

STATE OF FLORIDA
SITING BOARD

DEP 03-1036

IN RE: LEE COUNTY SOLID WASTE)
ENERGY FACILITY, UNIT 3, POWER)
PLANT SITING SUPPLEMENTAL)
APPLICATION NO. PA90-30SA1.)

OGC CASE NO. 02-1951
DOAH CASE NO. 02-4573EPP

FINAL ORDER OF SUPPLEMENTAL SITE CERTIFICATION

On August 19, 2003, an administrative law judge with the Division of Administrative Hearings ("DOAH") submitted his Recommended Order on supplemental site certification in this administrative proceeding. The Recommended Order indicates that copies were served upon the attorneys of record for the applicant, Lee County, and the Florida Department of Environmental Protection ("DEP"), and upon other designated state and regional agencies. A copy of the Recommended Order is attached as Exhibit A. The matter is now before the Governor and Cabinet, sitting as the "Siting Board," for final action under the Florida Electrical Power Plant Siting Act ("PPSA") embodied in §§ 403.501-403.518, Florida Statutes.

BACKGROUND

In this supplemental site certification proceeding, Lee County is seeking authorization to construct and operate a third municipal waste combustor unit and ancillary equipment (Project or Unit No. 3) at its Solid Waste Energy Recovery Facility (the "Facility"). The Facility is located east of the City of Fort Myers in unincorporated Lee County. In 1992, the Siting Board approved the construction and operation of Units No. 1 and No. 2 at the Facility, and certified an ultimate site capacity of 60 megawatts based on the operation of three municipal waste combustor units. Units No. 1 and No. 2 have been in commercial operation since 1994.

On November 18, 2002, Lee County filed a supplemental application (Supplemental Application) with DEP for site certification of Unit No. 3 pursuant to § 403.517, Florida Statutes. The new Unit No. 3 will be substantially the same as the two existing municipal waste combustor units and will have the capacity to process 600 tpd (nominal) of solid waste (660 tpd at 5000 Btu/lb). A new electric turbine generator will be installed, which will generate approximately 20 megawatts of additional electricity. In addition, the cooling tower will be expanded, the ash management building will be expanded, a lime and carbon silo will be installed, and the new Unit No. 3 may be connected with the two existing units.

DEP subsequently transmitted Lee County's Supplemental Application to DOAH for appropriate site certification proceedings under the PPSA. Prior to the transmittal of the Supplemental Application to DOAH, the Florida Public Service Commission ("PSC"), issued Order No. PSC-01-2390-DS-EQ concerning the proposed project. The PSC determined that the Project was exempt from the PSC's "determination of need" process, pursuant to § 377.709(6), Florida Statutes. The PSC's order has not been challenged and is now a final order of the PSC.

On April 11, 2003, the DEP issued its written Staff Analysis Report ("Staff Analysis") concerning the Project, as required by § 403.507(4), Florida Statutes. DEP's Staff Analysis included reports from other agencies and proposed conditions of certification (Conditions of Certification) for the Unit No. 3 Project. DEP subsequently issued a revised Staff Analysis and Conditions of Certification, effective July 11, 2003.

On July 18, 2003, a Prehearing Stipulation for Certification Hearing (Prehearing Stipulation) was filed by the County, DEP, the Florida Department of Transportation (DOT), the Florida Department of Community Affairs (DCA), the PSC, the Florida Fish and Wildlife Conservation Commission (FWCC), the South Florida Water Management District (SFWMD), and the Southwest Florida Regional Planning Council (SWFRPC). As reflected in the Prehearing Stipulation, all of the signatories either recommended certification of the Project or took no position concerning the Project's certification, provided that the Project is built and operated in compliance with the Conditions of Certification.

On July 29, 2003, a formal administrative certification hearing ("Certification Hearing") was conducted by Administrative Law Judge, Richard A. Hixson ("ALJ"), in compliance with § 403.508(3), Florida Statutes. Both testimony and documentary evidence was presented at the Certification Hearing by Lee County and DEP, and this evidence was uncontested. None of the other signatories to the Prehearing Stipulation appeared or otherwise participated at the Certification Hearing. In addition, members of the public were given the opportunity to provide oral and written comments about the Project at the Certification Hearing. However, no members of the public testified at the hearing, and no written comments were presented. Consequently, no one testified or proffered any exhibits in opposition to the Project at the Certification Hearing.

In his Recommended Order, the ALJ concluded that the uncontested evidence at the Certification Hearing established that Lee County's Unit No. 3 Project complies with all of the site certification criteria of the PPSA. The ALJ also concluded that Lee County has provided

reasonable assurance that the Project, if constructed and operated in accordance with the Conditions of Certification, will comply with all of the non-procedural requirements applicable to the Project. The ALJ further concluded that Lee County has provided reasonable assurance that the Project will comply with the requirements of § 403.7061, Fla. Stat., dealing with review of new waste-to-energy facilities. The ALJ ultimately recommended that the Siting Board enter a final order granting supplemental site certification for the construction and operation by Lee County of Unit No. 3 at the Facility, in accordance with the Conditions of Certification.

