

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF ENVIRONMENTAL  
PROTECTION,

Petitioner,

vs.

Case No. 20-5383EF

AGRICULTURAL FUELS CORP.,

Respondent.

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SUMMARY FINAL ORDER

Pursuant to notice, a final hearing was held by Zoom videoconference on August 30, 2021, before the Honorable Francine M. Ffolkes, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner:            Ronald Woodrow Hoenstine, Esquire  
                                 Kathryn E.D. Lewis, Esquire  
                                 Department of Environmental Protection  
                                 Douglas Building, Mail Station 35  
                                 3900 Commonwealth Boulevard  
                                 Tallahassee, Florida 32399-3000

For Respondent:         John A. Leklem, Esquire  
                                 John Leklem, P.A.  
                                 Suite A  
                                 133 East Marks Street  
                                 Orlando, Florida 32803

STATEMENT OF THE ISSUES

The issues are whether Respondent, Agricultural Fuels Corporation (Respondent), should have an administrative penalty assessed, take

corrective actions at its facilities, and pay investigative expenses for the reasons stated in the Notice of Violation, Orders for Corrective Action, and Administrative Penalty Assessment issued by the Department of Environmental Protection (Department) on March 12, 2020, as amended on February 9, 2021 (Notice).

#### PRELIMINARY STATEMENT

In the eight-count Notice, the Department alleged that Respondent operates two source-separated organics facilities (SOPFs) in Orange County, Florida. The Department alleged that Respondent operated the facilities in violation of their annual SOPF registrations, including currently operating without required registrations since August 1, 2020. The Notice proposed to assess a \$15,000.00 administrative penalty, require certain corrective actions, and recover \$1,000.00 in investigative expenses incurred by Department staff. Respondent timely filed its petition requesting a hearing to contest the proposed agency action and the Department referred the matter to DOAH to conduct a hearing.

On January 4, 2021, the undersigned noticed the hearing for February 23 and 24, 2021, and issued an Order of Pre-hearing Instructions. The Department served discovery, including a request for admissions on January 13 and 20, 2021. On February 9, 2021, the Department filed an unopposed motion to amend the original Notice and continue the hearing. The unopposed motion stated that Respondent intended to amend its petition and any resulting discovery was grounds for a continuance. By Orders issued on February 16, 2021, the undersigned granted the continuance and accepted the now amended Notice. Respondent never amended its petition.

On March 2, 2021, the Department filed a Motion to Compel Discovery Responses and Deem Admissions Admitted. The Department represented

that "several attempts to confer with Respondent were made in an effort to resolve the disputed issues by agreement prior to filing this motion." Respondent did not respond to the motion,<sup>1</sup> and on June 16, 2021, the undersigned issued an Order granting the motion to compel and deeming admissions admitted. The Order required Respondent to provide outstanding discovery responses by June 25, 2021. On the same day, the hearing was re-noticed for August 30 and 31, 2021, in response to the Joint Status Report filed on May 17, 2021. On August 4, 2021, the Department filed a Motion to Strike or In the Alternative, A Motion in Limine. Respondent did not file a response within the allowed seven days and on August 18, 2021, the Department's motion was denied without prejudice.

On August 17, 2021, the Department filed a Motion for Summary Final Order Based on Respondent's Failure to Comply with this Court's June 16, 2021, Order Granting the Department's Motion to Compel Discovery, or in the Alternative, Issue an Order Compelling Respondent to Comply with this Court's June 16, 2021, Order. Since the hearing was scheduled for August 30 and 31, 2021, the undersigned issued an Order on August 18, 2021, denying the motion for summary final order, and granting the request to compel Respondent to comply with the June 16, 2021, Order. The Order mandated that "Respondent shall comply with the June 16, 2021, Order compelling discovery responses on or before August 20, 2021. Failure to comply with this deadline and with the deadlines in the Order of Pre-hearing Instructions shall result in exclusion of Respondent's final hearing exhibits and witnesses."

