FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

MARJORY STONEMAN DOUGLAS BUILDING
3900 COMMONWEALTH BOULEVARD
TALLAHASSEE, FLORIDA 32399-3000

RICK SCOTT
GOVERNOR

HERSCHEL T. VINYARD JR.
SECRETARY

September 16, 2013

Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550

Re: Angelo's Aggregate Materials, LTD, et al vs. DEP, et al
DOAH Case No.: 09-1543, et al
OGC Case No.: 09-0400, et al

Dear Clerk:

Attached for filing are the following documents:

1. Agency Final Order
2. Angelo's Aggregate Materials, LTD's Exceptions
3. Joint Response to Exceptions
4. DEP's Clarification of Joint Response to Exceptions

If you have any questions, please do not hesitate to contact me at 245-2212 or lea.crandall@dep.state.fl.us.

Sincerely,

Lea Crandall

Lea Crandall
Agency Clerk

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ANGELO'S AGGREGATE MATERIALS, LTD, d/b/a ANGELO'S RECYCLED MATERIALS, Petitioner, vs. DEPARTMENT OF ENVIRONMENTAL PROTECTION, Respondent, and CRYSTAL SPRINGS PRESERVE, INC., CITY OF TAMPA, AND CITY OF ZEPHYRHILLS, Intervenors.	OGC CASE NO. DOAH CASE NO.	09-0400 09-0401 09-1543
CARL ROTH, JOHN FLOYD, LOUIS POTENZIANO, and MARVIN HALL, Petitioners, vs. ANGELO'S AGGREGATE MATERIALS, LTD, d/b/a ANGELO'S RECYCLED MATERIALS AND DEPARTMENT OF ENVIRONMENTAL PROTECTION, Respondents.	OGC CASE NO. DOAH CASE NO.	09-0362 09-0363 09-1544

WRB ENTERPRISES, INC.,		
Petitioner,		
vs.	**OGC CASE NO.**	**09-0398** **09-0399**
ANGELO'S AGGREGATE MATERIALS, LTD, d/b/a ANGELO'S RECYCLED MATERIALS, AND DEPARTMENT OF ENVIRONMENTAL PROTECTION,	**DOAH CASE NO.**	**09-1545**
Respondents.		
NESTLÉ WATERS NORTH AMERICA, INC.,		
Petitioner,		
vs.	**OGC CASE NO.**	**09-0421** **09-0422**
ANGELO'S AGGREGATE MATERIALS, LTD, d/b/a ANGELO'S RECYCLED MATERIALS, AND DEPARTMENT OF ENVIRONMENTAL PROTECTION,	**DOAH CASE NO.**	**09-1546**
Respondents.		

FINAL ORDER

An Administrative Law Judge ("ALJ") with the Division of Administrative Hearings ("DOAH"), on June 28, 2013, submitted a Recommended Order ("RO") to the Department of Environmental Protection ("DEP" or "Department") in the above referenced consolidated proceedings. A copy of the RO is attached as Exhibit A. The RO shows that copies were sent to counsel and representative for all parties. Angelo's Aggregate Materials, LTD ("Angelo's") filed Petitioner's Exceptions to Recommended Order on July 15, 2013. A Joint Response to Exceptions was filed on July 25, 2013, by

Nestlé Waters North America, Inc., City of Tampa, City of Zephyrhills, Crystal Springs Reserve, Inc., WRB Enterprises, Inc., the Department, Carl Roth, John Floyd, Louis Potenziano and Marvin Hall ("Aligned Parties"). The Department also filed a clarification of joint response to exceptions on July 25, 2013. These consolidated cases are now on administrative review before the Secretary for final agency action.

BACKGROUND

Angelo's applied to the Department, in 2006, to construct and operate a Class I landfill on its property in Pasco County. Application No. 22913-001-SC/01 corresponds to the construction permit application and Application No. 22913-001-SO/01 corresponds to the operating permit application. The proposed landfill would be approximately 30 acres in size located on a 1,020-acre parcel owned by Angelo's that is west of County Road 35 and south of Enterprise Road in Pasco County. The site is currently leased for cattle grazing and the production of hay and sod. There are also spray fields, orange groves, and a pond on the 1,020-acre parcel. On February 12, 2009, the Department issued a Notice of Intent to Deny Permits.

Angelo's filed a petition for hearing to contest the denial of its applications. Carl Roth, John Floyd, Marvin Hall, and Louis Potenziano filed a petition for hearing in support of the denial. WRB Enterprises, Inc. ("WRB"), and Nestlé Waters North America, Inc. ("Nestlé") also filed petitions in support of the denial. The petitions were sent to DOAH and consolidated for hearing. Crystal Springs Preserve, Inc., the City of Tampa, and the City of Zephyrhills were granted leave to intervene in support of the permit denials. In March 2010, the consolidated cases were abated pending Angelo's

submission of amended permit applications to the Department. The Department, on January 5, 2012, filed with DOAH a Statement Reaffirming Intent to Deny Permits and the case was set for final hearing. Angelo's and Nestlé were subsequently granted leave to amend their petitions.

At the final hearing, the parties that supported denial of the permits referred to themselves as the "Aligned Parties." Although their individual attorneys called different witnesses, the testimony and exhibits were generally presented on behalf of all the Aligned Parties. The 28-volume transcript of the final hearing was filed with DOAH. The Aligned Parties filed a single joint proposed recommended order, Angelo's filed a proposed recommended order, and the ALJ subsequently issued the RO on June 28, 2013.

SUMMARY OF THE RECOMMENDED ORDER

In the RO, the ALJ recommended that the Department deny Angelo's permit applications. (RO at page 47). The ALJ determined that Angelo's hydrogeological and geotechnical investigations did not adequately define the landfill site's geology and hydrology and its relationship to the local and regional hydrogeologic patterns, as required by rule 62-701.410(1)(a) of the Florida Administrative Code ("F.A.C."). (RO ¶¶ 65-78, 125). The ALJ found that Angelo's hydrogeological evidence was not sufficient to refute the reasonable possibility that the proposed landfill site is within the Crystal Springs springshed; that groundwater flow is to the south; that conduit flow or fractured flow extends south toward the water supply sources of the City of Zephyrhills, Crystal Springs, Nestlé, and the City of Tampa. (RO ¶¶ 72-78). The ALJ noted, therefore, that

the Department's determination of whether Angelo's provided reasonable assurances must account for the threat of contamination to Crystal Springs and the other public and private water supply sources to the south. (RO ¶ 72).

The ALJ found that without an adequate geotechnical investigation, Angelo's failed to insure that the integrity of the structural components of the landfill would not be disrupted. (RO ¶ 126). The ALJ found that the proposed landfill site is unstable because the evidence indicated loose soils, raveling, and sinkhole activity. (RO ¶¶ 81-83). The ALJ found that the potential for sinkhole formation at the landfill site was moderately high to high. (RO ¶ 83). The ALJ found that Angelo's did not demonstrate that proposed engineering measures would overcome the instability and make the site suitable for a landfill. (RO ¶ 84). Thus, the ALJ concluded that Angelo's did not provide reasonable assurance that the proposed landfill liner system would be installed upon a base and in a geologic setting capable of providing structural support as required by rule 62-701.400(3)(a), F.A.C. (RO ¶¶ 84, 127, 130). The ALJ also found that because Angelo's did not adequately characterize the geology and hydrology of the proposed landfill site, the groundwater monitoring plan does not provide reasonable assurance of compliance with applicable criteria. (RO ¶¶ 102, 128).

STANDARDS OF REVIEW OF DOAH RECOMMENDED ORDERS

Section 120.57(1)(l), Florida Statutes, prescribes that an agency reviewing a recommended order may not reject or modify the findings of fact of an ALJ, "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."

§ 120.57(1)(l), Fla. Stat. (2012); *Charlotte Cty. v. IMC Phosphates Co.*, 18 So.3d 1089 (Fla. 2d DCA 2009); *Wills v. Fla. Elections Comm'n*, 955 So.2d 61 (Fla. 1st DCA 2007). If there is competent substantial evidence to support an administrative law judge's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co. v. Dyer,* 592 So.2d 276, 280 (Fla. 1st DCA 1991); *Conshor, Inc. v. Roberts,* 498 So.2d 622 (Fla. 1st DCA 1986). Also, the ALJ's decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of any competent substantial evidence of record supporting this decision. *See e.g., Peace River/Manasota Regional Water Supply Authority v. IMC Phosphates Co.,* 18 So.3d 1079, 1088 (Fla. 2d DCA 2009); *Collier Med. Ctr. v. State, Dep't of HRS*, 462 So.2d 83, 85 (Fla. 1st DCA 1985); *Fla. Chapter of Sierra Club v. Orlando Utils. Comm'n*, 436 So.2d 383, 389 (Fla. 5th DCA 1983).

Section 120.57(1)(l), Florida Statutes, authorizes an agency to reject or modify an ALJ's conclusions of law and interpretations of administrative rules "over which it has substantive jurisdiction." *See Barfield v. Dep't of Health,* 805 So.2d 1008 (Fla. 1st DCA 2001); *L.B. Bryan & Co. v. Sch. Bd. of Broward Cty.*, 746 So.2d 1194 (Fla. 1st DCA 1999); *Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So.2d 1140 (Fla. 2d DCA 2001). Agencies do not have jurisdiction, however, to modify or reject rulings on the admissibility of evidence. Evidentiary rulings of the ALJ that deal with "factual issues susceptible to ordinary methods of proof that are not infused with [agency] policy

considerations," are not matters over which the agency has "substantive jurisdiction." *See Martuccio v. Dep't of Prof'l Regulation*, 622 So.2d 607, 609 (Fla. 1st DCA 1993).

RULINGS ON EXCEPTIONS

A party that does not file exceptions to certain findings of fact "has thereby expressed its agreement with, or at least waived any objection to, those findings of fact." *Envtl. Coalition of Fla., Inc. v. Broward Cty.*, 586 So.2d 1212, 1213 (Fla. 1st DCA 1991); *see also Colonnade Medical Ctr., Inc. v. State of Fla., Agency for Health Care Admin.*, 847 So.2d 540, 542 (Fla. 4th DCA 2003). An agency head reviewing a recommended order, however, is free to modify or reject any erroneous conclusions of law over which the agency has substantive jurisdiction, even when exceptions are not filed. *See* § 120.57(1)(l), Fla. Stat. (2012); *Barfield v. Dep't of Health,* 805 So.2d 1008 (Fla. 1st DCA 2001); *Fla. Public Employee Council, 79 v. Daniels*, 646 So.2d 813, 816 (Fla. 1st DCA 1994).

ANGELO'S EXCEPTIONS

Exception Number 1

Angelo's takes exception to Finding of Fact paragraph 69, where the ALJ found that a United States Geological Survey ("USGS") map and a springshed study done for the Southwest Florida Water Management District ("SWFWMD") show that the proposed landfill site is within the Crystal Springs springshed. Angelo's contends that the findings are not supported because "[n]either of these maps provide competent,

substantial evidence that the proposed site is within the Crystal Springs springshed." *See* Petitioner's Exceptions at page 3.[1]

Angelo's argues that its expert criticized the USGS map (Aligned Parties Ex. 159) and the criticism was not refuted. (Brown, T. Vol. V, pp. 67-71, 74-86; Angelo's Ex. 180). Contrary to Angelo's argument, however, the Aligned Parties' experts testified that the USGS map was an accurate depiction of the Crystal Springs springshed, and that additional studies supported the conclusion that water from under the proposed landfill site would travel to Crystal Springs. (Upchurch, Vol. XV, pp. 82-83; Davis, T. Vol. XVIII, pp. 48, 49, 53, 111-112). As outlined in the standard of review, the ALJ's decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency. *See e.g., Peace River/Manasota Regional Water Supply Authority v. IMC Phosphates Co.,* 18 So.3d 1079, 1088 (Fla. 2d DCA 2009). In addition, if there is competent substantial evidence to support the ALJ's findings, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Construction Co. v. Dyer,* 592 So.2d 276, 280 (Fla. 1st DCA 1991).

