

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHESTER NALLS and THELMA NALLS,)
)
 Petitioners,)
)
 vs.) Case No. 97-4596
)
 COASTAL LUMBER COMPANY and)
 DEPARTMENT OF ENVIRONMENTAL)
 PROTECTION,)
)
 Respondents.)
 _____)
 _____)

RECOMMENDED ORDER

Pursuant to notice, Administrative Law Judge Don W. Davis, duly designated by the Division of Administrative Hearings, held a formal hearing in the above-styled case on February 9 and 10, 1998, in Tallahassee, Florida.

APPEARANCES

For Petitioners:

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Thelma Nalls, pro se
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For Respondent Coastal Lumber Company:

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For Respondent Department of Environmental Protection:

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STATEMENT OF THE ISSUES

Whether Respondent Coastal Lumber Company (Coastal) has provided reasonable assurances to Respondent Department of Environmental Protection (DEP) that it can comply with applicable provisions of Chapter 403, Florida Statutes, and related rules in the Florida Administrative Code regarding odor and visible emissions, and whether DEP should issue a Title V Air Operation Permit to Coastal Lumber.

PRELIMINARY STATEMENT

In June of 1996, Coastal timely filed with DEP an application for a Title V Air Operation Permit. On or about August 25, 1997, DEP issued a draft permit and a notice documenting its intent to issue the permit.

On or about September 16, 1997, after learning of DEP's intention, Chester and Thelma Nalls (Petitioners) filed a petition at DEP challenging the issuance of the permit on the basis of smoke, noise, and acid and sulfur odors which Petitioners attributed to Coastal. The petition was forwarded to the Division of Administrative Hearings for conduct of formal administrative proceedings.

On December 3, 1997, Coastal's motion to strike the allegations of noise as irrelevant to the issuance of a Title V air permit was granted. The matter was set for final hearing on February 9, 1998.

At the final hearing, Petitioners presented the testimony of eight witnesses. Coastal presented the testimony of seven

witnesses and introduced 20 exhibits. Coastal also submitted three depositions into evidence. DEP presented two witnesses and one exhibit.

The transcript of the final hearing was filed with the Division of Administrative Hearings on February 27, 1998. The parties requested and were granted more than 10 days from the filing of the transcript within which to submit proposed recommended orders. Those post hearing submissions have been filed and reviewed in connection with the preparation of this recommended order.

FINDINGS OF FACT

Parties

1. Petitioners live in Gadsden County, Florida. Their home is approximately a half a mile from Coastal's plywood plant in Havana, Florida.

2. DEP is the agency that reviewed Coastal's application for a Title V Air Operation Permit and issued a draft permit and a notice of its intent to grant Coastal's permit request.

3. Coastal is the applicant for the proposed permit. Since 1971, Coastal has operated a wood products facility off of U.S. Highway 27 North in Havana, Florida. Coastal has operated various sawmill and hardwood operations during its existence. However, the sawmill and hardwood activities ceased operation in 1991 due to a shortage of logs in the area. Coastal began manufacturing plywood in 1980 and continues its plywood manufacturing activities today.

4. Coastal employs approximately 250 people with shifts covering 24 hours a day, seven days a week, year round -- including most holidays. The shifts rotate, so the same employees cover both day shifts and night shifts.

5. The operations of the plant, including compliance with environmental standards, are the same at night and on weekends as they are during the daytime shifts.

6. Coastal has operated the plant at normal capacity up to and during this proceeding with the exception of its peeler operations, which ceased operating on February 8, 1998, because of a lack of logs. However, all the other equipment was operated at its normal rate throughout the hearing.

Manufacturing Plywood

7. Logs arrive at Coastal and are separated by size and stored in log yards along the southern and southeastern portions of the mill property which is bordered by 159-A and U.S. 27 North. Logs are later moved to a block conditioning area, stripped of their bark, and cut into eight-foot lengths. The eight-foot logs are then soaked in hot water for about eight hours to soften them. After that, the logs are placed in a lathe that spins the logs against a sharp knife and peels them into sheets of veneer. The sheets of veneer are placed on dryers for six to nine minutes to drive off moisture. Then, the dried sheets of veneer are layered with glue between layers of veneer and placed in a press for four to five minutes. The result is a

sheet of plywood. The plywood is stacked according to its quality and some stacks are sealed by spraying the ends with canned spray paint.

