Florida Department of Environmental Protection

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June 8, 2012

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

Re: FINR II, Inc. vs. CF Industries, Inc. and Department of Environmental Protection
DOAH Case No.: 11-6495
DEP/OGC Case No.: 11-1756

Dear Clerk:

Attached for filing are the following documents:

1. Agency Final Order
2. FINR II, Inc.'s Exceptions to Recommended Order
3. CF Industries and DEP's Response to Exceptions to Recommended Order

Please note that there are three separate documents attached as one document. I would be happy to provide the documents as individual files via e-mail if that would be more convenient for you.

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

FINR II, INC.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**OGC CASE NO. 11-1756**
	)	**DOAH CASE NO. 11-6495**
CF INDUSTRIES, INC. and DEPARTMENT OF ENVIRONMENTAL PROTECTION,	)	
	)	
Respondents.	)	
	)	

FINAL ORDER

An Administrative Law Judge ("ALJ") with the Division of Administrative Hearings ("DOAH"), on April 30, 2012, submitted his Recommended Order ("RO") to the Department of Environmental Protection ("DEP" or "Department") in the above captioned proceeding. A copy of the RO is attached as Exhibit A. The RO shows that copies were sent to counsel for the Petitioner, FINR II, Inc. ("FINR"), and to counsel for the Respondents, CF Industries, Inc. ("CF"), and the Department. The Petitioner FINR filed Exceptions to the RO on May 15, 2012.[1] The Respondents filed a joint response on May 25, 2012. This matter is now before the Secretary of the Department for final agency action.

[1] On May 9, 2012, FINR filed a Motion to Stay Proceedings Pending Outcome of Petition for Review of Non-Final Agency Action, seeking to stay entry of this Final Order. The Department denied the motion by separate order.

BACKGROUND

CF first began mining for phosphate in Hardee County in 1978 at what was then known as the North Pasture mine. Mining operations at the North Pasture mine concluded in the middle of the 1990s, and the lands associated with that mine were completely reclaimed. Pursuant to local, state, and federal permits, CF relocated its beneficiation plant (which separates the phosphate ore matrix into phosphate rock, waste clay, and sand) to its present location south of State Road 62 in 1993, and began operation of its South Pasture mine in 1995. The South Pasture mine encompasses about 15,390 acres. After the startup of the South Pasture mine, CF acquired three additional land parcels totaling approximately 7,512.8 acres with mineable reserves contiguous to and immediately south of the South Pasture mine. These parcels are collectively referred to as the South Pasture Extension tract or the Project site. CF applied to the Department for permits and approvals to conduct phosphate mining, reclamation, and associated activities on the South Pasture Extension tract. Approval of the applications for the Project will extend the life of the current South Pasture mine and beneficiation plant by ten years.

The Department issued proposed agency actions, on November 21, 2011, approving CF's applications for the Project's Environmental Resource Permit ("ERP") and Conceptual Reclamation Plan ("CRP"), the South Pasture Wetland Resource Permit Modification ("WRP"), and South Pasture Conceptual Reclamation Plan Modification. On December 12, 2011, FINR timely filed a Petition challenging the

proposed agency actions. FINR owns approximately 875 acres of land east of County Road 663 and immediately south of and adjacent to the Project site, which it leases to two affiliated companies, Florida Institute of Neurological Rehabilitation, Inc. (FINR I, Inc.) and FINR III, LLC. FINR I, Inc., operates the Florida Institute of Neurological Rehabilitation, which is a post-acute, state-licensed inpatient rehabilitation facility accredited by the Commission on Accreditation of Rehabilitation Facilities. It specializes in the treatment of children and adults who have sustained brain injury or some other form of neurologic trauma.

The Petition was referred by the Department, on December 29, 2011, to the DOAH. The ALJ granted CF's motion for a summary hearing under section 120.574, Florida Statutes, which it was authorized to request under Section 378.205(3), Florida Statutes ("F.S."). CF also filed a motion to strike portions of the petition and motion in limine. The ALJ granted the motions on February 16, 2012, ("the non-final order") and proceeded with the accelerated hearing schedule in Section 120.574, F.S. Prior to the final hearing, FINR sought review of the non-final order in the First District Court of Appeal (1D12-1308).[2]

On March 12, 2012, the Department issued a revised proposed agency action incorporating a new modeling report prepared by CF which provided further support for the Department's proposed action. FINR also submitted a written proffer on matters

[2] FINR's Petition for Review of Non-Final Agency Order remains pending as of the date of this Final Order.

previously excluded by the February 16, 2012, Order. The final hearing was held March 26-28, 2012, and on April 30, 2012, the ALJ entered his RO.

RECOMMENDED ORDER

In the RO the ALJ recommended that the Department enter a final order approving CF's applications. The ALJ determined that FINR did not offer credible evidence of adverse environmental or water resources impacts to its property as a result of mining or reclamation within the footprint authorized by the ERP or CRP. (RO at page 47). The ALJ concluded that a preponderance of competent substantial evidence, including the entirety of the application, engineering studies and reports, scientific testimony, and a voluminous application, all support the Department's determination of reasonable assurance of CF's entitlement to the approvals at issue. (RO ¶ 97).

The Project ERP

The ALJ found that CF and the Department thoroughly investigated the Project's potential for causing adverse flooding and dewatering impacts on adjacent properties. (RO ¶ 33). Event-based stormwater runoff modeling provided reasonable assurance that peak discharge rates and outflow volumes at exit points from the Project site under post-reclamation conditions would not cause adverse offsite flood impacts. (RO ¶ 34).

