STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EAST BEACH WATER CONTROL DISTRICT, SOUTH SHORE DRAINAGE DISTRICT, EAST SHORE WATER CONTROL DISTRICT and SOUTH FLORIDA CONSERVANCY,	)	
Petitioners,	)	
vs.	)	CASE NO. 93-1479RU
STATE OF FLORIDA, DEPARTMENT OF ENVIRONMENTAL REGULATION,	)	
Respondent.	)	

FINAL ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, William J. Kendrick, held a formal hearing in the above-styled case on May 17 and 18, 1993, in Tallahassee, Florida.

APPEARANCES

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and
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For Respondent: Lori E. H. Killinger
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STATEMENT OF THE ISSUES

At issue in this proceeding is whether respondent, Department of Environmental Regulation (Department), has violated Section 120.535, Florida Statutes, by the adoption of a policy, which meets the definition of a rule under Section 120.52(16), Florida Statutes, without complying with the rulemaking procedures established by Section 120.54, Florida Statutes.

PRELIMINARY STATEMENT

This is a proceeding brought under the provisions of Section 120.535, FLorida Statutes, seeking an administrative determination that the Department has violated the provisions of Section 120.535(1), Florida Statutes, by adopting a policy, which meets the definition of a rule, without complying with the rulemaking procedures established by law. The challenged policy, as alleged in paragraph 19 of the petition, purports to be as follows:

> The Department has made a policy determination, which draws a distinction between "agricultural stormwater discharges" and other stormwater discharges regulated by Chapter 373, Florida Statutes, and the rule promulgated pursuant thereto. The Department has identified the Petitioners' discharges as "agricultural stormwater discharges" and has subjected the Petitioners to a set of rules and criteria that the Department has not adopted but which are apparently different from the general stormwater regulations adopted pursuant to Chapter 373, Florida Statutes.

At hearing, petitioners called Dwight R. Graydon, Eric Livingston, John Scott Benyon, Alexander Padva, and John Cox, as witnesses, and petitioners' exhibits 1-23 were received into evidence. 1/ The Department called Herbert Zebruth as a witness, and its exhibits 1-7 were received into evidence.

The transcript of hearing was filed June 8, 1993, and the parties were granted leave until June 18, 1993, to file proposed findings of fact. The parties' proposals have been addressed in the appendix to this final order.

FINDINGS OF FACT

The petitioners

1. Petitioners are special taxing districts and political subdivisions of the State of Florida, which were created pursuant to Chapter 298, Florida Statutes. The petitioners and their pertinent structures and operations were authorized by Chapter 298, Florida Statutes, for the purpose of providing irrigation, drainage and flood protection for the landowners within their respective boundaries. In order to effect this purpose, the petitioners designed and operate their water control structures to pump excess stormwater and surface water directly to Lake Okeechobee (the "Lake") in the case of East Beach Water Control District (East Beach) and directly to the Rim Canal at the southern end of the Lake in the case of South Shore Drainage District (South Shore), East Shore Water Control District (East Shore), and South Florida Conservancy District (South Florida).

2. East Beach covers a total area of approximately 6,542 acres located along the southeast shore of the Lake. Approximately 75-80 percent of the lands contained within the District are used for agriculture, with most of those lands planted in sugarcane. The remaining 20-25 percent of the drainage area is urbanized. The urban area includes the City of Pahokee.

3. South Shore covers a total area of approximately 4,230 acres located along the Rim Canal at the south end of the Lake. Approximately 80-85 percent of the lands contained within the District are used for agriculture, with most of those lands planted in sugarcane. The remaining 15-20 percent of the drainage area is urban and industrial. The urban area includes a portion of the cities in South Bay, Lake Harbor, Bean City, South Shore Village, and sparsely scattered home sites throughout the District.

4. East Shore covers a total area of approximately 8,136 acres located along the Rim Canal at the south end of the Lake. With the exception of lands developed as canals, levees, roads, and other service-related systems, the entire district is used for agricultural purposes.

5. South Florida covers a total area of approximately 32,754 acres located along the Rim Canal at the south end of the Lake with 28,649 acres located in Palm Beach County and 4,105 acres located in Hendry County. Approximately 85-90 percent of the land is used for agricultural purposes and the remaining 10-15 percent is used for urban or industrial purposes. The City of Belle Glade constitutes a major part of the urban land with the remainder situated around the cities of South Bay, Lake Harbor and other scattered home sites.

