STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

MW HORTICULTURE RECYCLING FACILITY, INC.,	)	
Petitioner,	)	
v.	)	**OGC CASE NO. 19-1536**
	)	**DOAH CASE NO. 19-5636**
DEPARTMENT OF ENVIRONMENTAL PROTECTION,	)	
Respondent.	)	
MW HORTICULTURE RECYCLING OF NORTH FT. MYERS, INC.,	)	
Petitioner,	)	
v.	)	**OGC CASE NO. 19-1537**
	)	**DOAH CASE NO. 19-5642**
DEPARTMENT OF ENVIRONMENTAL PROTECTION,	)	
Respondent.	)	

FINAL ORDER

An Administrative Law Judge (ALJ) with the Division of Administrative Hearings (DOAH) on September 17, 2020, submitted a Recommended Order (RO) to the Department of Environmental Protection (DEP or Department) in the above-captioned administrative proceeding. A copy of the RO is attached hereto as Exhibit A.

DEP timely filed exceptions with the Department on October 2, 2020. On September 30, 2020, the Petitioners, MW Horticulture Recycling Facility, Inc. (MW), and MW Horticulture Recycling of North Ft. Myers, Inc. (MW-NFM) (collectively the Petitioners), filed a Motion for Extension of Time to Submit Exceptions with DOAH, requesting an additional thirty (30) days

to file exceptions to the ALJ's RO. While the Petitioners' filed its motion for extension of time prior to expiration of the period for filing exceptions to the RO in compliance with rule 62-110.106(4), Florida Administrative Code; the Petitioners incorrectly filed its motion with DOAH and not the Department's agency clerk, as directed by DOAH's Recommended Order and rule 28-106.217(1), Florida Administrative Code. [1]

On October 9, 2020, the Petitioners' counsel sent an e-mail to the Department's agency clerk which read, in pertinent part, that "[o]n 09/30/2020, our office filed the attached Motion for Extension of Time (through 11/2/2020) to Submit Exceptions on behalf of the MW Horticulture entities for cases 19-5636 and 19-5642. When possible, can you please advise if an Order will be entered regarding our Motion?" On that date, the Department's agency clerk learned that Petitioners had filed a motion for extension of time but had no record of it having been filed with the Department's agency clerk as required by rule 28-106.217(1), Florida Administrative Code. On October 14, 2020, the Petitioners submitted its exceptions filed with DOAH to DEP's agency clerk. On October 15, 2020, the Department entered an order granting, in part, Petitioners' motion for extension of time to file its exceptions, and accepted the Petitioners' exceptions to the RO. Neither party filed responses to the other party's exceptions.

This matter is now before the Secretary of the Department for final agency action.

BACKGROUND

On April 25, 2019, Petitioners, MW and MW-NFM, submitted their annual renewal Yard Trash Transfer Station or Solid Waste Organics Recycling Facility registration applications to the Department. Petitioners' facilities are alternatively known as Source Separated Organics

[1] All motions, exceptions, and responses to exceptions filed after issuance of DOAH's RO must be filed with the Department's agency clerk. *See* Fla. Admin. Code R. 28-106.217(1)(2020).

Processing Facilities (SOPFs). Petitioner MW's application was designated as file number SOPFD 19-02 and known as the South Yard. Petitioner MW-NFM's application was designated as file number SOPFD 19-01 and known as the North Yard. On August 22, 2019, the Department issued notices of denial for both registration application renewals.

On September 11, 2019, Petitioners timely filed petitions for an administrative hearing challenging the registration denials. On October 18, 2019, the Department referred the petitions to DOAH to conduct an evidentiary hearing and submit a recommended order. DOAH consolidated the cases on October 31, 2019. The Department filed an Emergency Motion to Strike Witnesses on March 3, 2020. On March 4, 2020, the Petitioners filed their motion to strike witnesses. Petitioners' motion was withdrawn at hearing, and the Department's motion was denied.

At the final hearing, Petitioners presented the expert testimony of David Hill, who was tendered and accepted as an expert in compost and solid waste management; and Jeffrey Collins, who was tendered and accepted as an expert in fire prevention and suppression. Petitioners also presented the fact testimony of Denise Houghtaling, Mark Houghtaling, Mario Scartozzi, Deborah Schnellenger, Harshad Bhatt, and Rick Roudebush.

The Department presented the fact testimony of Lauren O'Connor; Vincent Berta; the expert testimony of Steve Lennon, who was tendered and accepted as an expert in fire prevention and suppression; Doug Underwood, who was tendered and accepted as an expert in fire prevention and suppression; and Renee Kwiat, who was tendered and accepted as an expert in solid waste and air quality.

SUMMARY OF THE RECOMMENDED ORDER

In the RO, the ALJ recommended that the Department enter a final order denying the Petitioners' annual registration renewal applications for the North Yard and South Yard. (RO at p. 19). In doing so, the ALJ found the evidence established that neither MW nor MW-NFM proved by a preponderance of the evidence that it would meet the "design and operating requirements for yard trash processing facilities." (RO ¶¶ 58-59). Specifically, the ALJ concluded that neither MW nor MW-NFM "provided reasonable assurance that it would meet the requirements that none of the processed or unprocessed material shall be mechanically compacted, and that none of the processed or unprocessed material shall be more than 50 feet from access by motorized firefighting equipment." (RO ¶¶ 58-59). Moreover, the ALJ found the evidence did not "provide reasonable assurance that the Petitioners can effectively control and prevent unauthorized open burning at the North Yard and South Yard" as required by Department rules. (RO ¶ 60). The ALJ then concluded that the "totality of the evidence does not justify labeling Petitioners as irresponsible applicants under relevant Department rule." (RO ¶ 62). *See* Fla. Admin. Code R. 62-701.320(3)(2020).

STANDARDS OF REVIEW OF DOAH RECOMMENDED ORDERS

Section 120.57(1)(l), Florida Statutes, prescribes that an agency reviewing a recommended order may not reject or modify the findings of fact of the ALJ "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence." § 120.57(1)(l), Fla. Stat. (2020); *Charlotte Cty. v. IMC Phosphates Co.*, 18 So. 3d 1079, 1082 (Fla. 2d DCA 2009); *Wills v. Fla. Elections Comm'n*, 955 So. 2d 61, 62 (Fla. 1st DCA 2007). The term "competent substantial evidence" does not relate to the quality, character, convincing power, probative value

or weight of the evidence. Rather, "competent substantial evidence" refers to the existence of some evidence as to each essential element and as to its admissibility under legal rules of evidence. *See e.g., Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm'n*, 671 So. 2d 287, 289 n.3 (Fla. 5th DCA 1996); *Nunez v. Nunez*, 29 So. 3d 1191, 1192 (Fla. 5th DCA 2010).

A reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g., Rogers v. Dep't of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); *Belleau v. Dep't of Envtl. Prot.*, 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands Cty. School Bd.*, 652 So. 2d 894, 896 (Fla. 2d DCA 1995). If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr. Co. v. Dyer*, 592 So. 2d 276, 280 (Fla. 1st DCA 1991); *Conshor, Inc. v. Roberts*, 498 So. 2d 622, 623 (Fla. 1st DCA 1986).

The ALJ's decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of any competent substantial evidence of record supporting this decision. *See, e.g., Peace River/Manasota Reg'l Water Supply Auth. v. IMC Phosphates Co.*, 18 So. 3d 1079, 1088 (Fla. 2d DCA 2009); *Collier Med. Ctr. v. State, Dep't of HRS*, 462 So. 2d 83, 85 (Fla. 1st DCA 1985); *Fla. Chapter of Sierra Club v. Orlando Utils. Comm'n*, 436 So. 2d 383, 389 (Fla. 5th DCA 1983). In addition, an agency has no authority to make independent or supplemental findings of fact. *See, e.g., North Port, Fla. v. Consol. Minerals*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994*); Fla. Power & Light Co. v. Fla. Siting Bd.*, 693 So. 2d 1025, 1026-1027 (Fla. 1st DCA 1997).

Section 120.57(1)(l), Florida Statutes, authorizes an agency to reject or modify an ALJ's conclusions of law and interpretations of administrative rules "over which it has substantive

jurisdiction." *See Barfield v. Dep't of Health*, 805 So. 2d 1008, 1012 (Fla. 1st DCA 2001); *L.B. Bryan & Co. v. Sch. Bd. of Broward Cty.*, 746 So. 2d 1194, 1197 (Fla. 1st DCA 1999); *Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So. 2d 1140, 1141-142 (Fla. 2d DCA 2001). However, the agency should not label what is essentially an ultimate factual determination as a "conclusion of law" to modify or overturn what it may view as an unfavorable finding of fact. *See, e.g., Stokes v. State, Bd. of Prof'l Eng'rs*, 952 So. 2d 1224, 1225 (Fla. 1st DCA 2007). Furthermore, agency interpretations of statutes and rules within their regulatory jurisdiction do not have to be the only reasonable interpretations. It is enough if such agency interpretations are "permissible" ones. *See, e.g., Suddath Van Lines, Inc. v. Dep't of Envtl. Prot.*, 668 So. 2d 209, 212 (Fla. 1st DCA 1996).

Agencies do not have jurisdiction, however, to modify or reject rulings on the admissibility of evidence. Evidentiary rulings of the ALJ that deal with "factual issues susceptible to ordinary methods of proof that are not infused with [agency] policy considerations," are not matters over which the agency has "substantive jurisdiction." *See Martuccio v. Dep't of Prof'l Regulation*, 622 So. 2d 607, 609 (Fla. 1st DCA 1993); *Heifetz v. Dep't of Bus. Regulation*, 475 So. 2d 1277, 1281-82 (Fla. 1st DCA 1985). Evidentiary rulings are matters within the ALJ's sound "prerogative . . . as the finder of fact" and may not be reversed on agency review. *See Martuccio*, 622 So. 2d at 609.

RULINGS ON EXCEPTIONS

In reviewing a recommended order and any written exceptions, the agency's final order "shall include an explicit ruling on each exception." *See* § 120.57(1)(k), Fla. Stat. (2020). The agency, however, need not rule on an exception that "does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal

basis for the exception, or that does not include appropriate and specific citations to the record." *Id.*

A party that files no exceptions to certain findings of fact "has thereby expressed its agreement with, or at least waived any objection to, those findings of fact." *Envtl. Coal. of Fla., Inc. v. Broward Cty.*, 586 So. 2d 1212, 1213 (Fla. 1st DCA 1991); *see also Colonnade Med. Ctr., Inc. v. State of Fla., Agency for Health Care Admin.*, 847 So. 2d 540, 542 (Fla. 4th DCA 2003). However, an agency head reviewing a recommended order is free to modify or reject any erroneous conclusions of law over which the agency has substantive jurisdiction, even when exceptions are not filed. *See* § 120.57(1)(l), Fla. Stat. (2020); *Barfield,* 805 So. 2d at 1012; *Fla. Pub. Emp. Council, v. Daniels,* 646 So. 2d 813, 816 (Fla. 1st DCA 1994).

RULINGS ON THE PETITIONERS' EXCEPTIONS

Petitioners' Exception No. 1 regarding Paragraph 11

The Petitioners take exception to paragraph 11 of the RO, alleging that the "record reflects that MW maintains both processed and unprocessed material in organized piles so as to be managed in a way to aerate and keep the temperatures at a level limiting spontaneous combustion." Petitioners' Exceptions at p. 1. However, the Petitioners did not allege that the findings are not supported by competent, substantial evidence. An agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020). This alone is a sufficient basis to reject Exception No. 1.

Moreover, the findings of fact are supported by competent substantial evidence. (Lennon, T. Vol. I, pp. 42-43; Petitioners' Ex. No. 3; DEP Ex. Nos. 9-17). Because the findings in paragraph 11 are supported by competent substantial evidence, and the Petitioners fail to meet the requirements of section 120.57(1)(k), Florida Statutes, this exception must be rejected.

Based on the foregoing reasons, Petitioners' Exception No. 1 is denied.

Petitioners' Exception No. 2 regarding Paragraph 28

The Petitioners take exception to paragraph 28 of the RO, alleging the findings are not supported by competent, substantial evidence. Contrary to the Petitioners' exception, the findings of fact are supported by competent, substantial evidence. (Lennon, T. Vol. I, pp. 42-43; Kwiat, T. Vol. II, pp. 137-41, 146-47; DEP Ex. Nos. 1, 10-17, 26). Because the findings in paragraph 28 are supported by competent substantial evidence, and the Petitioners fail to meet the requirements of section 120.57(1)(k), Florida Statutes, this exception must be rejected.

Based on the foregoing reasons, Petitioners' Exception No. 2 is denied.

Petitioners' Exception No. 3 regarding Paragraph 29

The Petitioners take exception to paragraph 29 of the RO, alleging the Department does not have a "clear definition of mechanical compaction." Petitioners' Exceptions at p. 2. First, the Petitioners' exception is vague, fails to cite to any record to support its claim, and does not allege that the findings are not supported by competent, substantial evidence. An agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020). This alone is a sufficient basis to reject Exception No. 3.

The Petitioners imply that the phrase "mechanical compaction" is vague and fails to provide adequate standards for agency action. The test for vagueness is whether the rule requires the performance of an act in terms so vague that men of common intelligence must guess at its meaning. *Southwest Florida Water Mgmt. Dist. v. Charlotte Cty.*, 774 So. 2d 903 (Fla. 2d DCA 2001); *see also Cole Vision Corp. v. Dep't of Bus. & Prof'l Regulation*, 688 So. 2d 404 (Fla. 1st DCA 1997); *St. Petersburg v. Pinellas County Police Benevolent Assoc.*, 414 So.2d 293 (Fla. 2d DCA 1982) (general test for vagueness of a rule is whether persons of common intelligence are

required to guess at the rule's meaning and could differ as to the rule's interpretation.) In fact, the record in this case establishes that DEP and the Petitioners' expert did not disagree over the definition of "mechanical compaction." (Hill, T. Vol. II, p. 215; Collins, T. Vol. II, p. 244; Denise Houghtaling, T. Vol. III, pp. 337-38).