The ALJ also found that CF and the Department evaluated the Project's potential for causing adverse flooding and dewatering impacts on adjacent properties during mining. (RO ¶ 37). He found that CF's application contained during-mining water

balance analyses that specifically evaluated the biological integrity of on-site and off-site preserved areas, streams, and wetlands during mining and after reclamation. There will be no substantial change in the during-mining water balance as a result of the extension of mining into the Project site. The ALJ found that the application, past practices and experience, and evidence presented at hearing all indicate that CF has more than a sufficient amount of water available to conduct the Project while simultaneously maintaining or improving the biological integrity of downstream systems. (RO ¶¶ 38, 39). The ALJ concluded that CF demonstrated its ability to manage large amounts of water within its mine recirculation system and store or discharge water as required in order to maintain downstream flows or reduce flooding potential. Thus, the risk of adverse flooding during mining was minimal. (RO ¶ 40). The ALJ found that once CF constructs the proposed perimeter ditch and berm system, the area of the drainage basin contributing flow to FINR's property would be reduced by approximately one-half, resulting in significantly less water flowing onto FINR's property during flood events. In addition, a reroute ditch would be installed in concert with the ditch and berm system that will reduce peak flood flows downstream in Troublesome Creek. (RO ¶ 51).

The ALJ found that CF thoroughly assessed the ability of the recharge ditch to maintain recharge to wetlands and adjacent properties during active mining of the Project. CF demonstrated that it would meet the goal of the recharge ditch design to maintain the water table during mining operations, within the normal range of seasonal

high and seasonal low water along preserve and property boundaries, including FINR's property. (RO ¶¶ 52 – 58, 72).

The ALJ found that, in addition to the above analyses, CF and the Department also thoroughly evaluated potential on-site and off-site water quality issues associated with the Project. The ALJ found that discharges would occur only through permitted outfalls. Additional water quality protection for adjacent undisturbed surface waters and wetlands would be provided by the perimeter ditch and berm systems and other proposed best management practices ("BMPs"), such as silt fences and stormwater collection systems. The ALJ determined that during mining and reclamation, these practices would preclude uncontrolled releases of water to adjacent un-mined and downstream areas. (RO ¶¶ 60, 61). The ALJ found that CF prepared a Stormwater Pollution Prevention Plan ("SPPP") to identify BMPs and controls for the Project during land preparation, mining, backfilling, and reclamation. The SPPP also incorporated by reference other documents already in place on the South Pasture mine pursuant to CF's National Pollutant Discharge Elimination System ("NPDES") permit for the South Pasture mine. Among these documents are a Best Management Practices/Pollution/Prevention ("BMP3") Plan that generally describes BMPs for waste management, spill reporting and response, and other specific measures to prevent pollution, and a memorandum of agreement ("MOA") between CF and the Department that describes general design and construction BMPs. The ALJ found that by using these measures at the South Pasture mine, CF has never had any issues with

stormwater discharges causing water quality violations. (RO ¶¶ 62, 63). The ALJ also found that FINR failed to present any competent substantial evidence that the Project will cause adverse water quality impacts during mining. (RO ¶ 64, 88).

As to ecological issues, the ALJ found that the level of detail and analysis provided by CF in its application to the Department for the Project ERP and CRP, and the South Pasture WRP and CRP Modifications, was more than adequate. The ALJ determined that CF provided substantially more baseline information in terms of existing site conditions, wetland conditions, and wildlife information than is provided in typical ERP applications. (RO ¶ 65). The ALJ noted that CF's expert's evidence as to the local and regional ecological, hydrological, and wildlife benefits expected to result from the proposed reclamation was not disputed. Thus, he concluded that CF's wetlands reclamation activities maintained or improved the water quality and the function of the biological systems present at the site prior to the commencement of mining activities as required under Section 373.414(6)(b), F.S. (RO ¶¶ 66 – 68, 88).

The ALJ found that CF considered the potential impacts to off-site wetlands from the Project both during mining and after reclamation, particularly those wetlands that straddle CF's shared property boundary with FINR. The ALJ also found that the wetlands on FINR's property are similar to nearby wetlands on the Project site, in that historically they have been impacted by agricultural activities, including ditching. (RO ¶ 69, 70 - 72). The ALJ concluded that no dewatering would occur that would have an adverse ecological effect on FINR's wetlands. (RO ¶¶ 69 – 77).

The Project CRP

The ALJ found that CF analyzed whether it would have sufficient materials available to it to accomplish the objectives of the CRP, and sufficient capacity in the existing South Pasture mine and proposed Project site clay settling areas ("CSAs") to dispose of waste clays generated by phosphate matrix processing. (RO ¶ 78). The ALJ found that based upon CF's calculations as reflected in the Life of Mine Backfill Plan ("LOMBP"), information contained in the Mine Production Plan ("MPP"), and testimony from CF's expert witness, CF would have sufficient materials to achieve its mining and reclamation objectives; and sufficient capacity to dispose of waste clays in existing CSAs located on the South Pasture mine and proposed CSAs on the Project site. Thus, the ALJ concluded that CF would be able to accomplish the mining and reclamation as proposed. (RO ¶¶ 79 – 82).

The ALJ determined that with respect to phosphate mining reclamation criteria contained in chapter 378, F.S., and rule 62C-16.0051, Florida Administrative Code ("F.A.C."), CF provided reasonable assurances that the Project will meet the reclamation criteria contained in the rule. (RO ¶¶ 87, 89).

South Pasture WRP and CRP Modifications

The ALJ noted that, as set forth in the Order Granting the Motion to Strike and Motion in Limine issued on February 16, 2012, the Petition did not contain any factual allegations relative to the compliance with applicable regulatory requirements regarding, or potential for harm resulting from, the South Pasture Modifications (as opposed to the

ERP or CRP for the Project). Therefore, the allegations relating to the South Pasture Modifications were stricken. (RO ¶ 90). The ALJ found that the prima facie case provided by CF and the Department at the final hearing of CF's entitlement to the South Pasture mine Modifications was not refuted, and FINR did not make a proffer relative to the South Pasture mine Modifications prior to the close of the evidentiary proceedings. Thus, the ALJ reaffirmed his ruling at the final hearing to receive into evidence the permit application and the Department's proposed agency action on these two items. (RO ¶ 90).

