STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Petitioner,

vs.

HOLMES DIRT SERVICE, INC., and WILLIAM J. HOLMES,

Respondents.

Case No. 02-2278

FINAL ORDER

Pursuant to notice, this cause was heard by Charles A. Stampelos, the assigned Administrative Law Judge of the Division of Administrative Hearings, on November 21, 2002, in Tavares, Florida.

APPEARANCES

For Petitioner Department of Environmental Protection:

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

For Respondents Holmes Dirt Service, Inc., and William J. Holmes:

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STATEMENT OF THE ISSUE

The issue presented is whether Respondents, Holmes Dirt Service, Inc., and William J. Holmes, are in violation of various rules and regulations as alleged in the Notice of Violation issued by Petitioner, Department of Environmental Protection (Department).[1]

PRELIMINARY STATEMENT

On December 17, 2001, the Department issued a Notice of Violation to Respondents, Holmes Dirt Service, Inc., and William J. Holmes, finding both parties to be in violation of various rules regulating management and operation of Construction and Demolition Debris Disposal Facilities (C & D Facilities). Respondents timely requested an administrative hearing. Thereafter, this cause was transferred to the Division of Administrative Hearings (Division) to conduct a final hearing.

Petitioner and Respondents stipulated to the joint admission of Exhibits A through J. The Department presented the testimony of Gloria-Jean DePradine, James N. Bradner, Randall C. Cunningham, John Burton Turner, Charles F. LaBell and Donald Strickland. Respondents offered no witnesses. Respondents admitted to Count II of the Department's Notice of Violation.

At the conclusion of the hearing, the parties were granted ten days from the filing of the transcript within which to file their proposed final orders. The hearing transcript was filed on December 4, 2002. Each party filed proposed final orders and they have been considered in preparing this Final Order.

FINDINGS OF FACT

The Parties

1. The Department is charged with the duty to administer and enforce the provisions of Chapter 403, Florida Statutes, and the rules promulgated thereunder in Chapter 62, Florida Administrative Code.

2. Respondent, Holmes Dirt Service, Inc. (Holmes, Inc.), is a Florida corporation authorized to do business in the State of Florida. Holmes, Inc., along with William J. Holmes (Holmes), is responsible for the operation and management of a solid waste facility permitted by the Department under the name "Holmes Fill Dirt Landfill" (Facility).

3. Holmes is a citizen of the State of Florida. Holmes was also the Director of Holmes Dirt Service, Inc.

Background

4. On or about August 24, 1998, the Department issued Permit/ Certification No. SO42-0133361-001 to Holmes Fill Dirt Landfill for the operation and management of a C & D disposal facility. The permit was sent to the attention of Holmes and

had an expiration date of August 24, 2003. This was a renewal permit, with the initial permit issued in or around 1993.

5. On or about June 26, 2000, Respondents notified the Department that the facility was temporarily closed. The Facility has remained closed since that time.

6. Holmes, Inc., and Holmes own and operate the Facility known as Holmes Fill Dirt Landfill

7. Holmes testified by deposition that he received a Conditional Use Permit from Marion County to operate the Facility. This permit expired on June 1, 2000. The Facility has been closed since at least June 1, 2000, although it has not been officially closed pursuant to Department rules.[2] The Facility has not received any additional C & D material after June 1, 2000.

8. On December 17, 2001, the Department issued a Notice of Violation to Holmes, Inc., and Holmes. On June 3, 2002, Respondents requested an administrative hearing before the Division.

Count I-Failure to Provide Department with Adequate Financial Assurance Documentation

9. In Count I, the Department alleges "that from June 2000, to the present, Respondents have failed to provide the Department with adequate financial assurance documentation." On June 4, 2001, the Department sent Respondents a letter advising

that the financial assurance documentation was inadequate. (Respondents admit the letter was sent, but deny their documentation was inadequate.) The Department specifically contends that Respondents did not provide an annual update of the closing costs to the Department and that the assurance bond, previously issued in 1998, see Finding of Fact 11, was no longer acceptable to the Department.

