

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LOIS MAHUTE, WALLIS MAHUTE, and)
NATHANIEL WILLIAMS,)
)
Petitioners,)
)
vs.) Case No. 08-6042
)
SUNCOAST CONCRETE, INC., and)
DEPARTMENT OF ENVIRONMENTAL)
PROTECTION,)
)
Respondents.)
_____)

CORRECTED RECOMMENDED ORDER

The final hearing in this case was held on March 17, 2009, in Milton, Florida, before Bram D.E. Canter, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioners: Wallis Mahute, pro se
5500 Cox Road
Milton, Florida 32583

Lois Mahute, pro se
5504 Cox Road
Milton, Florida 32583

Nathaniel Williams, Jr., pro se
8984 Tara Circle
Milton, Florida 32583

For Suncoast Concrete Inc.:

William J. Dunaway
Megan E. Fortson
Clark, Partington, Hart, Larry Bond &
Stackhouse
125 West Romana Street, Suite 800
Pensacola, Florida 32502

For Florida Department of Environmental Protection:

Ronda L. Moore, Esquire
Florida Department of Environmental
Protection
The Douglas Building, Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

STATEMENT OF ISSUE

The issue in this case is whether Suncoast Concrete, Inc. (Suncoast), is entitled to Permit No. 194919-003-SO, to construct and operate a construction and demolition debris disposal facility (C & D facility) in Santa Rosa County, Florida.

PRELIMINARY STATEMENT

On October 9, 2008, the Department of Environmental Protection (Department) issued a Notice of Intent to issue Permit No. 194919-003-SO to Suncoast, to construct and operate a C & D facility in Santa Rosa County. On October 30, 2009, the Department received a petition from 35 persons challenging the proposed agency action. The matter was then referred to DOAH.

Many of the original Petitioners apparently did not understand that their names had been submitted as Petitioners

and did not intend to present evidence or to otherwise participate as Petitioners. Before the final hearing, 25 of the Petitioners voluntarily dismissed their claims in the case. Only three Petitioners attended the final hearing: Lois Mahute, Wallis Mahute, and Nathaniel Williams, Jr. The other remaining Petitioners were dismissed by order of the Administrative Law Judge at the final hearing.

The Department's motion in limine to preclude Petitioners from offering evidence on zoning issues and impacts to real property values, was granted.

The Department's request for official recognition of Florida Administrative Code Chapter 62-701 and Rules 62-4.070 and 62-296.320, was granted.

At the final hearing, Joint Exhibits 1 through 12 were admitted into evidence. Suncoast presented the testimony of Tony Mellini, an expert in C & D facility design and construction. The Department presented the testimony of Marshall Seymour, an expert in engineering and solid waste management design; and Ross Mitchell, a field inspector with the Department. Petitioners presented the testimony of Kyle Holley, a local businessman with an interest in local water and land use issues. Petitioners' Exhibit 1 was admitted into evidence.

Petitioners attached to their post-hearing submittal a number of documents which had not been offered as exhibits at

the final hearing or had been offered, but not admitted into evidence over Respondents' objections. Respondents' motion to strike these documents from Petitioners' post-hearing submittal was granted.

A one-volume Transcript of the final hearing was prepared and filed with DOAH. Petitioners and Respondents filed post-hearing writings that were carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioners Lois and Wallis Mahute live within two miles of the proposed C & D facility. Petitioner Nathaniel Williams, Jr., resides less than one mile from the proposed facility.

2. Suncoast is a Florida corporation and is the applicant for Permit No. 194919-003-SO.

3. The site of the proposed C & D facility is already permitted by the Department as a disposal facility for land-clearing debris. It is located on U. S. Highway 90, 1.9 miles east of State Road 87.

4. The disposal area is 7.2 acres on a parcel of land that is 57.8 acres.

5. Suncoast provided all of the information required by the Department for applications for C & D facilities, including

geotechnical data, hydrologic data, and financial assurance for closure.

6. The proposed permit includes numerous conditions, including the use of an impermeable liner, groundwater monitoring, stormwater controls, leachate collection and storage, and access control. The requirement for an impermeable liner is uncommon for C & D facilities and adds greater protection for groundwater.

Issues Raised by Petitioners

7. Petitioners expressed concern about groundwater contamination. The required liner is designed to prevent rainwater that might become contaminated after contact with the materials in the landfill from entering the groundwater.

8. The proposed facility would be located over some existing land-clearing debris. The existing debris is located on part of one side of the proposed landfill. Before the liner is installed, the base would be prepared by covering the area with six inches of compacted soil. After the liner is installed, two feet of clean soil is placed on top of the liner. The liner would be installed in a manner to prevent the liner from being punctured or torn.

9. Groundwater monitoring is required so that any contamination that occurs will be detected and remediated.

10. There are no potable water wells within 500 feet of the proposed facility. The nearest public water supply well is approximately 4,000 feet away.

