



# Florida Department of Environmental Protection

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard, MS #35  
Tallahassee, Florida 32399-3000

Rick Scott  
Governor

Jennifer Carroll  
Lt. Governor

Herschel T. Vinyard Jr.  
Secretary

October 28, 2011

John Turner  
Assistant Lee County Attorney  
P.O. Box 398  
Fort Myers, Florida 33902-0398

RE: August 5, 2011 Notice of Violation of Agency Action  
Florida Department of Environmental Protection  
Second Amended Consent Order, OGC Case No: 06-2345

Dear Mr. Turner:

The Department is in receipt of your October 21, 2011 letter. As you know, on or about May 11, 2011, the Department issued its denial of the permit application required to install the Ceitus Boatlift. As you also know Lee County's petition challenging that denial was dismissed with prejudice and that dismissal is currently on appeal before the District Court of Appeal. As such, the filing of Lee County's 120.69 enforcement petition would at best be premature until the aforementioned appeal has been resolved, and certainly would constitute a meritless claim at this time. Section 120.69(3) specifically calls for the application of res judicata and collateral estoppel and similarly mandates the circuit court make such orders as are necessary to avoid multiplicity of actions. Finally, 120.69(7) provides attorneys fees for the prevailing party on any final order issued on a 120.69 enforcement action.

The Department sends this letter to put Lee County on notice that it will vigorously seek a final order of dismissal and an award of attorney's fees if Lee County knowingly files a premature 120.69 enforcement action against the Department for reinstallation of the Ceitus Boatlift.

Best Regards,

A handwritten signature in black ink, consisting of a stylized 'K' followed by a horizontal line.

Kirk S. White  
Assistant General Counsel

cc: Jon Iglehart, Director FDEP  
W. Doug Beason, Senior Assistant General Counsel, FDEP  
Megan Mills, FDEP  
Jeff Littlejohn, Deputy Secretary, FDEP  
Jack Chisolm, FDEP  
Betsy Hewitt, FDEP  
Tom Beason, FDEP  
Oliver Clarke, City of Cape Coral Engineer IV  
Steve Griffin, Asst. City Atty. City of Cape Coral