8. In a separate area, the cores of the logs are treated and shaped to be used as landscaping material.

Air Pollution Sources at the Plant

9. Coastal has been operating under seven separate DEP operating permits. The Title V permit, mandated by the Clean Air Act Amendments of 1990 and the subject of this proceeding, will combine those seven operating permits into a single operating permit.

10. The seven permits cover five boiler systems and seven dust control systems. Two boilers (numbers 1 and 2) have restrictions on particulate matter, nitrogen oxides, and visible emissions. Boiler number 3, with a "wet scrubber," also has restrictions on particulate matter, on nitrogen oxides, and on visible emissions. Boilers numbered 4 and 5 have visible emission limits. Three veneer dryers and two plywood presses are not permitted, but are proposed to be permitted to Coastal under the permit which is the subject of this proceeding. Boilers 3, 4, and 5, are operating and are used to generate steam for the plant.

11. The boilers are all fueled with wood waste such as bark chips and saw dust generated at the plant. The boilers are incapable of operating with a different type of fuel such as fuel

oil. Also, it would be inefficient for Coastal to use any other type of fuel in the boilers because Coastal Lumber has an abundance of wood waste.

12. The dust control systems include two filters for sander dust and four cyclones. A cyclone is a device which swirls dust and air together eventually releasing the air out of the top and letting the dust settle downward. The cyclones at the Coastal facility do not have filters inside. Three of the cyclones are not currently in use because they were used for the sawmill operations or to load rail cars and, at present, Coastal uses solely trucks. Coastal has included them in the application in the event that rail loading again becomes feasible. The fourth cyclone handles chips and sawdust collected throughout the plant.

13. The veneer dryers and plywood presses emit steam mixed with small quantities of pine oil naturally present in the wood and are operating under a construction permit until covered under the Title V permit.

14. Coastal's Title V permit application does not contemplate an increase in operations or capacity. Specifically, Coastal could not change its permitted capacity without adding new sources to its plant which would require additional permits.

15. Coastal can operate its Havana plant in compliance with the conditions in its draft Title V Permit.

Issues Raised by Petitioners

16. Petitioners raised two issues in challenging the issuance of Coastal's Title V Air Operation Permit: sulfur or

acid odors, and "smoke" or excess visible emissions that they attribute to the Coastal facility.

17. According to Petitioners and some of their witnesses, the odors are worse when it is humid or following a rain, at night, and on weekends. Thick smoke experienced in the past by Petitioner Chester Nalls as a result of open burning at Coastal's facility has ceased. Burning operations at present are only those instances of permitted burning for reforestation purposes.

18. Two of Petitioners' witnesses, however, Cathy Moore and Sondra Rowan do not have any complaints about sulfur or acid odors from the Coastal facility. Moore testified that she occasionally smells a "treated wood smell" that she associates with Coastal Lumber. Rowan described what she perceived to be smoke from the facility, but has never had a problem with smoke or odor on her property.

19. Donald Daniels, a neighbor of Petitioners, has experienced a burning wood smell and a smell that he describes as "chemical." Sometimes, the smoke is like a fog and not distinguishable from condensed steam. Ash has been deposited on his truck.

20. Nancy Lowe lives near the Coastal facility and claims that her car is often coated with ash. But she was unable at hearing to testify concerning the source of the ash. She has experienced a smell that she cannot identify, which she believes is created by Coastal since she associates that smell with smoke that settles like a fog on her neighborhood.

21. Norma Page described what she believed to be smoke, but her testimony was unclear regarding where she observed the smoke. Additionally, she was not sure that she could distinguish between fog and smoke.

22. Linda Pickles lives an equal distance from Coastal's facility and the Peavy and Son asphalt plant in Havana. She has experienced "smokey" smells and sulfur smells, as well as the deposit of an ash-like substance at her home. She did not testify concerning the source of the substance.

23. Although several types of odors --mainly wood odors-- are generated by Coastal's plywood manufacturing process, Coastal does not generate any odors that could be described as acid or sulfur odors.