Angelo's also argues that the SWFWMD springshed study in 2000 shows the proposed landfill site outside of the springshed divide. (Angelo's Ex. 75, p. 15, Figure 1; Brown, T. Vol. V, pp. 72-73). The Aligned Parties respond, however, that the springshed was later revised to include the proposed landfill site. (Upchurch, T. Vol. XV,

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[1] Angelo's, however, did not take exception to the ALJ's ultimate factual finding that its "hydrogeological evidence was not sufficient to refute the reasonable possibility that the proposed landfill site is within the Crystal Springs springshed." (RO ¶ 72).

pp. 73-76, 78-80). Thus, the ALJ's finding is supported by competent substantial record evidence. *Id.*

Therefore, based on the foregoing reasons, Angelo's Exception Number 1 is denied.

Exception Number 2

Angelo's takes exception to Finding of Fact paragraph 70, where the ALJ found that "[a] water chemistry analysis of the groundwater in the area of Angelo's proposed landfill indicates that the site is . . . within the Crystal Springs springshed." (RO ¶ 70). Angelo's contends that the "only evidence in the record of a water chemistry analysis" was in Angelo's Exhibit 75 (the 2000 SWFWMD springshed study); and that study "did not use water quality analysis to determine the springshed." *See* Petitioner's Exceptions at page 5. Contrary to Angelo's contention, the Aligned Parties' expert testified nitrate sampling tests of groundwater substantiated groundwater flow between the proposed landfill site and Crystal Springs. (Davis, T. Vol. XVIII, p. 50). Other expert testimony showed that the chemical fingerprint of the groundwater in the Griffin well adjacent to the Angelo's landfill and other evidence, matched the groundwater discharges from Crystal Springs. (Upchurch, T. Vol. XV, pp. 73, 76, 83). Thus, the ALJ's finding is supported by competent substantial record evidence. *See e.g., Peace River/Manasota Regional Water Supply Authority v. IMC Phosphates Co.,* 18 So.3d 1079, 1088 (Fla. 2d DCA 2009); *Arand Construction Co. v. Dyer,* 592 So.2d 276, 280 (Fla. 1st DCA 1991).

Therefore, based on the foregoing reasons, Angelo's Exception Number 2 is denied.

Exception No. 3

Angelo's takes exception to Conclusion of Law paragraph 110, where the ALJ concludes that "[a]ll of the challengers (exception John Floyd)[2] own property and use water wells located . . . south of the proposed landfill." In Conclusion of Law paragraph 108, which Angelo's did not challenge, the ALJ concluded that the Aligned Parties (except John Floyd) "have standing because their uses of water are substantial interests and evidence was offered that their uses of water could be impaired by the construction and operation of the proposed landfill." (RO ¶ 108). Angelo's argues that favorable rulings on its exceptions to Findings of Fact 69 and 70 would show that any leachate from the proposed landfill could not flow south to the water supplies of Crystal Springs Preserve, the City of Tampa, the City of Zephyrhills, and Nestlé Waters North America. Thus, Angelo's argues that these parties do not have standing in this proceeding. *See* Petitioner's Exceptions at page 5.

The above rulings on Angelo's exceptions conclude that the ALJ's Findings of Fact 69 and 70 are supported by competent substantial record evidence. These findings, along with unchallenged Findings of Fact 72 through 78, support the ALJ's Conclusions of Law 108 through 110 that these parties showed that their substantial

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[2] The ALJ found that John Floyd did not testify at the hearing; and there was no evidence that Floyd owned property with a water well near the proposed landfill site. (RO ¶ 107).

interests could be injured. *See, e.g., Peace River/Manasota Reg'l Water Supply Auth. v. IMC Phosphates Co.,* 18 So. 3d 1079, 1084 (Fla. 2d DCA 2009); *St. Johns Riverkeeper, Inc. v. St. Johns River Water Mgmt. District,* 54 So. 3d 1051 (Fla. 5th DCA 2001).

Therefore, based on the foregoing reasons, Angelo's Exception Number 3 is denied.

CONCLUSION

Having considered the applicable law in light of the rulings on Angelo's Exceptions, and being otherwise duly advised, it is

ORDERED that:

A. The Recommended Order (Exhibit A) is adopted in its entirety and incorporated herein by reference.

B. Angelo's Aggregate Materials, LTD., d/b/a Angelo's Recycled Materials' applications to construct (Application No. 22913-001-SC/01) and operate (Application No. 22913-001-SO/01) a Class I landfill on its property in Pasco County, are DENIED.

JUDICIAL REVIEW

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by filing a Notice of Appeal pursuant to Rules 9.110 and 9.190, 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 16th day of September, 2013, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

HERSCHEL T. VINYARD JR.
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.

Kay Buchanan 9/16/13
CLERK DATE

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing Final Order was electronically mailed to the following persons on this 16th day of September, 2013.

Jacob D. Varn, Esquire
Linda Loomis Shelley, Esquire
Karen A. Brodeen, Esquire
Fowler, White, Boggs, P .A.
101 North Monroe Street, Suite 1090
Tallahassee, FL 32301-1547
jvarn@fowlerwhite.com
lshelley@fowlerwhite.com

Christopher M. Kise, Esquire
Foley and Lardner, LLP
106 East College Avenue, Suite 900
Tallahassee, FL 32301-7732
ckise@foley.com

Wayne E. Flowers, Esquire
Lewis, Longman & Walker, P.A.
245 Riverside Avenue, Suite 150
Jacksonville, FL 32256-4931
wflowers@llw-law.com

David Smolker, Esquire
Smolker, Bartlett, Schlosser
500 East Kennedy Blvd., Suite 200
Tampa, FL 33602-4936
davids@smolkerbartlett.com

William D. Preston, Esquire
William D. Preston, P.A.
4832-A Kerry Forest Parkway
Tallahassee, FL 32309-2272
bill@wprestonpa.com

Stanley Warden, Esquire
Department of Environmental Protection
3900 Commonwealth Blvd., M.S. 35
Tallahassee, FL 32399-3000
Stan.warden@dep.state.fl.us

Janice McLean, Esquire
City of Tampa
315 East Kennedy Blvd., 7th Floor
Tampa, FL 33602-5211
jan.mclean@ci.tampa.fl.us

Doug Manson, Esquire
William Bilenky, Esquire
Manson Bolves, P.A.
1101 West Swann Avenue
Tampa, FL 33606-2637
dmanson@mansonbolves.com
bbilenky@mansonbolves.com

Joseph A. Poblick, Esquire
5335 8th Street
Zephyrhills, FL 33542-4312
jap@poblicklaw.com

Carl Roth
8031 Island Drive Port Richey
1101 West Swann Avenue
Tampa, FL 33606-2637
carlwroth@gmail.com

by electronic filing to:

Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550

FRANCINE M. FFOLKES
Administrative Law Counsel

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ANGELO'S AGGREGATE MATERIALS, LTD., d/b/a ANGELO'S RECYCLED MATERIALS,

Petitioner,

vs. Case No. 09-1543

DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondent,

and

CRYSTAL SPRINGS PRESERVE, INC.; CITY OF TAMPA; AND CITY OF ZEPHYRHILLS,

Intervenors.
_____/

CARL ROTH, JOHN FLOYD, LOUIS POTENZIANO, AND MARVIN HALL,

Petitioners,

vs. Case No. 09-1544

ANGELO'S AGGREGATE MATERIALS, LTD., d/b/a ANGELO'S RECYCLED MATERIALS, AND DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondents.
_____/

EXHIBIT "A"

WRB ENTERPRISES, INC.,

Petitioner,

vs. Case No. 09-1545

ANGELO'S AGGREGATE MATERIALS, LTD., d/b/a ANGELO'S RECYCLED MATERIALS, AND DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondents.
_____/

NESTLÉ WATERS NORTH AMERICA, INC.,

Petitioner,

vs. Case No. 09-1546

ANGELO'S AGGREGATE MATERIALS, LTD, d/b/a ANGELO'S RECYCLED MATERIALS, AND DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondents.
_____/

RECOMMENDED ORDER

The final hearing in this case was held in Temple Terrace, Florida, on September 24-26, October 1-4, 10-12, 15-18, and December 3-6, 2012, before Bram D. E. Canter, Administrative Law Judge with the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Angelo's Aggregate Materials, LTD:

Jacob D. Varn, Esquire
Linda Loomis Shelley, Esquire
Karen A. Brodeen, Esquire
Fowler, White, Boggs, P.A.
101 North Monroe Street, Suite 1090
Tallahassee, Florida 32301-1547

For City of Tampa:

Janice M. McLean, Esquire
City of Tampa
7th Floor
315 East Kennedy Boulevard
Tampa, Florida 33602-5211

Doug Manson, Esquire
William Bilenky, Esquire
Manson Bolves, P.A.
1101 West Swann Avenue
Tampa, Florida 33606-2637

For City of Zephyrhills:

Joseph A. Poblick, Esquire
5335 8th Street
Zephyrhills, Florida 33542-4312

For Crystal Springs Preserve, Inc.:

Wayne E. Flowers, Esquire
Lewis, Longman & Walker, P.A.
245 Riverside Avenue, Suite 150
Jacksonville, Florida 32256-4931

For Department of Environmental Protection:

Stanley Warden, Esquire
Christopher Dale McGuire, Esquire
Randy J. Miller, II, Esquire
Department of Environmental Protection
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

For Carl Roth, John Floyd, Louis Potenziano, and Marvin Hall:

Carl Roth, Qualified Representative
8031 Island Drive
Port Richey, Florida 34668-6220

For Nestlé Waters North America, Inc.:

Doug Manson, Esquire
William Bilenky, Esquire
Brian Bolves, Esquire
Manson Bolves, P.A.
1101 West Swann Avenue
Tampa, Florida 33606-2637

For WRB Enterprises, Inc.:

David Smolker, Esquire
Smolker, Bartlett, Schlosser, Loeb & Hinds, P.A.
500 East Kennedy Boulevard, Suite 200
Tampa, Florida 33602-4936

STATEMENT OF THE ISSUE

The issue to be determined in this proceeding is whether Angelo's Aggregate Materials, LTD ("Angelo's") is entitled to permits from the Department of Environmental Protection ("Department") to construct and operate a Class I landfill in Pasco County.

PRELIMINARY STATEMENT

In 2006, Angelo's applied to the Department for a construction permit and an operation permit for a Class I landfill. On February 12, 2009, the Department issued a Notice of Intent to Deny Permits.

Angelo's filed a petition for hearing to contest the denial of its applications, which was designated DOAH Case No. 09-1543. Carl Roth, John Floyd, Marvin Hall, and Louis Potenziano filed a petition for hearing in support of the denial, which was designated DOAH Case No. 09-1544. WRB Enterprises, Inc. ("WRB"), filed a petition in support of the denial, which was designated DOAH Case No. 09-1545. Nestlé Waters North America, Inc. ("Nestlé") filed a petition in support of the denial, which was designated DOAH Case No. 09-1546. The cases were consolidated for hearing. Thereafter, Crystal Springs Preserve, Inc., the City of Tampa, and the City of Zephyrhills were granted leave to intervene in support of permit denial.

