STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

THE PALM BEACH GARDEN CLUB, INC., THE FLORIDA AUDUBON SOCIETY, INC., AND THE FLORIDA WILDLIFE FEDERATION, INC.,	)	
Petitioners,	)	
vs.	)	CASE NO. 91-6391RX
STATE OF FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES,	)	
Respondent,	)	
and	)	
FLORIDA SUGAR CANE LEAGUE, INC.,	)	
Intervenor.	)	

FINAL ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, Mary Clark, held a formal hearing in the above-styled case on October 28, 1991, in Tallahassee, Florida.

APPEARANCES

For Petitioner: David G. Guest, Esquire
Kenneth B. Wright, Esquire
Sierra Club Legal Defense Fund
Post Office Box 1329
Tallahassee, Florida 32302

For Respondent: Gabriel Mazzeo, Esquire
Richard D. Tritschler, Esquire
Florida Department of Agriculture
and Consumer Services
Mayo Building, Room 512
Tallahassee, Florida 32301

For Intervenor: Gary P. Sams, Esquire
Gary V. Perko, Esquire
Hopping, Boyd, Green & Sams
Post Office Box 6526
Tallahassee, Florida 32314

STATEMENT OF THE ISSUES

Pursuant to Section 120.56, F.S., Petitioners have challenged the Department of Agriculture and Consumer Services' existing Rule 5I-2.006, F.A.C.,

and the agency's method of authorizing the Florida Sugar Cane League's pre-harvest sugar cane burning program pursuant to that rule. The specific issues for determination are as follows:

1. Whether the rule contains inadequate standards to guide agency decisions and vests unbridled discretion in agents of the Department;

2. Whether the Department has utilized an illegal, unpromulgated rule to delegate permitting authority to the Florida Sugar Cane League, Inc.

PRELIMINARY STATEMENT

On October 7, 1991, Petitioners filed a Petition for the Administrative Determination of Invalidity of Respondent's Rule 5I-2.006, F.A.C. On October 18, 1991, Petitioners moved for leave to amend the petition to challenge Respondent's method of authorizing Intervenor's pre-harvest sugar cane burning program as an illicit rule and improper delegation of permitting authority. Also on October 18th the parties filed their stipulation as to standing of the Petitioners and the Intervenor. Leave to amend was granted without objection on October 28, 1991.

At the commencement of the hearing, Petitioners withdrew from their amended petition all allegations concerning paraquat and mercury emissions, leaving as disputed facts the allegations related to general health risks of burning and the delegation of authority to the Sugar Cane League.

Petitioners presented the testimony of David Utley, District Manager of the Department's Division of Forestry, and Charles Lee, Senior Vice President of the Florida Audubon Society. Petitioners also introduced Petitioners' Exhibit Nos. 3(F), 3(G), 15, 52(A-E), 71, 73, 75-82, 84, 85, 87, 89, 91, 92, 94-98, 104, 105, and 106(B), all of which were admitted into evidence. However, Petitioners' Exhibit Nos. 76, 78, 79, and 85 were admitted subject to objections relating to the draft nature of each document. Likewise, Petitioners' Exhibit No. 89 was admitted for the limited purpose of showing that a letter was sent from the Department of Health and Rehabilitative Services to the Florida Sugar Cane League. Petitioners' Exhibit Nos. 101 and 106(A) were marked for identification, but were not introduced nor admitted into evidence.

Respondent called as its witnesses Mr. Utley and Michael C. Long, Chief of Fire Control for the Division of Forestry. The Department introduced Respondent's Exhibit No. 1 which was admitted into evidence without objection.

Intervenor presented the testimony of Mr. Utley; Anderson Rackley, Vice President and General Manager of the Florida Sugar Cane League, Inc.; Walter Parker, Assistant to the Vice President of United States Sugar Corporation; Ken Roberts of Southern Environmental Sciences, Inc., who was accepted as an expert in air quality engineering; and Kennard F. Kosky, President of KBN Engineering and Applied Sciences, who was accepted as an expert in air pollution control regulation and engineering, ambient air quality monitoring, and air quality impact analysis including dispersion modeling. Intervenor also introduced Intervenor's Exhibit Nos. 5, 6, 21, 23, 24, and 40-42, all of which were admitted into evidence without objection.

