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June 12, 2017

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Dept. of Environmental Protection
Office of General Counsel

ST. LUCIE COUNTY,)
)
 Petitioner,)
)
 vs.)
)
 SUNBREAK FARMS, LLC and)
 STATE OF FLORIDA DEPARTMENT)
 OF ENVIRONMENTAL PROTECTION,)
)
 Respondents.)
 _____)

OGC File No. 17-0251

ST. LUCIE COUNTY'S
PETITION FOR FORMAL ADMINISTRATIVE HEARING

Petitioner, St. Lucie County, Florida (the "County"), acting through the Board of County Commissioners of St. Lucie County, respectfully submits this petition for a formal administrative hearing, pursuant to the Florida Department of Environmental Protection's Order Granting Request for Extension of Time, and in accordance with Sections 120.569, 120.57(1), and 403.412(5), Florida Statutes, and Rule 28-106.201, Florida Administrative Code ("F.A.C."). This petition concerns the intent to issue a permit (the "Intent to Issue") and draft Domestic Wastewater Facility Permit (the "Draft Permit") that FDEP issued to Sunbreak Farms, LLC (the "Applicant"), for the construction and operation of a Type I Biosolids Management Facility (the "Type I Biosolids Management Facility" or

"Proposed Facility") on property located at 5101 Minute Maid Road in St. Lucie County, Florida. In support of this petition, the County states:

The Parties

1. Petitioner, St. Lucie County, is a political subdivision of the State of Florida and its main office is located at 2300 Virginia Avenue, Ft. Pierce, Florida 34982. For the purposes of this proceeding, all legal papers and correspondence should be served upon the County's environmental counsel, Mr. David S. Dee, and a copy provided to the County Attorney's Office in care of Ms. Katherine Barbieri. The contact information for Mr. Dee is provided on the last page of this petition. The contact information for Ms. Barbieri is provided in the Certificate of Service, which is attached to this petition. The telephone number for the County Attorney's Office is (772) 462-1420.

2. Respondent, the Florida Department of Environmental Protection (the "Department" or "FDEP"), is an agency of the State of Florida. The Department's address is 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-2400. The telephone number for the Department's Office of General Counsel is (850) 245-2242.

3. Respondent, Sunbreak Farms, LLC, is the applicant seeking the issuance of the Draft Permit for the Proposed Facility.

Notice of Agency Action

4. On May 11, 2017, the County received a copy of the Department's Intent to Issue the Draft Permit (FDEP File No. FLA979830-001-DWIS). The Department's Intent to Issue states that anyone wishing to challenge the Department's proposed agency action must file a petition for a formal administrative hearing, or a request for an extension of time to file a petition, with the Department's Clerk in the Office of General Counsel no later than 14 days after the Intent to Issue is received. On May 23, 2017, the County timely filed "St. Lucie County's Request for Enlargement of Time to File Petition for Administrative Hearing." On June 7, 2017, the Department issued its "Order Granting Request for Extension of Time," which granted the County an extension of time to file a petition in this matter until 5 p.m. on June 12, 2017. Since this petition is being filed before the FDEP's deadline, this petition is timely.

Background

5. If the Draft Permit becomes final, the Applicant will be authorized to construct and operate the Type I Biosolids Management Facility in unincorporated areas of St. Lucie County

and Indian River County, Florida. The Proposed Facility will accept and process "biosolids," which is defined by FDEP to mean the "solid, semisolid, or liquid residue generated during the treatment of domestic wastewater in a domestic wastewater treatment facility. . . ." (formerly known as residuals). See FDEP Rule 62-640.200(6), F.A.C. More specifically, the Draft Permit would authorize the Facility to receive and process Class B biosolids, other organic wastes (e.g., chicken and animal manure), and bulking agents to produce up to 500 dry tons per day of Class AA biosolids. To produce this quantity of Class AA biosolids, it appears the Proposed Facility may receive up to 2,500 wet tons (5,000,000 pounds) of biosolids each day.