In March 2010, the case was placed in abeyance. Angelo's amended and resubmitted its permit applications to the Department. On January 5, 2012, the Department filed a Statement Reaffirming Intent to Deny Permit and the case was set for final hearing. Angelo's and Nestlé were subsequently granted leave to amend their petitions.

At the final hearing, the parties opposed to the issuance of the permits referred to themselves as the "Aligned Parties." Although their individual attorneys called different witnesses, the testimony and exhibits were generally presented on behalf of all the Aligned Parties.

The Department presented the testimony of: Jon Arthur, Ph.D., P.G., accepted as an expert in the geology of Florida; David Carrier, Ph.D, P.E., accepted as an expert in geotechnical engineering; and Susan Pelz, P.E., the Department's Waste Program Administrator for the Southwest District and primary reviewer of Angelo's permit applications. Department Exhibits 1, 4, 5, 8, 18, and 19 were admitted into evidence.

Nestlé presented the testimony of: Phil Davis, accepted as an expert in hydrology, hydrogeology, and hydraulic modeling; Joseph Fluet, P.E., accepted as an expert in engineering with subspecialty, landfill liner design and landfill design; Darrell Hanecki, P.E., accepted as an expert in geotechnical engineering; Cathleen Jonas, P.G., accepted as an expert in geology and hydrogeology; Dr. Dale Rucker, accepted as an expert in geophysics, modeling, and geohydrology; Shawn Severn, Ph.D., accepted as an expert in toxicology and microbiology and the subfield of fate and impact of complex chemical mixtures to the environment; Sam Upchurch, Ph.D., P.G., accepted as an expert in geology, geochemistry, karst science and statistics; and Kent Koptiuch, Nestlé's corporate representative and a geologist.

WRB Enterprises ("WRB") presented the testimony of: Michael Cotter, P.E., accepted as an expert in general civil engineering, surface water hydrology, geotechnical engineering,

and the design, engineering, construction, operation, and management of landfills; and Richard Mortensen, P.E., accepted as expert in geotechnical engineering and sinkhole assessment and remediation. WRB Exhibits 8, 11, 12, 13, 16, 17, 20, 22, 32, 34, 44, 48, 50, 93, and 112 were admitted into evidence.

Crystal Springs Preserve, Inc. ("Crystal Springs"), presented the testimony of Robert Thomas, its CEO and corporate representative. Crystal Springs Exhibits 1-4G were admitted into evidence.

Carl Roth, John Floyd, Louis Potenziano, and Marvin Hall called no witnesses. Carl Roth, John Floyd, Louis Potenziano, and Marvin Hall Exhibits 1-11 were admitted into evidence.

Aligned Parties (joint) Exhibits 1, 3, 5, 7, 13-24, 27, 32, 33, 42, 43, 46-49, 83, 95, 118, 159, 168, 171, 172, 200-208, and 212-214 were admitted into evidence.

Angelo's presented the testimony of: John Arnold, the project manager and Angelo's corporate representative; Dominic Iafrate, Vice-President of Angelo's; Les Bromwell, Sc.D., P.E., accepted as an expert in geotechnical engineering; Carl Brown, P.G., accepted as an expert in geology and geophysical testing; Carl Christman, accepted as an expert in geotechnical engineering; Thomas Brown, P.G., accepted as an expert in geology and hydrogeology; Dennis Davis, P.E., accepted as an expert in design, construction, and civil engineering

related to landfills; Don Hullings, P.E., accepted as an expert in solid waste facility design and engineering, civil engineering as it relates to site development for landfills, and geotechnical engineering; Robert Powell, Ph.D., P.E., accepted as an expert in hydrology and hydrogeology; Anthony Randazzo, Ph.D., P.E., accepted as an expert in geology and geotechnical testing; and, Doug Smith, Ph.D., P.G., accepted as an expert in geology, geophysics, and Multiple Electrode Resistivity testing and interpolation. Angelo's Exhibits 1-6, 8-14, 17, 19, 20, 22, 32, 33, 34, 37, 45, 48-52, 72, 75, 77, 79, 80-82, 99, 116-131, 133, 135, 149, 151, 152, 175, 177, 179-186, 189-192, and 200 were admitted into evidence.

The 28-volume Transcript of the final hearing was filed with DOAH. The Aligned Parties filed a single joint proposed recommended order and Angelo's filed a proposed recommended order. The proposed orders were carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

A. The Parties

1. The Department is the state agency with the power and duty under chapter 403, Florida Statutes, to review and take action on applications for permits to construct and operate solid waste management facilities, including landfills.

2. Angelo's is a Florida limited partnership authorized to conduct business under the name Angelo's Recycled Materials. Angelo's filed the permit applications which are the subject of this proceeding. Angelo's owns the property on which the proposed landfill would be constructed and operated.

3. Crystal Springs Preserve is a Florida corporation that owns approximately 525 acres in Pasco County, Florida on which is located Crystal Springs, a second magnitude spring that flows into the Hillsborough River. The property is about 10 miles south of Angelo's proposed landfill site.

4. Crystal Springs Preserve's primary business activities are selling spring water for bottling for human consumption and operating an environmental education center that focuses on Crystal Springs and the Hillsborough River. Crystal Springs Preserve hosts approximately 50,000 visitors annually at the environmental education center.

5. Crystal Springs Preserve holds a water use permit which authorizes it to withdraw up to 756,893 gallons of water per day (annual average) from Crystal Springs for production of bottled water. The water is transported about three miles to a water bottling facility operated by Nestlé.

6. Nestlé is a private corporation engaged in the business of bottling and selling spring water. Nestlé purchases spring water from Crystal Springs Preserve. Nestlé's "Zephyrhills

Spring Water" brand is composed of approximately 90 percent Crystal Springs water and 10 percent Madison Blue Spring water.

7. The only water treatment applied by Nestlé is filtering the water to remove gross contaminants and passing the water through ultraviolet light or ozone to kill any potential bacteria before bottling. Nestlé has established "norms" for its spring water and would not be able to use the water from Crystal Springs if its chemical composition varied significantly from the norms.

8. WRB is a Florida corporation that owns 1,866 acres in Pasco County known as Boarshead Ranch. Boarshead Ranch is adjacent to the east and south of Angelo's property and is approximately 3,000 feet from the proposed landfill at its closest point.

9. Boarshead Ranch is currently being used for agricultural, recreational, residential, and conservation purposes, including wildlife management. Nearly all of Boarshead Ranch is subject to a conservation easement held by the Southwest Florida Water Management District (SWFWMD). The conservation easement allows WRB to continue agricultural operations.

10. Numerous agricultural water wells are located on Boarshead Ranch. WRB holds a water use permit which authorizes the withdrawal of 820,000 gallons per day (gpd) (annual average)

for a number of uses, including production of agricultural products, animal drinking water, and personal use.

11. The City of Zephyrhills is located in Pasco County and is a municipal corporation. Zephyrhills' water service area encompasses Zephyrhills and portions of Pasco County. Zephyrhills owns, operates, and maintains a water distribution and transmission system of pipes, pump stations, and storage tanks within the City and its service area.

12. Zephyrhills holds a water use permit which authorizes nine potable water supply wells with a combined withdrawal of 2.9 million gallons per day ("mgd") (annual average). Zephyrhills has two new production wells located about two miles southeast of the proposed landfill.

13. The City of Tampa owns and operates the David L. Tippin Water Treatment Plant, the Hillsborough River dam, and the City of Tampa reservoir on the Hillsborough River. Flows from Crystal Springs make up a substantial amount of the water in the Hillsborough River, especially during drought conditions when the spring flow accounts for about 50 percent of the flow.

14. The City of Tampa holds a water use permit which authorizes the withdrawal 82 mgd (annual average). The City of Tampa owns, operates, and maintains a water distribution and transmission system of pipes, pump stations, and storage tanks within the City and its service area.

15. Carl Roth, Marvin Hall, and Louis Potenziano own property in Pasco County near the proposed landfill site. Roth's property is 3.5 miles west of the proposed landfill site; Hall's property is located approximately one mile southwest of the site; and Potenziano's property is 1.6 miles to the south/southeast of the site. Roth, Hall, and Potenziano have water wells on their properties.

16. The record does not establish that John Floyd owns property in the area. Floyd and Associates, Inc., owns about 55 acres in the area and holds a water use permit authorizing the withdrawal of water for agricultural uses.

B. The Stipulated Agreement

17. On March 1, 2010, Angelo's filed with DOAH a "Stipulated Agreement" signed by all parties. The Stipulated Agreement states in relevant part:

> Angelo's shall provide a final design, revised complete permit application and site investigation (referred to jointly as "Revised Submittal") to DEP with copies to all Parties and DEP shall make a completeness determination prior to this proceeding being set for a new final hearing date.
>
> * * *
>
> Angelo's shall not revise its permit application or supporting information beyond the Revised Submittal prior to or during the final hearing except in response to issues raised by DEP.

18. It appears that the Aligned Parties did not remember the Stipulated Agreement until the commencement of the final hearing. They did not object before then to any of the evidence which Angelo's had prepared or intended to prepare for hearing on the basis that it violated the terms of the Stipulated Agreement. At the commencement of the hearing, Nestlé argued that the Stipulated Agreement barred Angelo's from revising its application or presenting new support for its project at the final hearing.

19. The Stipulated Agreement is unusual and the necessity for Angelo's to make any concessions to the Aligned Parties in order to obtain their agreement to an abeyance was not explained. Allowing an applicant time to amend a permit application is usually good cause for an abeyance.

20. The Stipulated Agreement allowed Angelo's to continue to respond to issues raised by the Department. Angelo's contends that all of the evidence it presented at the final hearing qualifies as a response to issues raised by the Department.

C. The Proposed Landfill

21. Angelo's applied to construct and operate a Class I landfill with associated buildings and leachate holding tanks. Application No. 22913-001-SC/01 corresponds to the construction permit application and Application No. 22913-001-SO/01 corresponds to the operation permit application.

22. A Class I landfill is a landfill authorized to receive Class I waste, which is solid waste from households and businesses. Class I waste does not include hazardous waste, yard waste, or construction and demolition debris. See Fla. Admin. Code R. 62-701.200(13) and (14).

23. The proposed landfill would be approximately 30 acres in size. It is part of a 1,020-acre parcel owned by Angelo's that is west of County Road 35 and south of Enterprise Road in Pasco County. The site is currently leased for cattle grazing and hay and sod production. There are also spray fields, orange groves, and a pond on the 1,020-acre parcel.

24. Angelo's would construct the landfill by first clearing the 30-acre site. It would then excavate and fill to create the design subgrade or floor of the landfill with slopes required for the liner system. The subgrade would be compacted with a vibratory roller.

25. After the subgrade compaction, the grouting plan would be implemented. The grouting plan calls for grouting 39 subsurface locations on the site that have voids, loose soils, or other unstable characteristics.

26. A liner system would be installed after the grouting is completed and the subgrade is finished. From the bottom upward, the liner system would begin with a 12-inch layer of clay, over which a reinforcement geotextile would be installed,

followed by another 12-inch layer of clay. This reinforcement geotextile is in addition to the double liner system required by Department rule. Its purpose is to maintain the integrity of the liner system in the event that a sinkhole occurs beneath the landfill.

27. Installed above the reinforcement geotextile and clay layer would be a 60-millimeter high-density polyethylene ("HDPE") geomembrane, followed by a HDPE drainage net. These last two components comprise the secondary leachate collection system.

28. Above the HDPE drainage net would be the primary leachate collection system, consisting of another 60-millimeter HDPE geomembrane and HDPE drainage net, followed by a geotextile, then a 12-inch sand layer for drainage, and an additional 12-inch sand layer for protection against puncture of the HDPE liner.