Motion in Limine and Motion to Strike

The ALJ concluded and reaffirmed that FINR's assertions regarding Hardee County's quarter-mile setback requirement had no legal basis in any environmental factors that are cognizable under the ERP or CRP permitting programs. (RO ¶ 98). The ALJ further concluded that FINR did not offer any credible evidence of adverse environmental or water resources impacts to FINR's property as a result of mining or reclamation within the footprint authorized by the ERP or CRP. (RO ¶ 98).

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. (2011); *Charlotte County 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). The term "competent substantial evidence" does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, "competent substantial evidence" refers to the existence of some evidence (quantity) as to each essential element and as to its admissibility under legal rules of evidence. *See e.g., Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm'n*, 671 So.2d 287, 289 n.3 (Fla. 5th DCA 1996); *Nunez v. Nunez*, 29 So.3d 1191, 1192 (Fla. 5th DCA 2010).

A reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See e.g., Rogers v. Dep't of Health,* 920 So.2d 27, 30 (Fla. 1st DCA 2005); *Belleau v. Dep't of Envtl. Prot.,* 695 So.2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands County Sch. Bd.,* 652 So.2d 894 (Fla. 2d. DCA 1995). These evidentiary-related matters are within the province of the ALJ, as the "fact-finder" in these administrative proceedings. *See e.g., Tedder v. Fla. Parole Comm'n,* 842 So.2d 1022, 1025 (Fla. 1st DCA 2003); *Helfetz v. Dep't of Bus. Regulation*, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985). 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). Therefore, if the DOAH record discloses any competent substantial evidence supporting a challenged factual finding of the ALJ, the agency is bound by such factual finding in preparing the Final Order. *See, e.g., Walker v. Bd. of Prof. Eng'rs*, 946 So.2d 604 (Fla. 1st DCA 2006); *Fla. Dep't of Corr. v. Bradley*, 510 So.2d 1122, 1123 (Fla. 1st DCA 1987). In addition, an agency has no authority to make independent or supplemental findings of fact. *See, e.g., North Port, Fla. v. Consol. Minerals*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994).

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 County*, 746 So.2d 1194 (Fla. 1st DCA 1999); *Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So.2d 1140 (Fla. 2d DCA 2001). If an ALJ improperly labels a conclusion of law as a finding of fact, the label should be disregarded and the item treated as though it were actually a conclusion of law. *See, e.g., Battaglia Properties v. Fla. Land and Water Adjudicatory Comm'n*, 629 So.2d 161, 168 (Fla. 5th DCA 1994). However, neither should the agency label what is essentially an ultimate factual determination as a "conclusion of law" in order to modify or overturn what it may view as an unfavorable finding of fact. *See, e.g., Stokes v. State, Bd. of Prof'l Eng'rs*, 952 So.2d 1224 (Fla. 1st DCA 2007).

An agency's review of the legal conclusions in a recommended order is restricted to those that concern matters within the agency's field of expertise. *See, e.g., Charlotte County v. IMC Phosphates Co.*, 18 So.3d 1089 (Fla. 2d DCA 2009); *G.E.L. Corp. v. Dep't of Envtl. Prot.*, 875 So.2d 1257, 1264 (Fla. 5th DCA 2004). An agency has the primary responsibility of interpreting statutes and rules within its regulatory jurisdiction and expertise. *See, e.g., Pub. Employees Relations Comm'n v. Dade County Police Benevolent Ass'n*, 467 So.2d 987, 989 (Fla. 1985); *Fla. Public Employee Council, 79 v. Daniels*, 646 So.2d 813, 816 (Fla. 1st DCA 1994). Considerable deference should be accorded to these agency interpretations of statutes and rules within their regulatory jurisdiction, and such agency interpretations should not be overturned unless "clearly erroneous." *See, e.g., Falk v. Beard*, 614 So.2d 1086, 1089 (Fla. 1993); *Dep't of Envtl. Regulation v. Goldring*, 477 So.2d 532, 534 (Fla. 1985). Furthermore, agency interpretations of statutes and rules within their regulatory jurisdiction do not have to be the only reasonable interpretations. It is enough if such agency interpretations are "permissible" ones. *See, e.g., Suddath Van Lines, Inc. v. Dep't of Envtl. Prot.*, 668 So.2d 209, 212 (Fla. 1st DCA 1996).

However, agencies do not have jurisdiction 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);

Heifetz v. Dep't of Bus. Regulation, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985); *Fla. Power & Light Co. v. Fla. Siting Bd.*, 693 So.2d 1025, 1028 (Fla. 1st DCA 1997). Evidentiary rulings are matters within the ALJ's sound "prerogative . . . as the finder of fact" and may not be reversed on agency review. *See Martuccio*, 622 So.2d at 609. Agencies do not have the authority to modify or reject conclusions of law that apply general legal concepts typically resolved by judicial or quasi-judicial officers. *See, e.g., Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So.2d 1140, 1142 (Fla. 2d DCA 2001).

RULINGS ON EXCEPTIONS

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." *Envtl. 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). 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. (2011);

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).