10. Rule 62-701.730(11), Florida Administrative Code, requires an owner or operator of an off-site construction and demolition debris disposal facility to provide to the Department proof of financial assurance "issued in favor of the State of Florida in the amount of the closing and long-term care cost estimates for the facility." This information is required to be submitted with the permit application for the facility.

11. Financial assurance is required should the State of Florida have to take over closure or long term care of a facility. On May 29, 1998, Holmes, Inc., and Holmes (as Vice President of Holmes Inc.) entered into a Trust Agreement with United Southern Bank, as Trustee, to provide financial assurance for the Facility. This agreement contained a cost estimate of $76,551.72 for closure and post-closure of the Facility. On April 29, 1998, a bond was executed between Holmes, Inc., and Frontier Insurance Company (Frontier) in this amount. Thus, when the C & D permit was renewed in 1998, Respondents obtained

financial assurance in the form of a closure cost/long-term care bond from Frontier.

12. Rule 62-701.630(3), Florida Administrative Code, pertaining to "cost estimates for closure," provides that the owner or operator shall estimate the total closure cost for the permitted potions of the landfill for the period in the operation "when the extent and manner of its operation make closing costs most expensive."

13. Rule 62-701.630(4)(a)-(d), Florida Administrative Code, pertaining to "cost adjustments for closure," requires the financial assurance to be updated annually to account for the inflation factor of 1.01. Once a bond is in place, as here as of 1998, these subsections require the permittee, here Holmes Inc., to provide the Department, on an annual basis, with an update to the closure cost, which includes the inflation factor. Additionally, the Department requires notification from the owner or operator that the annual update has been made.

14. Prior to 2001, there was no set time for a facility to report this information. As of 2001, each facility was required to report by March 1 of each year.

15. In 2000, the Department's Tallahassee office notified its Central District Office that the financial assurance for the Holmes Fill Dirt Landfill was inadequate.

16. On June 14, 2000, the Central District Office mailed a letter to the Holmes facility notifying Respondents that there was a problem with financial assurance in that as of June 1, 2000, Frontier was no longer listed as an acceptable surety and, as a result, Respondents were requested to "submit proof of alternate financial assurance," or risk an enforcement action.

17. A letter dated November 15, 2002, from Frontier to Judith Holmes, who is listed in the letter as the President of Holmes Dirt Service, Inc., was sent to Respondents to notify them that premiums were still due and outstanding on their closure/long-term care financial assurance bond for the past two years. This letter also informs that it was the position of Frank Hornbrook of the Department "that all of the requirements covered by our bond have not been satisfied and our bond has not been officially closed by the obligee. As a result, this bond still carries liability and premiums due." (The Department does not release a bond until a facility is officially closed and the Facility is not officially closed.) Invoices for "01/02 and 02/03 renewal premium due" were enclosed with the letter. Holmes admitted that the premium is past due and that he has no money to pay the premium.

18. Even though the bond renewal premiums are past due, there is no persuasive evidence that Frontier has been relieved of its obligations under the bond issued in 1998. Rather, the

Department wants a replacement bond from Respondents, but the original bond will remain in place until a replacement bond is furnished by Respondents. In fact, the Department will look to Frontier for potential payment under the 1998 bond, if necessary. However, Respondents have not provided the Department with the inflation update financial assurance in 2001. As a result, the current financial assurance for Holmes Fill Dirt Landfill is inadequate.

Count II- Failure to Provide Ground Water Monitoring Reports

19. The Department alleged that from "June 2000 to June 2001, Respondents failed to sample and analyze the ground water in accordance with the approved ground water monitoring plan for two consecutive sampling events." Respondents admit these allegations. Apparently, the last report was submitted to the Department in 2000. The Department does not allege that the ground water on and off-site violate Department rules. Holmes testified during a deposition that "the water tests have been clean. . . . until he stopped the sampling process." Holmes says he does not have "any money"--"[he is] broke."

