

debris facilities and one solid waste processing facility located in Santa Rosa County, Walton County, and Bay County, respectively.

PRELIMINARY STATEMENT

On December 11, 2009, Respondent, Department of Environmental Protection (Department), received Coyote's renewal permit application for it to continue to construct, operate, or modify a construction and demolition debris facility located in Santa Rosa County, known as the Coyote Navarre C&D Disposal Facility (Coyote Navarre). On April 2, 2010, the Department issued its notice of denial of permit number 0005651-005-SO on the grounds the application was untimely and incomplete and the applicant was an "irresponsible applicant." After receiving an extension of time, on June 7, 2010, Coyote timely filed a petition challenging the proposed agency action. The petition was referred by the Department to the Division of Administrative Hearings on June 28, 2010, with a request that an administrative law judge conduct a formal hearing. The matter was assigned Case No. 10-4179 and, by agreement of the parties, a final hearing was scheduled on December 6-8, 2010, in Milton, Florida.

On August 20, 2010, the Department received Coyote's renewal permit applications for it to continue to construct, operate, or modify a construction and demolition debris facility located in Walton County, known as Coyote West C&D Facility

(Coyote West), and a solid waste processing facility located in Bay County, known as the Coyote Disposal Facility (Coyote Disposal). On September 17, 2010, the Department issued notices of denial of permit numbers 0002039-005-SO and 0007948-006-SO for Coyote West and Coyote Disposal, respectively, on the ground the applicant was an "irresponsible applicant." On September 29, 2010, Coyote filed petitions challenging that action. The petitions were referred by the Department to the Division of Administrative Hearings on October 5, 2010, with a request that an administrative law judge conduct a formal hearing. They were assigned Case Nos. 10-9445 and 10-9448, and the three cases were consolidated by Order dated October 22, 2010.

At the request of the parties, the final hearing was rescheduled to January 26-28, 2011. A unilateral pre-hearing statement (statement) was filed by the Department on January 21, 2011. After a joint motion for continuance was filed, the matters were rescheduled to March 22-24, 2011, in Pensacola, Florida.

At the final hearing, Mr. Schweizer, who represented his corporation, made an ore tenus request for a continuance of the hearing for two reasons: (1) to have additional time to hire an attorney; and (2) to allow him 90 days in which to liquidate or sell the three facilities. The request was denied because his

prior counsel was authorized to withdraw as counsel in Case No. 10-4179 in August 2010, and the final hearing in that case was scheduled in December 2010 in order to allow him adequate time to hire a new attorney. Also, the Department is concerned with a long history of non-compliance by Coyote and does not want any further delays. Other than requesting a continuance, Coyote presented no evidence. The Department presented no witnesses but offered Department Exhibits 1-22 and A-D, which were received in evidence. Also, the admitted facts recited in the Department's unilateral statement (Exhibit D) were accepted as true. The exhibits and statement form the basis for the findings of fact set forth below.

The Transcript of the hearing was filed on April 6, 2011. Proposed findings of fact and conclusions of law were filed by the Department on April 18, 2011, and they have been considered by the undersigned in the preparation of this Recommended Order. None was filed by Coyote.

FINDINGS OF FACT

A. The Parties

1. Coyote is a for-profit corporation registered to conduct business in the State of Florida. W. Todd Schweizer is the president of the corporation. Coyote owns and operates Coyote Navarre, Coyote West, and Coyote Disposal, which are seeking permit renewals. It also owns and operates a solid

waste management facility known as Coyote East in Freeport, Walton County, which is now, along with two other Coyote facilities, the subject of an enforcement action in circuit court. See Department Ex. 20. However, Coyote East is not a party to this proceeding. (That facility's permit expires on March 4, 2013.)

2. The Department is an administrative agency of the State which administers and enforces chapters 376 and 403, Florida Statutes (2010), and Florida Administrative Code title 62.

B. Coyote Navarre

3. The evidence indicates that the Coyote Navarre facility has a long history of not complying with Department regulations and orders. In September 2001, Coyote filed an application to transfer an existing permit for a construction and demolition debris disposal facility located at 3201 Five Forks Road, approximately 3.3 miles north of the U.S. Highway 98 and State Road 87 intersection, in Navarre, Santa Rosa County to an entity known as Coyote Navarre. The application was approved, with a permit expiration date of May 4, 2003.

