STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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DIVISION OF ADMINISTRATIVE HEARINGS

LANIGER ENTERPRISES OF AMERICA, INC.,

Petitioner,

vs.

DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondent.

OGC CASE NO. 05-0726
DOAH CASE NO. 05-1599

FINAL ORDER

An administrative law judge with the Division of Administrative Hearings ("DOAH") submitted his Recommended Order ("RO") to the Department of Environmental Protection ("DEP") in this formal administrative proceeding. A copy of the RO is attached hereto as Exhibit A. The RO indicates that copies were served upon counsel for DEP and the Petitioner, Laniger Enterprises of America, Inc. ("Laniger"). DEP filed Exceptions to the RO, and Responses to Exceptions were filed on behalf of Laniger. The matter is now before the Secretary of DEP for final agency action.

BACKGROUND

Laniger is a Florida corporation that owns and operates a domestic wastewater treatment plant ("WWTP") located in Jensen Beach, Martin County, Florida. Laniger acquired the WWTP in 1988 in a foreclosure action. At the time Laniger purchased the WWTP, it was in a "dilapidated" condition and was operating under a consent order with

the Department of Environmental Regulation ("DER"), a predecessor agency of DEP.[1] After acquiring the WWTP, Laniger brought it into compliance with DER's requirements.

Laniger's WWTP does not have a direct discharge to surface water; and its treatment processes are extended aeration, chlorination, and effluent disposal to percolation ponds. This WWTP is one of a type of wastewater treatment facilities designed to serve small areas and commonly referred to as "package plants." In its 1991 report discussed hereafter, DER defined a package plant as a "manufactured treatment facility having a prefabricated or modular design and typically having a design capacity of less than one million gallons per day."

In 1989, the St. Johns River Water Management District and the South Florida Water Management District jointly produced a Surface Water Improvement and Management (SWIM) Plan for the Indian River Lagoon System ("the Lagoon System"). For the purpose of the planning effort, the Lagoon System was defined as composed of Mosquito Lagoon, Indian River Lagoon, and Banana River Lagoon. The Lagoon System extends from Ponce de Leon Inlet in Volusia County to Jupiter Inlet in Palm Beach County, a distance of 155 miles. The SWIM Plan identified high levels of nutrients as a major problem affecting water quality in the Lagoon System, and domestic wastewater was identified as the major source of the nutrients. With regard to package plants like Laniger's WWTP, the SWIM Plan stated:

> There are numerous privately operated, "package" domestic WWTPs which discharge indirectly or directly to the lagoon. These facilities are a continual threat to water quality because of intermittent treatment process failure, seepage to

[1] Effective July 1, 1993, the Department of Environmental Regulation and the Department of Natural Resources were transferred by a type-three transfer to a newly created Department of Environmental Protection.

> the lagoon from effluent containment areas, or overflow to the lagoon during storm events. Additionally, because of the large number of "package" plants and the lack of enforcement staff, these facilities are not inspected or monitored as regularly as they should be. Where possible, such plants should be phased out and replaced with centralized sewage collection and treatment facilities.

In 1990, the Legislature passed the Indian River Lagoon Act, Chapter 90-262, Laws of Florida. Section 1 of the Act defines the Indian River Lagoon System ("IRLS") as including the same water bodies as described in the SWIM Plan, and their tributaries. (emphasis supplied) It is undisputed in this case that the Laniger's WWTP is a package plant located adjacent to Warner Creek, a tributary of the St. Lucie River, which is a part of the IRLS. Thus, Warner Creek, itself, is a part of the IRLS. Section 4 of the Indian River Lagoon Act required DER to identify areas served by package sewage treatment plants, which package plants are considered a threat to the water quality of the IRLS.

In response to this legislative directive, DER issued a report in July 1991, entitled "Indian River Lagoon System: Water Quality Threats from Package Wastewater Treatment Plants." The 1991 report found 322 package plants operating within the lagoon system and identified 155 plants as threats to water quality. This 1991 report described the criteria DER used to determine which package plants were threats, which criteria included:

* * *

> 2. Facilities with percolation ponds, absorption fields, or other sub-surface disposal; systems located within 100 feet of the shoreline or within 100 feet of any canal or drainage ditch that discharges or may discharge to the Lagoon System during wet periods.