Count III-Objectionable Odors

20. The Department alleged that "[d]uring the period June 2000 to the present, the Department has received numerous complaints from residents in the area, alleging objectionable

odors emanating from the landfill." Respondents deny that there have been "objectionable odors."

21. Chapter 62-701, Florida Administrative Code, pertains to "Solid Waste Management Facilities." Rule 62-701.730(7)(e), Florida Administrative Code, provides that C & D debris disposal facilities "shall be operated to control objectionable odors in accordance with Rule 62-296.320(2), F.A.C. If objectionable odors are detected off-site, the owner or operator shall comply with the requirements of paragraph 62-701.530(3)(b), F.A.C."[3] Rule 62-701.200(84), Florida Administrative Code, incorporates the definition of "objectionable odors" found at Rule 62-210.200(181), Florida Administrative Code.

22. "Odor" is defined as "[a] sensation resulting from stimulation of the human olfactory organ." Rule 62-210.200(182), Florida Administrative Code. Rule 62-210.200(181), Florida Administrative Code, defines an "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 life or property, or which creates a nuisance."

23. Rule 62-296.320(2), Florida Administrative Code, provides that "[n]o person shall cause, suffer, allow or permit the discharge of air pollutants which cause or contribute to an

objectionable odor." See also Rule 62-210.200(19)-(20), Florida Administrative Code.

24. Joint Exhibit I is a study currently being done by Professor Timothy Townsend, Ph.D., of the University of Florida, Department of Environmental Services, which states that disposal of drywall, which contains gypsum, has caused hydrogen sulfide generation ("rotten egg" smell) at numerous C & D landfills in Florida. (Dr. Townsend is recognized as an authority on landfills.) Further, the primary constituents in the gas creating the problem is, among other reduced sulfur compounds, hydrogen sulfide. The main ingredient for these compounds is gypsum drywall. The study finds that hydrogen sulfide possesses a very strong odor at very low concentrations and is known to be toxic at high concentrations. The discussion of human health impact with regard to odor problems is raised and culminates with the observation that while hydrogen sulfide concentrations in ambient air surrounding C & D waste landfills are less than those thought of as harmful, some studies indicate that long-term exposure even to low concentrations can have a health impact.[4]

25. Holmes admitted that there is an odor problem at the Facility caused by gypsum and drywall and that the odor is worse in rainy weather. Holmes also admitted attempting to correct the problem by previously inviting individuals from the

University of Florida to the facility, but reported that there was nothing they could do at that time, except for keeping the area covered with dirt.

26. Individuals residing near the Facility offered opinion testimony that they suffered various problems resulting from the odor emanating from the Facility. Neighbor Charles F. LaBell, who resides 500 to 600 feet from the landfill, testified that the odor began as a rotten egg smell and evolved into what they "assumed was a hydrogen sulfide" odor. Mr. LaBell testified to being familiar with the odor of hydrogen sulfide due to his work experience at a wastewater treatment plant. Mr. LaBell further stated that the odor was unpredictable and not constant, but he equated rainy periods and "foggy mornings" with times when the odor would occur. The neighbors have found that outdoor activities have been severely impacted, resulting in a loss of use of portions of their property and diminished enjoyment of their outdoor life. Neighbor Donald L. Strickland confirmed Mr. LaBell's testimony, stating, in part, "You can't go outdoors, you can't stand it."

27. James Bradner, an employee with the Department for twenty-three years and current manager of the Department's solid and hazardous waste program, offered opinion and expert testimony on the issue of odor problems at C & D debris disposal facilities. Mr. Bradner has served in a technical advisory

capacity to a technical awareness group on odors caused by gypsum drywall in C & D debris facilities and has had experience at various C & D debris facilities in the State of Florida contending with odor problems. Mr. Bradner has experienced hydrogen sulfide odors at water treatment plants and would characterize the odor as a rotten egg odor. He has also had experience with C & D debris disposal facilities dealing with gypsum-related odor problems and testified that there are various methods to deal with the odor problems, such as putting an impervious cap (excluding water and liquids) of a clay liner and actually closing the Facility.