Respondent did not comply with the Order and on August 26, 2021, the undersigned issued an Order striking Respondent's untimely unilateral pre-

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<sup>1</sup> Florida Administrative Code Rule 28-106.204 provides for written responses to motions within seven days of service of the motion.

hearing stipulation and excluding Respondent's final hearing witnesses and exhibits "for failure to comply with the deadlines imposed by prior Orders of this tribunal relating to discovery and pre-hearing instructions."

See § 120.569(2)(f), Fla. Stat. (2020); Fla. R. Civ. P. 1.380. By the time of the final hearing on August 30, 2021, Respondent still had not complied.

On the morning of the hearing, August 30, 2021, Respondent filed a Motion for Rehearing and/or Reconsideration, and, a Motion for Continuance. After hearing argument from the parties, the undersigned denied both motions and issued written Orders memorializing those rulings.

At the hearing, the undersigned granted the Department's renewed Motion for Summary Final Order (Motion), filed on August 20, 2021. The seven-day period for a response expired on August 27, 2021, without any response from Respondent. The Department's Motion and its attachments were considered in the preparation of this Summary Final Order.

See § 120.57(1)(h), Fla. Stat.

References to the Florida Statutes are to the 2020 version, unless otherwise noted.<sup>2</sup>

#### FINDINGS OF FACT

The following Findings of Fact are based on the pleadings and admissions on file, together with an affidavit and inspection reports. See § 120.57(1)(h), Fla. Stat.

1. The Department is the administrative agency of the state of Florida

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<sup>2</sup> Because a final order was not yet issued and the alleged violations still existed at the time of the Notice and the Motion for Summary Final Order, this case is governed by current law. See *E.J. v. Dep't of Child. & Fams.*, 219 So. 3d 946 (Fla. 3d DCA 2017).

with the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of chapter 403, Florida Statutes, and the rules promulgated thereunder in Florida Administrative Code chapters 62-701 and 62-709.

2. Respondent operates a SOPF located at 5361 Young Pine Road, Orlando, Florida 32829, also described as Orange County Property Appraiser Parcel ID 17-23-31-000-00-008 (Facility 1). The Facility ID Number for Facility 1 is 95220.

3. Respondent operates another SOPF located at 15851 Lake Pickett Road, Orlando, Florida 32820, also described as Orange County Property Appraiser Parcel ID 07-22-32-0000-00-026 (Facility 2). The Facility ID Number for Facility 2 is 105000.

4. Facility 1 and Facility 2 are each a yard trash processing facility as defined by Florida Administrative Code Rule 62-709.201(26).

5. As of August 1, 2020, there has been no SOPF registration for Facility 1 and Facility 2.

6. On June 10, 2015, February 1, 2016, February 27, 2019, and December 20, 2019, the Department inspected the SOPF at Facility 1 and found that yard trash had not been size-reduced or removed within six months or within the time needed to receive 3,000 tons or 12,000 cubic yards.

7. On June 10, 2015, February 1, 2016, February 27, 2019, and December 20, 2019, the Department inspected the SOPF at Facility 1 and found that monthly records of incoming and outgoing material were not kept on-site or at another location for at least three years.

8. On December 16, 2019, and July 10, 2020, the Department inspected the SOPF at Facility 2 and found that unprocessed yard trash from off-site was buried on the property. Facility 2 is not permitted to dispose of yard trash.

9. On July 29, 2019, December 16, 2019, and July 10, 2020, the Department inspected the SOPF at Facility 2 and found that yard trash was stored within 50 feet of a water body.

10. On December 16, 2019, and July 10, 2020, the Department inspected the SOPF at Facility 2 and found the disposal of yard trash in the groundwater.

11. The Department's Notice charged Respondent with seven separate counts of violations of Department rules.

#### CONCLUSIONS OF LAW

12. DOAH has jurisdiction over the parties and subject matter of this proceeding under sections 120.569, 120.57, and 403.121, Florida Statutes.