* * *

Laniger's WWTP was listed in DER's 1991 report as a threat to water quality of the Lagoon System because its package plant was located within 100 feet of Warner Creek and a drainage ditch that connects to Warner Creek.

In August of 1999, DEP issued to Laniger Domestic Wastewater Facility Permit No. FLA013879 for the operation of its WWTP. Attached to and incorporated into Laniger's 1999 permit was Administrative Order No. AO 99-008-DW43SED (the "1999 Order"). The 1999 Order indicates it was issued pursuant to Section 403.088(2)(f), F.S., which pertains to discharges that "will not meet permit conditions or applicable statutes and rules" and requires that the permit for such a discharge be accompanied by an order establishing a schedule for achieving compliance. The 1999 Order also contains a finding that the WWTP is a threat to the water quality of the Lagoon System and that Laniger "has not provided reasonable assurance . . . that operation of the facility will not cause pollution in contravention of chapter 403, F.S., and Chapter 62-610.850 of the Florida Administrative Code."

The 1999 Order required Laniger to connect its WWTP to a centralized wastewater collection and treatment [facility] "within 150 days of its availability . . . or provide reasonable assurance in accordance with Chapter 620.320(1) of the Florida Administrative Code that continued operation of the wastewater facility is not a threat to the water quality of the Indian River Lagoon System." It is undisputed that Laniger waived its rights to challenge this 1999 Order of DEP, which is now the subject of a consolidated enforcement action before the ALJ.

Pursuant to an unrelated enforcement action taken by DEP against Martin County, and in lieu of a monetary penalty, Martin County agreed to extend a force main

from its centralized sewage collection and treatment facility so that the Laniger WWTP could be connected. The extension of Martin County 's force main was completed in April of 2003.

On April 10, 2003, DEP notified Laniger by letter that a centralized wastewater collection and treatment system was now available for connection to its WWTP; and Laniger was reminded of the 1999 administrative order requirement that connection must be made within 150 days of availability. However, on May 9, 2003, Laniger's attorney responded, stating that the DEP administrative order allowed Laniger, as an alternative to connecting to the centralized wastewater system, to provide reasonable assurance that the WWTP was not a threat to the water quality of the Lagoon System. Laniger's attorney asserted that such reasonable assurance had been provided and that, "due to the location of Martin County's wastewater facilities, such facilities are not available as that term is defined in the [administrative] order."

Laniger submitted its WWTP permit renewal application in February of 2005, and a notice of intent to deny the renewal application was issued by DEP's Southeast District Office on April 6, 2005. Laniger challenged this agency action and the matter was referred to DOAH to conduct a formal administrative hearing under §§ 120.569 and 120.57(1), Florida Statutes ("F.S."). Administrative Law Judge, Bram D.E. Canter ("ALJ"), was assigned to preside over the case.

Upon the joint request of the parties, this permit case was consolidated for hearing with an enforcement case (DOAH Case No. 06-1245EF) arising out of DEP's Notice of Violation, Orders for Corrective Action, and Administrative Penalty Assessment issued on August 12, 2005. Under applicable law, the ALJ must issue a

final order in the enforcement case and a recommended order in this permit case. The ALJ held a consolidated final hearing in Stuart on July 10, 2006; and both parties presented testimony and documentary evidence at the hearing.

RECOMMENDED ORDER

The ALJ submitted his Recommended Order in this permit case on September 13, 2006. The ALJ concluded that competent substantial evidence was presented at the final hearing that Laniger's WWTP is capable of being operated in accordance with DEP statutes and rules generally applicable to package wastewater treatment plants. The ALJ ultimately recommended that DEP enter a final order granting the WWTP permit renewal application.

STANDARD OF ADMINISTRATIVE REVIEW

Subsection 120.57(1)(l), F.S., authorizes an agency head reviewing a recommended order to modify or reject an administrative law judge's conclusions of law and interpretations of administrative rules "over which it [the agency] has substantive jurisdiction." An administrative law judge's findings of fact, however, may not be rejected or modified by an agency, "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence". See Section 120.57(1)(l), F.S.

It is the function of the administrative law judge to consider all the evidence, resolve conflicts, draw permissible inferences, judge the credibility of witnesses, and make ultimate factual findings based on competent substantial evidence. Heifetz v. Dept. of Business Regulation, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985); accord Perdue v. South Fla. Water Mgmt. District, 755 So.2d 660, 665 (Fla. 4th DCA 1999).