Finally, in reviewing a recommended order and any written exceptions, the agency's final order "shall include an explicit ruling on each exception." *See* § 120.57(1)(k), Fla. Stat. (2011). However, the agency need not rule on an exception that "does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." *Id.*

PETITIONER'S EXCEPTIONS

I. Exception concerning ALJ's February 16, 2012 Order.

FINR's first exception is to the ALJ's reaffirmation and/or incorporation by reference of the ALJ's February 16, 2012 Order granting CF's motion to strike and motion in limine (the "Order") as a conclusion of law. *See Exceptions* ¶ 11. FINR presents three arguments to support its contention that the Order was unauthorized and departed from the essential requirements of law because, (1) the ALJ lacked statutory authority to grant the motion to strike and motion in limine and to proceed in the manner contemplated by the Order; (2) the Order did not permit FINR to amend its Petition; and (3) the Petition was proper as pled. *See Exceptions* ¶ 14.

Contrary to FINR's contention in this exception, the Department does not have the authority to modify or reject the ALJ's procedural and evidentiary rulings under the summary hearing provisions of Section 120.574, F.S. Essentially, FINR is unhappy that

the ALJ complied with Section 373.205(3), F.S.; and in the context of conducting the summary hearing under section 120.574 he exercised his sole discretion to rule on procedural and evidentiary issues. *See Lee Cty. v. Mosaic Fertilizer, LLC,* DOAH Case No. 08-3886, 2009 WL 736931 (Fla. Dept. Env. Prot. February 1, 2009). It is well established that evidentiary rulings are matters within the ALJ's substantive jurisdiction and may not be reversed on agency review. *See, e.g., Barfield v. Dep't of Health*, 805 So.2d 1008, 1011-12 (Fla. 1st DCA 2001); *Martuccio v. Dep't of Prof'l Regulation*, 622 So.2d 607, 609 (Fla. 1st DCA 1993).

Section 378.205(3), F.S., provides:

> Administrative challenges to proposed state agency actions regarding phosphate mines and reclamation pursuant to this chapter or part IV of chapter 373 are subject to the summary hearing provisions of s. 120.574, except that the summary proceeding must be conducted within 90 days after a party files a motion for summary hearing, regardless of whether the parties agree to the summary proceeding and the administrative law judge's decision is a recommended order and not a final order.

By motion CF requested a summary hearing, which the ALJ granted, and he conducted the final hearing within the 90 days as provided in the statute. FINR's first two arguments are that the ALJ's actions and rulings "departed from the essential requirements of law." *See Exception* ¶ 17. This agency does not have substantive jurisdiction, however, over the matters that comprise the essence of FINR's lengthy exception. *Id.*

As to FINR's third argument, the Department adopts in this Final Order the ALJ's ruling that allegations concerning local land use criteria, air impacts, noise, dust, odor, and airborne radioactive particles were immaterial and irrelevant in this proceeding. *See Exceptions at Appendix A and* RO ¶ 98.

Local land use criteria.

First, FINR asserts that the ALJ should have allowed evidence and testimony regarding local land use criteria. *See Exceptions* ¶¶ 25-34. FINR does not provide, however, any applicable statute or rule that would make the land use criteria relevant in the ERP and CRP context. When determining whether or not to issue a permit, an agency may only consider the proposed project and the statutes and rules applicable to the project. *See, e.g., Save the St. Johns River v. St. Johns River Water Mgmt. Dist.*, 623 So. 2d 1193, 1198 (Fla. 1st DCA 1993) ("compliance or noncompliance with another agency's permitting program should not be litigated in this administrative proceeding that must be conducted under statutes and rules relating solely to the District's permitting authority"). "[T]he Department is neither required nor authorized to deny or modify water pollution permits based on alleged noncompliance with local land use restrictions and long-range development plans, because the issuance of the permit must be based only on the applicable pollution control standards and rules." *Taylor v. Cedar Key Special Water & Sewerage Dist.*, 590 So. 2d 481, 482 (Fla. 1st DCA 1991); *see also Council of Lower Keys v. Charley Toppino & Sons, Inc.*, 429 So. 2d 67, 68 (Fla. 3d DCA 1983).

The Southwest Florida Water Management District Basis of Review (the "BOR") also provides that local land use criteria of the type alleged in the FINR Petition are not ERP regulatory criteria. The BOR expressly states that, "[t]he proposed land use to be served by a surface water management system for which an Environmental Resource Permit is requested is not required to be consistent with the affected local government's comprehensive plan and/or existing zoning for the site." *See* Joint Ex. 21 § 2.2.

Likewise, the reclamation rules governing CRP approval, at rule chapter 62C-16, F.A.C., do not contain any criteria concerning mine setbacks or buffers, and do not require the Department to consider local land use approvals in its decision-making. *See* Fla. Admin. Code R. 62C-16.003; *see also* Fla. Admin. Code R. 62C-16.0041 and 62C-16.0051. Contrary to FINR's contentions, the Department cannot, by including a statement in a permitting document, extend its permitting authority beyond what is authorized by statute. *See Save the St. Johns River*, 623 So. 2d at 1198.

Air impacts, noise, dust, odor, and airborne radioactive particles.

Second, FINR's allegations regarding air impacts, noise, dust, odor, and airborne radioactive particles are likewise beyond the scope of the Department's permitting criteria for ERPs and CRPs. *See, e.g., Fla. Chapter of the Sierra Club, et al v. Suwannee Am. Cement, Inc., et al.*, 2000 WL 1185499, at *16-17 (Fla. Dept. Env. Prot. 2000); *Royal Palm Beach Colony, L.P. v. South Fla. Water Mgmt. Dist.*, 21. F.A.L.R. 3663, 3674 (DOAH 1999); *In re Fla. Power & Light Co., Manatee Orimulsion Project*, 21 F.A.L.R. 2569, 2587-88 (Siting Board 1998).

FINR argues that the public interest test makes these allegations relevant. *See Exceptions* ¶¶ 36-37. When applying the public interest factors, the Department is limited to environmental impacts associated with the proposed activities in wetlands and surface waters. *See* § 373.414(1)(a), Fla. Stat. (2011); *see also Save Anna Maria, Inc. v. Dep't of Transp.*, 700 So. 2d 113, 116 (Fla. 2d DCA 1997); *Miller v. State, Dep't of Envtl. Reg.*, 504 So. 2d 1325, 1327 (Fla. 1st DCA 1987).

