to newspaper notice, the statute and rule require only that the notice be "published" in a newspaper of general circulation in the county in which the site is located. There is no requirement that the notice be "printed" in the same county. The evidence clearly demonstrates that the notice of the land use hearing timely appeared in the Pasco Times, a daily newspaper published in Pasco County. The common definition of the word "publish" is to disseminate, to make generally known or

to place before the public. The common definition of the word "print" is to impress something in or on something else. It is clear that the intent of the statutory and regulatory notice requirements was to provide public awareness that a land use hearing would be held. That intent was fully satisfied by the timely and appropriate publication of notice of the hearing in the Pasco Times.

RECOMMENDATION

Based upon the findings of fact and conclusions of law recited herein, it is RECOMMENDED that the Governor and Cabinet, sitting as the Siting Board, enter a Final Order finding that the use of the site chosen by Pasco County for the location of its proposed solid waste and resource recovery facility is consistent with and in compliance with the applicable land use plans and zoning ordinances.

Respectfully submitted and entered this 25<sup>th</sup> day of March, 1988, in Tallahassee, Florida.

  
DIANE D. TREMOR  
Hearing Officer  
Division of Administrative Hearings  
The Oakland Building  
2009 Apalachee Parkway  
Tallahassee, Florida 32399-1550  
904/488-9675

FILED with the Clerk of the  
Division of Administrative  
Hearings this 25<sup>th</sup> day of  
March, 1988.

Copies furnished:

(See next page.)

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APPENDIX "A"

Pasco County's proposed findings of fact have been fully considered and are accepted and incorporated in this Recommended Order, with the following exceptions:

- 16, second sentence: Rejected as speculative. See Finding of Fact Number 10.
- 22, last sentence: Rejected as improper factual finding, but addressed in the Conclusions of Law.
- 23, last sentence: Rejected as argumentative and improper factual finding, but addressed in Conclusions of Law.

BEFORE THE GOVERNOR AND CABINET  
OF THE STATE OF FLORIDA

IN RE: APPLICATION FOR POWER PLANT  
SITE CERTIFICATION OF PASCO  
COUNTY SOLID WASTE RESOURCE  
RECOVERY FACILITY

DOAH CASE NO. 87-5337  
APPLICATION NO. PA 87-23

FINAL ORDER

BY THE GOVERNOR AND CABINET

The Governor and Cabinet, sitting as the Siting Board, pursuant to the Florida Electrical Power Plant Siting Act, Section 403.501 et seq., Florida Statutes (1987), having reviewed the Recommended Order which is attached hereto as Exhibit 1, and having otherwise been fully advised, issue this Final Order and, therefore, it is ORDERED:

1. The Recommended Order issued by the Hearing Officer on March 25, 1988, is approved and adopted in its entirety. The proposed Pasco County resource recovery plant, ashfill, and associated facilities are consistent and in compliance with the applicable land use regulations and, therefore, the proposed land use is approved pursuant to Section 403.508(2), Florida Statutes (1987).



DONE AND ORDERED this \_\_\_\_ day of May, 1988 in Tallahassee, Florida, pursuant to the vote of the Governor and Cabinet, sitting as the Siting Board, at a duly noticed and constituted Cabinet meeting on May 24, 1988.

FOR THE GOVERNOR AND CABINET  
SITTING AS THE SITING BOARD

By: The Honorable Bob Martinez, Governor