Therefore, an agency reviewing a DOAH proceeding may not reweigh the evidence or substitute its judgment as to the credibility of witnesses, as these are evidentiary matters within the province of the administrative law judges. Belleau v. Dept. of Environmental Protection, 695 So.2d 1305, 1307 (Fla. 1st DCA 1997); Maynard v. Unemployment Appeals Commission, 609 So.2d 143, 145 (Fla. 4th DCA 1992).

Furthermore, an agency reviewing a DOAH recommended order has no authority to make independent or supplemental findings of fact in its final order. See, e.g., North Port, Fla. v. Consolidated Minerals, 645 So.2d 485 (Fla. 2d DCA 1994). The scope of agency review of factual findings of recommended orders is limited to ascertaining whether the administrative law judge's existing findings of fact are supported by competent substantial evidence of record. Id., 645 So.2d at 487.

RULINGS ON DEP'S EXCEPTIONS TO RECOMMENDED ORDER

Exception A. Technical Review of the Permit Renewal Application.

DEP's first Exception challenges the portion of the ALJ's Finding of Fact 25 stating that DEP staff "proceeded to prepare the Notice of Permit Denial without any technical review of the application." This finding appears to be a reasonable factual inference drawn by the ALJ from the final hearing testimony of DEP witnesses, William Theil and Timothy Powell. (Tr. Vol. II, pp. 115-116, 157-166) Nevertheless, this challenged portion of the Recommended Order is a subordinate factual finding by the ALJ that does not relieve Laniger of its ultimate burden of proving at the final hearing that the continued operation of its WWTP will be conducted in compliance with applicable environmental standards.

A DOAH final hearing is not merely an administrative review of prior agency action, but is a *de novo* proceeding intended to formulate final agency action; and the parties are allowed to present additional evidence not previously included in the permit application and related documents submitted to and by the permitting agency. See, e.g., Florida Dept. of Transportation v. J.W.C. Company, Inc., 396 So.2d 778, 785 (Fla. 1st DCA 1981); McDonald v. Dept. of Banking and Finance, 346 So.2d 569, 584 (Fla. 1st DCA 1977). Thus, the basic issue at the final hearing in this case was not what DEP or Laniger did or failed to do during the prior permit application review process. Rather, the ultimate issue before the ALJ at the final hearing was whether Laniger provided reasonable assurance at that time that the operation of its WWTP will not violate applicable water quality standards. Hamilton County Commissioners v. State Dept. of Environmental Regulation, 587 So.2d 1378, 1387 (Fla. 1st DCA 1991); Putnam County Environmental Council, Inc. v. Georgia-Pacific Corporation, 24 F.A.L.R. 4674, 4685 (Fla. DEP 2002); Clarke v. Melton, 12 F.A.L.R. 4946, 4949 (Fla. DER 1990).

As limited above, DEP's first Exception is denied.

Exception B. The ALJ Incorrectly Characterizes the Reasonable Assurance Required.

DEP's second Exception objects to paragraphs 26 and 29 of the Recommended Order. I agree with DEP to the extent that the statements of the ALJ in paragraphs 26 and 29 are not pure findings of fact. Instead, these paragraphs constitute mixed factual findings and legal conclusions wherein the ALJ applies the DEP "reasonable assurance" rule standard to the particular facts of this case.

The term "reasonable assurance," as set forth in DEP Rules 62-4.070 and 62-620.320, F.A.C., has been defined by case law to mean "a substantial likelihood that the

project will be successfully implemented." Metro. Dade County v. Coscan Florida, Inc., 609 So.2d 644, 648 (Fla. 3d DCA 1992). The ultimate determination of whether the facts found in a recommended order constitute "reasonable assurance" of an applicant's entitlement to a regulatory permit from DEP is a decision that, in the final analysis, must be made by this agency. See, e.g., Charlotte County v. IMC Phosphates Co., 25 F.A.L.R. 4704, 4714 (Fla. DEP 2003), *aff'd, per curiam*, 896 So.2d 756 (Fla. 2d DCA 2005); Singer Island Civic Assn. v. Simmons, 24 F.A.L.R. 1295, 1301 (Fla. DEP 2002); Miccosukee Tribe of Indians v. South Florida Water Management District, 20 FALR 4482, 4491 (Fla. DEP 1998), *affirmed*, 721 So.2d 389 (Fla. 3d DCA 1998); Save our Suwanee v. Piechocki, 18 FALR 1467, 1471 (Fla. DEP 1996).