After filing of the transcript on November 27, 1991, the parties submitted proposed Findings of Fact and Conclusions of Law. Specific rulings on the Proposed Findings of Fact are set forth in the attached Appendix.

FINDINGS OF FACT

1. Petitioners, Palm Beach Garden Club, Inc., the Florida Audubon Society, Inc., and the Florida Wildlife Federation, Inc., are nonprofit Florida corporations whose purposes include the promotion of environmental protection and conservation of natural resources.

2. Respondent, the Florida Department of Agriculture and Consumer Services, is charged with regulating open burning undertaken for agricultural, silvicultural, and rural land clearing purposes throughout Florida.

3. Intervenor, the Florida Sugar Cane League, Inc. (League), is a nonprofit Florida corporation which represents most of Florida's sugar cane growers and processors. From October to March each year, League members burn mature sugar cane in the fields to prepare for harvesting and milling operations.

4. The substantive provisions of Rule 5I-2.006 have appeared in the Florida Administrative Code for over twenty years without significant change.

5. Pursuant to its rulemaking authority under the Florida Air and Water Pollution Control Act (Chapter 403, Florida Statutes), the then-existing Department of Pollution Control (DPC) originally promulgated the rule as part of its comprehensive open burning regulations in Chapter 17-5, F.A.C., on July 1, 1971.

6. In the Environmental Reorganization Act of 1975, the Florida Legislature transferred the general powers and duties of the DPC to the Department of Environmental Regulation (DER). However, the Legislature made an exception to this broad transfer, by specifying that:

> all powers, duties, and functions of the Department of Pollution Control relating to open burning connected with rural land clearing, agricultural, or forestry operations except fires for cold or frost protection are transferred by a type four transfer, as defined in Section 20.06(4), Florida Statutes, to the Department of Agriculture and Consumer Services.
>
> Ch. 75-22, Section 8, Florida Laws.

7. In accordance with the Reorganization Act, the provisions of Chapter 17-5, F.A.C., dealing with agricultural and silvicultural burning were transferred to the Department of Agriculture and Consumer Services Division of Forestry's rules in Chapter 5I-2, F.A.C.

8. Despite this administrative transfer, the substance of the rule has not changed since its original promulgation by the DPC. Rule 5I-2.006 currently provides:

(1) Open burning between the hours of 9:00 A.M. and one hour before sunset (except fires for cold or frost protection) in connection with agricultural, silvicultural or forestry operations related to the growing, harvesting, or maintenance of crops or in connection with wildlife management is allowed, provided that permission is secured from the Division of Forestry of the Department of Agriculture and Consumer Services prior to burning. The Division of Forestry may allow open burning at other times when there is reasonable assurance that atmospheric and meteorological conditions in the vicinity of the burning will allow good and proper diffusion and dispersement of air pollutants, and ready control of such fires within the designated boundaries.

(2) The Division of Forestry may suspend after reasonable notice any such permission whenever atmospheric or meteorological conditions change so that there is improper diffusion and dispersion of air pollutants which create a condition deleterious to health, safety, or general welfare, or which obscure visibility of vehicular or air traffic.

(3) Fires must be attended at all times.

9. According to the unrebutted testimony of Kennard Kosky, who participated in the original promulgation of the rule while working with the DPC in 1971, the DPC developed the 9:00 a.m.-to-one hour before sunset limitation after determining that daytime hours provide the best atmospheric and meteorological conditions for agricultural and silvicultural burning. Recent analysis of atmospheric dispersion modeling performed by Mr. Kosky indicates that impacts from night burning are approximately two to five times greater than impacts from open burning during the time periods prescribed in the rule.

10. Because atmospheric and meteorological conditions normally change after sunset, the rule prohibits night burning unless special authorization is obtained from the Division of Forestry. Under the terms of the rule, the Division may allow night burns only "when there is reasonable assurance that atmospheric and meteorological conditions in the vicinity of the burning will allow good and proper diffusion and dispersement of air pollutants... ." Rule 5I-2.006(1), F.A.C. The Department has implemented this requirement through the use of the Nighttime Stagnation Index (NSI) which measures the potential of smoke at night to create visibility problems and determines a potential for mixing of smoke and fog. The index is provided twice a day by the National Weather Service. The Division of Forestry's Bureau of Fire Control has developed guidelines for issuing night burning authorizations on the basis of NSI values.