13. Section 403.121(2)(b) provides that the Department may institute an administrative proceeding to order the abatement of conditions creating a violation of the law. The Department has the burden of proving by a preponderance of the evidence that Respondent is responsible for the violation. *See* § 403.121(2)(d), Fla. Stat. The Department met its burden in this proceeding.

14. Because the Department is requesting the imposition of administrative penalties, "[f]ollowing the close of the hearing, the administrative law judge shall issue a final order on all matters, including the imposition of administrative penalty." *Id.*

15. Under section 120.57(1)(h):

[a]ny party to a proceeding in which an administrative law judge has final order authority may move for a summary final order when there is no genuine issue as to any material fact. A summary final order shall be rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a

matter of law to the entry of a final order. A summary final order shall consist of findings of fact, if any, conclusions of law, a disposition or penalty, if applicable, and any other information required by law to be contained in the final order.

Count I and Associated Administrative Penalty

16. Rule 62-709.320(2)(e)1. requires that any yard trash, including clean wood, received at the facility shall be size-reduced or removed within six months, or within the period required to receive 3,000 tons or 12,000 cubic yards, whichever is greater. The facts establish four documented violations of this rule at Facility 1. These undisputed facts also constitute a violation of section 403.161, which states that failure to comply with Department rules constitutes a violation.

17. Under section 403.121(5), the required administrative penalty is \$1,000.00. The administrative penalty may be assessed per day per violation under section 403.121(6). The assessment based on the four inspections is \$4,000.00 as a matter of law.

Count II and Associated Administrative Penalty

18. Rule 62-709.320(4)(a) requires that monthly records of incoming and outgoing material be kept on-site or at another location as indicated on the registration form for at least three years. The facts establish four documented violations of this rule at Facility 1. These undisputed facts also constitute a violation of section 403.161, which states that failure to comply with Department rules constitutes a violation.

19. Under section 403.121(4)(f), the required administrative penalty is \$750.00. The administrative penalty may be assessed per day per violation under section 403.121(6). The assessment based on the four inspections is \$3,000.00 as a matter of law.

### Count III & VII and Associated Administrative Penalties

20. Rules 62-709.300(2) and 62-709.320(3) require that owners or operators of organic processing facilities obtain a registration or permit from the Department. The SOPF registrations for both Facility 1 and Facility 2 expired on August 1, 2020. To date, Respondent has not renewed the required registrations and has been operating unregistered SOPFs. These undisputed facts also constitute a violation of section 403.161, which states that failure to comply with Department rules constitutes a violation.

21. Under section 403.121(3)(e), the required administrative penalty is \$3,000.00. The administrative penalty may be assessed per day per violation under section 403.121(6). The assessment is \$3,000.00 for each of the two unregistered facilities. Therefore, the total assessment is \$6,000.00 as a matter of law.

### Count IV and Associated Administrative Penalty

22. Rule 62-701.300(1)(a) prohibits any person from storing, processing, or disposing of solid waste except as authorized at a permitted solid waste management facility or a facility exempt from permitting under chapter 62-701. It is undisputed that unprocessed yard trash from an off-site location was buried at Facility 2. Facility 2 is not authorized to dispose of yard trash. These undisputed facts also constitute a violation of section 403.161, which states that failure to comply with Department rules constitutes a violation.

23. Under section 403.121(3)(e), the required administrative penalty is \$3,000.00. The administrative penalty may be assessed per day per violation under section 403.121(6). The total assessment for the two inspections is \$6,000.00 as a matter of law.

### Count V and Associated Administrative Penalty

24. Rules 62-701.300(12)(b) and 62-709.300(7)(b) require the storage, processing, or disposal of yard trash at least 50 feet from water bodies. It is undisputed that yard trash was stored within 50 feet of a waterbody at Facility 2 during the July 29, 2019, December 16, 2019, and July 10, 2020,



inspections. These facts also constitute a violation of section 403.161, which states that failure to comply with Department rules constitutes a violation.