6. Here, the parties have stipulated that petitioners have standing to maintain this challenge.

Background

7. Before 1986, petitioners' discharges into the Lake had not been regulated by the respondent, Department of Environmental Regulation (Department).

8. In 1985 the Governor of the State of Florida issued Executive Order Number 86-150. This executive order observed that the Lake Okeechobee Technical Committee, formed to study water quality and water supply conditions in the Lake, had found the Lake to be in danger of becoming hypereutrophic because of the excessive amounts of nutrients, especially phosphorus, it was receiving, and had recommended corrective actions to substantially reduce the nutrient load and provide for long-term monitoring, research and management needs for the Lake. To protect and preserve the Lake, the executive order directed, inter alia, that the Department "bring all private and publically controlled backpumping sources into the lake under permit review or under enforcement for operating without a permit."

9. Pursuant to that executive order, the Department, in concert with petitioners, began the process of regulating petitioners' discharges into the Lake. The Department initially attempted to have the petitioners enter into consent orders; however, the petitioners objected to that concept. Ultimately, both the Department and petitioners agreed to the issuance of short-term operating permits (TOPs) containing specific conditions aimed at determining the composition of the discharges from petitioners' systems and at reducing the pollution loading into the Lake.

10. The TOPs, issued December 30, 1986, and effective until September 23, 1988, were issued pursuant to the Department's regulatory authority over pollution sources contained in Chapter 403, Florida Statutes, and Rule 17-4, Florida Administrative Code. 2/

11. Pertinent to this case, Section 403.088, Florida Statutes, provided, and continues to provide, as follows:

> 403.088 Water pollution operation permits; temporary permits; conditions--
>
> (1) No person, without written authorization of the department, shall discharge into waters within the state any waste which by itself or in combination with the wastes or other sources, reduces the quality of the receiving waters below the classification established for them . . .
>
> (2)(a) Any person intending to discharge wastes into the waters of the state shall make application to the department for an operation permit. Application shall be made on a form prescribed by the department and shall contain such information as the department requires.
>
> (b) If the department finds that the proposed discharge will reduce the quality of the receiving waters below the classification established for them, it shall deny the application and refuse to issue a permit. . .
>
> (3)(a) A person who does not qualify for an operation permit or has been denied an operation permit under paragraph (b) of subsection (2) may apply to the department for a temporary operation permit . . .
>
> (c) After consideration of the application, any additional information furnished, and all written objections submitted, the department shall grant or deny a temporary operation permit. No temporary permit shall be granted by the department unless it affirmatively finds:
>
> 1. The proposed discharge does not qualify for an operation permit;
>
> 2. The applicant is constructing, installing, or placing into operation, or has submitted plans and reasonable schedules of constructing, installing or placing into operation, an approved pollution abatement facility or alternate waste disposal system, or that the applicant has a waste for which no feasible and acceptable method of treatment or disposal is known or recognized but is making a bona fide effort through research and other means to discover and implement such a method;
>
> 3. The applicant needs permission to pollute the waters within the state for a period of time necessary to complete research, planning, construction, installation, or operation of an approved and acceptable pollution abatement facility or alternate waste disposal system;

4. There is no present, reasonable, alternative means of disposing of the waste other than by discharging it into the waters of the state;
5. The denial of a temporary operation permit would work an extreme hardship upon the applicant;
6. The granting of a temporary operation permit will be in the public interest; or
7. The discharge will not be unreasonably destructive to the quality of the receiving waters.
(d) A temporary operation permit issued shall:
1. Specify the manner, nature, volume, and frequency of the discharge permitted;
2. Require the proper operation and maintenance of any interim or temporary pollution abatement facility or system required by the department as a condition of the permit;
3. Require the permitholder to maintain such monitoring equipment and make and file such records and reports as the department deems necessary to ensure compliance with the terms of the permit and to evaluate the effect of the discharge upon the receiving waters;
4. Be valid only for the period of time necessary for the permit holder to place into operation the facility, system, or method contemplated in his application as determined by the department; and
5. Contain other requirements and restrictions which the department deems necessary and desirable to protect the quality of the receiving waters and promote the public interest.