Section 2 of the Indian River Lagoon Act, requiring the elimination of most sewage treatment facility discharges into the IRLS, does impose a heavier evidentiary burden on applicants seeking to continue to discharge into the IRLS than the standard burden imposed on applicants seeking permits for most domestic wastewater treatment plants. This Indian River Lagoon Act evidentiary burden requires an applicant seeking an exception to the sewage treatment facility discharge prohibition to "conclusively demonstrate" that such discharges will not result in violations of water quality standards and will not hinder efforts to restore water quality in the IRLS.

In this case, however, the unchallenged factual findings of the ALJ establish that Laniger's WWTP does not have a direct discharge into any surface water within the IRLS; and there is no seepage or intermittent overflow from the WWTP into Warner Creek or any other portion of the IRLS. (RO, paragraphs 4-5, 14) Consequently, the ALJ's legal conclusion that the standard reasonable assurance test applicable to most

package plant applications also applies to the subject WWTP is affirmed and adopted in this Final Order.

Based on the above rulings, Exception B is granted to the limited extent that those portions of Findings of Fact 26 and 29 interpreting the DEP "reasonable assurance" rule provisions are treated as legal conclusions. The remainder of Exception B is denied on its merits.

Exception C. The ALJ Misinterpreted the Indian River Lagoon Act.

DEP's third Exception objects to paragraphs 27 and 42 through 46 of the Recommended Order. I agree with DEP's conclusion that "Finding of Fact" 27, applying the evidence presented in this case to DEP's operative statutes and rules, is actually a mixed statement of fact and law by the ALJ and it is treated as such in this Final Order. I also agree with DEP that this agency has the primary responsibility of interpreting statutes and rules within its regulatory jurisdiction. However, I do not find DEP's substantive argument to be persuasive that the ALJ erred in interpreting the Indian River Lagoon Act provisions in paragraphs 27 and 42-46 of the Recommended Order.

I conclude that Section 2 of the Indian River Lagoon Act, requiring "elimination of sewage treatment facility discharges into the IRLS," does not apply to this permit renewal application proceeding. This conclusion is reached based on the ALJ's unchallenged factual findings that Laniger's WWTP does not have a direct discharge to surface waters; and there has been no seepage from the WWTP effluent containment areas or overflow into the IRLS of effluent from the WWTP during storm events. (RO, Findings of Fact 4 and 14)

I also conclude that Section 4 of the Indian River Lagoon Act does not warrant denial of the subject permit renewal application. It is undisputed in this case that the only reason for Laniger's WWTP being listed as a "threat to water quality" in DER's 1991 IRLS report was due to the plant's location within 100 feet of Warner Creek and the drainage ditch that connects to Warner Creek. The mere fact that Laniger's WWTP is located within close proximity to a portion of the IRLS does not, of itself, create a legal presumption in this *de novo* administrative proceeding that the continued operation of this package plant will result in a violation of applicable water quality standards.

In paragraph 27 of the Recommended Order, the ALJ finds and concludes that "competent substantial evidence was presented that Laniger's WWTP is capable of being operated in accordance with the statutes and rules of Department generally applicable to package wastewater treatment plants." This mixed statement of law and fact appears to be based, in large part, on the testimony of John Whitmer, a licensed professional engineer in Florida who prepared Laniger's application resulting in issuance of DEP's 1999 domestic wastewater facility permit for the subject WWTP.

Whitmer, who was accepted by the ALJ as an expert in the design and permitting of wastewater treatment plants, opined that Laniger's WWTP is "capable of operating in accordance with all of the state's rules" and "does not offer a threat to groundwater quality moving off the property." (Tr. Vol. 1, pp. 33-34, 46-47) Counsel for DEP challenged the factual bases for Whitmer's expert opinion testimony during cross-examination. However, the sufficiency of the facts required to form the opinion of an expert normally resides with the expert; and any purported deficiencies in such facts relate to the weight of the evidence, a matter generally within the province of the ALJ as

the finder of the facts. Gershanik v. Dept. of Professional Regulation, 458 So.2d 302, 305 (Fla. 3d DCA 1984), rev. denied, 462 So.2d 1106 (Fla. 1985). I decline to substitute my judgment for that of the ALJ as to the weight to be given to Whitmer's expert testimony and the opposing testimony of DEP's witnesses, Timothy Powell and Joseph May.