11. The rule reserves the Division of Forestry's authority to revoke any previously-granted permission whenever changed atmospheric or meteorological conditions create "a condition deleterious to health, safety, or general welfare." Rule 5I-2.006(2), F.A.C. The Department has interpreted this

provision to prohibit open burning whenever the National Weather Service or DER declares an "air stagnation advisory", or when DER declares an "air pollution episode" pursuant to DER regulations. An interagency agreement executed in 1981 requires DER promptly to notify the Department of any air pollution episode or any other circumstances requiring special control of open burning. (Resp. Exh. 1, paragraph 3).

A halt to daytime burning is rare, in the experience of David Utley, but it has occurred on notice from DER, and in that instance the Division of Forestry contacted everyone to let them know there would be no burning allowed that day.

12. Statistics of the Division of Forestry indicate that open burning related to agricultural, silvicultural, and land clearing activities is relatively common throughout Florida. On average, agricultural burning of all types represents approximately 61% of total acreage burned, whereas silvicultural and land clearing activities represent approximately 22.8% and 15.7%, respectively.

13. In order to meet the administrative burden of authorizing the large number of burning requests received each year, the Division of Forestry has developed special authorization procedures for a number of governmental and commercial interests which conduct open burning on a regular basis, including cattlemen, the citrus and forest industries, the park services and others.

14. Each year, the Florida sugar industry harvests approximately 430,000 acres of sugar cane in the Everglades Agricultural Area (EAA) of South Florida. In preparation for harvest, growers burn cane fields in 30 to 70 acre tracts between mid-October and mid-March each year. The pre-harvest burning is necessary to remove thick underbrush and foliage that otherwise would preclude workers from hand-harvesting the cane. The burning also is necessary to reduce the amount of non-product material processed by the sugar mills.

15. The Division of Forestry has interpreted and applied Rule 5I-2.006, F.A.C., to allow the League to obtain, on behalf of its members, a written burn authorization letter prior to harvest each year. Subject to the Division's authority to revoke permission based on prevailing atmospheric and meteorological conditions, the authorization letter allows League members to burn sugar cane fields in Palm Beach, Hendry, Martin, and Glades Counties from 9:00 a.m. until one hour before sunset. League members must keep records of the time, location, and wind conditions for each individual burn, and submit the records to the Division of Forestry. (see e.q., Pet. Exh. 106(B))

16. For night burns, individual League members must notify the League office of their desire to burn and other pertinent information. The League office contacts the Division of Forestry by telephone to relay that information, and to obtain the projected NSI. If the index is below a specified level, the Division's Duty Officer gives the League office a computer-derived authorization number for each authorized night burn. The League then notifies individual members of their ability or inability to burn after hours. The League office keeps records of each night burn on log sheets provided by the Division of Forestry.

17. The annual burn authorization letter also places certain site-specific conditions on the League's annual pre-harvest burn program. For example, this year's authorization letter divides the EAA into four zones and prescribes site-specific conditions for each zone. Under certain wind conditions specified for each zone, the 1991 authorization letter either prohibits burning altogether or

requires use of backfiring techniques to reduce visibility impacts. Backfiring produces approximately 60% less visible emissions than the ring-fire technique normally utilized for agricultural field burning.

18. These conditions are applicable to both daytime and nighttime burning. However, in accordance with the terms of the rule, the 1991 authorization letter still requires special authorization from the Division of Forestry for night burns (i.e., after one hour before sunset) and early burns (i.e., between 6:00 a.m. and 9:00 a.m.). The authorization letter specifically requires an NSI of 8 or below for any night burns, and notes that special authorization for early burns "will be granted on a hardship basis, if burning cannot be reasonably conducted within other time periods." (Pet. Exh. 15).