CONCLUSION

No Exceptions to the Recommended Order were filed by Lee County or DEP or by any of the other agencies that were signatories to the Prehearing Stipulation. Furthermore, the record in this case is devoid of objections by any governmental agencies or members of the general public to supplemental site certification of the Project. Having reviewed the matters of record and being otherwise duly advised, the Siting Board concludes that supplemental site certification of Lee County's Unit No. 3 Project will serve and protect the broad interests of the public and should be approved.

It is therefore ORDERED:

A. The Recommended Order entered by the ALJ in this proceeding is adopted in its entirety and incorporated by reference herein.

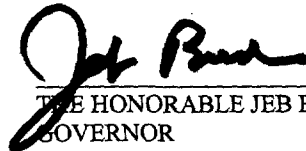
B. Supplemental Site Certification of Lee County's Unit No. 3 Project at the Facility as proposed in the Site Certification Application is APPROVED, subject to the Conditions of Certification attached as Appendix 1 to "DEP Exhibit 2," which Conditions of Certification are incorporated by reference herein.

C. Authority to assure and enforce compliance by Lee County and its agents with the Conditions of Certification imposed by this Final Order is delegated to DEP.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this ¹⁴6 day of October, 2003, in Tallahassee,
Florida, pursuant to a vote of the Governor and Cabinet, sitting as the Siting Board, at a duly
noticed and constituted Cabinet meeting held on ¹⁴September 30, 2003.

THE GOVERNOR AND CABINET
SITTING AS THE SITING BOARD



THE HONORABLE JEB BUSH
GOVERNOR

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

 _____ DATE 11/8/03
CLERK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order on Certification has been sent by United States Postal Service to:

David S. Dee, Esquire
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310 West College Avenue
Post Office Box 271
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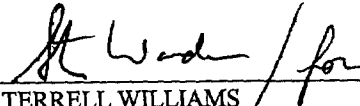
Ann Cole, Clerk and
Charles A. Stampelos, Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550

and by hand delivery to:

Scott A. Goorland, Esquire
Department of Environmental Protection
3900 Commonwealth Blvd., M.S. 35
Tallahassee, FL 32399-3000

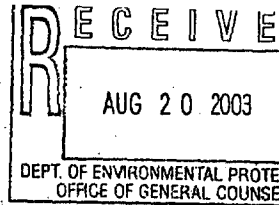
this 9 day of October, 2003.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS



IN RE: LEE COUNTY SOLID WASTE)
ENERGY FACILITY, UNIT 3, POWER)
PLANT SITING SUPPLEMENTAL) Case No. 02-4573EPP
APPLICATION NO. PA90-30SA1.)
_____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Richard A. Hixson, held a certification hearing in the above-styled case on July 29, 2003, in Fort Myers, Florida.

APPEARANCES

For the Applicant, Lee County:

David S. Dee, Esquire
Landers & Parsons
310 West College Avenue
Post Office Box 271
Tallahassee, Florida 32302-0271

For the Department of Environmental Protection:

Scott A. Goorland, Esquire
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STATEMENT OF THE ISSUE

The issue to be determined in this case is whether a supplemental site certification should be issued to Lee County for the construction and operation of Unit No. 3 at Lee County's Solid Waste Energy Recovery Facility (Facility), in accordance with the provisions of the Florida Electrical Power Plant Siting

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EXHIBIT "A"

Act (PPSA), Sections 403.501 - .518, Florida Statutes. (All statutory references are to the 2002 codification of the Florida Statutes.)

PRELIMINARY STATEMENT

On November 18, 2002, Lee County filed a supplemental application (Supplemental Application) for site certification with the Florida Department of Environmental Protection (Department or DEP), pursuant to Section 403.517, Florida Statutes. The County seeks authorization to construct and operate a third municipal waste combustor unit and ancillary equipment (Project or Unit No. 3) at the Facility. Lee County's application is subject to the requirements of the Florida Electrical Power Plant Siting Act. On November 25, 2002, the Department transmitted Lee County's Supplemental Application to the Division of Administrative Hearings for appropriate proceedings under the PPSA.

Prior to the transmittal of the supplemental application, the Florida Public Service Commission (PSC) on December 11, 2001, issued Order No. PSC-01-2390-DS-EQ (Order Granting Petition of Lee County, Florida, for Declaratory Statement) concerning the proposed Project. The PSC determined the Project was exempt from the PSC's "determination of need" process, pursuant to Section 377.709(6), Florida Statutes. The PSC's order has not been challenged and is now final.

On April 11, 2003, the DEP issued its written Staff Analysis Report (Staff Analysis) concerning the Project, in compliance with Section 403.507(4), Florida Statutes. The DEP's Staff Analysis included reports from other agencies and proposed conditions of certification (Conditions of Certification) for the Project. DEP subsequently issued a revised Staff Analysis and Conditions of Certification (effective July 11, 2003).¹

On July 18, 2003, a Prehearing Stipulation for Certification Hearing (Prehearing Stipulation) was filed by Lee County, DEP, the Florida Department of Transportation (DOT), the Florida Department of Community Affairs (DCA), the PSC, the Florida Fish and Wildlife Conservation Commission (FWCC), the South Florida Water Management District (SFWMD), and the Southwest Florida Regional Planning Council (SWFRPC). As reflected in the Prehearing Stipulation, all of the signatories either recommended certification of the Project or took no position concerning the certification of the Project, provided that the Project is built and operated in compliance with the Conditions of Certification.