29. A 48-inch layer of selected waste, free of items that could puncture the liner, would be the first waste placed over the primary leachate collection system.

30. "Leachate" is "liquid that has passed through or merged from solid waste and may contain soluble, suspended, or miscible materials." See Fla. Admin. Code R. 62-701.200(66).

31. Leachate would be collected through a system of perforated pipes that empty into a sloping trench with a

leachate collection pipe. The leachate collection pipe would run down the center of the landfill to the lowest point where a pump would send the collected leachate through a force main 0.25 miles to storage tanks.

32. Five above-ground storage tanks would be installed on a concrete pad with capacity to store 90,000 gallons of leachate. The stored leachate would be periodically transported to an offsite location, such as a wastewater treatment facility, for disposal.

D. Sinkholes and Karst

33. The terms "sinkhole" and "sinkhole activity" are not defined by Department rule, but the statutory definitions in chapter 627, a chapter dealing with insurance coverage for homes and other buildings, are generally consistent with the scientific meanings of these terms. The term "sinkhole" is defined in section 627.706(2)(h) as:

> a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater. A sinkhole forms by collapse into subterranean voids created by dissolution of limestone or dolostone or by subsidence as these strata are dissolved.

The term "sinkhole activity" is defined in section 627.706(2)(i) as:

> settlement or systematic weakening of the earth supporting the covered building only if the settlement or systematic weakening results from contemporaneous movement or

raveling of soils, sediments, or rock materials into subterranean voids created by the effect of water on a limestone or similar rock formation..

34. Sinkholes occur throughout Florida. There have been many reported and confirmed sinkholes in Pasco County. The more common type of sinkhole that has occurred on the Brooksville Ridge is a "cover subsidence" sinkhole, which is caused by voids in the limestone and the downward movement--"raveling"--of overlying soils into the cavity. Eventually, the loss of soils in the raveling zone will propagate upward until the soils at the ground surface also move downward and a depression is formed at the surface. Cover subsidence sinkholes develop slowly and are usually small, less than ten feet in diameter.

35. Less common are "cover collapse" sinkholes, which can form in a matter of days or hours as the result of the collapse of the "roof" of a dissolved cavity in the limestone. These sinkholes are usually large and deep.

36. The occurrence of a sinkhole does not always mean that areas near the sinkhole are unstable. However, the occurrence of a sinkhole is reasonable cause for concern about the stability of nearby areas and a reasonable basis for the Department to require thorough geologic investigations.

37. "Karst" refers to limestone that is undergoing dissolution and it is common in Florida. A sinkhole forms in karst.

38. "Epikarst" is limestone that was weathered while exposed above sea level millions of years ago before being submerged again. It is generally softer and more permeable than unweathered limestone.

39. "Paleokarst" refers to karst that is very old in geologic time. Paleosinks are old sinkhole features in the paleokarst. A paleosink may no longer be unstable because it has been filled in for thousands or millions of years.

40. A "lineament," or a "photolineament," is a relatively straight line seen in the topography or aerial photographs of the ground surface in an area. It might be defined by soil color, sloughs, ponds, wetlands, or other land features that follow a linear path. Lineaments are sometimes, but not always, associated with subsurface fractures in the bedrock where one would expect to also find active karst, sinkholes, and relatively rapid groundwater flow.

41. Even where there is no lineament, there can be fractures in limestone that, when extensive enough, will allow for "fractured," "preferential," or "conduit flow" of groundwater. Fractured flow can occur in a small area or may go on for miles. Springs in Florida are usually associated with

fractured flow or conduit flow that allows groundwater to move through the aquifer a long distance relatively rapidly, in weeks rather than decades.

E. Geotechnical Investigation

42. The Department's rules require subsurface conditions to be explored and described, including soil stratigraphy, soft ground, lineaments, and unstable areas, but the rules do not require the application of any particular geologic testing technique. An applicant's testing program is primarily a function of the professional judgment of the applicant's geologist in cooperation with Department staff.

43. The amount of geological testing done by Angelo's during its initial testing was similar to what was done for recent landfill applications. Angelo's conducted additional testing to respond to Department concerns and to prepare for the final hearing in this case, making the total amount of testing at Angelo's proposed site more extensive than is usual for a proposed landfill.

44. The geologic investigation conducted by Angelo's experts to determine subsurface features, including any sinkholes, employed several technologies. Split Spoon Penetrometer Test (SPT) or SPT borings were drilled with a drill rig that advances a split spoon sampler into the ground with a 140 pound hammer. The hammer is dropped 30 inches and the number

of blows required to drive the sampler each successive 12 inches is referred to as the "N" value and indicates soil strength and density. The higher the N value, the denser the soil. When the material is so dense the drill rod cannot (essentially) be hammered deeper, the N value is shown as "R," which stands for "refusal."

45. SPT Bore logs also note any observed "weight of hammer," "weight of rod," or "loss of circulation." These terms describe areas where the drilling encounters very soft material or voids. Weight of rod, for example, means the weight of the drilling rod, by itself, with no hammer blow, was enough to cause the rod to fall deeper through the soil or rock.

46. Cone Penetrometer Test ("CPT") borings were also conducted. CPT borings are relatively shallow, performed with a hand-held rod and special tip that the operator pushes into the ground. The CPT equipment continuously measures and records tip resistance and sleeve resistance as the rod moves downward through soils. It is helpful in some applications, but is less precise in determining soil type, strength, and compressibility than SPT borings and cannot be used to explore deep zones.

47. Ground penetrating radar ("GPR") studies were used. GPR equipment transmits pulses of radio frequency waves into the ground. The manner in which the radio waves are reflected indicates the types of soil and rock encountered. It can also

detect cavities and other features that would suggest karst activity. When the GPR identifies geologic features of interest, they can be further investigated with SPT borings.

48. Another investigative tool used by Angelo's was Multiple Electrode Resistivity ("MER"). MER uses a grid of wires and electrodes and the equipment interprets the resistivity of electrical signals transmitted through the subsurface. MER data can be displayed in a two dimensional or three dimensional format, depending on the software program that is used to process the data. Like GPR, MER is useful for indentifying geologic features of interest that can be further explored with SPT borings. However, GPR generally has good resolution only near the ground surface, while MER has good resolution to a depth of 100 feet.

F. The Regional Geology

49. The proposed site is in a geologic transition zone on the eastern flank of a regional, geological feature known as the Brooksville Ridge. It is a transition zone for both the Suwannee Limestone and Hawthorn Group.

50. The Brooksville Ridge was formed when it was part of the coastline. In its geologic past, the Brooksville Ridge experienced sea level changes, weathering, erosion of sediments, and beach reworking.

51. The general layering of geologic features on the Brooksville Ridge, from the top down, begins with topsoil and a layer of sand. Under the sand layer is the Hawthorn Group, an older geologic layer consisting of a heterogeneous mix of limestone, clays, and sands which generally range in depth from slightly under 60 feet to 80 feet or more. It was formed by river and wind erosion, flushing, and re-deposition in a beach dune environment.

52. Below the Hawthorn Group is the Suwannee Limestone Formation, which is present throughout eastern Pasco County. The upper surface of the Suwannee Limestone Formation is undulating, due to a gradual chemical weathering of its upper surface, representing a "paleokarst environment."

53. Underlying the Suwannee Limestone Formation is the Ocala Limestone Formation. It extends throughout most of Florida. It is composed of nearly pure limestone and is considered the Floridan Aquifer. It extends across the site's subsurface.

54. Angelo's used the Florida Geologic Survey's data base to determine there are six sinkholes within five miles of the proposed landfill.

55. A seventh sinkhole, not in the data base, is the 15-foot sinkhole at the Angelo's Enterprise Road Facility landfill, a Class III landfill (yard waste and construction and demolition

debris) about a mile northwest of the proposed site. Angelo's contends that the sinkhole at its Class III landfill was "induced" during construction of the facility by the diversion of stormwater runoff to an area where overburden had been removed.

56. The average diameter of the seven sinkholes is 11.9 feet.

G. The Geology of the Proposed Site

57. Rule 62-701.410(2)(c) requires a geotechnical site investigation and report, which shall:

> (a) Explore and describe subsurface conditions including soil stratigraphy and ground water table conditions;
>
> (b) Explore and address the presence of muck, previously filled areas, soft ground, lineaments, and sinkholes;
>
> (c) Evaluate and address fault areas, seismic impact zones, and unstable areas as described in 40 C.F.R. 258.13, 258.14 and 258.15;
>
> (d) Include estimates of the average and maximum high ground water table across the site; and
>
> (e) Include a foundation analysis to determine the ability of the foundation to support the loads and stresses imposed by the landfill. It may include geotechnical measures necessary to modify the foundation to accommodate the imposed loads and stresses. The foundation shall be analyzed for short-term, end of construction, and long-term stability and settlement conditions. Considering the existing or

proposed subgrade conditions and the landfill geometry, analysis shall include:

1. Foundation bearing capacity;

2. Subgrade settlements, both total and differential; and

3. Subgrade slope stability.

58. Angelo's conducted a geotechnical site investigation, but it was not adequate, as discussed below and in sections I. and J.

59. The proposed landfill site is geologically complex, having features that are discontinuous horizontally and vertically. The site has karst features or areas where the limestone has dissolved. There is a clay layer in some areas, but it is not continuous and its depth and thickness vary. There are deposits of hard and soft sands at various depths. There are pinnacles of limestone surrounded by softer materials.

60. Photographs from a quarry called the Vulcan Mine, located on the western flank of the Brooksville Ridge, show exposed features in the top 20 to 30 feet of the Suwannee Limestone in the region. The features at the Vulcan Mine are roughly similar to features at the Angelo's site.

61. There are a number of shallow depressions on the surface of the ground on the Angelo's site. The origin and significance of these depressions was a matter of dispute. The Aligned Parties believe they represent sinkhole activity, but

the evidence presented did not rise to the level of proof. However, Angelo's did not prove they were unassociated with geotechnical issues that could affect the proposed landfill.

62. Angelo's offered no reasonable explanation for the depressions. Determining the exact cause of the depressions may not be possible even with more extensive investigation, but it was Angelo's responsibility as the permit applicant, pursuant to rule 62-701.410(2)(c), to make a greater effort to account for them.

63. Angelo's initial permit application identified two intersecting lineaments on Angelo's property, based on aligned lowlands, enclosed valleys, and ponds. Angelo's contends the lineaments do not reflect an unstable subsurface or fractured limestone. The Aligned Parties contend that the lineaments are regional features and reflect fractures in the bedrock. They also contend that the onsite pond, which is located along the lineament, is an old sinkhole.

64. The Aligned Parties did not prove the proposed landfill site is above an area of fractured bedrock, but the evidence presented by Angelo's was incomplete and insufficient to show there are no fractures. The limestone on the site was not adequately investigated for voids and fractures. Angelo's did not refute the possibility that the lineaments reflect a

significant subsurface feature that could affect both site stability and groundwater movement.

H. The Regional and Local Hydrogeology

65. Rule 62-701.410(1) requires a hydrogeological investigation and site report, which shall:

> (a) Define the landfill site geology and hydrology and its relationship to the local and regional hydrogeologic patterns including:
>
> 1. Direction and rate of ground water and surface water flow, including seasonal variations;
>
> 2. Background quality of ground water and surface water;
>
> 3. Any on site hydraulic connections between aquifers;
>
> 4. For all confining layers, semi-confining layers, and all aquifers below the landfill site that may be affected by the landfill, the porosity or effective porosity, horizontal and vertical permeabilities, and the depth to and lithology of the layers and aquifers; and
>
> 5. Topography, soil types and characteristics, and surface water drainage systems of the site and surrounding the site.
>
> (b) Include an inventory of all the public and private water wells within a one-mile radius of the proposed landfill site. The inventory shall include, where available:
>
> 1. The approximate elevation of the top of the well casing and the depth of each well;
>
> 2. The name of the owner, the age and usage of each well, and the estimated daily pumpage; and

3. The stratigraphic unit screened, well construction technique, and static water levels of each well.

(c) Identify and locate any existing contaminated areas on the landfill site.