WRP and CRP Modifications.

Third, FINR asserts that since CF is modifying its current South Pasture mine WRP and CRP to include the new ERP and CRP for the additional mine area, then its substantial interests are automatically affected by the South Pasture mine proposed agency actions. *See Exceptions* ¶ 39. FINR's argument, however, does not provide a basis to modify or reject the ALJ's factual finding in paragraph 90 of the RO that, "the Petition contained no factual allegations relative to the compliance with applicable regulatory requirements regarding, or potential for harm resulting from, the South Pasture Modifications (as opposed to the ERP or CRP for the Project)." *See, e.g., St. Johns Riverkeeper, Inc. v. St. Johns River Water Mgmt. Dist.,* 54 So.3d 1051, 1054 (Fla. 5th DCA 2011). Therefore, the allegations relating to the South Pasture Modifications were properly stricken. *See Exceptions at Appendix A.*

Due process.

FINR also argues that it has been "effectively denied ... an administrative hearing concerning the [South Pasture] WRP and CRP Modifications" and that its "statutory and

constitutional due process rights [have been] irreparably harmed." *See Exceptions* ¶¶ 21, 26. It is well established that administrative agencies lack jurisdiction to consider the alleged unconstitutionality of the actions of administrative officials. *See, e.g., Hays v. Dep't of Business Regulation*, 418 So.2d 331 (Fla. 3d DCA 1982); *Harmon Brothers Rock Co. v. Dep't of Envtl. Regulation*, 15 F.A.L.R. 2183, 2186 (Fla. DER 1993).

As to statutory due process, the record of this proceeding shows that issuance of the South Pasture Modifications (challenged in Counts III and IV of the Petition) were dependent upon issuance of the new ERP and CRP for the South Pasture Extension (Counts I and II of the Petition). A full evidentiary hearing was held and a recommended order was issued on all Counts. *See* Ruling on FINR's second exception below. Although FINR further complains that much of Counts I and II were stricken, the paragraphs that remained of those counts included a recitation of all the ERP and CRP regulatory criteria. *See Exceptions* at Appendix A and *FINR's Petition for Hearing* at pages 17 through 52. Thus, the record reflects that FINR had a full and fair opportunity to be heard on all of the relevant allegations related to its substantial interests that reasonably could be affected by the ERP and CRP proposed agency actions. *See Exceptions at Appendix A.*

Therefore, based on the foregoing reasons, FINR's first exception to the ALJ's reaffirmation and/or incorporation by reference of the ALJ's February 16, 2012 Order, is denied. FINR's request for a remand is also denied.

II. Exception to RO Paragraphs 90 and 97 (SPM WRP Modification and SPM CRP Modification Exceptions).

FINR takes exception to the findings in paragraph 90 of the RO, where the ALJ determined that the Petition failed to include "factual allegations relative to the compliance with applicable regulatory requirements regarding, or potential for harm resulting from, the South Pasture Modifications" and that FINR failed to refute "[t]he prima facie case provided by CF and the Department at hearing of CF's entitlement to the associated WRP and CRP Modifications for the South Pasture mine (South Pasture Modifications)." (RO ¶ 90). FINR also takes exception to the ALJ's conclusion in paragraph 97 that, "a preponderance of competent substantial evidence . . . all support the Department's determination of reasonable assurance of entitlement to the approvals at issue." (RO ¶ 97).

First, FINR contends that Counts III and IV of the Petition regarding the South Pasture WRP and CRP Modifications are in a "state of administrative limbo from which [the Department] cannot legally extract them without overturning the ALJ's February 16, 2012 Order and remanding the matter back to DOAH for a further administrative hearing." *See Exceptions* ¶¶ 45-47. FINR argues that the Department currently lacks jurisdiction to "take action" on the South Pasture WRP and CRP Modifications because the ALJ severed his own subject matter jurisdiction when he struck the Petition's immaterial and irrelevant allegations in his February 16, 2012 Order, but did not enter a separate order of dismissal within 30 days. *See Exceptions* ¶¶ 45-51.

FINR's confusing argument is based upon the premise that Sections 120.569(2)(p) and 378.205(3), F.S., required that the ALJ issue his RO as to Counts III and IV within 30 days from the February 16, 2012 Order. *See Exceptions* ¶ 46. Contrary to FINR's argument, it is Section 120.574(2)(f), F.S. – not Sections 120.569(2)(p) or 378.205(3), F.S. – that requires the ALJ to render his decision "within 30 days after the conclusion of the final hearing or the filing of the transcript thereof, whichever is later." § 120.574(2)(f), Fla. Stat. (2011). The RO in this case complied with that requirement. FINR did not cite any authority that prohibits the ALJ from entering a single RO with his recommendation to the Department regarding all four approvals challenged by the Petition (two of which he can rule upon because there are no longer valid challenges against them and two of which he can rule upon because a full evidentiary hearing was held on the cognizable challenges). In fact, the ALJ is required to provide the agency with all "information required by law to be contained in the final order." *See* § 120.57(1)(k), Fla. Stat. (2011)("The presiding officer shall complete and submit to the agency and all parties a recommended order consisting of findings of fact, conclusions of law, and recommended disposition or penalty, if applicable, and any other information required by law to be contained in the final order.").

In addition, FINR asserts that, "overturning the ALJ's February 16, 2012 Order and remanding the matter back to DOAH for a further administrative hearing" is necessary to solve the alleged "administrative limbo" problem. *See Exceptions* ¶ 47. A

remand, however, would not resolve any alleged problem with respect to the South Pasture WRP and CRP Modifications. As noted above, the South Pasture WRP and CRP Modifications (Counts III and IV) were entirely dependent upon issuance of the new ERP and CRP (Counts I and II), and FINR had a full and fair opportunity to be heard on the material and relevant allegations contained in those counts. A new hearing on remand regarding Counts III and IV would not yield new factual information regarding potential impacts to FINR. Thus, a remand is not necessary. *See infra* – Conclusion.