On July 29, 2003, a certification hearing (Certification Hearing) was conducted in compliance with Section 403.508(3), Florida Statutes. At the Certification Hearing, Lee County called three expert witnesses: Paul C. Chrostowski (accepted as an expert concerning environmental science and engineering, including the health and ecological impacts resulting from the operation of resource recovery facilities); Donald F. Elias

(accepted as an expert concerning air pollution and air pollution control systems); and Samuel M. Rosania (accepted as an expert concerning solid waste programs and facilities, including resource recovery facilities). Lee County offered Exhibits 1-59, which were received into evidence without objection. The Department called one expert witness: Steve Palmer, P.E. (accepted as an expert concerning electrical power plant site certification in Florida). The Department offered DEP Exhibits 1 and 2, which were received into evidence without objection.

At the Certification Hearing, Lee County's request for official recognition of documents was granted, which included:

- (1) the final order (dated June 17, 1992) of the Siting Board granting certification of the Facility;
- (2) the final order (dated May 16, 1991) of the Siting Board finding the Facility to be consistent and in compliance with local land use plans and zoning ordinances; and
- (3) the "Order Granting Petition of Lee County, Florida, for Declaratory Statement" (dated December 11, 2001) of the Florida Public Service Commission, determining that the Project is exempt from the PSC's determination of need process.

These documents were included with Lee County's exhibits at the Certification Hearing.

The evidence presented by Lee County and DEP at the Certification Hearing was uncontested. None of the other signatories to the Prehearing Stipulation appeared or otherwise participated at the Certification Hearing. Except for Lee County

and DEP, the parties to this proceeding did not call any witnesses or proffer any exhibits.

Members of the public were given the opportunity to provide oral and written comments about the Project at the Certification Hearing; however, no members of the public testified at the hearing, and no written comments from any member of the public were presented. No one testified or proffered any exhibits in opposition to the Project at the Certification Hearing.

Following the conclusion of the Certification Hearing, a transcript was filed with the Division of Administrative Hearings on August 4, 2003. Pursuant to the agreement of the parties at the conclusion of the Certification Hearing, the parties were allowed until August 8, 2003, to submit proposed recommended orders. The DEP and Lee County jointly filed a timely Proposed Recommended Order on August 7, 2003, which has been considered and largely adopted in the rendition of this Recommended Order. No other party filed a Proposed Recommended Order.

Based on all of the evidence of record, the following findings of fact are determined:

FINDINGS OF FACT

The Applicant

1. The Applicant, Lee County, is a political subdivision of the State of Florida. Lee County owns the existing Facility and will own Unit No. 3. The Facility was designed, built and is operated by a private company, Covanta Lee, Inc. (Covanta),

pursuant to a long-term contract with Lee County. It is anticipated that Covanta or another private company will design, construct and operate Unit No. 3 for the County.

History of the Project

2. In 1985, the Florida Legislature enacted the Lee County Solid Waste Disposal and Resource Recovery Act (the Act), which authorized Lee County to construct, operate, and maintain a solid waste disposal and resource recovery system for the benefit of Lee County's residents. In 1989, pursuant to the Act, Lee County adopted an Integrated Solid Waste Management Master Plan (Plan), which established a comprehensive plan for the management, reuse, recycling and/or disposal of the solid waste generated in Lee County. Lee County's Plan was based on the development of: (a) an aggressive recycling program to reduce the quantity of materials requiring disposal; (b) a waste-to-energy facility for waste reduction and energy recovery from those materials that are not recycled; and (c) a landfill for the disposal of ash and by-pass waste (i.e., materials that are not recycled or processed in the waste-to-energy facility).

3. Lee County has implemented its Integrated Solid Waste Management Plan with innovative approaches and state of the art technology. Lee County has a comprehensive recycling program that handles a wide array of materials, including: (a) waste from residential, commercial, governmental, and institutional facilities; (b) household hazardous waste; (c) yard waste;

(d) recovered materials; (e) construction and demolition debris; and (f) electronic waste. Lee County established a recycling and materials separation goal of 40 percent for its residents, even though the State of Florida's goal is 30 percent. From 1993 through 2000, Lee County exceeded the State's 30 percent goal. In 1998, Lee County's recycling rate was approximately 38 percent, which was higher than that of any other county in Florida.

4. Consistent with its Plan, Lee County built a modern landfill, which is equipped with two synthetic liners, two leachate collection systems, and a network of groundwater monitoring wells to ensure the protection of the environment. Lee County's landfill is located in Hendry County, pursuant to an interlocal agreement between Lee County and Hendry County. Under this agreement, the solid waste from both counties is taken to Lee County's Facility for processing and then the ash and by-pass waste are taken to the landfill for disposal. This cooperative, regional approach to solid waste management issues has enabled Lee County and Hendry County to provide environmentally sound, cost-effective programs for the residents of both counties.

5. In 1992, the Governor and Cabinet, sitting as the Siting Board, approved the construction and operation of Units No. 1 and No. 2 at the Facility, and certified an ultimate site capacity of 60 megawatts (MW), based on the operation of three municipal

waste combustor (MWC) units. Units No. 1 and No. 2 have been in commercial operation since 1994.