28. Mr. Bradner has never been on the Facility site.

29. The Department's rules do not define "health." Odor is a subjective measure, according to Mr. Bradner.

30. Department employee John Turner was responsible for taking air samples in order to assess the odor problems at the Facility. Mr. Turner has been with the Department for 26 years, and in his experience with the Department, has smelled the rotten egg odor of hydrogen sulfide at sewage treatment plants and municipal solid waste facilities. Mr. Turner met with neighbors residing near the Facility as a results of complaints of odor. He visited the Facility five times to collect air samples. He detected an odor during his initial three visits, but did not take any samples because the aired smelled was not

representative of a strong odor. For Mr. Turner, during each visit, the odor was the same in quality. There was some variation in strength. "It was periodic in some cases and less periodic in other cases."

31. He collected samples during his fourth and fifth visits, but the "samples were below the minimum detection levels for the method." Mr. Turner offered no scientific evidence that would indicate that the air was harmful on the dates when samples were taken and analyzed. Nevertheless, Mr. Turner opined that the odor was objectionable in accordance with the definition found in Rule 62-210.200(181), Florida Administrative Code, on all five occasions.

Count IV-Failure to Control Access

32. The Department alleged that "access to the Facility was not completely controlled." Respondents deny the allegation.

33. Rule 62-701.730(7)(c), Florida Administrative Code, provides: "Operation requirements. Owners and operators of construction and demolition debris disposal facilities shall comply with the following requirements by May 1, 1997, or at the time of permit issuance, whichever is sooner: . . .(c) Access to the disposal facility shall be controlled during the active life of the facility by fencing or other effective barriers to

prevent disposal of solid waste other than construction and demolition debris."

34. Department employee Gloria-Jean DePradine testified that Florida Rules require that all C & D facilities have an effective barrier so as to prevent unauthorized disposal of waste. An effective barrier could be fencing, although the Department does not require a specific type of fencing. It depends on the situation.

35. Holmes originally owned a 46-acre tract (the property). The Facility is located on 13 acres of this property. Holmes resided on the property until he sold his residence in 2000 to Valentina Ellis.

36. The property has an earthen berm along Highway 42, the southern boundary of the property, which is a barrier. The entrance to the property is controlled by a gate, which provides access to the property. There is no fence separating the Facility from the residence. A fence exists along the perimeter of the property. The property is in the same condition today as when the Department originally issued the permit in 1993.

37. When the Facility was permitted and operated by Holmes, the Department found the access control to be acceptable. However, when a portion of the property (10 acres) was sold to Ms. Ellis, access was no longer being controlled completely because Holmes had provided the necessary security

for the Facility, being the owner of the entire 46-acre tract. Because there are two separate property owners, Ms. Ellis can now directly enter the Facility property, or any other members of the public that entered her property, could enter the Facility and dump unauthorized waste.

38. Randall Cunningham has been employed with the Department since May 1999, and has been working in the solid waste section since October 2000. On November 19, 2001, Mr. Cunningham conducted an inspection of the Facility site in response to an odor complaint and found that there was no barrier between the property owned by Ms. Ellis and the Facility. Mr. Cunningham was able to drive from Ms. Ellis' property onto the landfill. Mr. Cunningham saw a fence leading onto Ms. Ellis' driveway with a swinging gate attached to a post, which was attached to a fence. Mr. Cunningham did not visit the Facility while it was in operation.

39. There is no effective barrier between Ms. Ellis' property and the Facility. Additionally, the Facility is not yet officially closed.

