

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

<b>COYOTE LAND COMPANY, INC.,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b>OGC CASE NOS. 10-1424</b>
	)	<b>10-2700</b>
	)	<b>10-2701</b>
	)	
	)	<b>DOAH CASE NOS. 10-4179</b>
<b>DEPARTMENT OF ENVIRONMENTAL</b>	)	<b>10-9445</b>
<b>PROTECTION,</b>	)	<b>10-9448</b>
	)	
<b>Respondent.</b>	)	
_____	)	

**FINAL ORDER**

On April 26, 2011, an Administrative Law Judge ("ALJ") with the Division of Administrative Hearings ("DOAH") submitted a Recommended Order ("RO") to the Department of Environmental Protection ("DEP" or "Department") in the above captioned administrative proceeding. A copy of the RO is attached hereto as Exhibit A. The RO indicates that copies were sent to the representative of the Petitioner Coyote Land Company, Inc. ("Coyote"), and to counsel for the Respondent Department. The parties did not file any exceptions to the RO. This matter is now before the Secretary of the Department for final agency action.

**BACKGROUND**

This administrative proceeding concerns whether the Department should approve Coyote's applications for renewal permits to continue construction and

operation of two construction and demolition ("C&D") facilities and one solid waste processing facility located in Santa Rosa County, Walton County, and Bay County. Coyote is a for-profit corporation registered to conduct business in the State of Florida and W. Todd Schweizer is the president. Coyote owns and operates facilities known as Coyote Navarre, Coyote West, and Coyote Disposal, which are seeking the 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. However, Coyote East is not the subject of this administrative proceeding (that facility's permit expires on March 4, 2013).

On December 11, 2009, Coyote applied to renew its permit to continue to construct, operate, or modify the Coyote Navarre C&D facility located in Santa Rosa County. The Department denied the renewal application on April 2, 2010, on the grounds that the application was untimely and incomplete, and the applicant was an "irresponsible applicant." Coyote timely challenged the proposed denial, and the challenge was referred to DOAH (Case No. 10-4179).

On August 20, 2010, Coyote applied to renew its permit to continue to construct, operate, or modify the Coyote West C&D Facility in Walton County, and the solid waste processing facility located in Bay County (Coyote Disposal). On September 17, 2010, the Department issued notices of denial for Coyote West and Coyote Disposal, on the ground that the applicant was an "irresponsible applicant." Coyote challenged the proposed denials and the challenges were referred to DOAH (Case Nos. 10-9445 and

10-9448). The final hearing was conducted on March 22, 2011, in Pensacola, Florida. Proposed findings of fact and conclusions of law were filed by the Department, and the ALJ subsequently issued the RO on April 26, 2011.

### **RECOMMENDED ORDER**

In the RO the ALJ concluded that Coyote failed to provide reasonable assurances that all permitting criteria will be met. (RO ¶ 34). Specifically, the ALJ found that, although given an opportunity to do so, Coyote presented no evidence at the final hearing in support of its applications, or to respond to the Department's reasons for denying the applications. (RO ¶¶ 16, 24, 32, 34). The ALJ found that Coyote 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. (RO ¶ 34). The ALJ recommended that the Department enter a final order denying the applications for renewal of the three Coyote permits. (RO, page 13).

The ALJ found that the documentary evidence showed that Coyote's three facilities have a long history of not complying with the Department's regulations and orders. (RO ¶¶ 3 – 32). The Department had determined that based upon prior conduct, Coyote is an "irresponsible applicant" within the meaning of rule 62-701.320(3), Florida Administrative Code. Subparagraph (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). (RO ¶ 11). The ALJ determined that Coyote failed to submit evidence to refute the Department's assertion that, as to all three applications, Coyote is an irresponsible applicant. (RO ¶ 34).

### **CONCLUSION**

The case law of Florida holds that parties to formal administrative proceedings must alert reviewing agencies to any perceived defects in DOAH hearing procedures or in the findings of fact of ALJs by filing exceptions to DOAH recommended orders. See, e.g., *Comm'n on Ethics v. Barker*, 677 So.2d 254, 256 (Fla. 1996); *Henderson v. Dep't of Health, Bd. of Nursing*, 954 So.2d 77 (Fla. 5th DCA 2007); *Fla. Dep't of Corrs. v. Bradley*, 510 So.2d 1122, 1124 (Fla. 1st DCA 1987). Having filed no exceptions to certain findings of fact the party "has thereby expressed its agreement with, or at least waived any objection to, those findings of fact." *Env'tl. Coalition of Fla., Inc. v. Broward County*, 586 So.2d 1212, 1213 (Fla. 1<sup>st</sup> 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). However, even when exceptions are not filed, an agency head reviewing a recommended order is free to modify or reject any erroneous conclusions of law over

which the agency has substantive jurisdiction. See § 120.57(1)(l), Fla. Stat. (2010); *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).

Having considered the applicable law and standards of review in light of the findings and conclusions set forth in the RO, and being otherwise duly advised,

It is therefore ORDERED:

- A. The ALJ's Recommended Order (Exhibit A) is adopted and incorporated by reference herein.
- B. Coyote's renewal application no. 0005651-005-SO (Coyote Navarre) is DENIED.
- C. Coyote's renewal application no. 0002039-005-SO (Coyote West) is DENIED.
- D. Coyote's renewal application no. 0007948-006-SO (Coyote Disposal) is 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 the filing of 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 15<sup>th</sup> day of July, 2011, 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.

  
CLERK

7/15/11  
DATE

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing Final Order has been sent by United

States Postal Service to:

W. Todd Schweizer, President  
Coyote Land Company, Inc.  
4 Laguna Drive  
Suite 201  
Fort Walton Beach, FL 32548-3600

by electronic filing to:

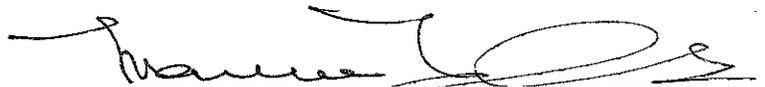
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, FL 32399-1550

and by hand delivery to:

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

this 15<sup>th</sup> day of July, 2011.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



FRANCINE M. FFÖLKES  
Administrative Law Counsel

3900 Commonwealth Blvd., M.S. 35  
Tallahassee, FL 32399-3000  
Telephone 850/245-2242