Second, FINR takes exception to RO paragraphs 90 and 97 because the ALJ "erroneously conclude[d] that CF successfully proved a prima facie case in support of the [South Pasture WRP and CRP Modifications] by introducing into evidence its permit applications and the [Department's] proposed agency actions." *See Exceptions* ¶ 53; *see also* T. 67-70 (indicating that Joint Exhibits 16-19 were received into evidence at hearing by the ALJ, notwithstanding Petitioner's objections based upon relevancy). In support of this claim, FINR argues that the ALJ's February 16, 2012 Order "prohibited all evidence related to FINR's stricken allegations regarding the [South Pasture WRP and CRP Modifications]; not just evidence tendered by FINR." *See Exceptions* ¶ 53. As described above, it is well established that procedural and evidentiary rulings are matters within the ALJ's substantive jurisdiction and may not be reversed on agency review. *See, e.g., Barfield v. Dep't of Health*, 805 So.2d 1008, 1011-12 (Fla. 1st DCA 2001); *Martuccio v. Dep't of Prof'l Regulation*, 622 So.2d 607, 609 (Fla. 1st DCA 1993).

Therefore, based on the foregoing reasons, FINR's exception to RO paragraphs 90 and 97 is denied. FINR's remand request is also denied.

III. Exception to RO Paragraphs 84 and 86 (BOR 2.8 Exception).

FINR takes exception to the findings in paragraphs 84 and 86 of the RO, where the ALJ construed both expert testimony[3] and Section 2.8 of the BOR to determine that CF did not need to submit a separate document titled "Construction Surface Water Management Plan." *See Exceptions* ¶¶ 57-67.

FINR contends in this exception that the ALJ found "as a matter of law that CF does not have to provide reasonable assurance of compliance with BOR 2.8" *See Exceptions* ¶ 59. Contrary to FINR's contention, the ALJ found that the evidence presented by CF demonstrated reasonable assurance of compliance with Section 2.8 of the BOR. (RO ¶ 84). The ALJ rejected FINR's argument that CF's applications should be denied because CF failed to submit at hearing a separate document entitled "Construction Surface Water Management Plan. (RO ¶ 84). The ALJ recognized that although CF did not submit a separate document entitled "Construction Surface Water Management Plan," the primary goal of the BOR criteria is to meet water resource objectives, and to that end the criteria were designed to be flexible. *See* RO ¶ 86; *see also* Joint Ex. 21, BOR §§ 1.1, 1.3. The BOR provides:

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[3] Paragraph 84, relying on the ALJ's discussion of expert testimony in paragraph 64, opens by stating: "For the reasons expressed in Finding of Fact 64, a contention by Petitioner that the SPE mine application must be denied because CF failed to submit at hearing a separate document entitled 'Construction Surface Water Management Plan' is rejected."

> **1.1 Objectives** - Under Part IV of Chapter 373, Florida Statutes (F.S.) and Chapters 40D-4, 40, and 400, Florida Administrative Code (F.A.C.), the [Department] is responsible for permitting construction and operation of surface water management systems within its jurisdictional boundaries. The objective of this document is to identify the usual procedures and information used by the [Department] staff in permit application review. The objective of the review is to ensure that the permit will authorize activities or situations which are not harmful to the water resources of the District or inconsistent with the public interest.
>
> * * *
>
> **1.3 Criteria Flexibility** - The primary goal of the review criteria is to meet District water resource objectives. However, the criteria are designed to be flexible. Performance criteria are used where possible. Other methods of meeting overall objectives will be considered depending on the magnitude of specific or cumulative impacts. (Emphasis added.)

The ALJ's reading of the BOR's plain language is reasonable and is adopted in this Final Order. *See, e.g., Pub. Employees Relations Comm'n v. Dade County Police Benevolent Ass'n*, 467 So.2d 987, 989 (Fla. 1985); *Fla. Public Employee Council, 79 v. Daniels*, 646 So.2d 813, 816 (Fla. 1st DCA 1994).

Based on the competent substantial evidence adduced at the hearing, the ALJ properly concluded that CF provided reasonable assurances that the Project will comply with Section 2.8 of the BOR. Expert witnesses for CF and the Department, testified that based upon their reviews of the entire application and the documents prepared and submitted in support of the application, CF demonstrated reasonable assurance that all stormwater discharges would satisfy state water quality standards. (RO ¶¶ 61, 62, 64;

Wuitschick at T. 187-190; Joint Ex. 8B, #96; CF Ex. 17; Durbin at T. 274-277; Owete at T. 324; Rivera at T. 370-371, 381-382).

Therefore, since the ALJ's determinations in paragraphs 84 and 86 are supported by competent substantial record evidence and correctly apply the BOR's plain language, FINR's exception is denied. FINR's request to remand this case back to DOAH to correct the ALJ's alleged "misinterpretation of BOR 2.8," is also denied. *See Exceptions* ¶ 75.

IV. Exception to RO Paragraph 64 (Water Quality Exception).

FINR takes exception to paragraph 64 of the RO, on the basis that the generic stormwater permit reference in Section 2.8.2(b) of the BOR ("Generic Permit for Stormwater Discharge from Construction Activities that Disturb Five or More Acres of Land" (effective October 22, 2000)) applies to CF; and that CF's SPPP failed to satisfy certain requirements contained in the generic stormwater permit concerning "the off-site generation of dust" and "local waste disposal, sanitary sewer or septic tank regulations." *See Exceptions*, ¶ 80.