Moreover, the findings of fact are supported by competent substantial evidence. (Lennon, T. Vol. I, pp. 25-27, 31-32, 42-43; Kwiat, T. Vol. II, pp. 137-38, 146-47, 160; DEP Ex. Nos. 9-17, 23). Because the findings in paragraph 29 are supported by competent substantial evidence, and the Petitioners fail to meet the requirements of section 120.57(1)(k), Florida Statutes, this exception must be rejected.

Based on the foregoing reasons, Petitioners' Exception No. 3 is denied.

Petitioners' Exception No. 4 regarding Paragraph 17

The Petitioners take exception to paragraph 17 of the RO alleging in its entirety that "Petitioner takes exception to finding of fact No. 17 in that it relies upon an undefined set of rules with the State of Florida, Department of Environmental Protection." Petitioners' Exceptions at p. 2. Paragraph 17 of the RO reads in its entirety:

> 17. Captain Underwood testified that the majority of the 75 calls were to the lake pile at the North Yard. *See* Tr. Vol. I, pg. 59. The lake pile was a temporary site on the southern end of the lake that borders the North Yard and for most of 2018 and 2019, contained debris from Hurricane Irma. The lake pile temporary site was completely cleared by the time of the hearing.

RO ¶ 17.

First, the Petitioners' exception is exceptionally vague, fails to cite to any record to support its claim, and does not allege that the findings are not supported by competent, substantial evidence. The Petitioners' allegation that the findings in paragraph 17 of the RO rely upon an undefined set of rules is so vague that it is impossible to determine what terms, phrases

or concepts are in dispute. An agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020). This alone is a sufficient basis to reject Exception No. 4.

Moreover, the findings of fact are supported by competent substantial evidence. (Underwood, T. Vol. I, p. 49-50, 59). Because the findings in paragraph 17 are supported by competent substantial evidence, and the Petitioners fail to meet the requirements of section 120.57(1)(k), Florida Statutes, this exception must be rejected.

Based on the foregoing reasons, Petitioners' Exception No. 4 is denied.

Petitioners' Exception No. 5 regarding Paragraph 22

The Petitioners take exception to paragraph 22 of the RO, which reads, in its entirety:

> 22. By Petitioners' own admission, the facilities have repeatedly violated applicable Department rules throughout the course of their operations over the last two and one-half years. The most pertinent of these violations center around the Department's standards for fire protection and control to deal with accidental burning of solid waste at SOPFs.

RO ¶ 22.

The Petitioners takes exception to paragraph 22 of the RO, alleging the Petitioners' "violations were the result of Hurricane [I]rma, a category 4 hurricane which made landfall in the State of Florida," . . . . Any violation was the direct result of the overwhelming volume of material needed to be processed and disposed of following Hurricane Irma." Petitioners' Exceptions at p. 2.

An agency reviewing a recommended order may not reject or modify the findings of fact of the ALJ "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence." § 120.57(1)(l), Fla. Stat. (2020); *Peace River/Manasota Reg'l Water Supply*

Authority, 18 So. 3d at 1082, 1088; *Wills,* 955 So. 2d at 62-63. However, the Petitioners did not allege that the findings are not supported by competent, substantial evidence. An agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020). This alone is a sufficient basis to reject Exception No. 5. Moreover, contrary to the Petitioners' arguments, the ALJ's findings in paragraph 22 are supported by competent substantial evidence. (Lennon, T. Vol. I, pp. 25-27, 45; Kwiat, T. Vol. II, pp. 138-41; Hill, T. Vol. II, p. 219; DEP Ex. Nos. 1, 2, 23; Denise Houghtaling, T. Vol. III, pp. 300, 331, 333-35, 350).

Furthermore, the Petitioners seek to have the Department reweigh the evidence. A reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307; *Dunham*, 652 So. 2d at 896. If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, Petitioners' Exception No. 5 is denied.

Petitioners' Exception No. 6 regarding Paragraph 45

The Petitioners take exception to paragraph 45 of the RO, alleging that the Department's witness Renee Kwiat testified that the only mechanical compaction she witnessed during her inspections were of MW loading debris for offsite shipment. Petitioners' Exceptions at p. 2.

An agency reviewing a recommended order may not reject or modify the findings of fact of the ALJ "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial

evidence." § 120.57(1)(l), Fla. Stat. (2020); *Peace River/Manasota Reg'l Water Supply Authority,* 18 So. 3d at 1082, 1088; *Wills,* 955 So. 2d at 62-63. However, the Petitioners did not allege that the findings are not supported by competent, substantial evidence. An agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020). This alone is a sufficient basis to reject Exception No. 6. Moreover, contrary to the Petitioners' arguments, the ALJ's findings in paragraph 45 are supported by competent substantial evidence. (Berta, T. Vol. I, pp. 15-17; O'Conner, T. Vol. I, pp. 92, 97-98, 107, 113; Kwiat, T. Vol. II, pp. 137-41, 143-47, 153-59; DEP Ex. Nos. 4, 5, 7, 8, 11, 12, 13, 14, 15, 16, 17, 23, 25).

Furthermore, the Petitioners seek to have the Department reweigh the evidence. A reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307; *Dunham*, 652 So. 2d at 896. If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, Petitioners' Exception No. 6 is denied.

Petitioners' Exception No. 7 regarding Paragraph 47

The Petitioners take exception to paragraph 47 of the RO, alleging that the hearing testimony supported the Petitioners' actions to suppress and mitigate the fires by driving their equipment on the tops of the piles of material. Petitioners' Exceptions at pp. 2-3.

An agency reviewing a recommended order may not reject or modify the findings of fact of the ALJ "unless the agency first determines from a review of the entire record, and states with

particularity in the order, that the findings of fact were not based on competent substantial evidence." § 120.57(1)(l), Fla. Stat. (2020); *Peace River/Manasota Reg'l Water Supply Authority,* 18 So. 3d at 1082, 1088; *Wills,* 955 So. 2d at 62-63. However, the Petitioners did not allege that the findings are not supported by competent, substantial evidence. An agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020). This alone is a sufficient basis to reject Exception No. 7. Moreover, contrary to the Petitioners' arguments, the ALJ's findings in paragraph 45 are supported by competent substantial evidence. (Lennon, T. Vol. I, pp. 25-27; O'Connor, T. Vol. I, pp. 94-95; Denise Houghtaling, T. Vol. III, pp. 300, 331, 333-35, 350; DEP Ex. Nos. 20, 23; Petitioners' Ex. No. 16).

Moreover, the Petitioners seek to have the Department reweigh the evidence. A reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307; *Dunham*, 652 So. 2d at 896. If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, Petitioners' Exception No. 7 is denied.

