

9STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES REINA, ANGELO REINA, )  
NANCY C. REINA, HELEN REINA, )  
and STEVE QUICK, )  
 )  
Petitioners, )  
 )  
vs. ) Case No. 97-1110  
 )  
SOUTHEAST OIL DEVELOPMENT CORP. )  
and DEPARTMENT OF ENVIRONMENTAL )  
PROTECTION, HILLSBOROUGH COUNTY, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

On May 20, 1997, a formal administrative hearing was held in this case in Tampa, Florida, before Richard Hixson, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioners: David M. Carr, Esquire  
600 East Madison Street  
Tampa, Florida 33602

For Respondent, Southeast Oil Development Corporation:

Richard E. Fee, Esquire  
Ganther and Fee, P.A.  
101 East Kennedy Boulevard  
Barnett Plaza, Suite 1030  
Tampa, Florida 33602

For Respondent, Department of Environmental Protection,  
Hillsborough County:

Sara M. Fotopulos, Esquire  
Vernon R. Wagner, Esquire  
Hillsborough County Environmental  
Protection Commission  
1900 9th Avenue  
Tampa, Florida 33605

STATEMENT OF THE ISSUE

The issues for determination in this case are 1) whether Respondent Department of Environmental Protection, Hillsborough County, as the permitting authority, should issue a final Title V Air Operation Permit to Respondent Southeast Oil Development Corporation, for its fiberglass lay-up and abrasive blasting facility in Thonotosassa, Florida; and 2) whether the conditions contained in the Draft Title V Air Operation Permit proposed for issuance to Southeast Oil are sufficient to ensure compliance with applicable provisions of Chapter 403, Florida Statutes, and Chapter 62, Florida Administrative Code.

PRELIMINARY STATEMENT

On September 6, 1995, Respondent, Southeast Oil & Development Corporation (Southeast) pursuant to Chapter 403, Florida Statutes, and Section 62-213, Florida Administrative Code, filed an application with Respondent, Department of Environmental Protection, Hillsborough County (EPC), for an Air Operation Permit for Southeast's operation of a fiberglass lay-up and blasting facility under Title V of the Clean Air Act.

On December 12, 1996, EPC provided Notice of Intent to Issue

Title V Air Operation Permit for the facility, along with a draft permit and conditions. Petitioners James Reina, Angelo M. Reina, Nancy C. Reina, Helen Reina, Steve Quick, and Betty Quick, filed a timely request for formal administrative hearing contesting the proposed issuance of the Title V Air Operation Permit. The petition for formal hearing specifically contested the issuance of the permit based on failure of the facility to meet applicable odor restrictions.

On March 10, 1997, the matter was referred to the Division of Administrative Hearings, and formal hearing was thereafter scheduled for May 20, 1997. Pursuant to the Prehearing Order, on May 14, 1997, the parties filed a Prehearing Stipulation. As set forth in the Prehearing Stipulation, the disputed issues of fact in this matter are limited to the emission of odors from Petitioner's facility.

At hearing, Petitioners presented the testimony of seven witnesses: Jack O'Neil; Martha Terrell; James Reina; Steven Quick; Nancy Reina; Angelo Reina; and Helen Reina. Petitioner, Betty Quick, withdrew from this matter and did not appear at final hearing. Petitioners also presented one exhibit which was received in evidence.

Respondent Southeast presented the testimony of five witnesses: David Palazzo; David Dye; Patrick Shell; Rick Delgado; and Richard Kirby. Southeast also presented seven exhibits which were received in evidence. Respondent EPC did not present

additional witnesses or exhibits.

The parties also presented one joint exhibit which was received in evidence.

A transcript of the final hearing was filed on June 30, 1997. Petitioners filed a Proposed Recommended Order on July 16, 1997, and Respondents filed a Proposed Recommended Order on July 15, 1997.

#### FINDINGS OF FACT

1. Petitioners, JAMES REINA, ANGELO M. REINA, NANCY C. REINA, HELEN REINA, and STEVE QUICK, are residents of Thonotosassa, in Hillsborough County, Florida, and reside within one-third mile of a fiberglass lay-up and abrasive blasting facility owned and operated by Respondent SOUTHEAST OIL & DEVELOPMENT CORPORATION. Petitioners' residences are located to the southwest of the fiberglass facility.

