

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**BARBARA MUSGRAY and JOE
MUSGRAY,**

Petitioners,

vs.

OGC CASE NO. 08-2731

**BIOMASS GAS AND ELECTRIC OF
TALLAHASSEE, LLC, and
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,**

Respondents.

ORDER DISMISSING PETITION WITH LEAVE TO AMEND

On November 17, 2008, the Department of Environmental Protection (Department) received from the Petitioners, Barbara Musgray and Joe Musgray (Petitioners), a petition for administrative hearing (Petition). The Petition challenges the Department's decision to issue an air permit, permit number 0730109-001-AC, to Biomass Gas and Electric of Tallahassee, LLC, to construct an integrated gasification and combined cycle unit alternative energy facility in Leon County, Florida.

Rule 28-106.201(2), Florida Administrative Code, and the notice provided to the Petitioners explain what must be included in a petition for a formal administrative proceeding. The Petition considered in this order does not comply with the cited rule or with the notice provided to the Petitioners. Therefore, the Petition does not contain sufficient information to enable the Department to determine whether a formal administrative proceeding should be held. Specifically, the Petition does not include the following:

(a) A statement of the specific rules or statutes that the Petitioners contend require reversal or modification of the Department's proposed decision, including an explanation of how the alleged facts relate to the specific rules or statutes.

In view of the above, the Petition must be dismissed as required by Section 120.569(2)(c), Florida Statutes.

IT IS THEREFORE ORDERED:

A. The Petition is DISMISSED, without prejudice. The Petitioners are granted leave to file an amended petition providing the additional information listed above. Any amended petition must comply with all the requirements of Rule 28-106.201(2), Florida Administrative Code.

B. Any amended petition must be filed (received) in the Office of General Counsel, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, by the close of business (5pm) on December 4, 2008.

C. This order constitutes final agency action of the Department, unless a timely amended petition is filed in compliance with this order.

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Any party to this proceeding has the right to seek judicial review of this order under Section 120.68, Florida Statutes, by the filing of a notice of appeal under 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, Mail Station 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 thirty days after the date this order is filed with the clerk of the Department.

DONE AND ORDERED this 20th day of November, 2008, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



THOMAS M. BEASON

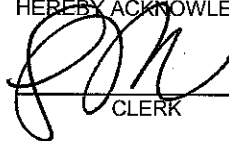
General Counsel

3900 Commonwealth Boulevard

Mail Station 35

Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.


CLERK

11/20/08
DATE

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing, Order Dismissing Petition with Leave to Amend, was sent via United States Postal Service to the following on this 20th day of November, 2008:

Barbara Musgray and Joe Musgray
1412 Coleman Street
Tallahassee, FL 32310

and via electronic mail to:

Angela Morrison Umland
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Post Office Box 6526
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*Attorney for Biomass Gas and
Electric of Tallahassee, LLC*



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cc via electronic mail:
Trina Vielhauer – DEP
Al Linero – DEP