6. Despite Lee County's comprehensive recycling program, the amount of solid waste delivered to the Facility has increased each year since the Facility began operation, primarily due to population growth. In 1999, Lee County's solid waste deliveries were equal to the Facility's guaranteed processing capacity (372,300 tons). In 2000, the Facility processed more than 392,000 tons of solid waste, but the County still had to dispose of nearly 44,000 tons of processible waste in its landfill. Current population projections for Lee and Hendry Counties suggest that the amount of processible solid waste will continue to increase, reaching almost 550,000 tons by 2010.

7. Lee County has decided that it should expand the Facility, consistent with Lee County's long-standing Plan, rather than discard processible waste in a landfill. The Facility was designed to readily accommodate the construction of a third MWC unit. If approved and built, the third unit (Unit No. 3) will be operating at or near its design capacity by 2010 (i.e., within five years after it commences commercial operations).

8. For these reasons, on November 18, 2002, Lee County filed its Supplemental Application with DEP for the construction and operation of Unit No. 3.

The Site

9. The Facility is located east of the City of Fort Myers, in unincorporated Lee County. The Facility is approximately 2.5 miles east of the intersection of Interstate-75 and State Road 82, on the north side of Buckingham Road. The County owns approximately 300 acres of land at this location, but only 155 acres (which constitutes the Site) was certified under the PPSA for the Facility.

10. The Site currently includes the Facility, a household hazardous waste drop-off area, a waste tire storage facility, a horticultural waste processing area, and a recovered materials processing facility. A solid waste transfer station is under construction at the Site. Even after the Facility is expanded to accommodate Unit No. 3, approximately 63 percent of the Site will be used solely as buffer and conservation areas.

The Surrounding Area

11. There are large buffer areas around the Site. A Florida Power & Light Company (FPL) transmission corridor, containing electric transmission lines, is located along the western boundary of the Site. Approximately three-quarters of a mile to the west of the Site is a limerock, fill, and topsoil mining operation. Immediately north of the Site is approximately 145 acres of undeveloped land owned by the County. A 135-acre County-owned park is adjacent to the Site's eastern property line. Scattered single-family homes are located northeast and

farther east of the Site. An adjacent parcel southeast of the Site was previously used as a sanitary landfill (which has been closed and covered), and is now owned by the City of Fort Myers and private individuals who use it for livestock grazing. The land immediately south of the Site is undeveloped. The Gulf Coast Sanitary Landfill is located three miles directly south of the Site.

Site Suitability

12. The Site is well-suited for the addition of Unit No. 3. The Site has sizable buffer areas on all sides. Potable water, reclaimed water, and wastewater services are already provided to the Site through existing pipelines.

13. The Facility is near an existing electrical substation (Florida Power & Light Company's Buckingham Substation). An existing electrical transmission line connects the Facility to the substation.

Zoning and Land Use

14. In 1991, the Siting Board determined that the Site and Facility are consistent and in compliance with the applicable land use plans and zoning ordinances, based on the construction and operation of three MWC units at the Facility. The Site was zoned for an Industrial Planned Development, and was designated as Public Facilities in the future land use map of Lee County's comprehensive land use plan, specifically to allow the Facility to be built and operated on the Site.

The Existing Facility

15. The Facility currently consists of Units No. 1 and No. 2, which have been in commercial operation since 1994. Each MWC unit has a nominal capacity of 600 tons per day (tpd) of solid waste (660 tpd using a reference fuel with a higher heating value of 5000 British thermal units per pound (Btu/lb)). The two MWC units generate steam that is used to drive an electric turbine generator, which generates approximately 39 MW of electricity. The Facility also includes an ash management building, cooling tower, stack, stormwater management ponds, water treatment system, electrical switchyard, electrical transmission lines, and related facilities.

16. Solid waste collection trucks enter the Site from Buckingham Road. They follow an access road to the County's scale house, where the trucks are weighed, and then the trucks are directed to the Facility. The trucks drive inside the Facility and dump the garbage into a refuse pit. A crane mixes the garbage in the pit. The crane then places the garbage in a hopper, which feeds into the combustion chamber where the garbage is burned. The air in the combustion chamber passes through the Facility's air pollution control equipment, and then out the stack. Ash from the combustion process is quenched and then is deposited onto an enclosed conveyor, which takes the ash to an ash management building. The ash then is loaded into trucks and taken to the County's existing landfill in Hendry County. As a

result of this process, the amount of fill being taken to the existing landfill is reduced by approximately 90 percent.

The New Project-MWC Unit No. 3

17. The Project involves the construction and operation of a new MWC unit (Unit No. 3) at the Facility. The new unit will be substantially the same as the two existing MWC units. The new unit will have the capacity to process 600 tpd (nominal) of solid waste (660 tpd at 5000 Btu/lb). A new electric turbine generator will be installed and it will generate approximately 20 MW of additional electricity. In addition, the cooling tower will be expanded, the ash management building will be expanded, a lime and carbon silo will be installed, and the new unit may be connected with the two existing units.

Construction of Unit No. 3

18. The Facility was originally designed and built to accommodate the addition of a third MWC unit, thus making the construction of Unit No. 3 relatively simple, without disrupting large areas of the Site. Unit No. 3 will be located adjacent to the two existing MWC units. The expansion of the cooling tower will be adjacent to the existing cooling tower.