Count V-Investigative Costs

40. The Department alleged that it incurred expenses of not less than $500 while investigating this matter.

41. Investigative costs are recoverable pursuant to Section 403.141(1), Florida Statutes, which states: "Whoever

commits a violation specified in s. 403.161(1) is liable to the state for . . . reasonable costs and expenses of the state in tracing the source of the discharge, [and] in controlling and abating the source and the pollutants. . . ."

42. Mr. Bradner's salary is approximately $35.00 per hour. He spent approximately 20 to 30 hours on this case which would total approximately $700.00.

43. Mr. Turner's salary is approximately $25.00 per hour. Mr. Turner visited the Facility on five separate occasions in order to attempt to collect an air sample. It took him an hour and a half, to one hour and 45 minutes to get to the Facility. He usually spent approximately one half hour at the Facility.

44. The Department conducted the two sampling events referred to above, which were sent to a lab in Los Angeles for analyses. Each analysis cost $250.00.

CONCLUSIONS OF LAW

45. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in this case. Sections 120.57(1) and 403.121(2)(d), Florida Statutes.

46. The Department has the burden of proving, by a preponderance of the evidence, that Respondents are responsible for the violations. Section 403.121(2)(d), Florida Statutes. See Saporito v. Bone, 195 So. 2d 244, 245 (Fla. 2d DCA 1967) for a definition of the test of preponderance of the evidence.

47. Respondents are the owners and operators of the Holmes Fill Dirt Landfill Facility, a C & D debris disposal facility.

48. Respondents admit they did not provide the Department with ground water monitoring reports. A penalty of $1,000.00 is appropriate. See Section 403.121(4)(d) and (f), Florida Statutes.

49. Rules 62-701.730(11), 62-701.630(3), and 62-701.630(4)(a)-(d), Florida Administrative Code, require the owner or operator of a facility to obtain adequate financial assurance, update that assurance annually to adjust for inflation costs and submit the annual update information to the Department. Respondents have not submitted their annual payments to the bonding company (Frontier), although the 1998 renewal permit bond has not been cancelled and, on this record, the Department can look to Frontier if necessary because the renewal bond has not been cancelled. However, Respondents have not provided the Department with the 2001 annual update. Consequently, the financial assurance is inadequate and Respondents are in violation of Rules 62-701.630(3) and 62-701.630(4)(a)-(d), Florida Administrative Code. A penalty of $1,000.00 is appropriate. See Section 403.121(4)(a) and (f), Florida Statutes.

50. Respondents are in violation of Rules 62-701.730(7)(e) and 62-296.320(2), Florida Administrative Code, which require

that C & D debris disposal facilities shall be operated to control objectionable odors. The Department defines an "objectionable odor" as "[a]ny odor present in the outdoor atmosphere which by itself or in conjunction 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." Rule 62-210.200 (181), Florida Administrative Code.

51. The Department proved that the odor detected unreasonably interferes with the neighbors comfortable use and enjoyment of their life and property. However, the Department did not prove, by a preponderance of the evidence, that the odor "is or may be harmful or injurious to human health or welfare." The Department reasonably interprets Rule 62-210.200(181) to prohibit, in the disjunctive, three separate problems. Compare with Section 403.031(7), Florida Statutes, and Rule 62-210.200(20), Florida Administrative Code. Accordingly, Respondents are in violation of Rules 62-701.730(7)(e) and 62-296.320(2), Florida Administrative Code. Additionally, the Facility should be properly closed in order to foreclose the release of "objectionable odors" in the future. See pages 22-24, infra. A penalty of $500.00 is appropriate. See Section 403.121(5), Florida Statutes.