4. To address ground contamination at the facility, in November 2001, Coyote submitted to the Department a Contamination Assessment Plan. In May 2003, Coyote submitted a renewal permit application, which was approved on December 17,

2004. See Department Ex. 1. The new permit had a renewal date of December 17, 2009. Id.

5. In September 2006, Coyote submitted a Site Assessment Report (SAR) to the Department that assessed benzene, arsenic, aluminum, iron, sulfate, and total dissolved solids (TDS) found in groundwater compliance monitoring wells at Coyote Navarrrre in concentrations above allowable groundwater standards.

6. The Department reviewed the SAR and advised Coyote by letter dated October 31, 2006, that the SAR was incomplete.

7. In January 2007, Coyote notified adjacent property owners that groundwater contamination had reached beyond the property boundaries of its facility.

8. During the years 2008 and 2009, Coyote did not submit groundwater monitoring results for the facility to the Department.

9. The Department sent Coyote a renewal permit reminder letter on July 9, 2009. The letter reminded Coyote that the application must be submitted on or before October 18, 2009, to be considered timely and sufficient. Coyote eventually submitted an application on December 11, 2009. See Department Ex. 8.

10. The application was deemed incomplete and a request for additional information was sent to Coyote. See Department

Ex. 9. Coyote did not provide a response to the Department before the permit expired on December 17, 2009.

11. On April 2, 2010, the Department issued its notice of intent to deny Coyote's permit renewal application. See Department Ex. 10. Besides the application being incomplete and untimely, the Department determined that based upon prior conduct by the applicant, Coyote is an "irresponsible applicant" within the meaning of rule 62-701.320(3). Id. Paragraph (3)(a) of the rule provides that an applicant is "irresponsible" if it "was subject to a state or federal notice of violation, judicial action, or criminal prosecution for activities that constitute violations of Chapter 403, F.S., or the rules promulgated thereunder, and could have prevented the violation through reasonable compliance with Department rules." If an applicant is deemed to be irresponsible, the rule provides that in determining whether an applicant has given reasonable assurances that Department standards will be met, the Department may also consider "repeated violations of applicable statutes, rules, orders, or permit conditions caused by a permit applicant after October 1988 relating to the operation of any solid waste management facility in this state." Fla. Admin. Code R. 62-701.320(3).

12. On December 9, 2010, the Department sent Coyote a letter informing it to cease and desist operations at Coyote

Navarre because the facility's permit had expired. See Department Ex. 11.

13. Because Coyote has continued to operate the facility without a permit, the Department has filed a complaint in circuit court. The outcome of that action is unknown.

14. Besides the foregoing civil action, the Department filed a complaint against Coyote in circuit court on April 8, 2008, alleging that the facility had violated chapter 403 and rule chapters 62-210, 62-296, and 62-701 by causing pollution and failing to control objectionable odors at the facility. See Department Ex. 2. This case was later settled through a Stipulated Order approved by the Court on August 25, 2009, which required Coyote to install an air monitoring device at Coyote Navarre and provide the Department with air monitoring results. See Department Ex. 4. The results were submitted to the Department for the months of October, November, and December 2010.

15. Another circuit court action was filed against Coyote in June 2009 alleging that the facility was causing groundwater contamination, that it failed to submit groundwater monitoring results, and that it failed to assess groundwater contamination or complete a SAR. See Department Ex. 5. A Consent Final Judgment was executed by the parties and approved by the Court on March 30, 2010. See Department Ex. 6. However, as of the

date of the hearing, Coyote had failed to submit a SAR Addendum within 270 days of the entry of the judgment, as required by the Consent Final Judgment.

16. Although given an opportunity to do so, Coyote presented no evidence at hearing in support of its application or to respond to the Department's reasons for denying the application.

C. Coyote West

17. Like Coyote Nararre, the documentary evidence indicates that the Coyote West construction and demolition debris disposal facility on Hatcher Cemetery Road, south of State Road 20, near Freeport, Walton County, has a history of not complying with Department regulations and orders. In 2002, Coyote filed an application for the transfer of an existing permit to an entity to be known as Coyote West. The Department approved the transfer of the permit, with an expiration date of February 19, 2004. Coyote West did not submit a permit renewal application and the permit expired in 2004.

