

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOSEPH GLISSON,	)	
	)	
Petitioner,	)	
	)	
vs.	)	OGC CASE NO. 11-0584
	)	DOAH CASE NO. 11-2953
CITY OF TALLAHASSEE AND	)	
DEPARTMENT OF ENVIRONMENTAL	)	
PROTECTION,	)	
	)	
Respondents.	)	
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**FINAL ORDER**

On October 5, 2011, an Administrative Law Judge (“ALJ”) with the Division of Administrative Hearings (“DOAH”) submitted his Recommended Order (“RO”) in the above captioned administrative proceeding to the Department of Environmental Protection (“Department”). (The RO is attached hereto as Exhibit A). The RO indicated that copies were served to the Petitioner, Joseph Glisson, and to counsel for the Co-Respondents City of Tallahassee (“the City”) and the Department. The parties did not file any Exceptions to the RO. This matter is now before me as Secretary of the agency for final agency action.

**BACKGROUND**

The City of Tallahassee owns and operates a sanitary sewer wastewater collection system that collects and processes all discharges to the City’s sanitary sewer collection system. The City’s sanitary sewer wastewater treatment facilities include the Thomas P. Smith Water Reclamation Facility (TPS), the Lake Bradford Road

Wastewater Treatment Plant (LBR), the Tram Road Reuse Facility, the Southeast Farm, and the Southwest Sprayfield. (RO ¶ 1).

On March 24, 2010, the City submitted applications for minor permit revisions to the permits and associated administrative orders under which it operates TPS and LBR. TPS, the City's primary wastewater treatment plant, is located at 4505 Springhill Road, Tallahassee, Florida, and LBR, an older and much smaller treatment facility is located at 1815 Lake Bradford Road, Tallahassee, Florida. (RO ¶ ¶ 3, 4).

On April 7, 2011, the Department issued its Consolidated Notice to Issue Minor Permit Revisions. The Petitioner challenged the Notice and the Department referred his amended petition to DOAH to conduct an evidentiary hearing.

The ALJ held the final hearing on August 16, 2011, in Tallahassee, Florida. Thereafter, the parties submitted their proposed recommended orders, which the ALJ considered. Subsequently, the ALJ submitted his RO on October 5, 2011.

### **RECOMMENDED ORDER**

The ALJ recommended that the Department enter a final order issuing the minor permit revisions at issue in the case. The RO contains the ALJ's factual findings and legal conclusions.

The City requested the following minor permit revisions to the compliance schedules: (1) a 12-month extension to install the new biosolids dryer; (2) a 12-month extension to each of the installation dates for the new treatment trains; and (3) indefinite deferral of the construction upgrades at LBR. (RO ¶ 29).

The petitioner contends that (1) the proposed revisions to the permits are substantial revisions rather than minor revisions; and (2) the City has not provided

reasonable assurance that the proposed permit revisions will not “cause or exacerbate” pollution of Wakulla Springs and the Wakulla River. (RO ¶ 47). The ALJ concluded that, regarding the first issue, the proposed revisions “extend compliance dates and are not expected to lead to a substantially different environmental impact,” and thus fall within the definition of minor modifications and revisions. (RO ¶¶ 48, 63). Moreover, the ALJ found that DEP had “processed the minor permit revisions at issue using essentially the same process used for substantial permit revisions,” and that Petitioner had not demonstrated that he was “adversely affected by the distinction between a minor and major permit revision.” (RO ¶ 49). With regard to the second issue, the ALJ found that the Petitioner did not put on any “testimony or evidence demonstrating adverse impacts associated with the permit revisions at issue,” and did not demonstrate “how the permit revisions at issue would impact Wakulla Springs.” (RO ¶¶ 50-53).