Petitioners' Exception No. 8 regarding Paragraph 54

The Petitioners take exception to paragraph 54 of the RO, which identifies the legal standard of proof in the case. Paragraph 54 reads, in its entirety, as follows: "Rule 62-701.320(9) directs the Department to deny a solid waste permit if reasonable assurance is not provided that the requirement of chapters 62-4 and 62-701 will be satisfied. *See also* Fla. Admin. Code R.

62-4.070(2). A solid waste permit may include registrations. *See* § 403.707(1), Fla. Stat."

If the reviewing agency modifies or rejects a conclusion of law set out in the ALJ's recommended order, it must state with particularity the reasons for the modification or rejection, and must find that its substituted conclusion of law "is as or more reasonable than that which was rejected or modified." § 120.57(1)(l), Fla. Stat. (2020). The Petitioners failed to identify any legal basis for its exception to the conclusions of law in paragraph 54 of the RO and failed to offer a substitute legal conclusion that is "as or more reasonable" than that which it proposes be rejected. § 120.57(1)(l), Fla. Stat. (2020). Instead, the Petitioners summarily reject the ALJ's conclusion of law in paragraph 54 without providing any legal basis for the exception or citation to the record. *See* §§ 120.57(1)(j) and (k), Fla. Stat. (2020).

Moreover, the Petitioners allege that their testimony establishes that MW would meet the Department's rule requirements. The Petitioners seek to have the Department reweigh the evidence, even though paragraph 54 of the RO contains conclusions of law and not findings of fact. Even if paragraph 54 contained findings of fact, a reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g.*, *Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307; *Dunham*, 652 So. 2d at 896. If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g.*, *Arand Constr Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623. Nevertheless, paragraph 54 of the RO does not contain any findings of fact, only conclusions of law

Based on the foregoing reasons, Petitioners' Exception No. 8 is denied.

Petitioners' Exception No. 9 regarding Paragraph 60

Petitioners take exception to the conclusions of law in paragraph 60 of the RO, alleging that "Petitioner's direct testimony demonstrated reasonable assurance that they can effectively control and prevent unauthorized open burning at both the north and south yards." Petitioners' Exceptions at p. 3.

If the reviewing agency modifies or rejects a conclusion of law set out in the ALJ's recommended order, it must state with particularity the reasons for the modification or rejection, and must find that its substituted conclusion of law "is as or more reasonable than that which was rejected or modified." § 120.57(1)(l), Fla. Stat. (2020). The Petitioners failed to identify any legal basis for its exception to conclusions of law in paragraph 60 of the RO and failed to offer a substitute legal conclusion that is "as or more reasonable" than that which it proposes be rejected. § 120.57(1)(l), Fla. Stat. (2020). Instead, the Petitioners summarily reject the ALJ's conclusion of law in paragraph 60 without providing any legal basis for the exception or citation to the record. *See* § 120.57(1)(j) and (k), Fla. Stat. (2020).

Moreover, the Petitioners seek to have the Department reweigh the evidence, even though paragraph 60 of the RO contains conclusions of law and not findings of fact. Even if paragraph 60 contained findings of fact, a reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g.*, *Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307; *Dunham*, 652 So. 2d at 896. If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g.*, *Arand Constr Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, Petitioners' Exception No. 9 is denied.

Petitioners' Exception No. 10 regarding Paragraph 61

Petitioners take exception to the conclusion of law in paragraph 61 of the RO, which merely quotes the Department's definition of "irresponsible applicant, and reads in its entirety:

> 61. Rule 62-701.320(3) defines an 'irresponsible applicant' as one that 'owned or operated a solid waste management facility in this state, including transportation equipment or mobile processing equipment used by or on behalf of the applicant, which was subject to a state or federal notice of violation, judicial action, or criminal prosecution for activities that constitute violations of chapter 403, F.S., or the rules promulgated thereunder, *and could have prevented the violation through reasonable compliance with Department rules*.' (Emphasis added).

RO ¶ 61 (emphasis added by ALJ in RO).

If the reviewing agency modifies or rejects a conclusion of law set out in the ALJ's recommended order, it must state with particularity the reasons for the modification or rejection, and must find that its substituted conclusion of law "is as or more reasonable than that which was rejected or modified." § 120.57(1)(l), Fla. Stat. (2020). The Petitioners failed to provide an explanation for how its interpretation of Florida Administrative Code Rule 62-701.320(3) is as or more reasonable than the ALJ's interpretation of this rule. Moreover, the ALJ did not interpret Florida Administrative Code Rule 62-701.320(3) in paragraph 61 of the RO; instead, the ALJ merely quoted the definition of "irresponsible applicant" in this paragraph of the RO. The Petitioners have no legal basis to take exception to an applicable quotation from the Department's rules.

Based on the foregoing reasons, Petitioners' Exception No. 10 is denied.

Petitioners' Exception No. 11 regarding Paragraph 62

Against their own best interest, Petitioners take exception to the conclusions of law in paragraph 62 of the RO, which reads:

> 62. The preponderance of the evidence established that Petitioners did not consistently comply with Department rules over the two and one-half years prior to the final hearing. However, Petitioners established through persuasive and credible evidence that because of the impacts of Hurricane Irma, and the subsequent circumstances, they could not have reasonably prevented the violations. The totality of the evidence does not justify labeling Petitioners as irresponsible applicants under the relevant Department rules.

RO ¶ 62.

An agency's interpretation of statutes and rules within its regulatory jurisdiction does not have to be the only reasonable interpretation. It is enough if such agency interpretation is a "permissible" one. *Suddath Van Lines, Inc.*, 668 So. 2d at 212. If the reviewing agency modifies or rejects a conclusion of law set out in the ALJ's recommended order, it must state with particularity the reasons for the modification or rejection, and must find that its substituted conclusion of law "is as or more reasonable than that which was rejected or modified." § 120.57(1)(l), Fla. Stat. (2020). However, the Petitioners did not even offer a substitute conclusion of law in Petitioners' Exception No. 11; instead, the Petitioners referenced their own testimony in support of rejecting paragraph 62 of the RO.

Ultimately, the Petitioners seek to have the Department reweigh the evidence. Drawing reasonable inferences from the evidence, is an evidentiary-related matter wholly within the province of the ALJ, as the "fact-finder" in this administrative proceeding. *See e.g., Tedder v. Fla. Parole Comm'n,* 842 So. 2d 1022, 1025 (Fla. 1st DCA 2003). I am not authorized to reweigh the evidence and draw inferences that are different from those drawn by the ALJ. *See, e.g., Heifetz,* 475 So. 2d at 1281-82; *Greseth v. Dep't of Health and Rehabilitative Services*, 573 So. 2d 1004, 1006 (Fla. 4th DCA 1991).

In addition, the ALJ's findings are a reasonable inference from the hearing testimony. The ALJ can "draw permissible inferences from the evidence." *Heifetz*, 475 So. 2d at 1281-82.