(d) Include a map showing the locations of all potable wells within 500 feet of the waste storage and disposal areas to demonstrate compliance with paragraph 62-701.300(2)(b), F.A.C.

66. Angelo's conducted a hydrogeological investigation, but it was not adequate, as discussed below.

67. Angelo's and the Aligned Parties disputed the hydrogeological characteristics of the proposed landfill site and region. The principal disputes related to the direction and velocity of groundwater flow.

68. Angelo's contends that groundwater flows from the landfill site to the west, making the proposed landfill site part of the Withlacoochee River groundwater basin. The Aligned Parties contend that groundwater flows south toward Crystal Springs and, therefore, the site is within the "springshed" of Crystal Springs.

69. A United States Geological Survey map of the Crystal Springs springshed shows Angelo's proposed landfill site within the springshed. A springshed study done for SWFWMD also indicates the site is within the Crystal Springs springshed, but

the District has not always been consistent in its statements about the groundwater basin boundaries in this area.

70. A water chemistry analysis of the groundwater in the area of Angelo's proposed landfill indicates that the site is an area of higher recharge and within the Crystal Springs springshed.

71. The springshed boundary can shift, depending on rainfall.

72. Angelo's hydrogeological evidence was not sufficient to refute the reasonable possibility that the proposed landfill site is within the Crystal Springs springshed. Therefore, the Department's determination whether Angelo's has provided reasonable assurances must account for the threat of contamination to Crystal Springs and the other public and private water supply sources to the south.

73. There are no creeks or streams and only a few lakes in the area between Crystal Springs and the Angelo's site. The absence of surface runoff features indicates it is an area of high recharge to the groundwater. Crystal Springs is in an area of conduit flow.

74. The hydrologic investigation conducted by Angelo's was not thorough enough to characterize surficial aquifer flow and flow between aquifers.

75. The preponderance of the evidence shows more groundwater recharge to the Floridan Aquifer in the area than estimated by Angelo's. Angelo's hydrogeological investigation was inadequate to refute the possibility of fractured flow or rapid groundwater movement at the proposed landfill site.

76. Angelo's contends there is a continuous clay confining layer that would prevent contamination from moving into deep zones, but the preponderance of the evidence shows discontinuity in the clay and large variations in thickness and depth.

77. The landfill's impermeable liner will impede water movement downward from the landfill, but groundwater will still recharge from outside the landfill to carry any contaminants deeper.

78. If fractured flow or conduit flow extends south from the proposed landfill site, any leachate released into the groundwater beneath the landfill could travel rapidly toward the water supply sources of the City of Zephyrhills, Crystal Springs, Nestlé, and the City of Tampa.

I. Whether the Proposed Landfill is in an Unstable Area

79. Rule 62-701.200(2)(a) prohibits the storage or disposal of solid waste "[i]n an area where geological formations or other subsurface features will not provide support for the solid waste." However, the Department has adopted by reference a federal regulation, 40 C.F.R. 258.15, which allows a

landfill to be constructed in a geologically unstable area if the permit applicant can demonstrate that engineering measures are incorporated into the design to ensure that the integrity of the landfill's structural components "will not be disrupted."

80. The parties presented evidence on many disputed issues of fact at the final hearing, but most of the case involved two ultimate questions: whether the proposed landfill site is unstable and, if so, whether Angelo's has proposed measures that would eliminate the unstable conditions and make the site suitable for a landfill.

81. An "unstable area" is defined in 40 C.F.R. § 258.15 as:

> A location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and Karst terrains.

82. There is overwhelming evidence that the proposed landfill site is an unstable area. A considerable amount of evidence presented by Angelo's supports this finding. For example, Angelo's experts agreed there are loose soils, evidence of raveling, and sinkhole activity. These conditions make the site susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the

landfill structural components responsible for preventing releases from the proposed landfill.

83. The Department's landfill permitting staff requested a sinkhole risk assessment from the Florida Geologic Survey ("FGS"). The State Geologist and Director of the FGS, Dr. Jonathan Arthur, believes the potential for sinkhole formation at the proposed site is moderately high to high. That potential is consistent with the characterization of the area as unstable.

J. Whether the Proposed Engineering Measures Are Adequate

84. Because the site is unstable, Angelo's must demonstrate that engineering measures have been incorporated into the landfill's design to ensure that the integrity of its structural components will not be disrupted. See 40 C.F.R. § 258.15(a). The engineering measures proposed by Angelo's are discussed below. Because it was found that Angelo's hydrogeological and geotechnical investigations were not sufficient to characterize all potentially unstable features of the subsurface, it was not demonstrated that the proposed engineering measures would overcome the instability and make the site suitable for a landfill.

Roller Compaction

85. Angelo's would use roller compaction on the graded floor of the landfill to compact the soils to a depth of about

five feet and eliminate any voids within that depth. The Aligned Parties did not contradict Angelo's evidence that its proposed roller compaction will be done in a manner exceeding what the Department usually requires as far as roller force and the number of roller "passes." However, roller compaction will not affect deep voids.

Liner System

86. In order to ensure that the landfill's liner system components will not be disrupted in the event of a sinkhole, Angelo's proposes to include the reinforcement geotextile discussed above. The Department previously approved the use of geotextile reinforcement, combined with grouting, to demonstrate site stability for the Hernando County Northwest Landfill, which had a comparable risk of sinkhole formation according to the Department.

87. The reinforcement geotextile can span a 15-foot diameter sinkhole without failure. As found above, the average diameter of the seven sinkholes within five miles of the proposed landfill is 11.9 feet.

88. Angelo's proved that the proposed liner system meets all applicable criteria, except the requirement of rule 62-701.400(3)(a) that the liner be installed upon a geologically stable base.

Grouting Plan

89. Angelo's grouting plan would be implemented to fill voids and stabilize areas of loose or weak material. The grouting plan was first designed to grout all locations where there was a Weight of Hammer, Weight of Rod, Loss of Circulation, or loose sands, as indicated by a low blow count. Angelo's revised the grout plan to include several more areas of concern identified later, for a total of 39 locations.

90. Each grout location would have seven grout points, one in the center and six others equally-spaced on a ten-foot radius from the center. If more than ten cubic yards of grout is needed, additional grout points further outward would be injected until the void or loose soils are filled or stabilized.

91. Although Angelo's proposes to grout every boring of concern, that still ties the integrity of the grouting plan to the thoroughness of the borings. The geologic evidence indicates that there are unstable areas which the grouting plan does not address. The Aligned Parties' MER analysis was persuasive in identifying potential areas of instability that were omitted from Angelo's investigation and from its grouting plan.

92. There are other unstable areas existing on the site that should be grouted or otherwise engineered to provide support for the landfill.

93. The grouting plan does not provide reasonable assurance that the integrity of the structural components of the landfill will not be disturbed.

K. Other Issues Raised by the Aligned Parties

94. The Aligned Parties raise a number of other issues, some of which begin with the assumption that the site is unstable and a large sinkhole would form at the landfill. This sometimes mixes issues inappropriately. It has been found that Angelo's did not provide reasonable assurance that the site will support the proposed landfill, but other project elements must be reviewed on their own merits where possible, assuming the site was engineered for stability.

Leachate Collection System

95. There is a single leachate collection trench in the center of the two landfill cells, which makes the landfill operate much like a single cell. The two halves of the cell slope toward the center, so that leachate will drain to the leachate collection trench, and the entire landfill slopes to the west, so that the trench will drain to a sump from which the leachate is pumped to storage tanks. At full capacity, the landfill will generate about 40,000 gallons of leachate per day.

96. Careful cutting and grading of the earth is necessary to create the slopes that are essential to the proper functioning of the project's leachate collection system.

Settlement analyses are necessary to assure that the slopes are maintained.

97. Rule 62-701.410(2)(e) requires a foundation analysis which must include a study of "subgrade settlements, both total and differential." "Total settlement" refers to the overall settlement of a landfill after construction and the loading of solid waste. "Differential settlement" compares settlement at two different points.

98. Angelo's did not meet its burden to provide reasonable assurance on this point. The settlement analysis conducted by Angelo's was amended two or three times during the course of the final hearing to account for computational errors and other issues raised by the Aligned Parties. The analysis never came completely into focus. The final analysis was not signed and sealed by a professional engineer.

99. The settlement analysis is dependent on the geologic analysis, which is inadequate.

100. Without adequate settlement and geologic analyses, it cannot be determined that leachate collection would meet applicable criteria.

Storage Tanks

101. The Aligned Parties contend that the leachate storage tanks cannot be supported by the site. Because it was found that Angelo's geologic investigation was not adequate to

identify all unstable areas, it is also found that Angelo's failed to provide reasonable assurance that the site would support the leachate storage tanks. In all other respects, the Aligned Parties failed to refute Angelo's demonstration that the storage tanks would meet applicable criteria.

Groundwater Monitoring Plan

102. The Aligned Parties contend that there is an insufficient number of monitor wells proposed by Angelo's to detect a leak from the landfill and the wells are too shallow. Because it was found that Angelo's did not adequately characterize the geology and hydrology of the proposed landfill site, the monitoring plan does not provide reasonable assurance of compliance with applicable criteria.

Cell Design

103. The Aligned Parties contend that the "mega-cell" design proposed by Angelo's provides less flexibility to respond to and isolate landfill problems than other landfill designs with smaller cells, and the mega-cell design could generate more leakage. No evidence was presented to show whether Angelo's design was one that had been approved or rejected in the past by the Department. Although it is not the best landfill design, the Aligned Parties did not show that the proposed design violates any permitting criteria.

Operation and Closure

104. The evidence presented by the Aligned Parties in support of their issues regarding the operation of the proposed landfill, such as noise, odor, and traffic, was not sufficient to refute Angelo's evidence of compliance with applicable criteria, with one exception: Angelo's has not provided an adequate contingency plan to show how it would respond to a sinkhole or other incident that required the landfill to be shut down and repaired.

105. Assuming the site was engineered to support the landfill, there is nothing about the Closure Plan that the Aligned Parties showed does not meet applicable criteria.

CONCLUSIONS OF LAW

A. Standing

106. In order to have standing to participate as a party, a person must have substantial rights or interests that reasonably could be affected by the agency's action. See St. Johns Riverkeeper, Inc. v. St. Johns River Water Mgmt. Dist., 54 So. 3d 1051, 1055 (Fla. 5th DCA 2011).

107. John Floyd did not testify at the final hearing. There is no evidence in the record showing that Floyd owns property with a water well near the proposed landfill site. He may be involved with Floyd and Associates, Inc., which the record does show is the owner of property and a water well near

the site, but Floyd and Associates, Inc., is not a party and cannot simply be substituted for John Floyd. Therefore, Floyd's standing to participate was not established.

108. All of the other Aligned Parties have standing because their uses of water are substantial interests and evidence was offered that their uses of water could be impaired by the construction and operation of the proposed landfill.

109. Angelo's argues that the challengers cannot show an injury because groundwater does not flow from the landfill toward their water wells and any discharged leachate will be detected and pumped out before it enters the groundwater. However, standing in a section 120.57 proceeding does not depend upon a party prevailing on factual disputes that determine whether the party would be injured; it depends on offering evidence to prove the party could be injured. St. Johns Riverkeeper, supra; Peace River/Manasota Reg'l Water Supply Auth. v. IMC Phosphates Co., 18 So. 3d 1079, 1084 (Fla. 2d DCA 2009).

