

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**BILL PROCTOR, LEON COUNTY COMMISSIONER,
FIRST DISTRICT, LEON COUNTY,**

Petitioner,

vs.

DOAH CASE NO. 08-_____
OGC CASE NO. 08-2674

**BIOMASS GAS & ELECTRIC OF TALLAHASSEE, LLC,
And STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,**

Respondent.

_____ /

**REQUEST FOR ASSIGNMENT OF ADMINISTRATIVE LAW JUDGE
AND NOTICE OF PRESERVATION OF RECORD**

YOU ARE HEREBY NOTIFIED that the Florida Department of Environmental Protection (Department) has received the attached Petition for Hearing in the above-styled case. Under Section 120.569(2)(a), Florida Statutes, the Secretary has decided not to act as presiding officer and requests that the Division of Administrative Hearings assign this matter to an administrative law judge to conduct all necessary proceedings required by law and to submit a recommended order to the Department. The forwarding of this Petition is not a waiver of the Department's right to object to any material defects in the Petition or to Petitioner's standing to institute this proceeding.

YOU ARE FURTHER NOTIFIED that the Department is responsible for preserving the record of any evidentiary hearings in this case in accordance with Section 120.57(1)(g), Florida Statutes. Unless otherwise notified by the Department prior to final hearing, such a record will be preserved by a court reporter. Any other party arranging for the presence of a court reporter at hearing should notify the administrative law judge and all parties prior to the hearing of the court reporter's name, mailing address, and telephone number.

Whenever a court reporter is used, Rule 28-106.214(2), Florida Administrative Code, provides that the court reporter's recordation becomes the official transcript.

If a party decides to file exceptions with the Department to any finding of fact made by the Administrative Law Judge, the party will need to submit an official transcript of the proceeding. A transcript may be prepared, at the expense of the requesting party, from a court reporter's notes.

Respectfully submitted this 25th day of November, 2008.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



JACK CHISOLM, Deputy General Counsel
RONDA L. MOORE, Assistant General Counsel
3900 Commonwealth Boulevard – MS 35
Tallahassee, Florida 32399-3000
Telephone 850-245-2242 Facsimile 850-245-2302

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Request for Assignment for Administrative Law Judge and Notice of Preservation of Record has been furnished via electronic mail only this 25th day of November, 2008, to:

Bill Proctor, County Commissioner
301 S. Monroe Street, Room 202
Tallahassee, FL 32301

proctorb@leoncountyfl.gov

Angela Morrison Uhland
123 South Calhoun Street
Tallahassee, FL 32314

AUhland@hgslaw.com

*Attorney for Biomass Gas and
Electric of Tallahassee, LLC*



JACK CHISOLM, Deputy General Counsel
RONDA L. MOORE, Assistant General Counsel

**BEFORE THE FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION**

BILL PROCTER, LEON COUNTY
COMMISSIONER, 1ST DISTRICT
OF LEON COUNTY, FLORIDA,

Petitioner

Case No.

FDEP File No. 0730109-0001-AC

v.

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondent

PETITION FOR ADMINISTRATIVE HEARING
PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES

Petitioner, BILL PROCTER, COUNTY COMMISSIONER FOR THE 1ST DISTRICT FOR LEON COUNTY OF FLORIDA, hereby petitions for an administrative hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes, challenging Respondent, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION'S ("FDEP"), approval of Biomass Gas & Electric of Tallahassee, LLC's ("BG&E") application for an air pollution construction permit which authorizes the construction of a nominal 42 megawatts biomass-fed integrated gasification and combined cycle power plant called the Tallahassee Renewable Energy Center. In support thereof, CONCERNED CITIZEN states as follows:

The Parties and Notice of Agency Action

1. The name and address of the affected agency is the FDEP, 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000. The telephone number of the Agency is (850) 245-2118.

2. The Agency's file or identification number is 0730109-0001-AC.

3. The name and address of the Petitioner is Bill Proctor, County Commissioner for the 1st District of Leon County, Florida, 301 S. Monroe Street, Room 202, Tallahassee, Florida 32301. The telephone number is (850) 606-5361.

4. FDEP issued a written notice of intent to issue draft air Construction Permit on October 27, 2008. The Petitioner received FDEP's written notice of intent to issue a Draft Air Construction Permit by electronic mail on or about October 28, 2008, pursuant to Florida Statute §120.60(3). By operation of law, this Petition is filed within a timely manner.

The Petitioner's Substantial Interests are Affected by this Determination

5. The Petitioner, Bill Proctor, believes that the health, well being, and quality of life of himself, his family, and citizens of Leon County in District 1, will be significantly damaged by the air emissions from the applicants proposed facility.

6. By approval of the air construction permit, BG&E's permitted facility will emit air pollutants that will have an immediate and real impact on the Petitioner's substantial interest.

7. For a party to have standing to challenge proposed agency action pursuant to Sections 120.569 and 120.57(1), Florida Statutes, the party must demonstrate its substantial interest are determined or affected by the proposed agency action. This requirement is met when a party demonstrates that, as a result of the agency action, it will suffer an injury in fact, of sufficient immediacy to entitle it to an administrative proceeding on the action and the substantial injury that would result from the agency action is of the type or nature the administrative proceeding is designed to protect. Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d. DCA 1981).

