

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SAFE HARBOR ENTERPRISES, INC.,            )  
  )  
      Petitioner,                            )  
  )  
vs.    )     Case No. 98-3695  
  )  
ROBBIE'S SAFE HARBOR MARINE            )  
ENTERPRISES, INC., and DEPARTMENT    )  
OF ENVIRONMENTAL PROTECTION,        )  
  )  
      Respondents.                        )  
\_\_\_\_\_)

RECOMMENDED ORDER

Pursuant to Notice, this cause was heard by Linda M. Rigot, the assigned Administrative Law Judge of the Division of Administrative Hearings, on December 10, 1998, in Key West, Florida.

APPEARANCES

For Petitioner:	Roger M. Bernstein, Vice-President Safe Harbor Enterprises, Inc. Post Office Box 144235 Coral Gables, Florida 33144
For Respondent, Robbie's Safe Harbor Marine Enterprises, Inc.:	Tracy J. Adams, Esquire Tracy J. Adams, P.A. 617 Whitehead Street Key West, Florida 33040
For Respondent, Department of Environmental Protection:	W. Douglas Beason, Esquire Department of Environmental Protection 3900 Commonwealth Boulevard Mail Station 35 Tallahassee, Florida 32399-3000

STATEMENT OF THE ISSUE

The issue presented is whether the application of Respondent Robbie's Safe Harbor Marine Enterprises, Inc., for a general permit to construct and operate a solid waste transfer station should be granted.

PRELIMINARY STATEMENT

Respondent Robbie's Safe Harbor Marine Enterprises, Inc., applied to the Department of Environmental Protection for a solid waste transfer station general permit and published notice of that application. Petitioner Safe Harbor Enterprises, Inc., timely objected to the issuance of a general permit, requesting an evidentiary proceeding. This cause was thereafter transferred to the Division of Administrative Hearings to conduct the proceeding.

The Respondents presented the testimony of Sandra Walters, Ghaus Minhaj, Robert Reckwerdt, and James T. Edds, Jr. The Petitioner presented the testimony of Miriam Bernstein, Ray Gonzalez, and James T. Edds, Jr. Additionally, Petitioner's Exhibits numbered 1-3, 5, and 6 and Respondents' Exhibits numbered 1 and 2 were admitted in evidence.

Only Petitioner and Respondent Robbie's Safe Harbor Marine Enterprises, Inc., filed proposed recommended orders post hearing. Those documents have been considered in the entry of this Recommended Order. The transcript of proceedings was not filed.

## FINDINGS OF FACT

1. In April 1998 Respondent Robbie's Safe Harbor Marine Enterprises, Inc., filed an application with Respondent Department of Environmental Protection, seeking a general permit to construct and operate a solid waste transfer station at the end of Shrimp Road on Stock Island in Monroe County, Florida. The application was accompanied by the required supporting documentation, including a site plan and an engineering report.

2. The site plan submitted with the application depicted access to the transfer station by using Shrimp Road. The access road was also designated as a private road.

3. What the site plan and remainder of the application did not reveal is that Shrimp Road, the private road providing access from the public road system to the proposed solid waste transfer station, is not owned by Robbie's. Rather, the road is owned by the adjoining property owner, Petitioner Safe Harbor Enterprises, Inc. Robbie's is the holder of an easement allowing use of Shrimp Road.

4. Robbie's published notice of its application for a general permit to construct and operate a solid waste transfer station. As a result of that notice, the adjoining property owner, Safe Harbor Enterprises, Inc., filed the petition initiating the instant proceeding, objecting to the issuance of a general permit to Robbie's.

5. On February 2, 1998, prior to Robbie's filing its application for a general permit to construct and operate its solid waste transfer station, Robbie's entered into a Consent Order with the Department which resolved the Department's allegations that Robbie's had been operating a solid waste transfer facility without a permit.

#### CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the subject matter hereof and the parties hereto. Sections 120.569 and 120.57(1), Florida Statutes.

7. Section 403.087, Florida Statutes, requires a permit for any stationary installation reasonably expected to be a source of pollution, unless exempted by Department rule, and authorizes the Department to promulgate rules for the issuance of permits. Pursuant thereto, the Department has promulgated Rule 62-701.801, Florida Administrative Code, allowing the issuance of general permits for solid waste transfer stations.