19. To reduce the possibility of muck fires, the 1991 burn authorization letter prohibits trash burning, and requires strict adherence to the Division's "two-field" policy, which prohibits burning within two fields of an adjacent wildlife area when the Fire Readiness Level reaches 4 or 5. (Pet. Exh. 15). The 1991 letter also requires suppression of all muck fires within 48 hours. (Pet. Exh. 15).

20. The blanket authorization arrangement has existed in various forms since 1975, the year the Division of Forestry was given the responsibility to regulate open burning. In 1975, for example, the arrangement required a representative from the League to contact the local agency dispatcher daily to confirm authorization for day, as well as nighttime burning.

In 1981 the daytime authorization covered the entire burning season, and nighttime burning was permitted so long as the NSI was reported at 6 or less. (Higher NSI values denote greater stagnation).

21. Documents introduced by the Petitioners from the files of the agency and the League refer to the "issuance of burn permits" by the League. Those terms were used, however, to describe the conduit and record-keeping functions of the League under the annual authorizations. The League does not issue permits.

22. The blanket authorization arrangement provides a convenient administrative shortcut for League members and for the agency. The agency, however, still retains and exercises the ultimate authority over the permitting of individual burns.

No witness, nor, any competent evidence established that the agency's authority has been delegated to the League.

23. The agency has not adopted a procedural nor substantive rule describing the blanket authorization arrangement with the League or with any other industry or group to which it grants such authority. The agency has not adopted as a rule its guidelines related to the NSI nor related to its reliance on DER and the National Weather Service for advisories as to meteorological and atmospheric conditions.

24. Those guidelines have changed over the years and could change again. For example, the stagnation level required for nighttime burning permission has fluctuated between 6 and 8, according to the annual authorization letters to the League. At one point, the annual authorization was amended to allow League members to begin burning at 8:00 a.m., rather than 9:00 a.m., without the daily check-in required for nighttime burning. (Pet. Exh. #75).

In 1987 the Division adopted guidelines applicable statewide for its personnel to follow in issuing burning authorizations. (Pet. Exh. #95) Those guidelines were transmitted to the League, but were not applied to the League. The guidelines were not adopted as a rule.

25. The 1991 authorization for pre-harvest burn issued to the League included the zones discussed in paragraph 17, above, and other conditions addressed in paragraphs 18 and 19. Those conditions were not adopted as a rule.

CONCLUSIONS OF LAW

26. The Division of Administrative Hearings has jurisdiction in this proceeding pursuant to Section 120.56, F.S.

27. The parties have stipulated that Petitioners and Intervenors have standing to participate in this proceeding.

28. To demonstrate the invalidity of a proposed or adopted rule, Petitioners have the burden of proving by a preponderance of the evidence that the rule is an invalid exercise of delegated legislative authority. This is a stringent burden. Agrico Chemical Co. v. Department of Environmental Regulation, 365 So.2d 759 (Fla. 1st DCA 1978), cert. denied, Askew v. Agrico Chemical Co., 376 So.2d 74 (Fla. 1979).

29. Section 120.52(8), Florida Statutes, defines "invalid exercise of delegated legislative authority" as:

> ...action which goes beyond the powers, functions and duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one or more of the following apply:
> (a) The agency has materially failed to follow the applicable rulemaking procedures set forth in section 120.54;
> (b) The agency has exceeded its grant of rulemaking authority, citation to which is required by section 120.54(7);
> (c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by section 120.54(7);
> (d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency; or
> (e) The rule is arbitrary or capricious.

30. Agencies are accorded wide discretion in exercise of their lawful rulemaking authority. Dept. of Natural Resources v. Wingfield Development Co., 581 So.2d 193 (Fla. 1st DCA 1991). When, as with Rule 5I-2.006, F.A.C., the agency's interpretation of a statute has been promulgated in rulemaking proceedings, the rule must be sustained if it does not exceed the agency's statutory authority and is reasonably related to an appropriate statutory purpose. Marine Fisheries Comm'n v. Organized Fisherman of Florida, 503 So.2d 935 (Fla. 1st DCA 1987), rev. denied, 511 So.2d 999 (Fla. 1987).