And, Section 403.927, Florida Statutes, provided, and continues to provide, as follows:

403.927 Use of water in farming and forestry activities.--
(1) . . . it is the intent of the Legislature to provide for the construction and operation of agricultural water management systems under authority granted to water management districts and to control, by the department or by delegation of authority to water management districts, the ultimate discharge from agricultural water management systems.

> (2) . . . The department may require a stormwater permit or appropriate discharge permit at the ultimate point of discharge from an agricultural water management system or a group of connected agricultural water management systems. . .
> (4) As used in this section, the term:
>
> * * *
>
> (b) "Agricultural water management systems" means farming and forestry water management or irrigation systems and farm ponds which are permitted pursuant to chapter 373 or which are exempt from the permitting provisions of that chapter.

The agricultural water management systems owned and operated by petitioners fall within the definition of "agricultural water management systems" set forth in Section 403.927(4)(b), Florida Statutes.

12. Consistent with the provisions of Section 403.088, Florida Statutes, Rule 17-4.070(1), Florida Administrative Code, provides:

> (1) A permit shall be issued to the applicant upon such conditions as the Department may direct, only if the applicant affirmatively provides the Department with reasonable assurance based on plans, test results, installation of pollution control equipment, or other information, that the construction, expansion, modification, operation, or activity of the installation will not discharge, emit or cause pollution in contravention of Department standards or rules. However, for discharges of wastes to water, the Department may issue temporary operation permits under the criteria set forth in Section 403.088(3), F.S.

Chapter 17-4, Florida Administrative Code, further delineates the specific procedures to obtain permits and the specific standards for issuing and denying permits.

13. In July 1988, petitioners applied for an extension of their TOPs. The monthly water quality monitoring data petitioners had submitted to the Department reflected, however, that the discharges from petitioners' systems were in contravention of the Department's rules and standards. Accordingly, since petitioners had not met the obligations set forth in the TOPs, the Department advised petitioners that the TOPs would not be extended and that they were required to apply for new operating permits.

The new permit applications

14. Following the Department's refusal to extend the TOPs, petitioners filed applications for operating permits for their discharges, and the Department, consistent with its previous reviews, undertook its review pursuant to Chapter 403, Florida Statutes, and Chapter 17-4, Florida Administrative Code. Effective July 1, 1989, however, Part IV of Chapter 373, Florida Statutes, was amended with regard to, inter alia, the definition of stormwater management systems so as to include pumped discharges such as petitioners.

15. Further, pertinent to this case, Part IV of Chapter 373 provided:

> 373.416 Permits for maintenance or operation--
> (1) . . . the governing board or department may require such permits and impose such reasonable conditions as are necessary to assure that the operation or maintenance of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works will comply with the provisions of this part and applicable rules promulgated thereto, will not be inconsistent with the overall objectives of the district, and will not be harmful to the water resources of the district.
>
> 373.418 Rulemaking; preservation of existing authority.--
> (1) It is the intent of the Legislature that stormwater management systems be regulated under this part incorporating all of existing requirements contained in or adopted pursuant to chapters 373 and 403. Neither the department nor governing boards are limited or prohibited from amending any regulatory requirement applicable to stormwater management systems in accordance with the provisions of this part. It is further the intent of the Legislature that all current exemptions under chapters 373 and 403 shall remain in full force and effect and that this act shall not be construed to remove or alter these exemptions.
> (2) In order to preserve existing requirements, all rules of the department or governing boards existing on July 1, 1989, . . . shall be applicable to stormwater management systems and continue in full force and effect unless amended or replaced by future rulemaking in accordance with this part.

16. Upon the amendment of Part IV, Chapter 373, Florida Statutes, petitioners amended their pending applications to reflect their desire that the applications be processed pursuant to the newly amended provisions of Part IV, Chapter 373, as they relate to stormwater management systems. The Department,

acknowledging the amendments to chapter 373, processed the applications accordingly; however, in view of the provisions of section 373.418(1) which "incorporat[ed] all of the existing requirements contained in or adopted pursuant to chapters 373 and 403," the Department did not in fact change the standards by which these applications were reviewed, to wit: Chapter 403, Florida Statutes, and Chapter 17-4, Florida Administrative Code.