See also Walker v. Bd. of Prof'l Eng'rs, 946 So. 2d 604, 605 (Fla. 1st DCA 2006) ("It is the hearing officer's function to consider all the evidence presented, including drawing permissible inferences from the evidence, and reaching ultimate findings of fact based on competent, substantial evidence.").

Based on the foregoing reasons, Petitioners' Exception No. 11 is denied.

Petitioners' Exceptions No. 12 and 13 to the RO's Recommendation

Petitioners take exception to the RO's recommendation that the "Department of Environmental Protection enter a final order denying Petitioners' annual registration renewal applications for the North Yard and South Yard," alleging that the Petitioners have proven by a preponderance of the evidence that they are in "substantial compliance." However, as cited by the ALJ in paragraph 54 of the RO, the standard of proof for annual registration renewal applicants is "reasonable assurance" and not "substantial compliance" that the requirements of Florida Administrative Code Chapters 62-4 and 62-701 will be met. *Fla. Dep't of Transp. v. J.W.C. Co. Inc.*, 396 So. 2d 778 (Fla. 1st DCA 1981).

Based on the foregoing reasons, Petitioners' Exceptions No. 12 and 13 are denied.

Petitioners' Exception No. 14 regarding the Conclusions of Law in General

Petitioners take exception to the RO's Conclusions of Law in general, stating

> 14. Petitioner takes exception to the Conclusions of Law <u>to the extent that it contains a finding</u> that Petitioner could have prevented the violation through reasonable compliance with the Department rules under the existence of an emergency order entered by the State of Florida. Petitioner clearly acted within reasonable compliance with the Department rules and the State of Emergency that existed throughout the State of Florida.

Petitioners' Exceptions at p. 4 (emphasis added).

Numbered paragraph 14 of the Petitioners' exceptions takes exception to findings of fact in the RO and not the conclusions of law in the RO. An agency reviewing a recommended order

may not reject or modify the findings of fact of the ALJ "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence." § 120.57(1)(l), Fla. Stat. (2020); *Peace River/Manasota Reg'l Water Supply Authority,* 18 So. 3d at 1082, 1088; *Wills,* 955 So. 2d at 62-63. However, the Petitioners did not allege that the findings are not supported by competent, substantial evidence. An agency need not rule on an exception that does not identify the legal basis for the exception. § 120.57(1)(k), Fla. Stat. (2020). This alone is a sufficient basis to reject Exception No. 14.

Moreover, contrary to the Petitioners' allegations, the RO's Conclusions of Law do not find or conclude that the Petitioners' "could have prevented the violation through reasonable compliance with the Department rules under the existence of an emergency order entered by the State of Florida." Petitioners' Exceptions at p. 4. Instead, paragraph 62 of the RO reads that "Petitioners established through persuasive and credible evidence that because of the impacts of Hurricane Irma, and the subsequent circumstances, they could not have reasonably prevented the violations" and that the "totality of the evidence does not justify labeling Petitioners as irresponsible applicants under the relevant Department rule." RO ¶ 62. Paragraph 62 of the RO does not conclude that the Petitioners provided reasonable assurances that they were entitled to approval of their annual registration renewal applications for the North Yard and South Yard. Instead, Paragraphs 61 and 62 of the RO conclude that the Petitioners merely were not "irresponsible applicants" as defined by Florida Administrative Code Rule 62-701.320(3). Just because the ALJ concluded that the Petitioners were not "irresponsible applicants" does not mean the ALJ concluded the Petitioners are entitled to annual registration renewal applications for their two facilities. In fact, the ALJ concluded in the RO that the Petitioners were not entitled

to the two registration renewals, because they did not provide a preponderance of the evidence that either facility would meet the design and operating requirements for yard trash processing facilities. RO ¶¶ 56-59.

Based on the foregoing reasons, Petitioners' Exception No. 14 is denied.

RULINGS ON DEP'S EXCEPTIONS

DEP's Exception No. 1 regarding Paragraph 38

DEP takes exception to paragraph 38 of the RO, alleging the findings are not supported by competent, substantial evidence. Specifically, DEP alleges that this paragraph "should be rejected in its entirety, or, in the alternative, be clarified to reflect that Petitioner MW-NFM could have prevented the accumulation of material in violation of Department rules but did not." DEP's Exceptions at p. 5.

If the DOAH record contains any competent substantial evidence supporting a challenged factual finding of the ALJ, the agency is bound by such factual finding in preparing the final order. *See, e.g., Walker*, 946 So. 2d at 605; *Fla. Dep't of Cord*, 510 So. 2d at 1123. DEP contends that paragraph 38 of the RO should be rejected or, in the alternative, clarified by adding supplemental information. However, an agency has no authority to make independent or supplemental findings of fact. *See, e.g., Fla. Power & Light Co.*, 693 So. 2d at 1026-1027; *North Port, Fla.*, 645 So. 2d at 487.

Moreover, the findings of fact are supported by competent, substantial evidence. (Denise Houghtaling, T. Vol. III, pp. 290-94, 300-302; Petitioners' Ex. No. 22). Because the findings in paragraph 38 are supported by competent substantial evidence, and DEP fails to meet the requirements of section 120.57(1)(k), Florida Statutes, this exception must be rejected.

Based on the foregoing reasons, DEP's Exception No. 1 is denied.

DEP's Exception No. 2 regarding Paragraph 50

DEP takes exception to a portion of the findings of fact in paragraph 50 of the RO, which reads in its entirety:

> 50. The persuasive and credible evidence established that Petitioners did not consistently comply with Department rules over the two and one-half years prior to the final hearing. However, Petitioners established through persuasive and credible evidence that because of the impacts of Hurricane Irma, and the subsequent circumstances, they could not have reasonably prevented the violations. The totality of the evidence does not justify labeling the Petitioners as irresponsible applicants under the relevant statute and Department rule.

RO ¶ 50 (emphasis added). The totality of DEP's exception leads the Department to conclude that DEP accepts the first sentence of paragraph 50 of the RO but takes exception to the second and third sentence of paragraph 50 of the RO, quoted above. However, DEP does not directly identify which portion of paragraph 50 of the RO should be stricken.

Later in paragraph 61 of the RO, the ALJ quotes the definition of "irresponsible applicant," contained in Florida Administrative Code Rule 62-701.320(3), which reads, in pertinent part:

> (3) Irresponsible applicant. In addition to the provisions of subsection 62-4.070(5), F.A.C., when determining whether the applicant has provided reasonable assurances that Department standards will be met, the Department shall consider repeated violations of applicable statutes, rules, orders, or permit conditions caused by a permit applicant after October 1988, relating to the operation of any solid waste management facility in this state if the applicant is deemed to be irresponsible. For purposes of this subsection, the following words have the following meaning:
>
> . . .
>
> (b) "Irresponsible" means that an applicant owned or operated a solid waste management facility in this state, including transportation equipment or mobile processing equipment used by or on behalf of the applicant, which was subject to a state or federal notice of violation, judicial action, or criminal prosecution for activities that constitute violations of chapter 403, F.S., or the rules promulgated thereunder, *and could have prevented the violation through reasonable compliance with Department rules.*

Fla. Admin. Code R. 62-701.320(3)(2020) (emphasis added by the ALJ and the Department).