8. Petitioner Safe Harbor Enterprises, Inc., objects to the issuance of a general permit to Robbie's for three reasons:

(a) Robbie's has operated an illegal and unlicensed solid waste transfer facility; (b) There is no need for Robbie's facility; and (c) Robbie's has no access since the proposed facility would expand the intended use of Robbie's limited easement. The first two arguments are without merit.

9. Rule 62-701.320(3), Florida Administrative Code, requires the Department to consider prior violations of applicable statutes and rules relating to the operation of a solid waste management facility if the applicant is "irresponsible" as that term is defined. The only evidence offered in this proceeding as to whether Robbie's is an irresponsible applicant was twofold: a copy of the Consent Order which recites that Robbie's has neither admitted nor denied the Department's allegations, and the testimony of Robbie's president that a lessee, not Robbie's, operated the illegal facility. Such evidence falls far short of proving Robbie's to be an irresponsible applicant.

10. Petitioner also argues that there is no need for Robbie's facility. However, no authority has been cited, and none has been found, which would support the argument that the Department should consider whether the facility is needed.

11. Petitioner's argument regarding the lack of access to the proposed facility is persuasive. Rule 62-701.801(2), Florida Administrative Code, requires that an application for a general permit for a solid waste transfer station include a site plan which must show entrances, exits, on-site roadways, and access roads. Robbie's application reflected Shrimp Road to be the private road which would provide access between the proposed facility and the public road system. The evidence is uncontroverted that Robbie's alleged private road is only an

easement and that the owner of the property on which the easement

is located objects to the use of the easement for the purpose of providing access to a solid waste transfer station.

12. Petitioner offered both evidence and argument that the easement when created was intended to be limited in use and that Robbie's proposed expansion of that use to carry vehicles of the size and weight required for operation of the proposed solid waste transfer facility is not permitted. See Crutchfield v. F. A. Sebring Realty Co., 69 So. 2d 328 (Fla. 1954); Walters, et al. v. McCall, 450 So. 2d 1139 (Fla. 1st Dist. 1984). The parties to this proceeding agree that any use or restriction of the easement can only be adjudicated by a circuit court and cannot be resolved in this proceeding.

13. Rule 62-701.801, Florida Administrative Code, requires that the site plan show both the on-site roadways and the access roads. Robbie's application complies on its face by showing the easement and labeling it a private road. However, once the owner of the property disputed the availability of the easement for access to the proposed facility, it was incumbent upon Robbie's, if it wished to demonstrate compliance with all requirements for obtaining a general permit, to resolve the dispute surrounding the use of the easement. Since the use of the easement is not resolved, then Robbie's cannot show that it has access roads so that the facility can be accessed. Accordingly, Robbie's has not demonstrated reasonable assurance of compliance with all the conditions precedent to the issuance of a general permit for a

solid waste transfer station, and Robbie's application must be denied.

RECOMMENDATION

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

RECOMMENDED that a final order be entered denying Robbie's Safe Harbor Marine Enterprises, Inc.'s, application for a general permit to construct and operate a solid waste transfer station.

DONE AND ENTERED this 29th day of January, 1999, in Tallahassee, Leon County, Florida.

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LINDA M. RIGOT  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 29th day of January, 1999.

COPIES FURNISHED:

Roger M. Bernstein, Vice-President  
Safe Harbor Enterprises, Inc.  
Post Office Box 144235  
Coral Gables, Florida 33144

Tracy J. Adams, Esquire  
Tracy J. Adams, P.A.  
617 Whitehead Street  
Key West, Florida 33040

W. Douglas Beason, Esquire



Department of Environmental Protection  
3900 Commonwealth Boulevard  
Mail Station 35  
Tallahassee, Florida 32399-3000

Kathy Carter, Agency Clerk  
Department of Environmental Protection  
3900 Commonwealth Boulevard  
Mail Station 35  
Tallahassee, Florida 32399-3000

F. Perry Odom, General Counsel  
Department of Environmental Protection  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

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.