25. Under section 403.121(5), the required administrative penalty is \$1,000.00. The administrative penalty may be assessed per day per violation under section 403.121(6). The assessment for the three inspections is \$3,000.00 as a matter of law.

#### Count VI and Associated Administrative Penalty

26. Rules 62-701.300(2)(d) and 62-709.300(7)(b) prohibit any person from storing or disposing of solid waste in any natural or artificial body of water, including groundwater and wetlands, within the Department's jurisdiction. It is undisputed that yard trash was disposed of in groundwater at Facility 2 during the December 16, 2019, and July 20, 2020, inspections. These facts also constitute a violation of section 403.161, which states that failure to comply with Department rules constitutes a violation.

27. Under section 403.121(3)(e), the required administrative penalty is \$1,500.00. The administrative penalty may be assessed per day per violation under section 403.121(6). The assessment for the two inspections is \$3,000.00 as a matter of law.

28. The total assessment for Counts I through VII is \$25,000.00.

29. There is no evidence to establish the accuracy or reasonableness of the investigative expenses in Count VIII. Therefore, the request for reimbursement of these expenses is denied.

30. The Department did not cite any legal basis for a lack of good faith administrative penalty. Therefore, the request for a lack of good faith administrative penalty is denied.

31. The corrective actions ordered in the Notice are reasonable and should be imposed.

#### Respondent's Affirmative Defenses

32. Respondent asserted in its petition that Facility 2 was exempt from the registration or permitting requirements applicable to yard trash

processing facilities. Respondent alleged that it submitted a letter requesting an exemption for Facility 2 on January 14, 2020; and because Respondent allegedly did not receive a response from the Department in 90 days, the alleged result was approval of the exemption.

33. Respondent did not cite any legal authority for its contention that it had an exemption by default for Facility 2. The permitting provisions applicable in this case do not authorize exemption by default. *See* §§ 120.60(1) and 403.0876, Fla. Stat.

34. In addition, as the Department argued in its Motion, the facts establish that the March 12, 2020, Notice was issued less than 90 days from Respondent's January 14, 2020, letter. The Notice informed Respondent that the Department considered the activities at Facility 2 to be illegal yard trash disposal as described in Counts IV, V, and VI of the Notice. *See, e.g., Sumner v. Bd. of Psychological Examiners*, 555 So. 2d 919 (Fla. 1st DCA 1990); *Dep't of Transp. v. Calusa Trace Dev. Corp.*, 571 So. 2d 543 (Fla. 2d DCA 1990).

35. Respondent also asserted that the Department is prohibited from regulating the activities at Respondent's facilities under the Florida Right to Farm Act, section 823.14, Florida Statutes. As a matter of law, the purpose of that provision is to "protect reasonable agricultural activities and complementary agritourism activities conducted on farm land from nuisance suits." § 823.14(2), Fla. Stat. This administrative enforcement proceeding is not a "nuisance suit" and the violations cited in the Notice are not nuisance claims.

36. The Florida Right to Farm Act prohibits local government regulation that limits or restricts farming activities. The Florida Right to Farm Act has no application to the instant administrative enforcement proceeding. *See Wilson v. Palm Beach Cty.*, 62 So. 3d 1247 (Fla. 4th DCA 2011).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Respondent shall comply with the Orders for Corrective Action set forth in the Notice.

An administrative penalty of \$25,000.00 is imposed. Recovery of a good faith administrative penalty and of investigative expenses is denied.

All deadlines in the Notice shall be calculated from the date of this Summary Final Order.

DONE AND ORDERED this 22nd day of September, 2021, in Tallahassee, Leon County, Florida.



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FRANCINE M. FOLKES  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 22nd day of September, 2021.

COPIES FURNISHED:

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#### NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.