18. In April 2005, Coyote West submitted a new permit application, which was approved in October 2005. See Department Ex. 12. That permit had an expiration date of October 21, 2010.

19. In November 2005, routine groundwater sampling at the facility indicated the presence of aluminum, iron, and sulfate in concentrations above groundwater standards. Coyote submitted

a SAR to the Department in December 2006 and a SAR Addendum in April 2007.

20. Although the Department advised Coyote in October 2007 that the SAR Addendum was incomplete, as of October 2010, Coyote had still not provided the requested information. See Department Ex. 21.

21. Also, during 2008 and 2009, Coyote did not file groundwater monitoring results for the Coyote West facility.

22. On April 28, 2010, the Department sent Coyote a renewal permit reminder letter, which reminded Coyote that its permit renewal application must be filed on or before August 22, 2010, in order to be considered timely. See Department Ex. 14. An application was filed by Coyote on August 20, 2010. See Department Ex. 16.

23. On September 17, 2010, the Department issued its notice of intent to deny the application on the ground Coyote's prior conduct rendered it an irresponsible applicant as defined in rule 62-701.320(3). See Department Ex. 18.

24. Although given an opportunity to do so, Coyote submitted no evidence at hearing in support of the application for renewal of the permit or to respond to the Department's reason for denying the application.

D. Coyote Disposal

25. In February 2002, Coyote filed an application with the Department seeking to transfer an existing permit for a solid waste processing facility located at 2101 East 9th Street, Panama City, to an entity to be known as Coyote Disposal. The application for a transfer of the permit was approved, with the permit having an expiration date of September 1, 2003.

26. In August 2003, Coyote submitted a renewal permit application to the Department, which approved the application with a new permit expiration date of October 21, 2010. See Department Ex. 13.

27. Coyote's January 2006 Semi-Annual Water Quality Report reflected aluminum, arsenic, iron, sulfate, and TDS in compliance monitoring wells at levels well above the allowable groundwater standards. After the Department confirmed these findings in September 2006, Coyote submitted a SAR in March 2008.

28. The Department sent Coyote letters on May 20, 2008, and October 17, 2008, informing Coyote that the March 2008 SAR was incomplete. See Department Ex. 22. Coyote has never responded to these letters.

29. On April 28, 2010, the Department sent Coyote a renewal permit reminder letter advising that an application must

be submitted by August 22, 2010, in order to be considered timely. See Department Ex. 15.

30. On August 20, 2010, Coyote filed its permit renewal application for Coyote Disposal. See Department Ex. 17.

31. On September 17, 2010, the Department issued its intent to deny the application on the ground that Coyote's prior conduct rendered it an irresponsible applicant within the meaning of rule 62-701.320(3). See Department Ex. 19.

32. Although given an opportunity to do so, Coyote presented no evidence at hearing in support of the application for renewal of the permit or to respond to the Department's reason for denying the application.

CONCLUSIONS OF LAW

33. As the applicant for the permit renewals, Coyote bears the burden of proving by a preponderance of the evidence that it has given reasonable assurances that all permitting criteria will be satisfied. See Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981). See also Fla. Admin. Code R. 62-4.070(1) ("[a] permit shall be issued to the applicant upon such conditions as the Department may direct, only if the applicant affirmatively provides the Department with reasonable assurance . . . that the construction, expansion, modifications, operation, or activity of the installation will

not discharge, emit, or cause pollution in contravention of Department standards or rules").

34. Coyote has failed to provide reasonable assurances that all permitting criteria will be met. See Fla. Admin. Code R. 62-4.070(1). Also, it failed to submit evidence to refute the Department's assertions that the Coyote Navarre application was untimely and incomplete and that, as to all three applications, Coyote is an irresponsible applicant. Accordingly, it is concluded that the applications should be denied.

RECOMMENDATION

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

RECOMMENDED that the Department of Environmental Protection enter a final order denying the applications of Coyote Land Company, Inc., for renewal of permits 0005651-005-SO (Coyote Navarre), 0002039-005-SO (Coyote West), and 0007948-006-SO (Coyote Disposal).

DONE AND ENTERED this 26th day of April, 2011, in
Tallahassee, Leon County, Florida.

D. R. Alexander

D. R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 26th day of April, 2011.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.