

**BEFORE THE FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION**

DEPT OF ENVIRONMENTAL
PROTECTION

DEC 04 2008

OFFICE OF
GENERAL COUNSEL

**In the Matter of an
Application for Air Construction Permit by:**

**Biomass Gas and Electric of Tallahassee, LLC
3500 Parkway Lane , Suite 440
Atlanta, Ga. 30092**

**Tallahassee Renewable Energy Center
Air Permit No. 0730109-001-AC
Leon County, Florida**

AMENDED PETITION FOR ADMINISTRATIVE HEARING

Petitioner, Bob Fulford, hereby files this Amended Petition, pursuant to sections 120.569, and 120.57, Florida Statutes, and requests that the Florida Department of Environmental Protection ("FDEP") convene an administrative hearing in which he might challenge the FDEP's Notice of Intent to Issue a Draft Air Construction Permit in this proceeding, and state:

1. The name and address of the agency affected by this petition is

Florida Department of Environmental Protection
3900 Commonwealth Boulevard, MS 35
Tallahassee, Florida 32399-3000

2. The agency's file number is 0730109-001-AC
3. The address of petitioner is 231 Westridge Drive, Tallahassee, Florida 32304.

4. Petitioner received notice of this agency action via certified mail received on October 29, 2008. On November 20, 2008, the agency issued an order dismissing Petitioner's initial petition as untimely, finding that the actual date of notice was October 27, 2008. Section 120.569(b), F.S., provides:

All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days; however, the 14-day notice requirement may be waived with the consent of all parties.

It is clear that the Legislature intends that agencies afford parties a degree of flexibility when applying

a deadline to their rights to opposed decisions affecting their substantial interests.

Rule 28-106.111(2), F.A.C., is the general standard for a point of entry by parties seeking to protect their substantial interests. It provides:

Unless otherwise provided by law, persons seeking a hearing on an agency decision which does or may determine their substantial interests shall file a petition for hearing with the agency within 21 days of *receipt of written notice* of the decision.. [emphasis added]

The agency has exempted itself to this provision by adopting Rule 62-110.106, F.A.C., which provides in subsection 3:

(3) Time for Filing Petition.

(a) A petition shall be in the form required by Rule 28-106.201 or 28-106.301, F.A.C., and must be filed (received) in the office of General Counsel of the Department within the following number of days *after receipt of notice of agency action*, as defined in subsection (2) of this rule above:

1. Petitions concerning Department action or proposed action on applications for permits under Chapter 403, Florida Statutes, and related authorizations under Section 373.427, Florida Statutes, (except permits for hazardous waste facilities): fourteen days... [emphasis added]

Subsection 2 of Rule 62-110.106 provides:

As an exception to subsection 28-106.111(2), F.A.C., for the purpose of determining the time for filing a petition for hearing on any actual or proposed action of the Department as set forth below in this rule, "receipt of notice of agency action" means either receipt of written notice or publication of the notice in a newspaper of general circulation in the county or counties in which the activity is to take place, whichever first occurs..

5. Petitioner asserts that his Petition should be accepted because he is not legally trained, and could not have understood the subtle legal distinctions recognized by the agency in counting the days for filing his petition from the content of the email they received. He relied upon the official newspaper notice as the start of the clock for protection of rights, and looked upon the mailing as an unofficial agency notice of the pending proceedings. Therefore, Petitioner objects to the determination by the agency that their filing was untimely. Nowhere in the statutes or rules does it require that the time for filing starts to run when a notice is sent as an attachment to an email by the agency. The

order dismissing Petitioner's original petition is clearly not consistent with the intent of the law, which provides substantial flexibility in allowing individuals to protect their substantial interests before state agencies. Further, it is illogical to do so, since the newspaper notification allows a much wider audience a reasonable time within to protect their rights.

6. Petitioner objects to the determination by the agency that the applicant has provided reasonable assurance that this project will not adversely impact the community's air quality, and that the project will comply with applicable legal standards.

7. The facility is a Title V "Major Source" of air pollution, and the agency proposes to authorize operation of the first plant of this type to be established in this region of the country. The plant will utilize an extensive biofuel delivery system to transport wood chips on-site. The applicant describes an elaborate process to remove dust particles and tars from the plant's air emissions, but fails to offer proven results of these emissions systems. With little actual operational experience for an operation such as this, the agency has unreasonably relied upon assertions by the applicant as to the operation of the proposed plant. Biomass plants can have important environmental impacts due to particulate emissions, which must be controlled with special devices. Many of the pollutants that may emerge from the Tallahassee BGE plant have been identified as having adverse effects on public health.

8. The agency has granted waivers and exemptions for this plant without adequate justification, that increase the risk of harm to air quality. Petitioner is aware that the operation of a similar plant in another region of the country posed substantial concerns to air quality, as well as public health and safety.

9. If the proposed plant is allowed to operate, Petitioner's proximity to the site will cause Petitioner's family to experience the detrimental impact to air quality caused by the plant. In addition, Petitioner will experience extreme nuisances from the plant in the form of noise, odor and property intrusion.

10. Petitioner's ownership of property in an area directly affected by the operation of the

plant, and the threat to health and safety posed by this plant constitutes harm to Petitioner's substantial interests, that will be directly affected if the agency authorization of the construction permit.

11. The interests of Petitioner are the type of interests this proceeding is designed to protect, *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2d DCA 1981), reh. denied, 415 So.2d 1359 (Fla. 1982).

12. Petitioner expressly disputes all facts and evidence put forth by the applicant purporting to establish that no adverse impact to the air quality will result from the operation of the proposed plant.

13. Petitioner asserts that the following rules and statutes should govern the agency's consideration of this application, and if applied, would be just cause to deny the application:

- (i) All applicable provisions of: Chapter 403, F.S.
- (ii) 40 CFR Part 60, New Source Performance Standards;
- (iii) Rule 62-296.401, F.A.C.
- (iv) Rule 62-204, F.A.C.
- (v) Rule 62-297, F.A.C.
- (vi) Rule 62-210, F.A.C.
- (vii) Clean Air Interstate Rule

The application in this proceeding should be denied because it does not support a conclusion that the proposed plant will meet the substantial requirements of law applicable to it. Petitioner asserts further that the application in this proceeding should be denied because it will deposit emissions which are adverse to this community's air quality, as established in applicable law.

14. Petitioner therefore requests that a formal hearing be scheduled to contest the evidence put forth by the applicant, and that at the conclusion of that hearing that the application for an air permit be denied.


Dated this 4th day of December, 2008.



Bob Fulford

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing was furnished to the following by U.S. mail on the 4th day of December, 2008, to Glenn Ferris, Biomass Gas and Electric, 3500 Parkway lane, Suite 440, Atlanta, Ga 30092.



Bob Fulford