In addition, I find paragraph 27 of the Recommended Order to be supported by the related unchallenged factual findings of the ALJ:

> 1. The WWTP does not have a direct discharge to surface water (FOF # 4).
>
> 2. The WWTP is adjacent to Warner Creek, which is part of the Indian River Lagoon System as a tributary of the St. Lucie River. However, neither Warner Creek, nor the area of the St. Lucie River that Warner flows into, is within any of the 12 problem areas identified in the 1989 SWIM Plan jointly prepared by St. Johns River Water Management District & South Florida Water Management District (FOF # 5 & 8).
>
> 3. There was no evidence presented [at the final hearing in this case] that Laniger's WWTP has ever had intermittent treatment process failure, seepage to the Indian River Lagoon System from effluent containment areas, or overflow during storm events (FOF #14).
>
> 4. Laniger's WWTP was not determined to be a threat [in DER's 1991 IRLS report] based on evidence that it was causing or contributing to excess nutrients in Warner Creek or in that part of the St. Lucie River nearest the WWTP (FOF # 15).[2]

I do, however, reject Conclusion of Law 45 wherein the ALJ concludes that DEP had no authority to issue its 1999 Order establishing a compliance schedule for Laniger's WWTP. Endnote 4 to the Recommended Order on review in this proceeding contains the unchallenged finding of the ALJ that: "Laniger's failure to comply with the

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[2] Although DEP's Exception E does reference Finding of Fact 15, this Exception essentially consists of a legal argument addressing the appropriate burden of proof in a *de novo* contested permit proceeding presided over by a DOAH administrative law judge. In its Exception E, no objections are raised by DEP to any of the specific findings set forth in Finding of Fact 15, and no citations to any testimony in the DOAH record are made.

[1999] administrative order was subject to enforcement and was the basis for imposing penalties in the Final Order in the companion case because Laniger waived its right to challenge the administrative order." Since Laniger waived its right to challenge DEP's 1999 Order, the validity of this Order is not at issue in this 2006 permit proceeding.

Based on the above rulings, Exception C is granted to the extent that paragraph 27 of the Recommended Order is treated as a mixed statement of fact and law and Conclusion of Law 45 is rejected. The remainder of Exception C is denied on its merits.

Exception D. "Availablity" of the Martin County Force Main.

This Exception of DEP objects to paragraphs 29 through 37 of the Recommended Order. In these paragraphs, the ALJ makes findings relating to the issue of whether Martin County's existing force main located approximately 150 feet north of the subject WWTP site is "available" for connection to Laniger's package plant under the terms of DEP's 1999 Order. DEP contends that the crucial issue in this permit proceeding is whether Laniger provided the necessary reasonable assurance for issuance of the WWTP permit renewal; and the ALJ's analysis of the availability of Martin County's force main for connection to Laniger's package plant is thus irrelevant. I agree with this contention of DEP.

For the reasons set forth in the above rulings, this Final Order adopts the ALJ's findings and conclusions that Laniger provided the necessary reasonable assurance at the DOAH final hearing that the continued operation of its WWTP will not violate any DEP statutes and rules generally applicable to package wastewater treatment plants. I thus conclude that Laniger has demonstrated its entitlement to issuance of the WWTP permit renewal. Therefore, it is unnecessary to adopt factual findings in this Final Order

dealing with the unrelated issue of whether the existing Martin County force main is "available" for connection to Laniger's WWTP.

For the above reasons, Exception D is granted on procedural grounds; and paragraphs 29 through 37 and those portions of paragraphs 41 and 42 of the Recommended Order discussing the connection of Laniger's WWTP to the Martin County force main are deemed to be dicta and are not adopted in this Final Order.

Exception E. The ALJ Improperly Shifted the Burden of Proof to DEP.