17. On March 14, 1991, the Department issued a notice of permit denial to each petitioner. In each of the denials, the Department noted the provisions of Section 373.416(1), Florida Statutes, ["the . . . department may require such permits and impose such reasonable conditions as are necessary to assure that the operation . . . of any stormwater system . . . will comply with the provisions of this part and applicable rules promulgated thereto . . . and will not be harmful to the water resources of the district"] and Section 373.418(1), Florida Statutes, ["incorporating all of existing requirements contained in or adopted pursuant to chapters 373 and 403"], and concluded that the applications should be denied for the following reasons:

> The Department has completed its review of the subject application, supporting documents and the discharge monitoring reports submitted by the applicant as required by Department Permit NO. IT50- 125678. Based on this review the Department has made the determination that the applicant has failed to provide reasonable assurances that the discharge from the agricultural stormwater management system proposed by the applicant will be in compliance with the aforementioned sections of Chapter 373, F.S. and the Class I Surface Water Quality Standards adopted by the Department pursuant to Chapter 403.061, F.S. and contained in Section 17-302.540, F.A.C. and the Antidegradation Policy for Surface Water Quality contained in Section 17-302.300(3), F.A.C.

18. The Department's action is facially consistent with the provisions of chapter 373, and chapter 403 incorporated therein, as well as the existing rules adopted pursuant to such chapters which require, whether the system be exempt or not, that discharges comply with state water quality standards. See e.g., Sections 373.416, 373.418, 403.088 and 403.927, Florida Statutes, and Rules 17-4.070(1), 17-25.060, 17-25.080, and Chapter 40E-4,

Florida Administrative Code.

19. Availing themselves of the point of entry accorded by the notice of permit denial, petitioners filed a request for administrative hearing, pursuant to Section 120.57, Florida Statutes, to contest the denial of their applications. Such proceedings are currently pending before the Division of Administrative Hearings, but distinct from this proceeding under Section 120.535, Florida Statutes.

The Section 120.535 challenge

20. The challenged policy, as alleged in paragraphs 19 of the petition, purports to be as follows:

> The Department has made a policy determination, which draws a distinction between "agricultural stormwater discharges" and other stormwater discharges regulated by Chapter 373, Florida Statutes, and the rules promulgated pursuant thereto. The Department has identified the Petitioners' discharge as "agricultural stormwater discharges" and has subjected the petitioners to a set of rules and criteria that the Department has not adopted but which are apparently different from the general stormwater regulations adopted pursuant to Chapter 373, Florida Statutes.

Such articulation of the challenged policy is substantially identical to petitioner's statement of the issue identified in their proposed final order, as follows:

> The issue for determination in this case is whether the Department's policy to apply criteria different from that contained in its "Regulation of Stormwater Discharge" Rule 17-25, Florida Administrative Code, and/or Rule 40E-4, Florida Administrative Code, of the South Florida Water Management District (SFWMD), when seeking to regulate an agricultural stormwater management system, as defined in Chapter 373, Part IV, Florida Statutes, constitutes a rule . . . .

21. The premises for the petitioners' challenge are their contention that the Department has drawn a distinction between the agricultural stormwater discharges of petitioners and other stormwater discharges, which is not supported by statutory or duly promulgated rules, and that the Department has applied criteria, which are not supported by statutory or duly promulgated rules, to evaluate petitioners' applications. The credible proof fails, however, to support petitioners' premises.

22. Contrary to the assertions raised by petitioners, the statutory and duly promulgated rules heretofore discussed provide ample authority for the Department's action, and there is no credible proof that the Department is applying any criteria that is not apparent from an application or reading of such statutes and existing rules. Indeed, Rule 17-25.060(2), Florida Administrative Code, provides:

> The permit requirements of Chapter 17-4 or other applicable rules, rather than those of this chapter, shall apply to discharges which are a combination of stormwater and industrial or domestic wastewater or which are otherwise contaminated by non-stormwater sources unless:

> (a) the stormwater discharge facility is capable of providing treatment of the non-stormwater component sufficient to meet state water quality standards . . . .

Here, the proof is compelling that the Department's decision was predicated on existing statutory and rule authority, and that it did not apply any criteria not promulgated as a rule or not contained within existing statutory authority to evaluate petitioners' applications, or treat petitioners' discharges differently than any other stormwater discharge contaminated by non-stormwater sources.

CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings. Section 120.535, Florida Statutes.