In paragraph 50 of the RO, the ALJ found that the Petitioners did not consistently comply with Department rules for two and one-half years before the DOAH final hearing. (Kwiat, T. Vol. II, p. 160). However, the ALJ also found that "Petitioners established through persuasive and credible evidence that because of the impacts of Hurricane Irma, and the subsequent circumstances, they could not have reasonably prevented the violations." RO ¶ 50. Moreover, the ALJ found that the "totality of the evidence" did not justify labeling the Petitioners as "irresponsible applicants" under relevant statutes and Department rules. Nevertheless, the ALJ concluded in paragraphs 58 and 59 of the RO that both MW and MW-NFM did not provide by a preponderance of the evidence that they would meet the design and operating requirements for yard trash processing facilities. RO ¶¶ 58-59. As a result, the ALJ recommended that the Department enter a final order denying the Petitioners' registration and renewal applications for the North and South Yards.

DEP takes exception to paragraph 50 of the RO, alleging the findings are not supported by competent, substantial evidence. However, the findings of fact are supported by competent, substantial evidence. (Denise Houghtaling, T. Vol. III, pp. 270-309, 312-55; Mark Houghtaling, T. Vol. III, pp. 356-61, Petitioners' Ex. No. 22). Because the findings in paragraph 50 are supported by competent substantial evidence, and DEP fails to meet the requirements of section 120.57(1)(k), Florida Statutes, this exception must be rejected.

The ALJ can "draw permissible inferences from the evidence." *Heifetz,* 475 So. 2d at 1281-82. *See also Walker*, 946 So. 2d at 605 ("It is the hearing officer's function to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial

evidence."). Moreover, drawing reasonable inferences from the evidence, is an evidentiary-related matter wholly within the province of the ALJ, as the "fact-finder" in an administrative proceeding. *See e.g., Tedder*, 842 So. 2d at 1025. The Department is not authorized to reweigh the evidence and draw inferences that are different from those drawn by the ALJ. *See, e.g., Heifetz*, 475 So. 2d at 1281-82; *Greseth*, 573 So. 2d at 1006. If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623.

Based on the foregoing reasons, DEP's Exception No. 2 is denied.

DEP's Exception No. 3 regarding Paragraph 62

DEP takes exception to the mixed findings of fact and conclusions of law in paragraph 62 of the RO, which reads:

> 62. The preponderance of the evidence established that Petitioners did not consistently comply with Department rules over the two and one-half years prior to the final hearing. However, Petitioners established through persuasive and credible evidence that because of the impacts of Hurricane Irma, and the subsequent circumstances, they could not have reasonably prevented the violations. The totality of the evidence does not justify labeling Petitioners as irresponsible applicants under the relevant Department rules.

RO ¶ 62 (emphasis added).

If the reviewing agency modifies or rejects a conclusion of law set out in the ALJ's recommended order, it must state with particularity the reasons for the modification or rejection, and must find that its substituted conclusion of law "is as or more reasonable than that which was rejected or modified." § 120.57(1)(l), Fla. Stat. (2020). However, DEP did not offer an adequate explanation for why DEP's legal interpretation is more reasonable than the ALJ's legal interpretation of Florida Administrative Code Rule 62-701.320(3). Instead, DEP alleges that

paragraph 62 of the RO should be rejected, because it is based on an erroneous finding of fact in paragraph 50 of the RO that "because of the impacts of Hurricane Irma, and the subsequent circumstances, [the Petitioners] could not have reasonably prevented the violations." *See* Fla. Admin. Code R. 62-701.320(3)(2020) (definition of "irresponsible applicant").

DEP seeks to have the Department reweigh the evidence upon which the conclusion of law in paragraph 62 of the RO is based, because DEP rejects the ALJ's findings of fact in paragraph 50 of the RO. Drawing reasonable inferences from the evidence, is an evidentiary-related matter wholly within the province of the ALJ, as the "fact-finder" in this administrative proceeding. *See e.g., Tedder,* 842 So. 2d at 1025. A reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307; *Dunham*, 652 So. 2d at 896. If there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. *See, e.g., Arand Constr Co.*, 592 So. 2d at 280; *Conshor, Inc.*, 498 So. 2d at 623. Contrary to DEP's exception No. 2 to paragraph 50 of the RO, the ALJ's findings in paragraph 50 are supported by competent substantial evidence, including inferences drawn by the ALJ from the totality of the evidence presented at the final hearing. (Denise Houghtaling, T. Vol. III, pp. 270-309, 312-55; Mark Houghtaling, T. Vol. III, pp. 356-61, Petitioners' Ex. No. 22).

Based on the foregoing reasons, DEP's Exception No. 3 is denied.

CONCLUSION

Having considered the applicable law in light of the rulings on the above Exceptions, and being otherwise duly advised, it is

ORDERED that:

A. The Recommended Order (Exhibit A) is adopted, except as modified by the above rulings on Exceptions, and is incorporated by reference herein; and

B. The proposed annual registration renewal applications from MW Horticulture Recycling Facility, Inc. (DEP file number SOPFD 19-02), and MW Horticulture Recycling of North Ft. Myers, Inc. (DEP file number SOPFD 19-01), for the North Yard and the South Yard are DENIED.

JUDICIAL REVIEW

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 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 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 15 day of December, 2020, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

NOAH VALENSTEIN
Secretary

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
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.

Syndie Kinsey Digitally signed by Syndie Kinsey Date: 2020.12.15 11:57:54 -05'00'

CLERK DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order has been sent by electronic mail to:

Clayton W. Crevasse, Esquire Sara E. Spector, Esquire Roetzel & Andress 2320 First Street, Suite 1000 Fort Myers, Florida 33901 ccrevasse@ralaw.com sspector@ralaw.com	Carson Zimmer, Esquire Department of Environmental Protection Mail Station 35 3900 Commonwealth Boulevard Tallahassee, Florida 32399-3000 Carson.Zimmer@FloridaDEP.gov

this 15th day of December, 2020.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Stacey D. Cowley

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Telephone 850/245-2242

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MW HORTICULTURE RECYCLING FACILITY, INC.,

Petitioner,

vs. Case No. 19-5636

DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondent.
_____/

MW HORTICULTURE RECYCLING OF NORTH FT. MYERS, INC.,

Petitioner,

vs. Case No. 19-5642

DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held before Francine M. Ffolkes, the assigned Administrative Law Judge of the Division of Administrative Hearings (DOAH), on March 5 and 6, 2020, in Fort Myers, Florida.