2. Respondent, SOUTHEAST OIL & DEVELOPMENT CORPORATION (SOUTHEAST), owns and operates a fiberglass lay-up and abrasive blasting facility located at 11801 Elyssa Road, Thonotosassa, in Hillsborough County, Florida.

3. Respondent, DEPARTMENT OF ENVIRONMENTAL PROTECTION, HILLSBOROUGH COUNTY (EPC), is the local regulatory agency authorized to act as the permitting authority for Title V Air Operations permits. EPC is processing and acting on the subject's air permit on behalf of the Florida Department of Environmental Protection, pursuant to operating agreements

between the state and local agencies.

4. The SOUTHEAST facility operation which is the subject of these proceedings consists of taking a steel tank shell and abrasive blasting around the filler ports openings. The tank is then covered with a layer of mesh, mylar, and styrene based fiberglass resin. The tank is rotated to aid in an even application. Prior to shipment, wood crates are cut to protect the tank in transit.

5. The SOUTHEAST facility has been in continuous operation, manufacturing tanks at this location since 1985. During the manufacturing process, there is no open air venting while chemicals are mixed. Manufacturing is conducted in an enclosed and covered facility. Chemical containers are tightly capped when not in use.

6. The SOUTHEAST facility currently manufactures approximately 150 tanks on an annual basis. The tanks are primarily used for gasoline storage.

7. Styrene is the chemical that produces a fiberglass odor during the tank manufacturing process. Under the terms and conditions of its current and proposed permits, SOUTHEAST is limited in the amount of styrene allowed to be used in the manufacturing process.

8. Approximately three years ago, SOUTHEAST changed its formula for the manufacturing process. The current formula includes a secret ingredient designated "Ingredient A" which

contains significantly less styrene than SOUTHEAST'S prior formula. The use of "Ingredient A" has resulted in less styrene emission during the manufacturing process.

9. The fiberglass odor emitted during the manufacturing process is sporadic and dependent on the wind and weather conditions. Petitioners do not detect the odor on a continual basis, and for several months at a time, there is no noticeable odor. The objectionable nature of the odor is dependent on the various sensitivities of the Petitioners. On at least two occasions within the last year, some of the Petitioners have complained to EPC of the odor; however, EPC's investigators who responded to the complaints in a timely manner were unable to detect significant levels of fiberglass odor at Petitioners' residences. The investigators did not consider the odors detected as objectionable.

10. The fiberglass odor emitted during the manufacturing process is not offensive to all of the neighboring businesses and residences. The owner of the business closest in proximity to SOUTHEAST has not made a complaint regarding an objectionable odor emission and does not consider the odor objectionable.

11. There is no evidence that the odor emitted during the manufacturing process presents a health problem to the residents of the area.

12. The permit proposed by EPC contains conditions controlling the emission of objectionable odors and places limits

on the amount of styrene which may be utilized by SOUTHEAST during the manufacturing process.

#### CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction of the parties to and over the subject matter of this proceeding. Section 120.57(1), Florida Statutes.

14. The EPC is a local regulatory agency authorized to act as the permitting authority for Title V Air Operations Permits, such as that permit which is the subject of these proceedings. The EPC is processing and is acting on the subject air permit on behalf of the Florida Department of Environmental Protection, pursuant to general and specific operating agreements between the agencies. The permitting authority has permitting jurisdiction under the provisions of Chapter 403, Florida Statutes, and Chapters 62-4, 62-210, and 62-213, Florida Administrative Code.

15. As the applicant for a Title V Permit, SOUTHEAST carries the "ultimate burden of persuasion" of its entitlement through all proceedings, of whatever nature, until such time as final agency action has been taken. Florida Dept. of Transp. vs. J.W.C. Co., 396 So. 2d 778, 787 (Fla. 1st DCA 1981). Thus, the burden of proof is on the party asserting the affirmative of the issue to provide "reasonable assurances" that pollution standards will not be violated" before an administrative tribunal. Id. Any additional information necessary to provide reasonable assurances may be provided at the hearing. Hamilton County Bd.