31. This deferential standard, which applies to the rule as well as the meaning assigned to it by the agency, is particularly strong when, as here, the challenged rule has been on the books for twenty years without legislative correction. Department of Administration v. Nelson, 424 So.2d 852, 858 (Fla. 1st DCA 1982); Department of Commerce v. Matthews Corp., 358 So.2d 256, 260 (Fla. 1st DCA 1978).

32. Florida Department of Agriculture and Consumer Services' rule chapter 51-2, F.A.C. comprises the regulatory process transferred in 1975 from the Department of Pollution Control.

Rule 5I-2.002, F.A.C. provides:

> Declaration and Intent. The Department finds and declares that the open burning of materials outdoors and the use of outdoor heating devices result in or contribute to air pollution. The Department further finds that regulation of open burning and outdoor heating devices will reduce air pollution significantly.
> It is the intent of the Department to require that open burning be conducted in a manner, under conditions, and within certain periods that will reduce or eliminate the deleterious and noisome effect of air pollution caused by open burning.

33. This rule renders unnecessary the Petitioners' and Intervenor's debate as to whether open burning of preharvest sugar cane can or does produce pollution.

34. The intent of the Department expressed in the second paragraph of this rule is effectuated in Rule 5I-2.006, F.A.C., the rule at issue here.

35. The Petitioners' amended petition complains that Rule 5I-2.006, F.A.C. contains no monitoring requirements, no standards, no meaningful restrictions on pollution emissions, "[i]n short, the rule contains completely inadequate standards to guide agency decisions, and vests unbridled discretion in agents of the Department." (Amended Petition filed 10/18/91, paragraph 1.)

36. Rule 5I-2.006, F.A.C., contains within its four corners the following standards and criteria for open burning generally:

> A. Open burning may be conducted between the hours of 9:00 a.m. and one hour before sunset;
> B. Permission must be secured from the Division of Forestry;
> C. The burning must not be ignited so as to cause it to continue spreading after one hour before sunset;
> D. Open burning may be allowed at other times --
> i. if the atmospheric and meteorological conditions in the vicinity of the burning will allow good and proper diffusion and dispersement of air pollutants,
> and

ii. there is ready control of such fires within the designated boundaries.
E. The Division of Forestry may suspend after reasonable notice any permission whenever --
i. atmospheric or meteorological conditions change so that there is improper diffusion and dispersion of air pollutants
a. which create a condition deleterious to health, safety, or general welfare, or
b. which obscure visibility of vehicular or air traffic.
F. Fires must be attended at all times.

(see text of rule in Findings of Fact, paragraph #8)

37. In addition to the rule, Section 590.12, F.S., provides the following standards and criteria:

A. Every person conducting a burning operation must:
i. First obtain authorization from the Division of Forestry;
ii. provide adequate fire lines, manpower, and firefighting equipment for the control of the fire;
iii. not permit an authorized fire to escape from the authorized area.
B. Any person violating those standards and criteria is guilty of a second degree misdemeanor.

38. These standards plainly preclude the agency's exercise of arbitrary power to determine private rights with an unbridled discretion and thus do not suffer the defect found in a Game and Fresh Water Fish Commission rule invalidated in Barrow v. Holland, 125 So.2d 749, (Fla. 1960), a case relied on by Petitioners and a case predating contemporary Chapter 120, F.S. but nonetheless authoritative.

39. The offending Commission Rule 6, in contrast to Rule 5I-2.006, F.A.C. provides only:

The Director may issue permits giving the right to take or to be in possession of wildlife or fresh water fish, or their nest of eggs, for scientific, educational, exhibition, propagation or management purposes. Such permits shall be subject to such terms, conditions, and restrictions as may be prescribed by the Commission, provided that no such permits shall be operative, as to migratory birds unless and until the holder thereof has a permit from the U.S. Fish and Wildlife service permitting the taking, exhibiting, or possession of such birds, their nests or eggs.