19. Construction of Unit No. 3 will occur in previously disturbed upland areas on the Site. Construction of Unit No. 3 will not impact any wetlands or environmentally sensitive areas on the Site.

20. No new electrical transmission lines or improvements will need to be built to accommodate the additional electrical power generated by Unit No. 3. No new pipelines or other linear facilities will need to be built for the Project.

Operation of Unit No. 3

21. The basic operation of the Facility will not change when Unit No. 3 becomes operational. Solid waste will be processed at the Facility in the same way it is currently processed.

22. The Facility has been in continuous operation since 1994, and has an excellent record for compliance with all applicable regulations, including regulations concerning noise, dust, and odors. All of the activities involving solid waste or ash occur inside enclosed buildings. The refuse pit is maintained under negative air pressure, thus ensuring that dust and odors are controlled within the building. Because the operations at the Facility will remain the same after Unit No. 3 becomes operational, no problems are anticipated due to noise, dust or odors.

23. The Facility's basic water supply and management system will remain the same after Unit No. 3 becomes operational. Treated wastewater from the City of Ft. Myers' wastewater treatment plan (WWTP), will be used to satisfy the Facility's need for cooling water. Potable water will be provided to the Facility from the City's water supply plant. On-site wells will

be available for emergency water supply purposes; however, the wells have not been regularly used as a source of back-up cooling water since the Facility became operational.

24. The County's water supply plan maximizes the use of reclaimed water and minimizes the use of groundwater. To the extent feasible, the Project uses all of the reclaimed water that is available before it relies on groundwater. The Facility also recycles and reuses water to the greatest extent practicable.

25. Unit No. 3 will not discharge any industrial or domestic wastewater to any surface water or groundwater. Most of the wastewater from the cooling tower will be recycled and reused in the Facility. Any excess wastewater will be discharged to the City of Fort Myers' WWTP.

26. Stormwater runoff from the Project will be collected and treated in the existing system of swales and detention/retention ponds on the Site.

Ultimate Site Capacity

27. The construction of Unit No. 3 will not expand the Facility beyond the boundaries of the Site certified by the Siting Board in 1992. The operation of Unit No. 3, together with the operation of Units No. 1 and No. 2, will not increase the electrical generating capacity of the Site beyond the 60 MW certified by the Siting Board in 1992.

Air Quality Regulations

28. The County must comply with federal and state New Source Performance Standards (NSPS) and Best Available Control Technology (BACT) requirements, both of which impose strict limits on the Facility's airborne emissions. The County also must comply with Ambient Air Quality Standards (AAQS) and Prevention of Significant Deterioration (PSD) standards, which establish criteria for the protection of ambient air quality.

29. The addition of Unit No. 3 must undergo PSD review because the Project is a new source of air pollution that will emit some air pollutants at rates exceeding the threshold levels established under the PSD program. PSD review for the Project is required for airborne emissions of particulate matter less than 10 microns in diameter (PM_{10}), MWC metals, MWC organic compounds, MWC acid gasses, sulfur dioxide (SO_2), nitrogen oxides (Nox), carbon monoxide, mercury, fluorides, and sulfuric acid mist (SAM).

Best Available Control Technology

30. A BACT determination is required for each pollutant for which PSD review is required. BACT is a pollutant-specific emission limit that provides the maximum degree of emission reduction, after taking into account the energy, environmental, and economic impacts and other costs. As part of the BACT determination, all available and feasible pollution control technologies being used worldwide are evaluated.

31. As part of its BACT analyses, DEP determined that a fabric filter baghouse will control the Facility's emissions of particulate matter, a scrubber will control acid gases, a selective non-catalytic reduction system (SNCR) will control NOx, an activated carbon injection system (ACI) will control mercury emissions, and proper facility design and operating methods will control other pollutants. These air pollution control technologies are currently used in Units No. 1 and No. 2, and they have performed extremely well. Units No. 1 and No. 2 are among the best operated and controlled MWC units currently operating in the United States. Unit No. 3 will have better, more modern, and more sophisticated air pollution control systems than Units No. 1 and No. 2.

32. In its PSD analysis for the Project, DEP determined the emission limits for the Project that represent BACT. All of the BACT emission limits determined by DEP for Unit No. 3 are as low as the limits established by the United States Environmental Protection Agency (EPA) in the NSPS (40 CFR 60, Subpart Eb) for new MWC units, based on the use of Maximum Achievable Control Technology (MACT). Indeed, DEP's BACT emission limits for Unit No. 3 are lower than EPA's MACT emissions limits for: (a) particulate matter; (b) sulfur dioxide; (c) carbon monoxide; (d) nitrogen oxides; and (e) mercury. The BACT emission limits, as determined by DEP, are included in the proposed Conditions of Certification for Unit No. 3.

33. The Facility's proposed air pollution control systems are proven technologies that can achieve the proposed BACT emission limits. The Facility will use an array of continuous emissions monitors to help ensure that the Facility is continuously in compliance with the BACT emission limits.