8. As a resident of Leon County and working in the vicinity of the proposed facility site, the Petitioner's substantial interest is being determined in this proceeding. Further, the substantial injury that will result by the presence in the outdoor atmosphere of the state of any one or more substances or pollutants in quantities which are or may be harmful or injurious to human health or welfare, animal or plant life, or property, or unreasonably interfere with the enjoyment of life or property, including outdoor recreation, §62.210.200(12), F.A.C., such injury that this administrative proceeding is designed to protect. Therefore, the Petitioner has standing to challenge FDEP's decision to approve BG&E's application for an air pollution construction permit.

Disputed Issues of Material Fact

9. The Petitioner disputes the determination by FDEP that the applicant, BG&E, has shown that the installation is provided or equipped with pollution control facilities that will abate or prevent pollution to the degree that will comply with the standards or rules adopted by the department in accordance with Florida Statute § 403.087.

10. Petitioner failed to provide reasonable assurance that operation of the proposed facility will not adversely impact air quality and failed provide a reasonable assurance that the project will not cause or contribute to a violation of a state or federal ambient air quality standard.

Ultimate Facts Warranting Reversal of Approval of the Permit

11. The Petitioner contends that the applicant has not adequately demonstrated or proven that the proposed project will not adversely impact or exceed air quality standards set forth in Florida Statutes § 403.087.

DATED this 7 day of November, 2008.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Bill Proctor", is written over a horizontal line.

Bill Proctor, Commissioner
District 1, Leon County, Florida

WRITTEN NOTICE OF INTENT TO ISSUE DRAFT AIR CONSTRUCTION PERMIT

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

Mr. Glenn Farris, President and CEO
Biomass Gas and Electric of Tallahassee, LLC
3500 Parkway Lane, Suite 440
Atlanta, Georgia 30092

DEP File No. 0730109-001-AC
Tallahassee Renewable Energy Center
Biomass Integrated Gasification Combined Cycle Unit
Leon County, Florida

Facility Location: The proposed Tallahassee Renewable Energy Center (TREC) will be located in Leon County near South Lipona and Roberts Road in Tallahassee.

Project: On April 3, 2008, Biomass Gas and Electric, LLC submitted an air permit application to construct the TREC consisting of a nominal 42 megawatts (net) biomass integrated gasification and combined cycle unit and ancillary equipment. Details of the project are provided in the application and the enclosed Technical Evaluation and Preliminary Determination.

Permitting Authority: Applications for air construction permits are subject to review in accordance with the provisions of Chapter 403, Florida Statutes (F.S.) and Chapters 62-4, 62-210, and 62-212 of the Florida Administrative Code (F.A.C.). The proposed project is not exempt from permitting requirements and an air construction permit is required to perform the proposed work. The Bureau of Air Regulation is the Permitting Authority responsible for making a permit determination for this project. The Permitting Authority's physical address is: 111 South Magnolia Drive, Suite 4, Tallahassee, Florida. The Permitting Authority's mailing address is: 2600 Blair Stone Road, Mail Station (MS) 5505, Tallahassee, Florida 32399-2400. The Permitting Authority's telephone number is 850/488-0114.

Project File: A complete project file is available for public inspection during the normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday (except legal holidays), at address indicated above for the Permitting Authority. The complete project file includes the Draft Permit, the Technical Evaluation and Preliminary Determination, the application, and the information submitted by the applicant, exclusive of confidential records under Section 403.111, F.S. Interested persons may contact the Permitting Authority's project review engineer for additional information at the address or phone number listed above. In addition, electronic copies of key documents are available at the following web link:

www.dep.state.fl.us/Air/permitting/construction/tallahassee.htm

Notice of Intent to Issue Air Construction Permit: The Permitting Authority gives notice of its intent to issue an air construction permit to the applicant for the project described above. The applicant has provided reasonable assurance that operation of the proposed equipment will not adversely impact air quality and that the project will comply with all appropriate provisions of Chapters 62-4, 62-204, 62-210, 62-212, 62-296 and 62-297, F.A.C. The Permitting Authority will issue a Final Permit in accordance with the conditions of the proposed Draft Permit unless a timely petition for an administrative hearing is filed under Sections 120.569 and 120.57, F.S. or unless public comment received in accordance with this notice results in a different decision or a significant change of terms or conditions.

Public Notice: Pursuant to Section 403.815, F.S. and Rules 62-110.106 and 62-210.350, F.A.C., you (the applicant) are required to publish at your own expense the enclosed Public Notice of Intent to Issue Air Construction Permit (Public Notice). The Public Notice shall be published one time only as soon as possible in the legal advertisement section of a newspaper of general circulation in the area affected by this project. The newspaper used must meet the requirements of Sections 50.011 and 50.031, F.S. in the county where the activity is to take place. If you are uncertain that a newspaper meets these requirements, please contact the Permitting Authority at above address or phone number. Pursuant to Rule 62-110.106(5) and (9), F.A.C., the applicant shall provide proof of publication to the Permitting Authority at the above address within 7 days of publication. Failure to publish the notice and provide proof of publication may result in the denial of the permit pursuant to Rule 62-110.106(11), F.A.C.