Of County Commissioners vs. Florida Dept. of Environ. Protection,  
587 So. 2d 1378 (Fla. 1st DCA 1991).

16. It is the burden of those who oppose the application, however, to "identify the areas of controversy and allege a factual basis for the contention that facts relied upon fall short of carrying the "reasonable assurances" burden cast upon the applicant." J. W. C., 396 So. 2d 789.

17. A "reasonable assurance" is one which envisions "a substantial likelihood that the project will be successfully implemented." Metropolitan Dade County vs. Coscan Florida, Inc., 609 So. 2d 644 (Fla. 3rd DCA 1992). A reasonable assurance need not be a guarantee.

18. Once the applicant has preliminarily established reasonable assurances through credible and credited evidence of entitlement to the permit, only the establishment of "contrary evidence of equivalent quality" to that presented by the permit applicant, offered by the opponent of the permit, will support denial of the permit. J. W. C., 396 So. 2d 789.

19. The DEP may decide any dispute arising between the parties on the basis of the facts found and record made regarding whether reasonable assurances have been provided and whether the Title V Permit to SOUTHEAST should issue.

20. A Title V Air Operation Permit is required to commence or continue the proposed operations at the SOUTHEAST facility. SOUTHEAST provided the permitting authority with reasonable



assurances that, under the terms of the Draft Permit, the operation of the SOUTHEAST facility will not adversely impact air quality, and the SOUTHEAST facility will comply with all appropriate provisions of Chapter 62, Florida Administrative Code, including those provisions prohibiting objectionable odors, which was the only issue raised by Petitioners.

21. The facility is subject to and must comply with Section 62-296.320(2), Florida Administrative Code, which prohibits "the discharge of air pollutants which cause or contribute to an objectionable odor."

22. Section 62-210(200), Florida Administrative Code, defines objectionable odor as "[a]ny odor present in the outdoor atmosphere which, by itself or in combination with other odors, is or may be harmful or injurious to human health or welfare, which unreasonably interferes with the comfortable use and enjoyment of the life or property, or which creates a nuisance."

23. Pursuant to the Draft Permit No. 0571005-004-AV, Section II, facility-wide condition 3, the "permittee shall not cause, suffer, allow, or permit the discharge of air pollutants which cause or contribute to an objectionable odor." Thus, if odor problems occur after the issuance of the permit, there is no shield to enforcement or permit revocation proceedings.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Florida Department of Environmental Protection enter a Final Order granting Southeast Oil's Application for Title V Air Operation Permit for the fiberglass lay-up and abrasive blasting facility, with the conditions included in the December 13, 1996, Draft Permit with conditions.

DONE AND ENTERED this 6th day of August, 1997, in Tallahassee, Leon County, Florida.

---

RICHARD HIXSON  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(904) 488-9675    SUNCOM 278-9675  
Fax Filing (904) 921-6847

Filed with the Clerk of the  
Division of Administrative Hearings  
this 6th day of August, 1997.

COPIES FURNISHED:

David M. Carr, Esquire  
600 East Madison Street  
Tampa, Florida 33602

Richard E. Fee, Esquire  
Ganther and Fee, P.A.  
101 East Kennedy Boulevard  
Barnett Plaza, Suite 1030  
Tampa, Florida 33602

Sara M. Fotopulos, Esquire  
Vernon R. Wagner, Esquire  
Hillsborough County Environmental  
Protection Commission  
1900 9th Avenue  
Tampa, Florida 33605

Perry Odom, General Counsel  
Department of Environmental Protection  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399

James Reina, pro se  
9947 Fowler Avenue  
Thonotosassa, Florida 33592

Angelo M. Reina, pro se  
Nancy C. Reina, pro se  
9949 Fowler Avenue  
Thonotosassa, Florida 33592

Helen Reina, pro se  
9951 Fowler Avenue  
Thonotosassa, Florida 33592

Steve Quick, pro se  
Betty Quick, pro se  
9953 Fowler Avenue  
Thonotosassa, Florida 33592

#### 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.