6. The Proposed Facility will be constructed and operated on a parcel of land (the "Site") that is approximately 6,580 acres in size and primarily located in the unincorporated areas of St. Lucie County. The Site is in the watershed of the St. Lucie River, which the Florida Legislature has identified as one of the "critical water resources of the state." Fla. Stat. § 373.4595(1)(a). Surface water runoff and other discharges from the Site will drain into the estuary of the St. Lucie River (the "Estuary") via the C-25 canal and Taylor Creek. The Estuary has been designated as an "impaired water" by FDEP because the water quality in the Estuary fails to comply with the state standards for Class III surface waters, which were "established to protect

fish consumption, recreation and the propagation and maintenance of a healthy, well-balanced population of fish and wildlife." FDEP Rule 62-302.400(4), F.A.C. The poor water quality in the Estuary is caused in part by excessive amounts of nitrogen and phosphorus that drain into the Estuary from upstream areas, including agricultural lands. Given these water quality problems, the Florida Legislature established various programs and requirements for the protection of the St. Lucie River watershed and the Estuary. See, e.g., Fla. Stat. §§ 373.4595(1), (4), (5), and (8). Notwithstanding these efforts by the Legislature, and notwithstanding the efforts of the FDEP to implement the Legislature's directives, the Estuary and the downstream waters in the Indian River Lagoon (the "Lagoon") have experienced major algae blooms in recent years. These algae blooms have been unprecedented in their scope and severity, causing large areas of the Estuary and Lagoon to be covered in thick mats of toxic blue-green algae. The impacts were devastating to the local ecosystems and dramatically reduced the use of the Estuary and Lagoon for fishing, boating, and other recreational purposes. Indeed, the County declared a "State of Local Emergency" in 2016 and 2017, pursuant to Section 252.38(3), Florida Statutes, based on the County's determination that the algae in the local waterways posed a danger to health,

life, property, and the economic well-being of St. Lucie County residents.

7. The County is concerned the Applicant's proposed Type I Biosolids Management Facility will have significant adverse impacts on the County, its property, and the natural resources located in the County, including but not limited to the Estuary. Accordingly, the County retained a professional engineering and consulting firm, CDM Smith, to assist the County with its review of the Draft Permit. CDM Smith's engineers and other professionals have extensive experience with biosolids and biosolids management facilities. CDM Smith has reviewed the Department's files for the proposed Type I Biosolids Management Facility, including Sunbreak Farms' permit application and the Draft Permit, but CDM Smith still has unresolved questions and concerns about the Proposed Facility and the Draft Permit.

St. Lucie County's Verified Petition

8. St. Lucie County is a political subdivision of the State of Florida and, pursuant to Section 403.412(5), Florida Statutes, St. Lucie County has standing to initiate a formal administrative hearing by filing a verified petition asserting that the activity to be licensed or permitted will have the effect of impairing, polluting, or otherwise injuring the air, water, or other natural resources of the State. In the instant case, St. Lucie County asserts that the proposed activity to be

permitted by FDEP will have such effects, unless the Proposed Facility is properly located, designed, built, operated, maintained, and regulated. Unfortunately, the Applicant's submittal to the FDEP appears to be unclear, incomplete, and internally inconsistent in certain respects, and thus does not provide reasonable assurance that the Proposed Facility will comply with all of the applicable statutes and FDEP rules. The County's essential assertions about these matters are verified by Dr. K. Richard Tsang, Ph.D., P.E., B.C.E.E. Dr. Tsang is a licensed Professional Engineer in Florida and three other states, he has many years of experience with the management of biosolids, and he is a Senior Vice President of CDM Smith. Dr. Tsang's affidavit is attached hereto as Exhibit A and incorporated herein.

St. Lucie County's Substantial Interests

9. In addition to having standing in this case under Section 403.412(5), Florida Statutes, St. Lucie County also has standing because the proposed Type I Biosolids Management Facility and the proposed activities to be permitted by the FDEP could reasonably be expected to adversely affect the County's substantial interests. As noted above, the Proposed Facility is located within the watershed of the St. Lucie River and the Site drains into the Estuary. The surface water runoff from the Site, as well as the water that may be pumped from the 640-acre

stormwater reservoir on the Site, may cause or contribute to water quality violations in the Estuary. It appears that the Applicant's existing permits would allow the Applicant to discharge up to 190,000 gallons of water per minute (273,600,000 gallons per day) from the Site. The discharges from the Site could reasonably be expected to increase the nutrient loading to the St. Lucie River watershed and thus exacerbate the water quality problems in the Estuary.

10. The County has four public parks that could be adversely affected by the Applicant's proposed activities. First, the County owns and operates the Harbour Pointe Park on a 20-acre parcel of land that is bordered on two sides by the Estuary. The Harbour Pointe Park is adjacent to the mouth of Taylor Creek - i.e., the location where the surface water discharges from the Site will leave Taylor Creek and enter the Estuary. Second, the County operates Wesley's Island Park on a State-owned island that is in the Estuary and relatively close to the mouth of Taylor Creek. Third, the County owns and operates the South Causeway Island Park, which has a lengthy border abutting the Estuary, relatively close to the mouth of Taylor Creek. Fourth, the County leases and operates Coon Island, another island in the Estuary.