The ALJ found that the City’s request for a 12-month extension to install the new biosolids dryer and to extend the treatment train construction was because of financial and construction scheduling concerns. (RO ¶ 34). The City’s request to indefinitely defer the upgrades at LBR was based on: “(1) the City’s re-assessment of forecasted wastewater flow projections; (2) updated cost projections for the upgrades at LBR; and (3) a technical evaluation concluding that the City can achieve the 4.5 MGD of treatment capability previously provided by LBR through more cost-effective means at future date.” (RO ¶ 31). The ALJ found that the City’s wastewater flow projections were “independently confirmed and represent sound engineering practice.” (RO ¶ 32).

The ALJ found that “the City did not ask to alter the total nitrogen reduction requirements in the January 29, 2008, permits and administrative orders.” (RO ¶ 36).

The ALJ determined that, in fact, “the City has achieved the total nitrogen reductions ahead of schedule, reaching an annual average below 9 mg/L (the currently applicable interim limitation) more than one year ahead of the January 2011 compliance deadline.” (RO ¶ 36). The ALJ further found that “the City has not asked to change any of the other environmental performance requirements in the TPS and LBR permits and administrative orders.” (RO ¶ 37). The ALJ also found that the permit revisions at issue “do not ask to change the presently-permitted hydraulic loading rates at the Southeast Farm or Southwest Sprayfield.” (RO ¶ 38). He further found that “the nitrogen limits and other concentration limits in the January 2008 permits and administrative orders can be achieved despite deferring upgrades at the LBR and postponing the construction of the treatment train upgrades by 12 months.” (RO ¶ 41).

In sum, the ALJ found that the City provided reasonable assurances that the requested permit revisions: would not negatively impact the environmental performance requirements in the January 2008 permits and administrative orders; would not adversely affect the City’s compliance with the nitrogen concentration limits or increase hydraulic loading rates; would not increase nutrient concentrations or the volume of effluent applied at the City’s Southeast Farm or Southwest Sprayfield; would not impact Wakulla Springs or the Wakulla River; and would not hinder the City’s ability to provide public access reuse water. (RO ¶¶ 40-46, 65, 66, 67).

The ALJ concluded that the permit revisions at issue were minor permit revisions. (RO ¶ 63). The ALJ further concluded that the “Petitioner did not carry his burden of proving, through competent substantial evidence, that the Department should not issue the proposed minor permit revisions.” (RO ¶¶ 60-61, 67).

## 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. 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).

Even when no exceptions are filed, an agency head may, *sua sponte*, make corrections to a scrivener's error contained in a RO. The RO, ¶ 60, mistakenly refers to "120.569(1)(p)" instead of "120.569(2)(p)," and this Final Order hereby corrects that scrivener's error. Having considered the applicable law in light of the findings and conclusions set forth in the ALJ's Order, and being otherwise duly advised, it is ORDERED that:

A. The Recommended Order (Exhibit A), with the corrected scrivener's error as discussed above, is adopted in its entirety and incorporated by reference herein.

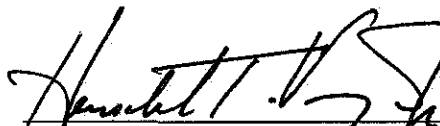
B. Respondent City of Tallahassee's applications for the minor permit revisions at issue in this case are GRANTED, and the Department shall issue the minor permit revisions at issue in this case.

**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 18<sup>th</sup> day of November, 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.

Lea Crandall  
CLERK

11/21/11  
DATE

**CERTIFICATE OF SERVICE**

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

United States Postal Service to:

James S. Alves, Esquire  
Brooke E. Lewis, Esquire  
Hopping, Green & Sams, P.A.  
119 South Monroe Street, Suite 300  
Tallahassee, FL 32301

Joseph Glisson  
198 Mount Zion Road  
Wakulla, FL 32327

by electronic filing to:

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

and by hand delivery to:

Francine M. Ffolkes, Esquire  
Department of Environmental Protection  
3900 Commonwealth Blvd., M.S. 35  
Tallahassee, FL 32399-3000

this 21<sup>st</sup> day of November, 2011.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



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KARA GROSS  
Senior Assistant General Counsel

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