FLORIDA DEPARTMENT OF Environmental Protection

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Tallahassee, FL 32399-2400

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Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

August 15, 2024

Sent by Electronic Mail – Document Access Verification Requested

Douglass L. Whitehead, Director
Lee County Solid Waste Department
10550 Buckingham Road
Fort Myers, Florida, 33905
DWhitehead@leegov.com

RE: Lee County Resource Recovery Facility (PA90-30)
Amendment Request (AM24-300)
Building Extension, Waste Transfer Bunkers, and Employee Building

Mr. Whitehead:

On April 23, 2024, the Florida Department of Environmental Protection (Department) Siting Coordination Office received a request from Lee County for a post-certification amendment to the Lee County Resource Recovery Facility Site Certification Application (SCA). The amendment request is to authorize the construction of a maintenance building extension, solid waste transfer bunkers, and an employee resources facility.

Based on a review of the information submitted on April 23, 2024, and additional information submitted on June 18, July 10, and August 7, 2024, the Department has determined that this request has been properly characterized as an amendment, pursuant to § 403.5113(1), Florida Statutes (F.S.), as it proposes a material change to Lee County's SCA but does not require modification to the Conditions of Certification. This letter serves as notification of the approval of the proposed amendment. Failure to comply with all existing requirements of the Conditions of Certification, pursuant to § 403.514, F.S., shall constitute a violation of Chapter 403, F.S.

NOTICE OF RIGHTS

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under §§ 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until a subsequent order of the Department. Because the administrative hearing process is designed to formulate final agency action, the subsequent order may modify or take a different position than this action.

Petition for Administrative Hearing

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under §§ 120.569 and 120.57, F.S. Pursuant to Rules 28-106.201

and 28-106.301, F.A.C., a petition for an administrative hearing must contain the following information:

(a) The name and address of each agency affected and each agency's file or identification number, if known;
(b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
(c) A statement of when and how the petitioner received notice of the agency decision;
(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
(e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
(f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
(g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at Agency_Clerk@dep.state.fl.us.
Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant and persons entitled to written notice under § 120.60(3), F.S., must be filed within **14** days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under § 120.60(3), F.S., must be filed within **14** days of receipt of the written notice or within **14** days of publication of the notice, whichever occurs first. You cannot justifiably rely on the finality of this decision unless notice of this decision and the right of substantially affected persons to challenge this decision has been duly published or otherwise provided to all persons substantially affected by the decision. While you are not required to publish notice of this action, you may elect to do so pursuant Rule 62-110.106(10)(a).

The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under §§ 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C. If you do not publish notice of this action, this waiver may not apply to persons who have not received a clear point of entry.

Extension of Time
Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at Agency_Clerk@dep.state.fl.us, before the deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Mediation
Mediation is not available in this proceeding.

Judicial Review
Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to § 120.68, F.S., by filing a Notice of Appeal pursuant to Florida Rules of Appellate Procedure 9.110 and 9.190 with the Clerk of the Department in the Office of General Counsel (Station #35, 3900 Commonwealth Boulevard, 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 must be filed within 30 days from the date this action is filed with the Clerk of the Department.

Questions
Any questions regarding the Department's review of this amendment request should be directed to Nate Senn at (850) 717-9111. Questions regarding legal issues should be referred to the Department's Office of General Counsel at (850) 245-2257. Contact with any of the above does not constitute a petition for an administrative hearing or request for an extension of time to file a petition for an administrative hearing.

Sincerely,

Cindy Mulkey, Deputy Director
Division of Water Resource Management

CC by email:
Elizabeth Sweigert, District Director SD, DEP: Elizabeth.Sweigert@FloridaDEP.gov
Nolin Moon, District Liaison SD, DEP: Nolin.Moon@FloridaDEP.gov

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to § 120.52, F. S., with the designated Department Clerk, receipt of which is hereby acknowledged.

Brittany Lamb Digitally signed by Brittany Lamb
Date: 2024.08.15 15:44:47 -04'00'
Adobe Acrobat version: 2024.002.20991

8/15/2024

Clerk **Date**

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