The competent substantial record evidence established that CF is required to have (and does have) an individual NPDES permit for its mining operations. (T. 49-50, 117, 187-188, 274-275); *see also* FINR Ex. 52, at 2 (indicating that "[t]he following stormwater discharges from construction sites are not authorized by this permit: ... stormwater discharges associated with construction activity that are subject to an existing generic or individual permit that are issued pursuant to Section 403.0885,

F.S."); Fla. Admin. Code R. 62-621.100 (indicating that authorization under a generic permit is "[a]s an alternative to individual permits"); Fla. Admin. Code R. 62-620.100 (indicating, in the rule authorizing individual NPDES permits, that "[w]here there are conflicts with other existing specific or general rules of the Department, the requirements and procedures set forth in this chapter shall supersede all other procedures and requirements for wastewater facilities or activities").

Therefore, based on the foregoing reasons and the ruling on FINR's third exception above, this exception is denied. FINR's request to remand is also denied.

V. Exception to RO Paragraphs 50 and 58 (Dewatering Exception).

FINR takes exception paragraphs 50 and 58 of the RO, where the ALJ found that the reroute ditch would not cause adverse water quantity impacts to Wetland 10E-40 on FINR's property. FINR argues that CF's plans to armor the reroute ditch "bottom" and install an overland weir are not supported by competent substantial evidence in the record. *See Exceptions*, ¶¶ 82-83.

First, FINR argues that "there is no competent substantial evidence that the armoring of the reroute ditch bottom or the installation [of an] overland weir in the portion of the reroute ditch crossing Wetland 10E-40 is part of any plan submitted as part of the SPEM ERP." *See Exceptions* ¶ 83. FINR asserts, apparently based upon Mr. Burleson's testimony alone, that the "uncontroverted evidence indicates the overland weir is not part of the [Troublesome Creek Reroute Ditch Modeling and Conceptual Design Report ("RDMR")] and the RMDR only discusses the armoring of

sides, but not the bottom of the reroute ditch as it traverses Wetland 10E-40." *Id.* FINR also asserts that "[t]he overland weir was only mentioned in the RDMR Errata Sheet in describing the corrected modeling conducted by CF in support of the RDMR." *Id.*

As to FINR's argument that there is no competent substantial evidence in the record regarding armoring the reroute ditch "bottom," FINR has apparently misread the ALJ's findings in paragraph 50. *See Exceptions* ¶ 82. The entire finding of fact states that:

> CF assessed the potential that the reroute ditch could result in dewatering during non-flood events. To address this concern, CF designed the reroute ditch with a bottom elevation that would match the bottom elevation of the existing ditch, meaning the water table will intersect the reroute ditch in the same manner it currently intersects the Troublesome Creek ditch. Adjacent to Wetland 10E-40 in the southeast corner between Petitioner's property and the Project property, however, the reroute ditch received special design consideration because the reroute ditch bottom will be below the bottom of the wetland at that location. There, the reroute ditch will be armored, an overland weir will regulate flow, and an impermeable geotextile liner will be installed.

See RO ¶ 50 (emphases added). A plain reading of the entire finding of fact reveals that the ALJ generally found that "the reroute ditch will be armored," not that the reroute ditch "bottom" will be armored. *Id.* Competent substantial record evidence supports the ALJ's actual finding of fact. (T. 134, 241-243; Joint Ex. 8B, #105, § 1.0, at 3).

Second, as to FINR's assertion that the "uncontroverted evidence indicates the overland weir is not part of the RDMR," FINR seems to ignore the following language in the RDMR:

> An overland weir (S-3) (Figure TC4) will be constructed on the eastern edge of marsh bisected by the property line to allow flow to exit the marsh and spill over into the reroute ditch. This is necessary because the existing grade at that location is higher than the bottom by about three feet. ...

See Joint Ex. 8B, #105, § 1.0, at 3. CF's experts, Mr. Blitch and Mr. Beriswill, also testified at the hearing regarding the need for this overland weir, which was also referenced in the RDMR Errata Sheet as noted by FINR. (T. 134, 241-243; Joint Ex. 8B, #106).

Therefore, since the ALJ's findings in paragraphs 50 and 58 that the reroute ditch would not cause adverse water quantity impacts to Wetland 10E-40 on FINR's property are supported by competent substantial record evidence, this exception is denied.

VI. Exception to RO Paragraph 48 (Lettis Creek Exception).

FINR takes exception to paragraph 48 of the RO, where the ALJ rejected Mr. Burleson's modeling regarding alleged flooding at Lettis Creek. FINR argues that the ALJ's rejection was "on the basis the modeling assumed the County-maintained culverts would be closed," even though FINR contends that there is no competent substantial evidence to support that finding. *See Exceptions* ¶ 84.

FINR appears to mischaracterize the ALJ's finding of fact in paragraph 48. The ALJ did not reject Mr. Burleson's modeling regarding alleged flooding at Lettis Creek "on the basis the modeling assumed the County-maintained culverts would be closed" (*see Exceptions* ¶ 84), but because "Mr. Burleson's modeling assumed that County-

maintained culverts between the properties would be blocked during mining." RO ¶ 48 (emphasis added).

Mr. Burleson testified that his modeling assumed that "[t]he outfall from FINR across County Road 663 and the railroad track would be blocked by the ditch and berm system." *See* T. 492 (emphasis added). Further, when asked to describe the modeling he performed to assess the potential for off-site flooding in the Lettis Branch Basin during mining, Mr. Burleson indicated that he "cut[ ] off that outfall over by County Road 663 to where no flow could exit from FINR[,]" because his modeling was intended to evaluate existing and during-mining conditions "if the outfall was blocked, what would be the effect." *See* T. 493 (emphasis added). Thus, competent substantial record evidence supports the ALJ's finding. In addition, competent substantial record evidence establishes that CF is in fact "committed to maintaining the hydrologic connection through culverts at County Road 663 and Lettis Creek during mining" (T. 716). Mr. Burleson's modeling assumption that flow would be blocked was not credited by the ALJ. Therefore, based on the foregoing reasons, this exception is denied.