Protection of Ambient Air Quality

34. The EPA has adopted "primary" and "secondary" National Ambient Air Quality Standards (NAAQS). The primary NAAQS were promulgated to protect the health of the general public, including the most susceptible groups (e.g., children, the elderly, and those with respiratory ailments), with an adequate margin of safety. The secondary NAAQS were promulgated to protect the public welfare, including vegetation, soils, visibility, and other factors, from any known or anticipated adverse effects associated with the presence of pollutants in the ambient air. Florida has adopted EPA's primary and secondary NAAQS, and has adopted some Florida AAQS (FAAQS) that are more stringent than EPA's NAAQS.

35. Lee County and DEP analyzed the Project's potential impacts on ambient air quality, using conservative assumptions that were intended to over-estimate the Project's impacts by a wide margin. These analyses demonstrate that the maximum impacts from Unit No. 3 will be less than one percent of the amount allowed by the ambient air quality standards. The maximum impact from the Facility (i.e., all three units) will be less than or

equal to 1.2 percent of the amount allowed by the FAAQS and NAAQS. Unit No. 3 and the Facility will not cause or contribute to any violations of the FAAQS or NAAQS.

36. The maximum impacts of Unit No. 3 and the Facility, when operating under worst case conditions, will be less than the regulatory levels that are deemed "significant" (i.e., less than the numerical thresholds set by EPA as "significant impact levels"). The Facility's impacts on ambient air quality will be immeasurably small and will be indistinguishable from ambient background conditions.

37. Non-criteria pollutants are substances for which there are no AAQS. The Department's Air Toxics Group has established non-enforceable guidelines known as ambient reference concentrations (ARCs) (also known as "No Threat Levels") for the non-criteria pollutants. DEP believes there is no health or environmental threat associated with ambient air impacts less than the ARCs. In this case, the maximum impacts of the Facility (3 MWC units) will be less than 50 percent of any of DEP's ARCs. For most parameters, the Facility's maximum impacts are less than 10 percent of the applicable ARCs.

Other PSD Analyses

38. The PSD program provides protection for those areas that have good air quality. Different areas of Florida have been designated as PSD "Class I" or "Class II" areas, depending upon the level of protection that is to be provided under the PSD

program. In this case, the Project is located in a PSD Class II area. The nearest PSD Class I area is the Everglades National Park (Everglades), which is approximately 90 kilometers (km) south-southeast of the Site.

39. The analyses performed by Lee County and DEP demonstrate that the Project's impacts on the ambient air quality in the vicinity of the Site will be insignificant. The analyses performed by Lee County and DEP also demonstrate that the Project's impacts on the ambient air quality in the PSD Class I area at the Everglades will be insignificant. The Project will not significantly affect visibility in the Class I area, regional haze, or other air quality-related values.

Compliance With Air Standards

40. Lee County has provided reasonable assurance that the Project will comply with all of the applicable state and federal air quality standards and requirements. Among other things, Lee County has provided reasonable assurance that the airborne emissions from the Project, alone and when operating with the two existing MWC units at the Facility, will not: (a) cause or contribute to the violation of any state or federal ambient air quality standard; (b) cause or contribute to a violation of any PSD increment for any PSD Class I or Class II area; (c) cause any adverse impacts on human health or the environment; (d) exceed any ARC guideline established by DEP for non-criteria pollutants; or (e) cause any adverse impacts to soils, vegetation or

wildlife. Lee County also has provided reasonable assurance that Unit No. 3 and the Facility will be able to comply with the Conditions of Certification involving air issues.

Human Health and Ecological Risk Assessments

41. As indicated above, the County has performed extensive analyses of the Facility's emissions and impacts to demonstrate compliance with the requirements of state and federal air quality regulations. In addition, the County has taken other measures to address public concerns about the potential impacts associated with the Facility's airborne emissions.

42. In 1992, the County's expert consultants conducted a human health and ecological risk assessment, which evaluated the potential impacts associated with the airborne emissions of mercury and dioxin from the County's Facility. The assessment demonstrated that the operation of the Facility would not adversely affect humans or threatened or endangered species.

43. At the request of the United States Fish and Wildlife Service, the County conducted a supplementary risk assessment in 1992, to more thoroughly evaluate the potential impact of the Facility's mercury emissions on the Florida panther. Among other things, the supplementary assessment evaluated the panther's exposure to mercury through a complex food chain. The County's supplementary assessment confirmed that the Facility would not cause adverse impacts to the panther.

44. The County also initiated a biomonitoring program, which was designed in conjunction with the U.S. Fish and Wildlife Service to identify background concentrations and trends for mercury in key indicator species within the local aquatic environment (i.e., largemouth bass, oysters, and mosquitofish). The County's biomonitoring program was started in 1993, and continued after the County's Facility commenced operations in 1994. The data collected in the biomonitoring program indicate that the mercury concentrations in these key species have not increased as a result of the operation of the Facility.

45. In 2002, the County's consultants completed a new, large-scale, evaluation of the human health and ecological risks associated with the Facility's airborne emissions. The County's 2002 risk assessment evaluated the cumulative impacts of the entire Facility, with all three MWC units in operation.