52. Respondents are in violation of Rule 62-701.730(7)(c), Florida Administrative Code, which provides in part: "Operation requirements. Owners and operators of construction and demolition debris disposal facilities shall comply with the following requirements by May 1, 1997, or at the time of permit issuance, whichever is sooner: . . . .(c) Access to the disposal facility shall be controlled during the active life of the facility by fencing or other effective barriers to prevent disposal of solid waste other than construction and demolition debris." There is no fencing or any other type of effective barrier blocking anyone on Ms. Ellis's property from entering the property on which the Facility is located. (This was not a problem according to the Department, when Holmes operated the facility and resided nearby. It became a problem when Ms. Ellis bought the property.) Also, the Facility is not yet closed. Accordingly, Respondents are not controlling access as required by Rule 62-701.730(7)(c), Florida Administrative Code, and a penalty of $500.00 is appropriate. See Section 403.121(5), Florida Statutes.

53. The penalties assessed in this proceeding are below the amount requested by the Department and the statutory schedule. However, the facility has not been operational since June 2000 and the remedial efforts outlined by the Department in its Notice of Violation and incorporated herein, are extensive

and appear to require the expenditure of money by Respondents, which they apparently do not have. See Finding of Fact 19. See also Section 403.121(10), Florida Statutes. Nevertheless, these provisions shall be complied with in order to avoid further problems with the Facility.

54. Evidence was presented that investigative hours and costs in excess of $500 were spent on this case. The Department is entitled to recover investigative costs pursuant to Section 403.141(1), Florida Statutes, of $500.00.

CONCLUSIONS

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

1. Respondents shall forthwith comply with all Department rules regarding solid waste management as related to the disposal of C & D debris. Respondents shall correct and redress all violations in the time periods required below and shall comply with all applicable rules in Chapters 62-296 and 62-701, Florida Administrative Code.

2. Within 30 days of the effective date of this Final Order, Respondents shall prevent unauthorized waste disposal at the Facility, and shall provide access control by the use of fencing, gates, or other effective barriers on the portion of property that is contiguous with property owned by Ms. Valentina Ellis.

3. Within 30 days of the effective date of this Final Order, Respondents shall obtain adequate financial assurance and shall provide the Department with proof of financial assurance issued in favor of the State of Florida, in the amount of the closing and long-term care cost estimates for the Facility, if the 1998 renewal bond is no longer in full force and effect. (If the renewal bond is in full force and effect, Respondents shall provide the Department with an appropriate financial update.) Otherwise, proof of financial assurance shall consist of one or more of the following instruments which, comply with the requirements of Rule 62-701.630(6), Florida Administrative Code: trust fund agreement; certificate of deposit; surety bonds guaranteeing payment; surety bonds guaranteeing performance; irrevocable letter of credit; closure insurance; or financial test and corporate guarantee.

4. Respondents shall continue to monitor and analyze the ground water at the Facility in accordance with the approved monitoring plan through the active life of the Facility, and for five years after closure activities are completed. The ground water monitoring results shall be submitted to the Department for review within 45 days of each sampling event.

5. Respondents shall control any objectionable odors emanating from the Facility in accordance with Rule 62-296.320(2), Florida Administrative Code. Since strong odors

have been detected off-site, beyond the disposal area boundary, Respondents shall comply with the requirements of Rule 62-701.530(3)(b), Florida Administrative Code. See Endnote 3. Therefore, within 30 days of the effective date of this Final Order, Respondents shall implement a routine monitoring program to determine the timing and the extent of any off-site odors. If the monitoring program confirms the existence of objectionable odor, Respondents shall submit to the Department for approval an Odor Remediation Plan (Plan) within 60 days of confirmation of objectionable odors. The Plan shall describe the nature and extent of the problem and the proposed remedy. The Plan shall be implemented within 30 days of approval.

6. Upon review of the Plan, the Department may request additional information. Any additional information shall be submitted to the Department within 30 days of receipt of the Department's written request. If additional information is not submitted in a timely manner, the Department will approve or deny the Plan as submitted. Upon approval, the Plan shall be incorporated herein and made part of this Final Order and the Respondents shall implement the conditions in the Plan pursuant to an approved schedule. If the proposal is denied, Respondents shall submit a new plan or modifications to the plan within 30 days and the review process shall continue as detailed herein.