11. All four of these properties (i.e., Harbour Pointe Park; Wesley's Island Park; South Causeway Island Park; Coon

Island) are maintained and operated by the County. The County has removed exotic vegetation, provided shelters and amenities, and taken other steps to promote the public's use of these four properties. The County's goal is to enhance the environmental and social value of these properties so that they are an attractive destination for the County's residents and tourists, who use these properties for various purposes, including but not limited to fishing, boating, birdwatching, and picnicking.

12. The County's substantial interests in these four properties would be materially and adversely affected by the Proposed Facility if the Facility's surface water discharges cause or contribute to water quality violations and toxic algae blooms in the Estuary. The County's residents and tourists will curtail their use of the County's properties if the Estuary again experiences a massive algae bloom that turns the water green, coats the shoreline with gelatinous mats of toxic blue-green algae, kills the fish and other aquatic creatures, and causes respiratory distress for humans in the vicinity of the Estuary. Under such circumstances, the County's substantial interests also will be adversely affected because the County will need to clean-up the shoreline bordering its four properties. The clean-up will require the County to expend its time, energy, money, and other resources. The clean-up will place the County's employees and/or contractors at risk because

they will be exposed to the algae, dead fish, and other dead and dying organisms along the shoreline of the Estuary.

Disputed Issues of Material Fact

13. Based on its preliminary review of the Applicant's permit application, the relevant FDEP files, and the Draft Permit, the County has identified the following disputed issues of material fact in this case:

- a. Whether the Applicant has provided reasonable assurance that the activities to be authorized by the Draft Permit will comply with all of the applicable FDEP rules and statutes.
- b. Whether the Applicant has provided reasonable assurance that the activities to be authorized by the Draft Permit will not cause or contribute to violations of the FDEP water quality standards for surface water or groundwater.
- c. Whether the Applicant has provided reasonable assurance that the activities to be authorized by the Draft Permit will not increase the nutrient loading in the St. Lucie River watershed, including but not limited to the Estuary.
- d. Whether the Applicant has provided reasonable assurance that the activities to be authorized by

the Draft Permit will not cause violations of the FDEP prohibition against objectionable odors.

- e. Whether the general and specific conditions in the Draft Permit provide reasonable assurance that the activities authorized by the Draft Permit will be conducted in compliance with the applicable FDEP rules.
- f. Whether, and the extent to which, the Applicant will discharge nutrient-enriched water from the Site pursuant to the Applicant's existing Environmental Resource Permit (ERP No. 56-00111-5).

The County reserves its right to raise additional disputed issues of material fact and law that may be identified in the future as a result of the County's further review of the FDEP files or discovery conducted in this case.

Statement of Ultimate Facts Entitling St. Lucie County to Relief

14. The Applicant has not provided reasonable assurance that the proposed construction and operation of the Type I Biosolids Management Facility will comply with all applicable FDEP rules, including but not limited to Chapter 62-640, F.A.C. Among other things, it appears the activities to be authorized by the Draft Permit may result in objectionable odors, discharges of nutrient-enriched water to surface waters in the

St. Lucie River watershed, and violations of water quality standards in the Estuary. It also appears the general and specific conditions in the Draft Permit do not provide reasonable assurance that the activities authorized by the Draft Permit will be conducted in compliance with the applicable FDEP requirements.

Statutes and Rules Entitling St. Lucie County to Relief

15. St. Lucie County is entitled to relief in this case pursuant to Chapters 120, 373, and 403, Florida Statutes, and Chapters 62-4, 62-302, 62-520, and 62-640, F.A.C. Among other things, it appears that the proposed activities to be authorized by the Draft Permit may result in violations of: (a) the FDEP prohibition against objectionable odors, as set forth in FDEP Rules 62-640.400(6) and 62-296.320(2), F.A.C.; (b) the FDEP surface water or ground water quality standards, as set forth in FDEP Rules 62-640.400(2), F.A.C., and Chapters 62-302 and 62-520, F.A.C.; and (c) the FDEP prohibition against activities that cause an increase in the nitrogen or phosphorus loadings in the watershed of the St. Lucie River, as set forth in FDEP Rule 62-640.400(12), F.A.C. and Section 373.4595, Florida Statutes.