WRITTEN NOTICE OF INTENT TO ISSUE DRAFT AIR CONSTRUCTION PERMIT

Comments: The Permitting Authority will accept written comments concerning the proposed Draft Permit for a period of 14 days from the date of publication of the Public Notice. Written comments must be received by the Permitting Authority by close of business (5:00 p.m.) on or before the end of this 14-day period. If written comments received result in a significant change to the Draft Permit, the Permitting Authority shall revise the Draft Permit and require, if applicable, another Public Notice. All comments filed will be made available for public inspection.

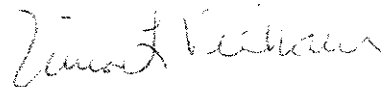
Petitions: A person whose substantial interests are affected by the proposed permitting decision may petition for an administrative hearing in accordance with Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed with (received by) the Department's Agency Clerk in the Office of General Counsel of the Department of Environmental Protection, 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000. Petitions filed by the applicant or any of the parties listed below must be filed within 14 days of receipt of this Written Notice of Intent to Issue Air Construction Permit. Petitions filed by any persons other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the attached Public Notice or within 14 days of receipt of this Written Notice of Intent to Issue Air Construction Permit, whichever occurs first. Under Section 120.60(3), F.S., however, any person who asked the Permitting Authority for notice of agency action may file a petition within 14 days of receipt of that notice, regardless of the date of publication. A petitioner shall mail a copy of the petition to the applicant at the address indicated above, at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the approval of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

A petition that disputes the material facts on which the Permitting Authority's action is based must contain the following information: (a) The name and address of each agency affected and each agency's file or identification number, if known; (b) The name, address, and telephone number of the petitioner; the name, address and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination; (c) A statement of when and how each petitioner received notice of the agency action or proposed decision; (d) A statement of all disputed issues of material fact. If there are none, the petition must so state; (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action; (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action including an explanation of how the alleged facts relate to the specific rules or statutes; and, (g) A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the agency to take with respect to the agency's proposed action. A petition that does not dispute the material facts upon which the Permitting Authority's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Permitting Authority's final action may be different from the position taken by it in this Written Notice of Intent to Issue Air Construction Permit. Persons whose substantial interests will be affected by any such final decision of the Permitting Authority on the application have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation: Mediation is not available in this proceeding.

Executed in Tallahassee, Florida.



Trina Vielhauer, Chief
Bureau of Air Regulation

WRITTEN NOTICE OF INTENT TO ISSUE DRAFT AIR CONSTRUCTION PERMIT

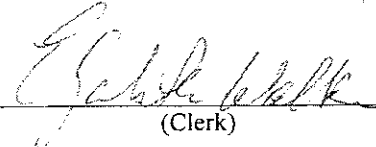
CERTIFICATE OF SERVICE

The undersigned duly designated deputy agency clerk hereby certifies that this Written Notice of Intent to Issue Air Construction Permit package (including the Public Notice, the Technical Evaluation and Preliminary Determination, and the Draft Air Construction Permit) was sent by electronic mail (or a link to these documents made available electronically on a publicly accessible server) with received receipt requested or by U.S. certified mail as indicated below before the close of business on 10/27/08 to the persons listed below.

Glenn Farris, BG&E: glenn@biggreenenergy.com
Dick Fancher, DEP NWD: dick.fancher@dep.state.fl.us
Scott Osbourn, P.E., Golder: sosbourn@golder.com
Kathy Forney, EPA Region 4: forney.kathleen@epamail.epa.gov
Heather Abrams, EPA Region 4: Abrams.Heather@epa.gov
Jane Sauls, Chair, Leon County Board of County Commissioners: saulsj@leoncountvfl.gov
Bill Proctor, Commissioner, Leon County: proctorb@leoncountvfl.gov
John Marks, Mayor, City of Tallahassee: john.marks@talgov.com
Anita Favors Thompson, Manager, City of Tallahassee: anita.favors.thompson@talgov.com
Vickie Gibson, DEP BAR: Victoria.Gibson@dep.state.fl.us (for read file)
John Gibby, Citizen: gibbyj@earthlink.net
Joy Towles Ezell, Citizen: hopeforcleanwater@yahoo.com
Deb Swim, Citizen: daswim@gmail.com
Joe Cain, Citizen: joecain1@comcast.net
Dr. Ronald Saff, Floridians Against Incinerators in Disguise: ronsaff@aol.com
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Neil Seldman, Institute for Self-Reliance: nseldman@ilsr.org
Donald L. Mellman, Vice-President, Physicians for Social Responsibility: dmellman@post.harvard.edu
Lynn Ringenberg, President, Physicians for Social Responsibility: ring@tampabay.rr.com
Dr. Andres Rodriguez, Capital Medical Society: by U.S. Mail

Clerk Stamp

FILING AND ACKNOWLEDGMENT FILED, on this date, pursuant to §120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.


(Clerk)

10/27/08
(Date)