7. Respondents shall submit monthly reports to the Department. The reports shall include all data collected during the monitoring. The first report shall be submitted to the Department within 45 days of the implementation of the plan and shall continue every 30 days thereafter.

8. Respondents are ordered to close the Facility within 60 days of this Final Order, unless the time is extended by the Department. Respondents shall implement closure activities in accordance with Rule 62-701.730(9)(b)(c)(d) and (10), Florida Administrative Code. Closure activities shall include, but not be limited to the following:

> A. Grade and compact the disposal area to eliminate ponding, promote drainage and minimize erosion.
>
> B. Establish and maintain side slopes no greater than three feet horizontal to one foot vertical rise in all above-grade disposal areas.
>
> C. Establish and maintain final cover consisting of a 24-inch thick layer of clean soil, the upper six inches of which shall be capable of supporting vegetation.
>
> D. Seed and/or plant vegetative cover over the disposal area.

Respondents shall monitor the effectiveness of the cover for a minimum of five years following completion of closure activities, and acceptance by the Department.

9. Within 30 days of the completion of the closure activities, Respondents shall provide the Department with "Certification of Closure Construction Completion" and a final survey report, conducted by a Professional Land Surveyor in accordance with Rule 62-701.610(3) Florida Administrative Code, if the disposal operation has raised the elevation higher than 20 feet above natural land surface.

10. Within 60 days of the effective date of this Order, Respondents shall pay $3,000.00 to the Department for the administrative penalties assessed above. Payment shall be made by cashier's check or money order payable to the "State of Florida Department of Environmental Protection" and shall include thereon the OGC Case No.: 01-1946 and notation "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the Department of Environmental Protection, Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767.

11. In addition to the administrative penalties, within 60 days of the effective date of this Final Order, Respondents shall pay $500.00 to the Department for costs and expenses. Payment shall be made by cashiers check or money order payable to "State of Florida Department of Environmental Protection" and shall include OGC Case No. 01-1946 thereon with the notation "Ecosystem Management and Restoration Fund." The

payment shall be sent to the Department of Environmental Protection, Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767.

12. Respondents will remain liable to the Department for any damages resulting from the violations alleged herein and for the correction, control, and abatement of any pollution emanating from Respondents' Facility.

13. Respondents may request and the Department may extend the time limits imposed by this Final Order.

DONE AND ORDERED this 24th day of December, 2002, in Tallahassee, Leon County, Florida.

____

CHARLES A. STAMPELOS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings,
this 24th day of December, 2002.

ENDNOTES

[1]/ Pursuant to Section 403.121(2)(d), Florida Statutes, the parties have been re-aligned.

[2]/ A facility is not officially closed until, for example, it reaches its final grade, and a final survey is conducted and submitted to the Department "on a certificate of completion."

[3] Subsection (3)(b) provides:

> (b) Odor remediation plan. The Facility shall be operated to control objectionable odors in accordance with Rule 62-296-320(2), F.A.C. If gas concentrations cause objectionable odors beyond the landfill property boundary, the owner or operator shall:
>
> 1. Implement a routine odor monitoring program to determine the timing and extent of any off-site odors; and
>
> 2. If the monitoring program confirms the existence of objectionable odors, submit to the Department for approval an odor remediation plan for the gas releases. The plan shall describe the nature and extent of the problem and the proposed remedy. The remedy shall be initiated within 30 days of approval.

[4] Footnote one in the study notes: "A ceiling limit of 10 ppm over a 10 minute period was set as a recommended guideline by the National Institute for Occupational Safety and Health (NIOSH). Ambient concentrations in air surrounding C & D waste landfills is most often in the low ppb range." The OSHA standards for workers in the workplace is 50 pm over a 10 minute period.

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 the original notice of appeal with the Clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, 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 this Final Order.