DEP's Exception E objects to paragraphs 15 and 41 of the Recommended Order wherein the ALJ discusses the issue of the burden of proof in this formal administrative proceeding. DEP contends that these challenged findings and conclusions of the ALJ erroneously shift the evidentiary burden on DEP to demonstrate that Laniger has not provided the necessary reasonable assurance in this case and is thus not entitled to issuance of the permit renewal.

I agree, in part, and disagree, in part, with DEP's argument in this Exception. In the first and second sentences of paragraph 41, the ALJ states that: "Laniger presented a prima facie case of its entitlement to the permit. The burden then shifted to the Department to demonstrate that reasonable assurance had not been provided." For the reasons set forth in the above rulings on DEP's Exceptions B and C, I reject DEP's argument that the ALJ erred by concluding that Laniger presented a prima facie case at the final hearing of its entitlement to the permit.

Nevertheless, DEP correctly points out that the seminal Florida case dealing with the burden of proof in formal administrative proceedings concludes that a permit applicant carries the "ultimate burden of persuasion" of entitlement to the permit

throughout the proceeding and this burden is not subject to any shifting, although the burden of going forward with the evidence may shift during the course of the proceeding. J.W.C. Company, Inc., 396 So.2d at 787. However, once a permit applicant makes a "preliminary showing" of reasonable assurance, the permit should be issued unless the permit opponent then goes forward with contrary "evidence of equivalent quality." Id. at 789. The ALJ's legal conclusion in the second sentence of paragraph 41 is thus modified to read: "DEP was then required to go forward and present evidence demonstrating that the WWTP permit renewal should be denied."

Exception E is thus denied, in part, and granted, in part, as above stated.

Exception F. The ALJ's Recommendation is Inconsistent with DEP Rules.

DEP's final Exception objects to the ALJ's ultimate recommendation that an agency final order be entered in this case granting Laniger's WWTP permit renewal subject to the same conditions contained in the 1999 permit, with the exception of the conditions derived from Administrative Order No. AO 99-008-DW43SED. DEP contends that Laniger is not entitled to issuance of the permit renewal because it has not complied with the provisions of the Indian River Lagoon Act.

Based on the material facts found by the ALJ in his Recommended Order, I conclude that issuance of Laniger's WWTP permit renewal application will not result in any violation of the provisions of the Indian River Lagoon Act. Accordingly, DEP's Exception F is denied.

CONCLUSION

For the reasons set forth in detail in the above rulings, I agree with the ALJ that Laniger provided the necessary reasonable assurance at the final hearing in this case

that the continued operation of its WWTP will not violate any statutory or rule standards applicable to domestic wastewater treatment package plants.

It is therefore ORDERED:

A. Findings of Fact 29 through 37 of the Recommended Order are deemed to be dicta and are not adopted in this Final Order.

B. The second sentence of Conclusion of Law 41 of the Recommended Order is modified as set forth in the above ruling on DEP's Exception E.

C. Conclusion of Law 45 of the Recommended Order is rejected for the reasons set forth in the above ruling on DEP's Exception C.

D. As modified by paragraphs A through C above, the Recommended Order (Exhibit A) is otherwise adopted and incorporated by reference herein.

E. DEP's Southeast District Office is hereby directed to ISSUE to Laniger a domestic wastewater facility permit renewal for operation of the WWTP identified as "Beacon 21 WWTP" in DEP File No. FLA 013879-004-DW3P.

F. This permit renewal is subject to the conditions set forth in Domestic Wastewater Facility Permit No. FLA 013879 issued to Laniger in August of 1999, except for any conditions derived from the attached 1999 Order. Those 1999 permit conditions are incorporated by reference herein with a revised expiration date of five years from the date of rendition of this Final Order.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35,

Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 1 day of November, 2006, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

COLLEEN M. CASTILLE
Secretary

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52, FLORIDA STATUTES, WITH THE DESIGNATED DEPARTMENT CLERK, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED.

CLERK

11/1/06
DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order has been sent by United States Postal Service to:

Martin S. Friedman, Esquire
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2180 West State Road 434
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Longwood, FL 32779

Ann Cole, Clerk and
Bram D. E. Canter, Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
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and by hand delivery to:

Brian J. Cross, Esquire
Ronda L. Moore, Esquire
Department of Environmental Protection
3900 Commonwealth Blvd., M.S. 35
Tallahassee, FL 32399-3000

this 2nd day of November, 2006.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

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