110. The Aligned Parties offered evidence that the groundwater beneath the landfill could become contaminated. Angelo's presented evidence that groundwater flows west from the proposed site. The Aligned Parties presented evidence that the groundwater flows south. All of the challengers (except John Floyd) own property and use water wells located west or south of

the proposed landfill. This evidence is sufficient under St. Johns Riverkeeper to establish their standing.

111. Some evidence related to odors, "vectors," and other aspects of a landfill operation was offered by WRB, but the evidence does not tend to prove that WRB could be injured as a result. The evidence did not show how Angelo's would fail to meet the criteria applicable to these potential impacts. WRB did not establish a basis for standing in addition to the potential impairment of its water use.

112. Angelo's claims that Nestlé's alleged injury would be purely economic, because Nestlé bottles and sells water. That claim misconstrues the law of standing. Nestlé has a substantial interest in its use of water and this proceeding is designed to prevent water contamination. The fact that Nestlé receives income from its water use is not a basis for denying it standing. Impairment of Nestlé's water use is the injury that gives it standing, not the resulting loss of income.

B. The Stipulated Agreement

113. This is a de novo proceeding for the purpose of determining final agency action. See Capeletti Bros. v. Dep't of Gen. Servs., 432 So. 2d 1359, 1363-64 (Fla. 1st DCA 1983). The effect the Aligned Parties wish to give to the Stipulated Agreement interferes with that fundamental purpose.

114. Because it is determined that Angelo's did not demonstrate entitlement to the permits, taking into account all of the evidence presented by Angelo's, the motion by the Aligned Parties to exclude some of the evidence is hereby denied.

C. Burden and Standard of Proof

115. Angelo's, as the applicant for the permits, has the burden to prove that it is entitled to the permits because it meets all applicable permitting criteria. See Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

116. Rule 62-701.320(9) directs the Department to deny a landfill permit if reasonable assurance is not provided that the requirements of chapters 62-4 and 62-701 will be satisfied.

117. "Reasonable assurance" means "a substantial likelihood that the project will be successfully implemented." Metro. Dade Cnty. v. Coscan Fla., Inc., 609 So. 2d 644, 648 (Fla. 3d DCA 1992); Save Anna Maria, Inc. v. Dep't. of Transp., 700 So. 2d 113, 117 (Fla. 2d DCA 1997).

118. Findings of fact must be based on a preponderance of the evidence. See § 120.57(1)(j), Fla. Stat.

D. The Department's Joinder in Issues

119. Angelo's argues that the Department should not be allowed to join in the issues raised by the other Aligned Parties which are different from the reasons for denying the permits identified in the Department's Notice of Intent. The

Department's joinder in the issues raised by the other Aligned Parties was manifested for the first time in the parties' pre-hearing stipulation.

120. Angelo's agrees that the Department is not always bound by the issues identified in a Notice of Intent, but asserts that the Department should be bound in this instance because its late notice of joinder in the other issues did not afford Angelo's a reasonable opportunity to prepare to refute the issues. Angelo's acknowledges that no Department witness testified that Angelo's failed to meet any criterion other than the criteria listed in the Department's Notice of Intent, but Angelo's contends that, if it had known the Department was going to join in other issues, it would have conducted discovery on the Department's interpretation of the rules implicated by the claims of the other Aligned Parties. However, because these issues had been raised by other parties, Angelo's was already alerted to the possible benefit of conducting discovery on the Department's interpretation of the rules involved.

121. Furthermore, Angelo's did not take reasonable action available to it to cure any prejudice. Near the beginning of the multi-week final hearing, the hearing was suspended to allow for additional discovery, but Angelo's did not request to conduct the discovery it now says it needed.

E. Applicable Rules

122. The criteria for the permitting of solid waste facilities are set forth in rule chapter 62-701. That chapter has been amended more than once since Angelo's original application was filed with the Department. Angelo's cites rule 62-701.220(1) in support of its argument that the rules that were in effect when Angelo's application was deemed complete by the Department on August 15, 2008, are the rules that should be applied in this proceeding; no later rule amendments.

123. Angelo's modified its application during the course of the proceeding. Angelo's is not relying on the application as it existed on August 15, 2008. It is relying on the application it completed during the course of the final hearing.

124. In addition, Angelo's does not explain how the application of any particular rule amendment that took effect after August 15, 2008, would be prejudicial. The recommendation made in this Recommended Order would not be different if the version of chapter 62-701 in effect on August 15, 2008, had been applied instead of the version in effect at the time of the final hearing.

F. Compliance with Permitting Criteria

125. Angelo's hydrogeological and geotechnical investigations did not adequately define the landfill site geology and hydrology and its relationship to the local and

regional hydrogeologic patterns as required by rule 62-701.410(1)(a).

126. Without an adequate geotechnical investigation, Angelo's failed to insure the integrity of the structural components of the landfill will not be disrupted, as required by 40 C.F.R § 258.15.

127. Angelo's did not provide reasonable assurance that the proposed landfill liner system would be installed upon a base and in a geologic setting capable of providing structural support as required by rule 62-701.400(3)(a).

128. Because the hydrogeological investigation is inadequate, the proposed monitoring plan cannot be determined to be adequate. It cannot be determined, for example, that the monitoring system has a sufficient number of groundwater wells installed at appropriate locations and depths as required by rule 62-701.510.

129. Rule 62-701.340(1) requires a landfill to be designed, constructed, operated, maintained, closed, and monitored to control the movement of waste into the environment so that water quality standards will not be violated. Angelo's contends that its proposed project meets the minimum design standards in rule 62-701.400 and, therefore, Angelo's is entitled to the presumption that it has provided reasonable assurances that water quality standards will not be violated.

130. Angelo's did not prove that its design meets all of the minimum standards in the rule. Angelo's did not prove that it meets the standard in rule 62-701.400(3)(a)2. that the liner will be "[i]nstalled upon a base and in a geologic setting capable of providing structural support to prevent overstressing of the liner due to settlements and applied stresses."

131. Furthermore, the Department rebutted the presumption in the rule by presenting evidence at the final hearing that the site specific conditions warrant more stringent standards. The Department imposed on Angelo's some additional design standards above the minimum standards in rule 62-701.400, but remained unconvinced that Angelo's project could be successfully implemented.

132. The presumption in rule 62-701.400(1) does not eliminate an applicant's need to prove compliance with the requirement found elsewhere in rule chapter 62-701 to conduct adequate hydrogeological and geotechnical investigations and the prohibition against constructing a landfill in an area that is unstable unless adequate engineering measures have been proposed so that the site will support the proposed landfill.

G. Inconsistent Agency Action

133. Angelo's contends that the Department acted inconsistently in denying Angelo's permits because the Department has permitted other landfills in areas with sinkhole

activity. The Department counters that "every site is different." That is an unfortunate short-hand description of the permitting process because it suggests a lack of predictability.

134. The record evidence does not establish how Angelo's proposed site compares to other landfill sites permitted by the Department. Angelo's was given an opportunity to present a comparison, but did not do so in a manner that avoided relevance objections from opposing parties. Angelo's did not offer evidence to show that the Department has accepted similar assurances as sufficient for a landfill in an unstable area with the potential for contaminating several public and private drinking water sources.

135. It is logical that the quantum of assurance that is deemed reasonable by the Department should be higher when there is a potential for a higher level of harm. Here, the potential harm--contamination of several public and private drinking water sources--is a high level of harm. Therefore, the assurance required that the harm will not occur must be commensurately high.

136. Angelo's emphasizes that sinkholes have formed at other landfills permitted by the Department. However, under the permitting criteria in rule chapter 62-701, the occurrence of sinkholes at permitted landfills represents a failure of the

permitting process that the Department must take into account and strive to prevent.

H. Irresponsible Applicant

137. The Aligned Parties contend that, in determining whether Angelo's provided reasonable assurance, Angelo's past irresponsible conduct should be considered. The Department may deny the application for a solid waste facility permit if an applicant has "repeatedly violated pertinent statutes, rules, and orders or permit terms relating to any solid waste facility and who is deemed to be irresponsible as defined by department rule." See § 403.707(8), Fla. Stat.

138. An applicant is "irresponsible" if he owned or operated a solid waste management facility in Florida that was the subject of a state or federal notice of violation, judicial action, or criminal prosecution for violations of chapter 403 or rules adopted under that chapter. See Fla. Admin. Code R. 62-701.320(3)(b). The Aligned parties failed to prove that Angelo's operated a solid waste facility that was the subject of any of these enforcement proceedings.

RECOMMENDATION

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

RECOMMENDED that the Department of Environmental Protection deny Angelo's Permit Application Nos. 22913-001-SC/01 and 22913-002-SO/01.

DONE AND ENTERED this 28th day of June, 2013, 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 28th day of June, 2013.

COPIES FURNISHED:

Carl Roth, Qualified Representative
8031 Island Drive
Port Richey, Florida 34668-6220

Christopher M. Kise, Esquire
Foley and Lardner, LLP
106 East College Avenue, Suite 900
Tallahassee, Florida 32301-7732

Wayne E. Flowers, Esquire
Lewis, Longman and Walker, P.A.
Suite 150
245 Riverside Avenue
Jacksonville, Florida 32202-4931

Janice M. McLean, Esquire
City of Tampa
7th Floor
315 East Kennedy Boulevard
Tampa, Florida 33602-5211

Joseph A. Poblick, Esquire
City of Zephyrhills
5335 8th Street
Zephyrhills, Florida 33542-4312

Doug Manson, Esquire
William Bilenky, Esquire
Brian A. Bolves, Esquire
Manson Bolves, P.A.
1101 West Swann Avenue
Tampa, Florida 33606-2637

Jacob D. Varn, Esquire
Linda Loomis Shelley, Esquire
Karen A. Brodeen, Esquire
Fowler, White, Boggs, P.A.
101 North Monroe Street, Suite 1090
Tallahassee, Florida 32302-1547

David Smolker, Esquire
Smolker, Bartlett, Schlosser,
Loeb and Hinds, P.A.
Suite 200
500 East Kennedy Boulevard
Tampa, Florida 33602-4936

Stanley Warden, Esquire
Christopher Dale McGuire, Esquire
Department of Environmental Protection
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

William D. Preston, Esquire
William D. Preston, P.A.
4832-A Kerry Forest Parkway
Tallahassee, Florida 32309-2272

Herschel T. Vinyard, Jr., Secretary
Department of Environmental Protection
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Matthew Z. Leopold, General Counsel
Department of Environmental Protection
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Lea Crandall, Agency Clerk
Department of Environmental Protection
Mail Station 35
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.

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ANGELO'S AGGREGATE MATERIALS, LTD,
d/b/a ANGELO'S RECYCLED MATERIALS,

Petitioner,

vs. DOAH Case No. 09-1543

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Respondent,

and

CRYSTAL SPRINGS PRESERVE, INC.,
CITY OF TAMPA, and CITY OF
ZEPHYRHILLS,

Intervenors.
_____/

CARL ROTH, JOHN FLOYD, LOUIS POTENZIANO,
and MARVIN HALL,

Petitioners,

vs. DOAH Case No. 09-1544

ANGELO'S AGGREGATE MATERIALS, LTD.,
d/b/a ANGELO'S RECYCLED MATERIALS,
and STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondents.
_____/

WRB ENTERPRISES, INC.