46. The County's 2002 risk assessment was conducted in compliance with current EPA guidance. The risk assessment considered hypothetical human receptors (e.g., infants, children, and adults) that were engaged in different types of behavior (e.g., a typical resident; a beef farmer; a subsistence fisherman) and were exposed through multiple pathways (e.g., inhalation; ingestion of soil; ingestion of local produce, beef and/or fish) to both acute short-term and chronic long-term impacts from the Facility. The risk assessment was designed to overestimate the potential impacts of the Project, and thus be

protective of human health and the environment. The risk assessment relied upon the latest EPA data for mercury, dioxin, and the other chemicals of concern, as set forth in EPA's 1997 Mercury Report to Congress, EPA's 2000 Dioxin Reassessment, and other relevant documents.

47. The County's 2002 risk assessment demonstrates that the Facility's airborne emissions will not measurably increase the typical concentrations of chemicals in the environment. For example, even at the point of maximum impact, the maximum environmental mercury and dioxin concentrations associated with the operation of the Facility will be far below the levels that are typically found in the environment and they will be immeasurably small. The County's 2002 risk assessment also demonstrates that the potential risks associated with the Facility's emissions will not exceed, and in most cases will be much less than, the risks that are deemed acceptable by the EPA and DEP for the protection of human health and the environment.

48. The County's findings are consistent with the findings in environmental monitoring studies and risk assessments that have been performed for other modern waste-to-energy (WTE) facilities in the United States. Indeed, the environmental monitoring studies conducted at similar WTE facilities have shown that risk assessments, like the ones performed for Lee County, overestimate the actual impacts.

49. In light of the evidence presented by the County in this case, the Facility should not have any measurable effect on human health or the environment, even when all three MWC units are operational.

Other Potential Environmental Impacts

50. The County's 2002 risk assessment primarily focused on the Facility's maximum impacts under worst case operating conditions. The maximum concentrations in the ambient air and the maximum deposition rates resulting from the Facility's mercury emissions will occur within 2.5 km (approximately 1.5 miles) of the Site. The ambient air concentrations and deposition rates at all other locations beyond the Site will be even lower. EPA studies of similar facilities have shown that mercury deposition rates decrease at least 100 times (i.e., by a factor of 100) within the first 10 km.

51. In this case, the nearest portions of the Everglades are approximately 90 km from the Site. Moreover, the generally prevailing winds at the Site blow toward the Gulf of Mexico, not toward the Everglades. Approximately 90 percent of the time, the wind does not blow from the Site toward the Everglades. For these and other reasons, the Facility's mercury emissions will have an insignificant impact on the Everglades.

52. The Facility's emissions of nitrogen oxides (i.e., NOx) will not cause or contribute to violations of any water quality standards in any surface waterbody.

Environmental Benefits of the Project

53. The addition of Unit No. 3 will provide significant environmental benefits to Lee County and Hendry County. The solid waste processed by Unit No. 3 will reduce the volume of processible solid waste by approximately 90 percent. By reducing the volume of processible waste, the Facility will significantly extend the useful life of the Lee County/Hendry County regional landfill, effectively postponing the need to build a new landfill in Lee County or Hendry County.

54. The Project will also provide environmental benefits to the State of Florida. For example, the Facility will produce approximately 1.88 billion kilowatt-hours of electricity from discarded materials during the next 20 years. In this manner, Unit No. 3 will reduce the need to use fossil fuels to generate electricity at traditional power plants. Unit No. 3 will eliminate the need to use approximately 5.54 million barrels of oil, and thus will save approximately \$150 million in oil purchases over the next 20 years. In addition, the County will recover ferrous and non-ferrous metals from the Facility's ash, thus recycling resources that otherwise would be buried with the County's solid waste in a landfill.

Socioeconomic Benefits of the Project

55. The local economy and labor market will benefit from approximately \$70 million that Lee County will spend to construct the Project. A significant amount of construction supplies, such

as concrete, structural steel, glass, piping, fittings, and landscape materials, are anticipated to be purchased from local businesses.

56. The Project will provide jobs for over 125 construction workers during the peak of construction activities. The addition of Unit No. 3 will also provide approximately nine new permanent jobs at the Facility, with an increase in the Facility's annual payroll of approximately \$400,000.

WTE Criteria in Section 403.7061

57. Section 403.7061, Florida Statutes, establishes several criteria that must be satisfied before an existing waste-to-energy facility may be expanded. Lee County has provided reasonable assurance that the Project will satisfy all of the standards and criteria in Section 403.7061, Florida Statutes. Among other things, the County has demonstrated that Lee County's waste reduction rate will exceed 30 percent when Unit No. 3 begins operation.

Compliance with Environmental Standards

58. Lee County has provided reasonable assurance that the Project will comply with all of the nonprocedural land use and environmental statutes, rules, policies, and requirements that apply to the Project, including but not limited to those requirements governing the Project's impacts on air quality, water consumption, stormwater, and wetlands. The location, construction, and operation of the Project will have minimal

adverse effects on human health, the environment, the ecology of the State's lands and wildlife, and the ecology of the State's waters and aquatic life. The Project will not unduly conflict with any of the goals or other provisions of any applicable local, regional or state comprehensive plan. The Conditions of Certification establish operational safeguards for the Project that are technically sufficient for the protection of the public health and welfare, with a wide margin of safety.