Relief Requested

WHEREFORE, St. Lucie County respectfully requests:

a. the Department to forward this petition to the Division of Administrative Hearings for the assignment of an Administrative Law Judge;

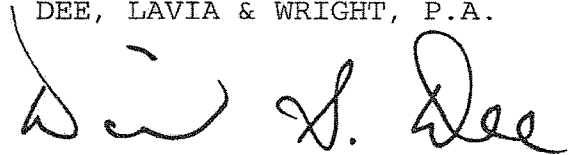
b. the Administrative Law Judge to conduct a formal administrative hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes;

c. the Administrative Law Judge to issue a recommended order denying the Applicant's permit application or modifying the Draft Permit; and

d. the Department to issue a final order denying the Applicant's permit application or modifying the Draft Permit.

Respectfully submitted this 12th day of June, 2017.

GARDNER, BIST, BOWDEN, BUSH,
DEE, LAVIA & WRIGHT, P.A.



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ATTORNEYS FOR ST. LUCIE
COUNTY

CERTIFICATE OF SERVICE

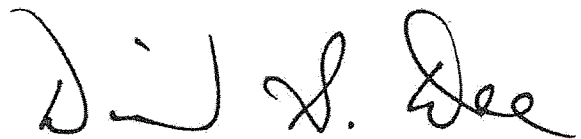
I HEREBY CERTIFY that a true and correct copy of the foregoing was served electronically this 12th day of June, 2017, to:

Francine Ffolkes (francine.ffolkes@dep.state.fl.us)
Kirk White (kirk.white@dep.state.fl.us;
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Attorney

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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_____)	

AFFIDAVIT OF DR. K. RICHARD TSANG

STATE OF: NORTH CAROLINA
COUNTY OF: WAKE

BEFORE ME, the undersigned authority, personally appeared Dr. K. Richard Tsang, Ph.D., P.E., B.C.E.E., who after being first duly sworn, deposes and states as follows:

1. My name is Dr. K. Richard Tsang and I have personal knowledge of the matters set forth herein.
2. I am over eighteen (18) years of age and otherwise competent to testify.
3. I am a licensed Professional Engineer in Florida and I am employed by CDM Smith. CDM Smith is a full-service engineering and professional consulting firm that has been retained by St. Lucie County to assist the County in its review of the Florida Department of Environmental Protection ("FDEP") file (FDEP File No. FLA979830-001-DWIS) and draft permit ("Draft

Exhibit A

Permit") concerning Sunbreak Farms, LLC's proposed Type I Biosolids Management Facility in St. Lucie County, Florida. I am making the statements herein as a Senior Vice President of CDM Smith, in reliance on the work performed and information obtained by me and other professionals employed by CDM Smith. St. Lucie County authorized me to make the statements herein in support of the verified petition for formal administrative hearing that is being filed by St. Lucie County with FDEP.

4. As a general proposition, a Type I Biosolids Management Facility located in St. Lucie County, Florida, will impair, pollute, or otherwise injure the air, water, and other natural resources of the State of Florida, unless the facility is properly located, designed, constructed, operated, maintained, and monitored. In the instant case, the application filed by Sunbreak Farms, LLC, and the Draft Permit issued by the FDEP are not entirely clear about the activities authorized by the Draft Permit or the requirements imposed on those activities by FDEP. Consequently, it appears that Sunbreak Farms, LLC, has not provided reasonable assurance that the activities to be authorized by the Draft Permit will comply with all of the applicable FDEP requirements. Based on CDM Smith's preliminary review of the FDEP file and Draft Permit concerning the Type I Biosolids Management Facility proposed by Sunbreak Farms, LLC, it appears that the activities to be authorized by the Draft

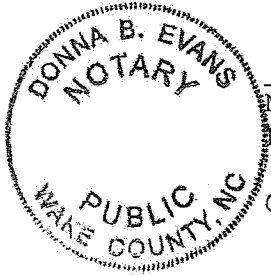
Permit may have the effect of impairing, polluting, or otherwise injuring the air, water, or other natural resources of the State of Florida.

FURTHER AFFIANT SAYETH NAUGHT.

K. Richard Tsang

By: K. RICHARD TSANG

Sworn to and subscribed before me this 12th day of June, 2017, by K. RICHARD TSANG, who personally appeared before me and did take an oath. K. RICHARD TSANG ___ is personally known to me or X produced Driver's License as identification.



Donna B. Evans

Notary Public

Print Name: Donna B. Evans

Commission Expires: 03-04-2018