Petitioner,

vs. DOAH Case No. 09-1545

ANGELO'S AGGREGATE MATERIALS, LTD.,

d/b/a ANGELO'S RECYCLED MATERIALS,
and STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondents

_____/

NESTLE WATERS NORTH AMERICA, INC.

Petitioner,

vs. DOAH Case No. 09-1546

ANGELO'S AGGREGATE MATERIALS, LTD.,
d/b/a ANGELO'S RECYCLED MATERIALS,
and STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondents.

_____/

PETITIONER'S EXCEPTIONS TO RECOMMENDED ORDER

Petitioner Angelo's Aggregate Materials, Ltd., d/b/a Angelo's Recycled Materials ("Angelo's"), submits the following exceptions to the Recommended Order entered on June 28, 2013.

Exception Number 1.

Angelo's takes exception to Finding of Fact 69 on the basis that it is not supported by competent, substantial evidence.

Although the Administrative Law Judge did not specifically indicate to which USGS map he is referring in support of the finding that the proposed landfill is within the Crystal Springs springshed, the only possible map in the record that relates to this finding is Exhibit 159, "Transmissivity of the Upper Floridan Aquifer in Florida and Parts of Georgia, South Carolina, and Alabama." (Hereinafter "2012 USGS map"). The SWFWMD map referenced in the same

paragraph of the Recommended Order is Angelo's Exhibit 75. Neither of these maps provide competent, substantial evidence that the proposed site is within the Crystal Springs springshed.

The Crystal Springs springshed delineation in the USGS map was not shown to be based on underlying competent, substantial evidence and cannot support a finding that the site is located within the springshed. In its prima facie case, Angelo's presented the expert testimony of Tom Brown, who testified that it is the practice of the USGS to publish potentiometric surface maps semiannually to show the direction of groundwater flow (Transcript, T. Brown, Vol. V, p. 67), and that it is standard practice to determine springshed boundaries using USGS potentiometric maps. (Transcript, T. Brown, Vol. V, p. 71) Mr. Brown further testified that he reviewed approximately 70 potentiometric surface maps spanning a period of 50 years and none of those maps show the site as being located within the springshed. (Transcript, T. Brown, Vol. V, pp. 67-71; Angelo's Exhibit 180).

Mr. Brown also testified that the 2012 USGS map's delineation of the springshed to include the site is not supported by any of the potentiometric surface maps that he reviewed, including the Greenhalgh study listed in the map as a reference. (Transcript, T. Brown, Vol. V, pp. 74-86; Angelo's Exhibit 159). Mr. Brown testified that the 2012 USGS map cites to a 2003 Greenhalgh study as a reference, however that study does not delineate the Crystal Springs springshed. (Transcript, T. Brown, Vol. V, pp. 74-75) According to Mr. Brown's uncontradicted testimony, a later Greenhalgh study that was done in 2005 specified that it used the May 2000 USGS potentiometric surface map to delineate the springshed. Mr. Brown testified that the relevant contour line divide drawn in the 2005 Greenhalgh study is flawed and a proper interpretation of the May 2000 map is that the site lies north of the springshed. (Transcript, T. Brown, Vol. V, p. 84-86)

The Aligned Parties did not present any particular data source used by the USGS for the 2012 USGS map's springshed delineation or by Greenhalgh. They also did not refute Mr. Brown's testimony regarding the site's location on the potentiometric maps or his criticism of the Greenhalgh study's divide.

The second sentence of Finding of Fact 69 also includes the incorrect statement that a springshed study done for SWFWMD indicates that the site is within the springshed and that finding is not supported by competent substantial evidence. The finding does not identify the referenced study, however the finding's substance indicates that it is Angelo's Exhibit 75. The study is entitled "Origin of Nitrate in Groundwater Discharging in Crystal Springs; Pasco County, Florida" and was prepared in 2000 for SWFWMD. (See Angelo's Exhibit 75, page 3).

Mr. Brown reviewed this study and testified that its springshed delineation shows the site as being located north of the springshed divide. (Transcript, T. Brown, pp.72-73; Angelo's Exhibit 75, p. 15, Figure 1) The study used the potentiometric map of September 1992 for determining the springshed and that map shows the site as lying north of the springshed divide. ((Transcript, T. Brown, pp.72-73; Angelo's Exhibit 75, p. 15, Figure 1) Mr. Brown's testimony was not contradicted; the Aligned Parties did not present any evidence that this study, or the relied upon September 1992 potentiometric surface map, shows the site as being within the springshed.

Based on the foregoing, the first and second sentences of Finding of Fact 69 are not supported by competent, substantial evidence and must be stricken.

Exception Number 2.

Angelo's takes exception to the portion of Finding of Fact 70 which states that the water quality analysis indicates that the site is within the Crystal Springs springshed. That portion of the Finding of Fact is not supported by competent, substantial evidence.

The only evidence in the record of a water chemistry analysis is what was presented in Angelo's Exhibit 75, which is the 2000 study entitled "Origin of Nitrate in Groundwater Discharging in Crystal Springs; Pasco County, Florida." That study did not use a water quality analysis to determine the springshed. (Transcript, T. Brown, Vol. V, p. 72-73) There is no competent, substantial basis upon which to use the study to extrapolate the springshed boundaries as including the site. The site was not located within the study area. (See Angelo's Exhibit 75, p. 15, Figure 1) Additional, more current data was not compiled and analyzed using geochemical fingerprinting.

Finding of Fact 70 must be stricken.

Exception 3.

Angelo's takes exception to Conclusion of Law 110. Based on the above rulings on the exceptions to Finding of Fact 69 and 70, it was shown that groundwater beneath the proposed landfill could not flow to the south as this would require the groundwater to flow upgradient or uphill, which is not possible. According, any leachate could not flow to the water supplies of Crystal Springs Preserve, the City of Tampa, the City of Zephyrhills, and Nestle Waters North America. As those parties could not be adversely impacted by the proposed landfill, they do not have standing in this proceeding.

Dated this 15th day of July, 2013.

JACOB D. VARN
Florida Bar No. 0139615
jvarn@fowlerwhite.com
LINDA LOOMIS SHELLEY
Florida Bar No. 0240621
lshelley@fowlerwhite.com
KAREN A. BRODEEN
kbrodeen@fowlerwhite.com

Florida Bar No. 0512771
FOWLER WHITE BOGGS P.A.
101 North Monroe Street, Suite 1090
Tallahassee, Florida 32301
Telephone: (850) 681-0411
Facsimile: (850) 681-6036

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to those listed on the following service list by Email only on this 15th day of July, 2013.

Doug Manson, Esq.
William Bilenky, Esq.
Brian Bolves, Esq.
Manson Bolves, P.A.
1101 W. Swann Ave.
Tampa, FL 33606
Attorneys for Nestle Waters
North America, Inc. and City of Tampa
dmanson@mansonbolves.com
bbilenky@mansonbolves.com
bbolves@mansonbolves.com

Christopher M. Kise, Esq.
Thomas K. Maurer, Esq.
Foley & Lardner
106 E. College Ave., Suite 900
Tallahassee, FL 32301
Attorneys for WRB Enterprises, Inc.
ckise@foley.com
tmaurer@foley.com

Wayne Flowers, Esq.
Lewis Longman & Walker PA
245 Riverside Ave., Suite 150
Jacksonville, FL 32256
Attorney for
Crystal Springs Preserve, Inc.
wflowers@llw-law.com

Janice McLean, Esq.
Asst. City Attorney-City of Tampa
Old City Hall-5th Floor
315 E. Kennedy Blvd.
Tampa, FL 33602
Attorney for City of Tampa
jan.mclean@ci.tampa.fl.us

David Smolker, Esq.
Smolker Bartlett Schlosser
Loeb & Hinds, P.A.
500 E. Kennedy Boulevard, Suite 200
Tampa, FL 33602
Attorneys for WRB Enterprises, Inc.
davids@smolkerbartlett.com

Stan Warden, Esq.
Randy Miller, Esq.
FDEP
3900 Commonwealth Blvd.
Tallahassee, FL 32399
Attorneys for Florida DEP
stan.warden@dep.state.fl.us
randy.j.miller@dep.state.fl.us

Joseph A. Poblick, Esq.
City of Zephyrhills
5335 8th Street
Zephyrhills, FL 33542
Attorney for City of Zephyrhills
jap@poblicklaw.com

Carl Roth
8031 Island Drive
Port Richey, FL 34668
carlwroth@gmail.com

William D. Preston, Esq.
4832-A Kerry Forest Pkwy.
Tallahassee, FL 32309
bill@wprestonpa.com

JACOB D. VARN

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ANGELO'S AGGREGATE MATERIALS, LTD,
d/b/a ANGELO'S RECYCLED MATERIALS,

Petitioner,

vs. DOAH Case No. 09-1543

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,
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and

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_____/

CARL ROTH, JOHN FLOYD, LOUIS POTENZIANO,
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_____/

NESTLÉ WATERS NORTH AMERICA, INC.,

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ANGELO'S AGGREGATE MATERIALS, LTD., d/b/a ANGELO'S RECYCLED MATERIALS, and STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondents.
_____/

JOINT RESPONSE TO EXCEPTIONS

Pursuant to rule 28-106.217, Florida Administrative Code, Nestlé Waters North America, Inc., City of Tampa, City of Zephyrhills, Crystal Springs Reserve, Inc., WRB Enterprises, Inc., Department of Environmental Protection, Carl Roth, John Floyd, Louis Potenziano and Marvin Hall, file this response to Angelo's Aggregate Materials, Ltd. d/b/a Angelo's Recycled Material ("Angelo's") Exceptions to Recommended Order.

When reviewing and ruling upon exceptions to the findings of fact in an Administrative Law Judge's ("ALJ's") Recommended Order, in whole or in part, an agency is bound by section 120.57(1)(1), Florida Statutes, which states:

> The agency may not reject or modify the findings of fact 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 upon competent substantial evidence....

In its exceptions Petitioner is not contending that the record is devoid of competent, substantial evidence to support the ALJ's finding. Instead, Angelo's is advancing its alternate view on the

evidence and is, in essence, asking the Agency to re-weigh the evidence in order to reach findings that differ from those of the ALJ. However, the Agency is specifically prohibited from doing so. See McDonald v. Dep't of Banking & Fin., 346 So. 2d 569, 579 (Fla. 1st DCA 1977); Schrimsher v. Sch. Bd. of Palm Beach County, 694 So. 2d 856, 860 (Fla. 4th DCA 1997); see also McGann v. Fla. Elections Comm'n, 803 So. 2d 763, 764 (Fla. 1st DCA 2001) (concluding that an agency could not reject an ALJ's finding of fact by recasting findings as a conclusion of law); Harac v. Dep't of Prof. Reg., 484 So. 2d 1333, 1337 (Fla. 3d DCA 1986).

Finding of Fact 69

In Finding of Fact 69, the ALJ finds that "a United States Geological Survey map of the Crystal Springs springshed shows Angelo's proposed landfill site within the springshed." Aligned parties' Exhibit 159 is a USGS map delineating the northern boundary of the Crystal Springs springshed. Angelo's landfill site is located just south of the northern boundary within the USGS depicted springshed. Dr. Upchurch, an expert in geology, geochemistry, karst science and statistics, testified that it is his opinion that the USGS depiction of the springshed, aligned parties' Exhibit 159, is an accurate depiction of the Crystal Springs springshed. (V. XV, pp. 82 - 83).