Agency Positions and Conditions of Certification

59. On December 11, 2001, the PSC issued an order concluding that the Project was exempt from the PSC's "determination of need" process, pursuant to Section 377.709(6), Florida Statutes.

60. DEP, DOT, DCA, and SFWMD all recommend certification of the Project, subject to the Conditions of Certification. The SWFRPC determined that the Project is "Regionally Significant and Consistent with the Regional Strategy Plan," but did not recommend any conditions of certification for the Project. Lee County has accepted, and has provided reasonable assurance that it will comply with, the Conditions of Certification.

CONCLUSIONS OF LAW

61. The Division of Administrative Hearings has jurisdiction over the parties to, and subject matter of, this proceeding pursuant to Sections 120.569, 120.57(1), 403.508, and 403.517, Florida Statutes.

62. Lee County and DEP provided timely public notices concerning the Project and the Certification Hearing, which satisfied the notice requirements contained in the PPSA, Chapter 120, Florida Statutes, and Chapter 62-17, Florida Administrative Code. All necessary and required governmental agencies participated in the certification process, and the required reports and studies were issued by DEP and the other agencies, in accordance with their statutory duties.

63. Pursuant to Section 377.709, Florida Statutes, the Project is a "solid waste facility" and is exempt from the requirement that the PSC issue a determination of need under Section 403.519, Florida Statutes.

64. In its order dated May 16, 1991, the Governor and Cabinet of the State of Florida, sitting as the Power Plant Siting Board, determined that the Lee County Solid Waste Energy Recovery Facility is consistent and in compliance with existing land use plans and zoning ordinances. Pursuant to Section 403.517(3), Florida Statutes, further consideration of consistency with local land use plans and zoning ordinances is not required for this Supplemental Application.

65. The issue for determination in this case is whether a supplemental site certification should be granted to Lee County to construct and operate Unit No. 3 at Lee County's Solid Waste Energy Recovery Facility. Under Section 403.502, Florida Statutes, the following criteria are to be considered when

determining whether an electrical power plant should be certified under the PPSA:

the state shall ensure through available and reasonable methods that the location and operation of electrical power plants will produce minimal adverse effects on human health, the environment, the ecology of the land and its wildlife, and the ecology of state waters and their aquatic life and will not unduly conflict with the goals established by the applicable local comprehensive plans. It is the intent to seek courses of action that will fully balance the increasing demands for electrical power plant location and operation with the broad interests of the public. Such action will be based on these premises:

(1) To assure the citizens of Florida that operation safeguards are technically sufficient for their welfare and protection.

(2) To effect a reasonable balance between the need for the facility and the environmental impact resulting from construction and operation of the facility, including air and water quality, fish and wildlife, and the water resources and other natural resources of the state.

(3) To meet the need for electrical energy as established pursuant to s. 403.519.

The competent, substantial, and uncontested evidence presented by Lee County and DEP at the Certification Hearing demonstrates that the Project has met all of the criteria required to obtain certification under the PPSA. Lee County has provided reasonable assurance that the Project, if constructed and operated in accordance with the Conditions of Certification, will comply with all of the non-procedural requirements that are applicable to the Project. Lee County has also provided reasonable assurance that

the Project will satisfy all of the criteria and standards in Section 403.7061, Florida Statutes. Certification of the Project will serve and protect the broad interests of the public, and the benefits of the Project will outweigh the negative impacts. Lee County has accepted, and demonstrated that it will comply with, the Conditions of Certification.

66. In the PPSA review process and the Conditions of Certification for the Project, the State of Florida has ensured through available and reasonable methods that the location, construction and operation of the Project will produce minimal adverse effects on human health, the environment, the ecology of the land and its wildlife, and the ecology of State waters and their aquatic life. If the Project is built and operated in accordance with the Conditions of Certification, the Project will not unduly conflict with the goals in any applicable local, regional or state comprehensive plan. The Conditions of Certification establish safeguards that are technically sufficient for the protection and welfare of Florida's citizens, and the Conditions of Certification ensure that the potential adverse effects of the Project will be minimized.

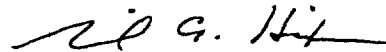
67. Certification of the Project is consistent with the legislative intent to balance the demand for electrical power with the broad interests of the public. Certification of the Project reasonably balances the need for the Project with the

environmental and other impacts resulting from the construction and operation of the Project.

RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law, it is RECOMMENDED that the Governor and Cabinet, sitting as the Siting Board, enter a Final Order granting a supplemental site certification for the construction and operation of Unit No. 3 at the Lee County Solid Waste Energy Recovery Facility, in accordance with the Conditions of Certification contained in Appendix 1 to DEP Exhibit 2.

DONE AND ENTERED this 19th day of August, 2003, in Tallahassee, Leon County, Florida.



RICHARD A. HIXSON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of August, 2003.

ENDNOTE

^{1/} In 1992, the Siting Board adopted Conditions of Certification for Units No. 1 and No. 2. The Department has modified and supplemented the 1992 Conditions of Certification to address Unit No. 3. Changes to the 1992 Conditions of Certification which address the addition of Unit No. 3 are indicated by underlining (additions) and striking through (deletions). In addition,

changes between the April 11, 2003, and the final July 11, 2003 versions of the Conditions of Certification are indicated by shading.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the Agency that will issue the Final Order in this case.