Traveling shows, zoos, or wildlife exhibits, exhibiting wildlife and/or fresh water fish

> native to Florida, shall be required to secure a permit before entering the State and shall file with the Director localities over the State where they expect to operate at such localities. All such traveling shows, zoos or wildlife exhibits shall be subject to inspection at all times by Wildlife Officers of the Game and Fresh Water Fish Commission and failure to comply with all requirements set out by the Commission, including mistreatment or neglect of such animals, shall be cause for immediate cancellation of permit issued for the operation of the show or exhibit.
>
> (Barrow, supra, p. 752, emphasis added)

40. The standard, "...deleterious to health, safety and welfare" is essentially the same standard considered in State v. Hamilton, 388 So.2d 561 (Fla. 1980) where the Supreme Court upheld provisions of Chapter 403, F.S. which make it a crime to cause pollution, "so as to harm or injure human health or welfare, animal, plant or aquatic life or property."

41. The real problem Petitioners have with the rule is not its text, but what is not included. That is, it does not go far enough to prevent certain open burning by the sugar cane industry. The relief in this instance is not in a Section 120.56, F.S. proceeding, but in a petition for rulemaking, denial of which is subject to judicial review. See Stephen Krisher v. Department of Lottery, 10 FALR 2465, 2469 (Final Order by Wm. R. Dorsey, Hearing Officer, dated 3/31/88)

42. Petitioners also complain of the unpromulgated policies of the agency reflected in a series of letters, written guidelines and other documents providing burn authorization to the Sugar Cane League's members and describing the limits of that authorization. Some of those guidelines, for example the 1987 guidelines discussed in Finding of Fact paragraph #24, have statewide application; others, such as the League members' annual authorizations, are more limited. None have been promulgated as rules pursuant to Section 120.54, F.S.

43. Instead, they are subject to the case by case scrutiny of evolving policy that is, for now, specifically approved in McDonald v. Department of Banking and Finance, 346 So.2d 569 (Fla. 1st DCA 1977), pursuant to Section 120.57(1), F.S. Whether those policies must be adopted under the new requirements of Section 120.535, F.S., effective March 1, 1992, remains to be seen.

44. The requirement of permission or authorization by the Division of Forestry in Section 590.12, F.S. or in Rule 22I-2.006, F.A.C. does not require permission for every discrete event as argued by Petitioners.

45. Permission is nonetheless effective if it is granted for a single burn, for a series of burns in a day or night, or for a season of burns.

46. The blanket authorizations for burning are not, as found in Finding of Fact paragraph #22, delegations to the Sugar Cane League of the agency's permitting authority. Instead, they are in the nature of general permits, issued with conditions, and subject to challenge in Section 120.57(1), F.S.

proceedings by parties with appropriate standing after notice by the agency with appropriate point of entry. See, McDonald, supra; Friends of the Hatchineha, 580 So.2d 267 (Fla. 1st DCA 1991).

ORDER

Based on the foregoing, it is hereby, ordered the amended Petition for Determination of Invalidity of Rule 5I-2.006, F.A.C. filed on October 18, 1991, is DENIED.

DONE AND ORDERED this 31st day of December, 1991, in Tallahassee, Leon County, Florida.

_____

MARY CLARK
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904)488-9675

Filed with the Clerk of the Division of Administrative Hearings this 31st day of December, 1991.

APPENDIX TO FINAL ORDER, CASE NO. 91-6391RX

The following constitute specific rulings on the parties' proposed findings of fact.

Petitioners' Proposed Findings

1.-3. Adopted in paragraph 14.
4.-6. Rejected as unnecessary.
7. Adopted in paragraphs 4. and 5.
8. Rejected as contrary to the evidence. Paragraph 2 of the rule applies to day and night burning.
9. Adopted in substance in paragraph 9.
10. Rejected as unnecessary.
11. Adopted in paragraph 6.
12. Adopted in paragraph 7.
13. Rejected as an improper conclusion (as to the implication that a separate permit is required for each burn).
14.-15. Adopted in substance in paragraph 20.
16. Rejected as contrary to the evidence. The League does not "issue permits".
17. Adopted in paragraph 10.
18.-19. Rejected as contrary to the evidence. See 16, above.
20. Adopted in substance in paragraph 24.
21. Rejected as unnecessary.
22. Adopted in summary in paragraph 21.
23.-27. Rejected as unnecessary.
28. Adopted in summary in paragraph 24.