24. The log yard where Coastal stores harvested pine logs has odors of cut pine logs. The block conditioning area where logs are cut into eight-foot lengths and soaked in hot water has additional odors of cut wood and wet wood.

25. A small amount of caustic or base is added to the water occasionally to keep the pH of the water neutral because wood is naturally acidic. Caustic generally tends to smell like soap or bleach; however, no such odors were associated with the caustic at Coastal Lumber.

26. The area where the logs are peeled into thin veneer sheets generates pine odors. The dryers used on the sheets of

veneer generate a smell described alternatively as a pine oil or a cookie-baking scent. Where the gluing occurs there is a faint odor similar to Elmer's glue.

27. Additionally, an area near the boilers where sawdust and bark are stored for fuel generates smells, but none that would be objectionable. The area where the cores of the logs are treated and sliced into landscaping timbers has a slight, treated-wood odor. Also, where the plywood is color-coded by painting the edges, there is a localized paint smell.

29. Neither the boilers nor a re-circulating pond at the Coastal facility are associated with any odors.

30. From 1989 until the publication of the Notice of Intent to issue the Title V permit, Coastal did not receive any complaints about its Plywood Manufacturing facility in Havana, Florida.

31. None of the processes at the Coastal facility generate sulfur or acid types of odors. Acid odors are usually associated with chemicals that contain sulfur. Wood fuel, as is used in the boilers, does not generally generate sulfur emissions.

32. A facility such as the asphalt plant near Coastal's location burns fuel oil and could generate sulfur odors. The asphalt plant is subject to the same emissions limitations as Coastal.

33. Frequent open burning of trash, including tires, by other persons occurs near the Coastal facility and could produce sulfur smells.

34. None of the odors at the Coastal facility are likely to mix with odors produced at other facilities in the area to create objectionable odors. Nor would any of the odors or processes within the plant combine to create chemical reactions leading to objectionable odors.

35. Coastal employees who offered testimony regarding odors have a normal sense of smell. None of the Coastal employees who have responded to the Petitioners' complaints have been able to detect the odor conditions described by Petitioners.

36. No employees have complained of objectionable odors at the plant. No employees have been made sick by or quit because of odors at the plant within the last five years. Nor have any workers' compensation claims been filed because of odors generated by the plant.

37. Contractors from Air Consulting and Engineering, Inc., hired by Coastal to conduct emissions testing at its facility, and a consultant from Environmental Resources Management Group, hired to study odors generated by the facility, have never noticed objectionable odors at the Coastal facility.

38. DEP inspectors have visited Coastal on rainy, humid days when the odors would be expected to be at the worst and did not detect objectionable odors. Also, DEP inspectors who responded to Petitioners' complaints were unable to detect significant levels of odors at Petitioners' residence.

39. Coastal's operations are not offensive to neighboring businesses and residences. A restaurant, located closer to

Coastal Lumber than Petitioners' residence, has not made any complaints regarding odor.

40. No credible evidence established that the odors complained of by the Petitioners were produced by Coastal Lumber. To the contrary, the evidence demonstrates that the odors may be caused by one or more other sources in the vicinity.

41. No evidence was presented to indicate that odors emitted at the plant pose any danger to human health or welfare.

42. Coastal Lumber's operations do not produce objectionable odor.

43. The main sources of visible emissions which would be covered by the Title V permit are the three boilers used to generate steam for the plant.

44. "Excess emissions" occur when a boiler becomes "upset" due to a malfunction of equipment or the startup or shutdown of equipment. Such conditions account for occasional dark puffs emitted by the boilers, but do not occur for long periods of time. Under DEP rules and the draft permit conditions, excess emissions may not exceed two hours in a twenty-four (24) hour period. Coastal has complied with excess emissions limits in the past and can comply with the draft permit conditions regarding excess emissions.

45. The boilers at Coastal Lumber are equipped with oxygen sensors that regulate the rate of fuel coming into the boiler before an upset condition occurs, thus, minimizing excess emissions. Coastal Lumber has excess steam capacity so if a

boiler is not operating properly it will be shut down. A computer also records the occurrence of upset conditions. Because the sensors are sent to an outside facility to be maintained and calibrated, Coastal employees can not change sensor settings or information recorded by the computers.