VII. Exception to RO Paragraph 89 (Reclamation Criteria Exception).

FINR takes exception to paragraph 89 of the RO, where the ALJ found that "[n]o evidence concerning the reclamation criteria was presented by Petitioner." *See Exceptions* ¶¶ 85-87. FINR contends that paragraph 89 is not supported by competent substantial evidence. *See id.*

FINR asserts that the testimony of Mr. Burleson and other evidence in support of its allegations that the SPPP did not "provide reasonable assurance that water quality standards would be met during construction," and that CF did not "take all reasonable steps to eliminate the risk of flooding on FINR's property caused by damming of the Troublesome Creek stream channel and Lettis Creek with the ditch and berm system;" constitutes the evidence concerning the reclamation criteria in Rule 62C-16.0051, F.A.C. (the "Reclamation Rule"). *See Exceptions* ¶¶ 85-87 (emphases added). This evidence, however, addressed mining and during mining activities, not the reclamation standards.

Applicable law clearly distinguishes "reclamation" activities from mining operations. "Reclamation" means "the reshaping of lands in a manner that meets the reclamation criteria and standards contained in this part." § 378.203(9), Fla. Stat. (2011). Those standards are contained in Rule 62C-16.0051, F.A.C. By contrast, mining operations are "those physical activities, other than prospecting and site preparation, which are necessary for extraction, waste disposal, storage, or dam maintenance prior to abandonment." § 378.203(6), Fla. Stat. (2011)(emphasis added). The Reclamation Rule governs reclamation activities, not mining operations. *See* § 378.207(1)-(2), Fla. Stat. (2011)(reflecting that the Department is only authorized to adopt rules containing "statewide criteria and standards for reclamation," which "shall govern performance of reclamation and not ... the manner in which mining and associated activities are conducted.") (Emphases added); *see also* § 378.205(1)(d), Fla.

Stat. (2011)(also authorizing the Department to adopt rules implementing the provisions of Chapter 378, Part II, F.S.).

Therefore, since the ALJ properly found that "[n]o evidence concerning the reclamation criteria was presented by Petitioner," this exception is denied.

VIII. Exception to RO Paragraph 29 (Environmental Impact Exception).

FINR takes exception to paragraph 29 of the RO, where the ALJ found that FINR was "permitted to pursue its water resource and environmental impact issues and express[ ] its concerns regarding the Project's impact on Petitioner's property and development potential as well as on the health, safety, and welfare of residents or inhabitants of Petitioner's property." *See Exceptions* ¶ 88. FINR contends that the February 16, 2012 Order prevented it from pursuing its claims related to "environmental impacts such as dust, noise, air pollution, and airborne radioactive particles" and prohibited the parties from introducing evidence related to those issues, and therefore the ALJ's finding is not based upon competent substantial evidence. *Id.*

For the reasons discussed in the ruling on FINR's first exception above, the ALJ properly struck FINR's immaterial allegations concerning dust, noise, air pollution, and airborne radioactive particles, and properly prohibited the introduction of evidence concerning same. FINR was permitted to pursue all of its relevant claims, including claims relating to all the ERP and CRP criteria. Therefore, for the reasons discussed in the ruling in FINR's first exception above, this exception to paragraph 88 is denied.

RULING ON PETITIONER'S REQUEST FOR REMAND

The Florida courts have held that there are some circumstances under which agency remand to DOAH is not only appropriate, but is actually "dictated." *See, e.g., Miller v. Dep't of Envtl. Regulation*, 504 So.2d 1325, 1327 (Fla. 1st DCA 1987); *Cohn v. Dep't of Envtl. Regulation*, 477 So.2d 1039, 1047 (Fla. 3d DCA1985). The subject proceeding does not constitute one of those circumstances where remand to DOAH is dictated. The ALJ fulfilled his role as to factual findings and the Department is able to enter a coherent final order. *Cohn*, 477 So.2d at 1047.

The ALJ recommended that the Department enter a final order granting CF's applications for the Project ERP and CRP, and the South Pasture mine WRP and CRP Modifications. He ultimately determined that CF established its entitlement to the requested approvals by a preponderance of the evidence in the administrative hearing, and that FINR failed to meet its burden of showing that the permits and approvals should not be issued. (RO ¶¶ 96 and 97). This Final Order adopts the ALJ's recommendation and denies FINR's remand request.

CONCLUSION

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. Petitioner FINR II, Inc.'s request for remand to DOAH is denied.

C. Respondent CF Industries, Inc.'s application for Environmental Resource Permit No. 0294666-001 is granted.

D. Respondent CF Industries, Inc.'s Conceptual Reclamation Plan Application No. 0294666-002 is approved.

E. Respondent CF Industries, Inc.'s application for Wetland Resource Permit Modification No. 0151551-017 is granted.

F. Respondent CF Industries, Inc.'s Conceptual Reclamation Plan Modification No. 0151551-818 is approved.

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 6th day of June, 2012, 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.

Deputy CLERK

6-8-12
DATE

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing Final Order has been sent by United States Postal Service to:

Edward P. de la Parte, Jr.
de la Parte & Gilbert, P.A.
PO Box 2350
Tampa, FL 33601-2350

Frank E. Matthews, Esq.
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by electronic filing to:

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

and by hand delivery to:

Brynna R. Ross, Esquire
Department of Environmental Protection
3900 Commonwealth Blvd., M.S. 35
Tallahassee, FL 32399-3000

this 8th day of June, 2012.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

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