29.-33. Rejected as unnecessary.
34. Adopted in summary in paragraph 24.
35.-36. Rejected as unnecessary.
37. Adopted in paragraph 24.
38.-43. Rejected as unnecessary.
44. Adopted in paragraph 24.
45. Rejected as contrary to the evidence. See paragraph 16, above.
46. Adopted in paragraph 23.
47. Rejected as unnecessary.
48. Adopted in paragraph 23.
49. Rejected as unnecessary.
50. Adopted in paragraph 23.
51.-52. Adopted in paragraph 24.
53.-55. Rejected as unnecessary.
56. Adopted in paragraph 25.
57.-60. Rejected as unnecessary.

Respondent's Proposed Findings

1.-2. Adopted in paragraph 6.
3. (no paragraph 3)
4.-5. Adopted in paragraphs 7. and 8.
6.-7. Rejected as unnecessary.
8.-9. Adopted in paragraph 10.
10. Adopted in substance in paragraph 11.
11. Rejected as unnecessary.
12. Adopted in substance in paragraph 17.
13. Adopted in substance in paragraphs 17.-19.

Intervenor's Proposed Findings

1.-19. Adopted in corresponding numbered paragraphs.
20. Adopted in substance in paragraph 21.
21.-22. Adopted in substance in paragraph 22.
23.-24. Rejected as unnecessary.
25. Adopted in paragraph 22.
26.-30. Rejected as unnecessary.

COPIES FURNISHED:

David G. Guest, Esquire
Kenneth B. Wright, Esquire
Sierra Club Legal Defense Fund
P.O. Box 1329
Tallahassee, FL 32302

Gabriel Mazzeo, Esquire
Richard D. Tritschler, Esquire
Fla. Dept. of Agriculture
and Consumer Services
Mayo Building, Room 512
Tallahassee, FL 32301

Gary P. Sams, Esquire
Gary V. Perko, Esquire
Hopping, Boyd, Green & Sams
P.O. Box 6526
Tallahassee, FL 32314

Hon. Bob Crawford
Commissioner of Agriculture
The Capitol, PL-10
Tallahassee, FL 32399-0810

Carroll Webb, Executive Director
Administrative Procedures Committee
Holland Building, Room 120
Tallahassee, FL 32399-1300

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULE OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DIVISION OF ADMINISTRATIVE HEARINGS AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

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DISTRICT COURT OPINION

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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

THE PALM BEACH GARDEN CLUB, INC., et al,

Appellants,

vs.

STATE OF FLORIDA, DEPT. OF AGRICULTURE, et al.

Appellees.
_____/

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED.

CASE NO. 92-272
DOAH CASE NO. 91-6391RX

Opinion filed December 3, 1992.

An appeal from the Division of Administrative Hearings.

David G. Guest, Sierra Club Legal Defense Fund, Tallahassee, for Appellant.

Gary P. Sams, Hopping, Boyd, Green & Sams, Tallahassee, for Appellee Florida Sugar Cane League, Inc.

Gabriel Mazzeo, Tallahassee, for Appellee State, Dept. of Agriculture and Consumer Services.

PER CURIAM.

AFFIRMED.

BOOTH, BARFIELD and MINER, JJ., CONCUR.

MANDATE
From
DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

To the Honorable Mary Clark, Hearing Officer

WHEREAS, in that certain cause filed in this Court styled: Division of Administrative Hearings

THE PALM BEACH GARDEN CLUB, INC.
THE FLORIDA AUDUBON SOCIETY, INC.
AND THE FLORIDA WILDLIFE
FEDERATION, INC.

vs. Case No. 92-272
Your Case No. 91-6391RX

STATE OF FLORIDA, DEPARTMENT OF
AGRICULTURE AND CONSUMER SERVICES

and

FLORIDA SUGAR CANE LEAGUE, INC.

The attached opinion was rendered on December 3, 1992.

YOU ARE HEREBY COMMANDED that further proceedings be had in accordance with said opinion, the rules of this Court and the laws of the State of Florida.

WITNESS the Honorable James E. Joanos

Chief Judge of the District Court of Appeal of Florida, First District and the Seal of said court at Tallahassee, the Capitol, on this 5th day of January, 1993.

_____

Clerk, District Court of Appeal of Florida,
First District