Angelo's argument focuses more on the facts supporting the USGS map. However, based upon the testimony of Phillip R. Davis, who was tendered and accepted as an expert in the fields of hydrology, hydrogeology, and hydrologic modeling, any leachate released into the groundwater is likely to drain into Crystal Springs. (V. XVIII p. 53). Mr. Davis further testified that conduit flow exists in the Crystal Springs springshed, based upon studies he has performed and the available data, including the water quality analysis, water level data, and water

hydraulics information. (V. XVIII p. 48). As such, water from under the Angelo's landfill site will travel to Crystal Springs in as little as 4 to 6 months. (V. XVIII pp. 49, 111 – 112).

In Finding of Fact 69, the ALJ also finds that "a springshed study done for SWFWMD also indicates the site is within the Crystal Springs springshed." Dr. Upchurch testified that Crystal Springs has distinctive water quality characteristics. (V. XV, p. 73). While it is true that the 2000 Champion and DeWitt springshed delineation done for SWFWMD did not initially show that the Angelo's site was within the Crystal Springs springshed, Dr. Upchurch, who informally peer reviewed the study, attributed that omission to a problem with the data as to water chemistry from a well just south of the Angelo's site. (V. XV, p. 75). The springshed was initially cut off south of the Angelo's site because of this problematic well. However, the springshed was later revised north of the site because another well, the Griffin well, had distinctive chemical characteristics similar to Crystal Springs. (V. XV, p. 76, 78-80).

Angelo's alternative view of the evidence is further refuted by Mr. Davis' testimony. Mr. Davis showed that to accept Angelo's suggested springshed boundary, the recharge rate for the area would have to be doubled from 8 inches per year to 16 inches per year in order to justify the spring flow at Crystal Springs. Sixteen inches of recharge is not realistic for the area. (V. XVIII p. 57).

Finding of Fact 70

In Finding of Fact 70, the ALJ finds that "a water chemistry analysis of the groundwater in the area of Angelo's proposed landfill indicates that the site is … within the Crystal Springs springshed." Mr. Davis testified that he used available nitrate sampling tests of groundwater in the area to substantiate groundwater flow between the landfill site and Crystal Springs. (V. XVIII p. 50). Dr. Upchurch testified that Crystal Springs has distinctive water quality characteristics.

(V. XV, p. 73). Similar chemical characteristics were found in the Griffin well adjacent to the landfill site. (V. XV, p. 76). Dr. Upchurch testified that the chemical fingerprint of the groundwater in the Griffin well adjacent to the Angelo's landfill and other evidence matched the groundwater discharges from Crystal Springs thereby confirming that the landfill site is within the Crystal Springs springshed. (V. XV, p. 83).

Conclusion of Law 110

When reviewing conclusions of law, section 120.57(1)(l), Florida Statutes, provides in pertinent part:

> The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction.

Notwithstanding that the issue of standing is not within the substantive jurisdiction of the Department, Findings of Fact 69 and 70, as discussed above, are both supported by competent substantial evidence. These findings along with Findings of Fact 72 through 78 support the finding that the landfill site is within the Crystal Springs springshed and, therefore, leachate from the landfill would flow to the water supplies of Crystal Springs Preserve, the City of Tampa, the City of Zephyrhills and Nestlé Waters North America, Inc. As such, the ALJ correctly concluded that these parties could be adversely impacted by the proposed permits and, therefore, have standing in this matter. St. Johns Riverkeeper Inc. v. St. Johns River Water Mgmt., 54 So. 3d 1051 (Fla. 5th DCA 2011). "Specifically named persons whose substantial interests are determined in a proceeding," and any "other person . . . whose substantial interests will be affected by proposed agency action" may be "parties" under the APA definition of the term. Section 120.52(13), Florida Statutes. Gibby Family Trust v. Blueprint 2000 and Dep't of Envtl.

Prot., Case No. 10-9292 (DOAH April 11, 2011), at 14-16; See also, Martin Cnty. Conserv. Alliance v. Martin Cnty., 73 So. 3d 856 (Fla. 1st DCA 2011).

Recommendation

Angelo's exceptions must be denied because they fail to demonstrate that the challenged findings are not based upon competent substantial evidence and, therefore, that the conclusion of law is erroneous. Section 120.57(1)(1), Florida Statutes. In fact, as shown above, the challenged findings are supported by competent substantial evidence. As such, the Department should adopt the Recommended Order in its entirety and conclude that Permit Application Nos. 22913-001-SC/01 and 22913-002-SO/01 for the construction and operation of a Class I landfill in Pasco County should be denied.

Respectfully Submitted,

MANSON BOLVES, P.A.
1101 W. Swann Avenue
Tampa, Florida 33606
Ph.: (813) 514-4700
Fax: (813) 514- 01
Attorneys for Nestle Water North America

Douglas Manson
Florida Bar Number 0542687
William S. Bilenky
Florida Bar Number 0154709
Brian Bolves
Florida Bar Number 0367079

CERTIFICATE OF SERVICE

I hereby certify this 25th day of July, 2013, that a true and correct copy of the foregoing has been served by Electronic Mail only to the parties on the following distribution list:

Stan Warden, Assistant General Counsel Florida Department of Environmental Protection 3900 Commonwealth Blvd. Tallahassee, FL 32399 Stan.warden@dep.state.fl.us *Attorney for Florida DEP*	Janice McLean, Assistant City Attorney City Attorney – City of Tampa Old City Hall – 5th Floor Tampa, FL 33602 Jan.mclean@ci.tampa.fl.us *Attorney for Intervenor City of Tampa*
Jacob D. Varn, Esquire Linda Loomis Shelley, Esquire Karen A. Brodeen, Esquire Fowler White Boggs P.A. 101 North Monroe Street, Suite 1090 Tallahassee, FL 32301 jvarn@fowlerwhite.com lshelley@fowlerwhite.com kbrodeen@fowlerwhite.com *Attorneys for Petitioner/Respondent Angelo's Aggregate Materials, Ltd.*	William D. Preston, Esquire 4832-A Kerry Forest Pkwy. Tallahassee, FL 32309 bill@wprestonpa.com *Attorney for Angelo's Aggregate Materials, Ltd.*
Christopher M. Kise, Esquire Thomas K. Maurer, Esquire Foley & Lardner 106 E. College Ave., Suite 900 Tallahassee, FL 32301 ckise@foley.com tmaurer@foley.com *Attorneys for WRB Enterprises, Inc.*	David Smolker Esquire Kristin M. Tolbert Smolker, Bartlett, Schlosser, Loeb & Hinds 500 East Kennedy Boulevard Suite 200 Tampa, FL 33602 davids@smolkerbartlett.com cristinaf@smolkerbartlett.com *Attorneys for WRB Enterprises, Inc.*
Wayne Flowers, Esquire Lewis Longman & Walker, P.A. 245 Riverside Avenue Suite 150 Jacksonville, FL 32256 wflowers@llw-law.com *Attorney for Crystal Springs Preserve, Inc.*	Mr. Carl Roth 8031 Island Drive Port Richey, FL 34668 carlwroth@gmail.com *Spokesperson for Protector's of Florida's Legacy*
Joseph A. Poblick, Esquire City of Zephyrhills 5335 8th Street Zephyrhills, FL 33542 jap@poblicklaw.com *Attorney for City of Zephyrhills*	

Attorney

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ANGELO'S AGGREGATE MATERIALS, LTD,
d/b/a ANGELO'S RECYCLED MATERIALS,

Petitioner,

vs. DOAH Case No.: 09-1543

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,
Respondent,

and

CRYSTAL SPRINGS PRESERVE, INC.,
CITY OF TAMPA, and CITY OF
ZEPHYRHILLS,

Intervenors.
_____/

CARL ROTH, JOHN FLOYD, LOUIS POTENZIANO,
and MARVIN HALL,

Petitioners,

vs. DOAH Case No.: 09-1544

ANGELO'S AGGREGATE MATERIALS, LTD.,
d/b/a ANGELO'S RECYCLED MATERIALS,
and STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondents.
_____/

WRB ENTERPRISES, INC.

Petitioner,

vs. DOAH Case No.: 09-1545

ANGELO'S AGGREGATE MATERIALS, LTD.,
d/b/a ANGELO'S RECYCLED MATERIALS,

and STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,
Respondents
_____/

NESTLÉ WATERS NORTH AMERICA, INC.

Petitioner,

vs. DOAH Case No.: 09-1546

ANGELO'S AGGREGATE MATERIALS, LTD., d/b/a ANGELO'S RECYCLED MATERIALS, and STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondents.
_____/

CLARIFICATION OF JOINT RESPONSE TO EXCEPTIONS

The Florida Department of Environmental Protection joins in the Response to Exceptions, filed on even date by Nestlé Waters North America, Inc., City of Tampa, City of Zephyrhills, Crystal Springs Reserve, Inc., WRB Enterprises, Inc., Department of Environmental Protection, Carl Roth, John Floyd, Louis Potenziano and Marvin Hall, with the exception of the following:

Conclusion of Law 110- The Joint Response to Exceptions provides in part "Notwithstanding that the issue of standing is not within the substantive jurisdiction of the Department, as discussed above…" The Department files this clarification to point out that the question of whether an alleged interest is within the zone of interest protected by Chapter 403 Florida Statutes, is a matter within the substantive jurisdiction of the Department.

CERTIFICATE OF SERVICE

I hereby certify this 25th day of July, 2013, that a true and correct copy of the foregoing has been served by Electronic Mail only to the parties on the following distribution list:

Douglas Manson Manson and Bolves, P.A. 1101 W. Swann Avenue Tampa, Florida 33606 dmanson@mansonbolves.com *Attorney for Nestle Waters North America*	Janice McLean, Assistant City Attorney City Attorney – City of Tampa Old City Hall – 5th Floor Tampa, FL 33602 Jan.mclean@ci.tampa.fl.us *Attorney for Intervenor City of Tampa*
Jacob D. Varn, Esquire Linda Loomis Shelley, Esquire Karen A. Brodeen, Esquire Fowler White Boggs P.A. 101 North Monroe Street, Suite 1090 Tallahassee, FL 32301 jvarn@fowlerwhite.com lshelley@fowlerwhite.com kbrodeen@fowlerwhite.com *Attorneys for Petitioner/Respondent Angelo's Aggregate Materials, Ltd.*	William D. Preston, Esquire 4832-A Kerry Forest Pkwy. Tallahassee, FL 32309 bill@wprestonpa.com *Attorney for Angelo's Aggregate Materials, Ltd.*
Christopher M. Kise, Esquire Thomas K. Maurer, Esquire Foley & Lardner 106 E. College Ave., Suite 900 Tallahassee, FL 32301 ckise@foley.com tmaurer@foley.com *Attorneys for WRB Enterprises, Inc.*	David Smolker Esquire Kristin M. Tolbert Smolker, Bartlett, Schlosser, Loeb & Hinds 500 East Kennedy Boulevard Suite 200 Tampa, FL 33602 davids@smolkerbartlett.com cristinaf@smolkerbartlett.com *Attorneys for WRB Enterprises, Inc.*
Wayne Flowers, Esquire Lewis Longman & Walker, P.A. 245 Riverside Avenue Suite 150 Jacksonville, FL 32256 wflowers@llw-law.com *Attorney for Crystal Springs Preserve, Inc.*	Mr. Carl Roth 8031 Island Drive Port Richey, FL 34668 carlwroth@gmail.com *Spokesperson for Protector's of Florida's Legacy*

Joseph A. Poblick, Esquire City of Zephyrhills 5335 8th Street Zephyrhills, FL 33542 jap@poblicklaw.com *Attorney for City of Zephyrhills*	

/s/

W. DOUGLAS BEASON
Assistant General Counsel
3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, FL 32399-3000
Telephone: (850) 245-2242
Facsimile: (850) 245-2292
Email: doug.beason@dep.state.fl.us