46. Under its current operating permits, Coastal is required to conduct annual testing for visible emissions and has been found in compliance every year. During that testing, the plant operates under its normal procedures and at its normal capacity.

47. Under its current operating permits, Coastal has been subject to inspections by DEP investigators, including weekend inspections. Some of the visits are scheduled so that Coastal knows the inspectors are coming, and others are not scheduled or announced in advance.

48. Contractors from Air Consulting and Engineering, Inc., hired by Coastal to conduct visible emissions test have always found Coastal in compliance with visible emissions limits placed on it. Air Consulting and Engineering, Inc.'s reports and test results have always been accepted by DEP.

49. DEP personnel have inspected the Coastal facility at least ten (10) times between December of 1996 and the hearing on February 9, 1998 -- eight of those inspections were made after January 24, 1998. Those inspections included an unannounced weekend inspection of the plant.

50. Based on the Title V Application and Coastal Lumber's history of compliance with emissions limits, Coastal can comply with DEP emissions regulations.

51. No employees have been made sick by or quit because of smoke at the plant. Nor have any workers' compensation claims been filed because of smoke generated by the plant.

52. Petitioners also complained of black smoke from Coastal's log loaders. These diesel-fueled motor vehicles are not subject to the Title V air permit.

53. Coastal has responded promptly to complaints of Petitioners and has made diligent efforts to locate excess emissions from its plant, but Petitioners' complaints can not be substantiated.

54. In the absence of credible evidence that Coastal exceeds DEP emissions limits or that emissions from Coastal are harmful to human health or property, it is established that Coastal can operate in compliance with DEP standards for visible emissions.

CONCLUSIONS OF LAW

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

56. DEP is the regulatory agency authorized by the State to act as the permitting authority for Title V Air Operation Permits, such as the permit at issue in this proceeding, pursuant to Chapter 403, Florida Statutes, and Chapters 62-4, 62-210, and

62-213, Florida Administrative Code.

57. Coastal, as the applicant for a Title V Air Operation Permit, carries the ultimate burden of persuasion of its entitlement to the permit throughout the proceeding until final agency action is taken. Florida Department of Transportation v. J.W.C., 396 So. 2d 778, 787-88 (Fla. 1st DCA 1981). Hence, Coastal carries the burden of proving that "reasonable assurances" have been provided that pollution standards can and will be met.

58. A "reasonable assurance" envisions "a substantial likelihood" that a facility will comply with pollution limits. See Metropolitan Dade County v. Coscan Florida, Inc., 609 So. 2d 644, 648 (Fla. 3d DCA 1992). A reasonable assurance need not be a guarantee. See Reina v. Southeast Oil Dev. Corp., 97 ER FALR 173 (Dept. of Env'tl. Protection 1997).

59. Once an applicant preliminarily establishes 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, will support denial of the permit. J.W.C., 396 So. 2d at 789.

60. A Title V Air Operation Permit is required to continue the operations at the Coastal facility. Coastal has provided reasonable assurances that, under the terms of the Draft Permit, the operation of the Coastal Lumber facility will comply with all appropriate provisions of Chapter 62, Florida Administrative

Code, including both provisions prohibiting objectionable odors and provisions pertaining to visible emissions – the only issues raised by Petitioners.

61. The Coastal Lumber 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."

62. Section 62-210(200), Florida Administrative Code, defines objectionable odor as "any 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 life or property, or which creates a nuisance."

63. Pursuant to the conditions in Draft Permit No. 0390009-002-AV, Section II, Coastal must comply with the FDEP odor rule and visible emissions standards under Section 62-296.320(4)(b), Florida Administrative Code, which limit visible emissions to twenty (20) percent capacity.

64. Based on the evidence presented at the hearing, Coastal has provided reasonable assurances that the DEP odor rule and DEP visible emissions standards will be met; therefore, Coastal Lumber is entitled to a Title V Air Operation Permit.

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 Coastal's Application for a Title V Air Operation Permit subject to the conditions set forth in the Draft Permit.

DONE AND ENTERED this 18th day of March, 1998, in Tallahassee, Leon County, Florida.

DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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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.