11. Petitioners presented the testimony of Kyle Holley, who expressed his views on hydrogeologic conditions in the area. Mr. Holley is not a geologist or hydrologist and was not competent to testify regarding the hydrogeologic conditions in the area.

12. Petitioners expressed concern about odors, but presented no competent evidence that foul or unhealthy odors would be generated by the facility. The permit conditions that require a small working face and weekly cover with soil would minimize odors.

13. Petitioners expressed concern about fires, partly because fires have occurred at other C & D facilities. The evidence shows that the requirements of the proposed permit, including the prohibition against burning and requirements to maintain a small working face and to cover with soil on a weekly basis, would minimize the possibility of fires at the facility. The facility must maintain access for fire trucks to the disposal area so that, if a fire occurs, it can be suppressed.

14. Petitioners expressed concerns that the facility would not be safely closed in the event that Suncoast became bankrupt or otherwise ceased operations at the facility. The evidence

shows that the financial assurance requirements of the proposed permit provide a means to close the facility in the event that Suncoast was unwilling or unable to close the facility.

15. Petitioners expressed concerns about the "pattern of abuse" by landfill owners. However, Petitioners presented no evidence that Suncoast has shown a pattern of noncompliance, or that the landfills where these alleged abuses have occurred are similar to Suncoast's proposed C & D landfill with respect to physical conditions and permit requirements.

16. Suncoast provided reasonable assurance by a preponderance of the evidence that the facility, with the conditions in the permit, will comply with all applicable rule requirements regarding the protection of groundwater, odor and fire control, and proper closure of the facilities.

17. In summary, Suncoast proved by a preponderance of the evidence that it has provided reasonable assurance that the proposed facility meets all regulatory criteria for entitlement to Permit No. 194919-003-SO.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

19. Petitioners' standing to initiate this proceeding was not placed at issue. Petitioners' residences are close enough to the facility site that odors and fires at the facility, if not prevented or controlled, could adversely affect their health, safety, and welfare. Petitioners have standing to initiate this proceeding.

20. The burden of proof in a permit case is on the applicant for the permit. Fla. Dep't of Transp. V. J.W.C., Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). The standard of proof is preponderance of the evidence. Id.

21. After the applicant demonstrates that all applicable regulatory criteria have been met, the burden shifts to the challenger to present contrary evidence of equal quality to support its claim that the applicant is not entitled to the permit. Id. Speculation or expressions of concern by a challenger are not sufficient to rebut the applicant's prima facie showing of entitlement.

22. A permit applicant must provide reasonable assurances, which means that there is a substantial likelihood of compliance with standards, or "a substantial likelihood that the project will be successfully implemented." Metropolitan Dade County v. Coscan Florida, Inc., 644 So. 2d 648 (Fla. 3d DCA 1992). It does not mean absolute assurances. Save Our Suwanee v. Fla. Dep't of Env'tl. Prot., 18 F.A.L.R. 1467, 1472 (DEP 1996).

23. Competent substantial evidence based upon detailed site plans and engineering studies, coupled with credible expert testimony is a sufficient basis for a finding of reasonable assurances. Hamilton County Bd. of County Comm'ns. v. Fla. Dep't of Env'tl. Prot., 587 So. 2d 1378 (Fla. 1st DCA 1991).

24. Suncoast provided competent substantial evidence based upon detailed site plans and engineering studies, coupled with credible expert testimony, that there is a substantial likelihood of compliance with all applicable standards. The evidence offered by Petitioners in support of their concerns was insufficient to rebut Suncoast's prima facie case.

25. Suncoast proved by a preponderance of the evidence that it is entitled to the proposed permit.

RECOMMENDATION

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

RECOMMENDED that the Department issue a final order granting Permit No. 194919-003-SO, subject to all the conditions set forth in the Department's Notice of Intent to Issue, for the construction and operation of a construction and demolition debris disposal facility in Santa Rosa County, Florida.

DONE AND ENTERED this 20th day of May, 2009, in
Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of May, 2009.

COPIES FURNISHED:

Michael W. Sole, Secretary
Department of Environmental Protection
Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Tom Beason, General Counsel
Department of Environmental Protection
Douglas Building, Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Lea Crandell, Agency Clerk
Department of Environmental Protection
Douglas Building, Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

William J. Dunaway, Esquire
Clark, Partington, Hart, Larry
Bond & Stackhouse
125 West Romana, Suite 800
Pensacola, Florida 37502

Ronda L. Moore, Esquire
Department of Environmental Protection
Douglas Building, Mail Stop 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Nathaniel Williams, Jr.
8984 Tara Circle
Milton, Florida 32583

Wallis Mahute
5500 Cox Road
Milton, Florida 32583

Lois Mahute
5504 Cox Road
Milton, Florida 32583

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.