24. Pertinent to this case, Section 120.535, Florida Statutes, provides:

> (1) Rulemaking is not a matter of agency discretion. Each agency statement defined as a rule under s. 120.52(16) shall be adopted by the rulemaking procedure provided by s. 120.54 as soon as feasible and practicable. . .
> (2)(a) Any person substantially affected by an agency statement may seek an administrative determination that the statement violates subsection (1). A petition for an administrative determination of an agency statement shall be in writing and shall state with particularity facts sufficient to show:
> * * *
> 2. That the statement constitutes a rule under s. 120.52(16), in which case the petition shall include the text of the statement or a description of the statement.

25. Section 120.52(16), Florida Statutes, defines "rule" to mean:

> . . . each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not required by statute or by an existing rule. The term also includes the amendment or repeal of a rule . . .

26. Here, petitioners are seeking an administrative determination that the following description is an "agency statement" that violates Section 120.535(1), Florida Statutes:

> The Department has made a policy determination, which draws a distinction between "agricultural stormwater discharges" and other stormwater discharges regulated by Chapter 373, Florida Statutes, and the rules promulgated pursuant thereto. The Department has identified the Petitioners' discharges as "agricultural stormwater discharges" and has subjected the Petitioners to a set of rules and criteria that the Department has not adopted but which are apparently different from the general stormwater regulations adopted pursuant to Chapter 373, Florida Statutes.

As the challenger, the burden is upon the petitioners to demonstrate, by a preponderance of the evidence, that such policy exists and that such policy constitutes a rule as defined by Section 120.52(16), Florida Statutes. Section 120.535, Florida Statutes, Humana, Inc. v. Department of Health and Rehabilitative Services, 469 So.2d 889 (Fla. 1st DCA 1985), and Agrico Chemical Co. v. Department of Environmental Regulation, 365 So.2d 759 (Fla. 1st DCA 1978).

27. Here, the proof fails to support the conclusions that the Department has any policy, not predicated on existing statutory and rule authority, which treats petitioners' discharges in a manner different from other stormwater discharges that are contaminated by non-stormwater sources, or that the Department's basis for review of petitioners' applications are not based on requirements currently required by statute or existing rule. Under such circumstances, petitioners have failed to demonstrate a violation of Section 120.535(1), Florida Statutes. See, St. Francis Hospital, Inc. v. Department of Health and Rehabilitative Services, 553 So.2d 1351, 1354 (Fla. 1st DCA 1989), ["We recognize that an agency interpretation of a statute which simply reiterates the legislature's statutory mandate and does not place upon the statute an interpretation that is not readily apparent from its literal reading, nor in and of itself purport to create rights, or require compliance, or to otherwise have the direct and consistent effect of law, is not an unpromulgated rule, and actions based upon such an interpretation are permissible without requiring an agency to go through rulemaking."]

CONCLUSION

Based on the foregoing findings of fact and conclusions of law, it is

ORDERED that petitioners have failed to demonstrate a violation of Section 120.535(1), Florida Statutes, and their petition is denied.

DONE AND ORDERED in Tallahassee, Leon County, Florida, this 29th day of June 1993.

WILLIAM J. KENDRICK
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
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(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of June 1993.

ENDNOTES

1/ By agreement of the parties, the record remained open to accord the parties the opportunity to depose Randall Armstrong, and to file such deposition as a late- filed exhibit. The transcript and video of Mr. Armstrong was filed with the Division of Administrative Hearings on May 28, 1993, marked petitioner's exhibits 23A and 23B respectively, and received into evidence.

2/ From the outset, petitioners conceeded that Chapter 403, Florida Statutes, and Department rules mandated agency protection of adopted water quality standards. However, petitioners contested the Department's authority to require permits based on Chapter 403, initially taking the position that no permits could be required but, if any regulatory permit were appropriate, petitioners should be treated as a storm water source. The Department rejected this position, contended that the pumping was not stormwater, and asserted that "[t]he department has consistently taken this position with other similar pumped discharges even through the original source of the water that is discharged is rainwater. The basis for this position is outlined in the Final Order in DER v. Deseret Ranches of Florida, Inc., DOAH Case No. 78- 2040." Accordingly, the Department proposed to regulate the discharge under its general regulatory authority. The propriety of the Department's treatment of the subject discharges was not formally contested with regard to the issuance of the TOPs, and appears consistent with Rules 17-25.060 and 17-25.080, Florida Administrative Code.