APPEARANCES

For Petitioners: Clayton W. Crevasse, Esquire
Sarah E. Spector, Esquire
Roetzel & Andress
2320 First Street, Suite 1000
Fort Myers, Florida 33901

Exhibit A

For Respondent: Carson Zimmer, Esquire
Department of Environmental Protection
Mail Station 49
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

STATEMENT OF THE ISSUES

The issues for determination in this matter are: (1) whether Petitioner, MW Horticulture Recycling Facility, Inc. (MW), is entitled to renewal of its Yard Trash Transfer Station or Solid Waste Organics Recycling Facility registration; (2) whether Petitioner MW is an irresponsible applicant; and (3) whether Petitioner MW Horticulture Recycling of North Fort Myers, Inc. (MW-NFM), is entitled to renewal of its Yard Trash Transfer Station or Solid Waste Organics Recycling Facility registration.

PRELIMINARY STATEMENT

On April 25, 2019, Petitioners, MW and MW-NFM, submitted their annual renewal Yard Trash Transfer Station or Solid Waste Organics Recycling Facility registration applications to the Department of Environmental Protection (Department). Petitioners' facilities are alternatively known as Source Separated Organics Processing Facilities (SOPFs). Petitioner MW's application was designated as file number SOPFD 19-02. Petitioner MW-NFM's application was designated as file number SOPFD 19-01. On August 22, 2019, the Department issued notices of denial for both registration application renewals.

On September 11, 2019, Petitioners timely filed petitions for administrative hearing challenging the registration denials. On October 18, 2019, the Department referred the petitions to DOAH to conduct an evidentiary hearing and submit a recommended order. DOAH consolidated the cases on October 31, 2019. The Department filed an Emergency Motion to

Strike Witnesses on March 3, 2020. On March 4, 2020, the Petitioners filed their motion to strike witnesses. Petitioners' motion was withdrawn at hearing; the Department's motion was denied. The parties filed their Joint Pre-hearing Stipulation on March 3, 2020.

At the final hearing, Petitioners presented the expert testimony of David Hill, who was tendered and accepted as an expert in compost and solid waste management; and Jeffrey Collins, who was tendered and accepted as an expert in fire prevention and suppression. Petitioners also presented the fact testimony of Denise Houghtaling, Mark Houghtaling, Mario Scartozzi, Deborah Schnellenger, Harshad Bhatt, and Rick Roudebush. Petitioners' Exhibits 3 (Lake Yard photos A, B, D through J, L, N, P, Q, T, BB, CC, DD; North Yard photos A, C, D, E, H, I, L, N; South Yard photos A, B, C, E, G, K, L through T, Z, AA, BB), 6 (page 2 only), 9 through 14, 16, 20, 22, 25, and 26, were admitted into evidence.

The Department presented the fact testimony of Lauren O'Connor; Vincent Berta; the expert testimony of Steve Lennon, who was tendered and accepted as an expert in fire prevention and suppression; Doug Underwood, who was tendered and accepted as an expert in fire prevention and suppression; and Renee Kwiat, who was tendered and accepted as an expert in solid waste and air quality. The Department's Exhibits 1 through 32 were admitted into evidence.

A three-volume Transcript of the hearing was filed with DOAH on March 27, 2020. The parties filed their Proposed Recommended Orders on April 16, 2020, which have been considered in the preparation of this Recommended Order.

References to Florida Statutes are to the 2019 version, unless otherwise stated.

FINDINGS OF FACT

The following Findings of Fact are based on the stipulations of the parties and the evidence adduced at the final hearing.

The Parties and the Registration Denials

1. Petitioner MW is a Florida corporation that operates an SOPF located at 6290 Thomas Road, Fort Myers, Lee County, Florida. The site is commonly referred to as the "South Yard."

2. Petitioner MW-NFM is a Florida corporation that operates an SOPF located at 17560 East Street, North Fort Myers, Lee County, Florida. The site is commonly referred to as the "North Yard."

3. The Department is the administrative agency of the state statutorily charged with, among other things, protecting Florida's air and water resources. The Department administers and enforces certain provisions of part IV of chapter 403, Florida Statutes, and the rules promulgated thereunder in Florida Administrative Code Chapters 62-701 and 62-709. Pursuant to that authority, the Department determines whether to allow SOPFs to annually register in lieu of obtaining a solid waste management facility permit.

4. On April 25, 2019, Petitioner MW submitted its application for registration renewal for the South Yard. On August 22, 2019, the Department issued a notice of denial. The listed reasons for denial focused on non-compliance with orders for corrective action in a Consent Order (Order) between Petitioner MW and the Department entered on February 22, 2019. The Order was entered to resolve outstanding violations in a Notice of Violation, Orders for Corrective Action and Administrative Penalty Assessment (NOV), issued on November 20, 2018.

5. The notice of denial stated that, as of August 9, 2019, Petitioner MW had not completed the following corrective actions of the Order by the specified timeframes: (a) within 90 days of the effective date of this Order, Respondent shall remove all processed or unprocessed material (yard trash) from the Seminole Gulf Railway Right of Way and the swale along Old US 41 and establish a 20 foot wide all-weather access road, around the entire perimeter of the site; (b) within 90 days of the effective date of this Order, Respondent shall reduce the height of the piles to a height that the facility's equipment can reach without driving (mechanically compacting) onto the processed or unprocessed material; and (c) within 90 days of the effective date of this Order, Respondent shall have all the processed and unprocessed material be no more than 50 feet from access by motorized firefighting equipment.

6. The notice of denial also stated that when Department staff conducted compliance visits on April 29, 2019, June 27, 2019, July 7, 2019, and July 18, 2019, the following outstanding violations were documented: (a) unauthorized open burning of yard waste; (b) unauthorized mechanical compaction of processed and unprocessed material; (c) an all-weather access road, at least 20 feet wide, around the perimeter of the Facility has not been maintained and yard trash has been stored or deposited within the all-weather access road; and (d) yard trash is being stored more than 50 feet from access by motorized firefighting equipment.

7. On April 25, 2019, Petitioner MW-NFM submitted its application for registration renewal for the North Yard. On August 22, 2019, the Department issued a notice of denial. The notice of denial stated that compliance and site observation visits were conducted on July 9, 2019, July 30, 2019, August 1 and 2, 2019, and the following non-compliance issues were documented: (a) unauthorized open burning; (b) unauthorized mechanical compaction of processed and unprocessed material; (c) yard trash received has been stored or disposed of within 50 feet of a body of water; and

(d) yard trash received is not being size-reduced or removed, and most of the unprocessed yard trash has been onsite for more than six months.

8. The notice of denial also stated that on March 27, 2018, May 10, 2018, and October 3, 2018, Department staff conducted inspections of the North Yard. A Warning Letter was issued on November 2, 2018. The Warning Letter noted the following violations: (1) unauthorized burning of solid waste; (2) the absence of the required 20-foot-wide all-weather perimeter access road along the southern unprocessed yard trash debris pile; (3) inadequate access for motorized firefighting equipment around the southern unprocessed yard trash debris pile (lake pile); (4) the lake pile not size-reduced or removed within six months; (5) mechanical compaction of processed and unprocessed material by heavy equipment; and (6) yard trash storage setbacks from wetlands not maintained.