APPENDIX

Petitioners' proposed findings of fact are addressed as follows:

1.	Adopted in paragraph 6.
2-6.	Adopted in paragraphs 1-5.
7.	Addressed in paragraph 8.
8.	Addressed in paragraph 7, otherwise not relevant.
9.	Addressed in paragraphs 9 and 10 and endnote 2.
10 & 11.	Addressed in endnote 2, otherwise not relevant.
12 & 13.	Addressed in paragraphs 10, 11, 13 and 22.
14.	Addressed in paragraphs 10-13, 21, 22, and endnote 2.

15. While the Department may consider it desirable to promulgate a design or performance based rule, and may be addressing such issue currently, it is not relevant to this Section 120.535 proceeding, or to the application of existing rules to petitioners' discharges.

16. Rejected as unsupported by the credible proof. The Department is permitting the discharge under existing authority. See paragraphs 10-13, 21, 22 and endnote 2. While the TOP's may have required petitioners to reevaluate their systems as a means of meeting Department standards, such requirement is consistent with the provisions of Section 403.088 by which petitioners gained their TOP's and is a potential option available to petitioners to achieve a discharge that meets Department standards. It is, however, petitioners' option to formulate an appropriate methodology to meet water quality standards, recognizing their obligation to meet such standards.

17. Addressed in paragraph 14, otherwise previously addressed.

18. Addressed in paragraph 16.

19. Not relevant.

20. While the Department may not have adopted any new rules to address the amendments to Chapter 373, such was not necessary. See paragraph 16. The memorandum cited does not impose criteria upon petitioners but, rather, delineates within the Department which section will review the applications. As such, it is not relevant to this Section 120.535 proceeding as phrased by petitioners. See paragraph 20.

21. To the extent pertinent, addressed in paragraphs 10-13, 15, 21, 22, and endnote 2.

22. Accepted, but not shown to lack support in existing statutory and rule authority. See paragraphs 10-13, 15, 21, 22 and endnote 2.

23-25. Rejected as argumentative or unsupported by the credible proof. See paragraphs 10-13, 15, 21, 22 and endnote 2.

26. Subordinate and misleading. See paragraph 22.

27 & 28. Rejected as argumentative and not supported by the proof. See paragraph 22 and endnote 2.

29. Addressed in paragraph 15, otherwise rejected as argument.

30 & 31. Addressed in paragraph 22 and endnote 2, otherwise argumentative. Specifically, Rule 17-25.060(2), Florida Administrative Code, accords authority to the Department's evaluation.

32. Rule citations are accurate, however, see Rule 17-25.060(2), Florida Administrative Code, and paragraphs 10-13, 15, 21, 22 and endnote 2.

33. Addressed in paragraphs 21 and 22, otherwise rejected as contrary to the proof.

34. To the extent it is not a conclusion of law, addressed in paragraphs 21 and 22. See also response to paragraph 15.

35. Addressed in paragraphs 10-13, 15, 21, 22, and endnote 2.
36 & 37. Repetitious. Moreover, addressed in paragraphs 10-13, 15, 21, 22 and endnote 2.
38-42. Generally not relevant to the issue as phrased by petitioners. Moreover, as to delegation, since the provisions of the delegation agreement adopted by Rule 17-101.040(12)(a)4, Florida Administrative Code, are not of record, the propriety of the Department retaining jurisdiction is far from settled. Such matter is, however, at issue in the Section 120.57 proceeding.
43 & 44. Addressed in paragraphs 17 and 22, and response to paragraphs 38-42, otherwise contrary to the proof.
45. Addressed in paragraphs 21 and 22.
46. Rejected as conclusion of law or unnecessary to the result reached.
47-50. To the extent necessary, addressed in paragraphs 21 and 22, and the response to paragraph 15.

The Department's proposed findings of fact are addressed as follows:

1 & 2. Addressed in paragraphs 1-6.
3. Addressed in paragraph 7.
4. Addressed in paragraph 8.
5. Addressed in paragraph 9.
6 & 7. Addressed in paragraph 10.
8-11. Addressed in paragraphs 11 and 12.
12 & 13. Addressed in paragraph 13.
14. Addressed in paragraphs 12 and 13.
15-17. Addressed in paragraphs 14 and 15.
18. Addressed in paragraph 16.
19. Addressed in paragraph 17.
20-24. Addressed in paragraphs 13, 18, and 20-22, otherwise rejected as subordinate or recitation of testimony.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

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 Rules 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.