Petitioners' SOPFs

9. The North Yard is located in North Fort Myers and is bound by the southbound lanes of Interstate 75 to the east and a lake to the west. The South Yard is slightly larger than the North Yard and abuts Thomas Road to the west and a railroad owned and operated by the Seminole Gulf Railway Company to the east.

10. Petitioners' facilities accept vegetative waste and yard trash (material) from the public in exchange for a disposal fee before processing and size-reducing the material into retail products such as organic compost, topsoil, and mulch. The unprocessed material is staged in various piles generally according to waste type until it can be processed by grinding or screening.

11. As of the date of the final hearing, both the North Yard and the South Yard were completely full of large, tall, and long piles of processed and unprocessed material except for a perimeter roadway around each site and paths that meander between the piles themselves.

12. As the material in the piles decomposes, heat is produced from the respiration and metabolization of organic matter. This heat ignites the dry material and can cause substantial fires. Both the North Yard and South Yard are susceptible to fires caused by spontaneous combustion as a result of their normal operations of collecting and stockpiling organic waste.

Fires

13. Although spontaneous combustion is an inherent risk with SOPFs, the evidence at the hearing established that the material at Petitioners' facilities catches fire at an abnormally high rate as a result of poor pile management. Piles need to be turned and wetted to keep down incidents of spontaneous combustion. Monitoring temperatures, rotating the piles, and removing the material at a faster rate would help reduce the incidence of fires. Large piles with no extra land space cannot be managed in a way "to aerate and keep the temperatures at a level where you're not going to have spontaneous combustion." *See* Tr. Vol. I, pg. 32.

14. Fire Marshal Steve Lennon of San Carlos Park Fire and Rescue regarded the South Yard as a fire hazard compared to other similar sites in his district. He testified that the pile heights, widths, and lengths at the South Yard are not in compliance with applicable fire-code size requirements. He also testified that if the pile sizes were in compliance, Petitioner MW would not have to put their motorized firefighting equipment on top of the piles "because [they] would be able to reach it from the ground." *See* Tr. Vol. I, pg. 41.

15. As of the date of the hearing, San Carlos Park Fire and Rescue had responded to 43 active fire calls at the South Yard in the last two years, and three times in 2020 alone. In 2018, the active fire calls at the South Yard were multi-day suppression operations. In 2019, the active fire calls were mostly hotspots and flare-ups.

16. Captain Doug Underwood of the Bayshore Fire Rescue and Protection Service District (Bayshore Fire District) testified that his department had

responded to approximately 75 fire calls at the North Yard in the last two years. The most common cause of the fires was spontaneous combustion. The piles were not in compliance from a size standpoint.

17. Captain Underwood testified that the majority of the 75 calls were to the lake pile at the North Yard. *See* Tr. Vol. I, pg. 59. The lake pile was a temporary site on the southern end of the lake that borders the North Yard, and for most of 2018 and 2019, contained debris from Hurricane Irma.[1] The lake pile temporary site was completely cleared by the time of the hearing.

18. Captain Underwood testified that in 2018, he recommended to Petitioners that they engage the services of an expert fire engineer. Petitioners engaged Jeff Collins who met with Captain Underwood on multiple occasions. They discussed how to address fires and hotspots and that the facilities should have a written fire protection safety and mitigation plan. Such a plan was created and Captain Underwood was satisfied with its provisions.

19. Although the lake pile temporary site was completely cleared by the time of the hearing, it was not an entirely voluntary effort on Petitioners' part. Captain Underwood testified that Petitioners' "initial plan of action was to leave it there for . . . eight months or greater, depending on the time frame needed to have the product decompose and cool down to a temperature that they could remove it." *See* Tr. Vol. I, pg. 83. It took Lee County code enforcement efforts "to compel MW to remove this material off-site as quickly as possible." *See* Tr. Vol. I, pg. 82.

[1] Throughout this proceeding, the lake pile was referred to by various names in testimony and exhibits, such as, "southern unprocessed yard trash debris pile," "lake yard," "trac[t] D," and "temporary site."

20. As recently as February 12, 2020, a large pile of hardwood, green waste, and compost at the North Yard caught fire as a result of spontaneous combustion. The size of the fire was so large and hot that the Bayshore Fire District could not safely extinguish the fire with water or equipment, and allowed it to free-burn openly for 24 hours in order to reduce some of the fuel.

21. The fire produced smoke that drifted across the travel lanes of Interstate 75. The free-burn allowed the pile to reduce in size "down to the abilities of the district and the equipment on-site." *See* Tr. Vol. I, pgs. 51-52. Captain Underwood testified that "once we started putting water on it, then the MW crews with their heavy equipment covered the rest of the smoldering areas with dirt." *See* Tr. Vol. I, pg. 56.

Rule Violations

22. By Petitioners' own admission, the facilities have repeatedly violated applicable Department rules throughout the course of their operations over the last two and one-half years. The most pertinent of these violations center around the Department's standards for fire protection and control to deal with accidental burning of solid waste at SOPFs.

23. Renee Kwiat, the Department's expert, testified that the Department cited the South Yard nine times for failing to maintain a 20-foot all-weather access road. The South Yard consistently violated the requirement to maintain processed and unprocessed material within 50 feet of access by motorized firefighting equipment, and the North Yard has violated this requirement twice. The North Yard consistently violated the requirement to size-reduce or remove the lake pile material within six months. Both the North Yard and South Yard were cited multiple times for mechanically compacting processed and unprocessed material.

24. Following a period of noncompliance and nearly 11 months of compliance assistance at the South Yard, Petitioner MW told the Department it would resolve all outstanding violations by July 1, 2018. The July 1, 2018, deadline passed and on October 18, 2018, the Department proposed a consent

order to resolve the violations at the South Yard. However, Petitioner MW did not respond.

25. On November 20, 2018, the Department issued the NOV to Petitioner MW regarding the South Yard. The violations included failure to maintain a 20-foot all-weather access road around the perimeter of the site, failure to ensure access by motorized firefighting equipment, mechanical compaction, and the unauthorized open burning of solid waste. On February 22, 2019, the Department executed the Order with Petitioner MW to resolve outstanding violations in the NOV.

26. By signing the Order, Petitioner MW agreed to undertake the listed corrective actions within the stated time frames. Compliance visits to the South Yard on April 29, 2019, June 7, 2019, June 27, 2019, July 18, 2019, and August 22, 2019, documented that many violations outlined above were still present at the site.

27. At the time of the final hearing, the preponderance of the evidence established that none of the time periods in the Order were met. The preponderance of the evidence established the violations listed in paragraphs 5 and 6 above.

28. At the time of the final hearing, the preponderance of the evidence established that Petitioner MW still had not reduced the height of the piles such that their equipment could reach the tops of the piles without driving (mechanically compacting) onto the processed or unprocessed material. Thus, all the processed and unprocessed material was not more than 50 feet from access by motorized firefighting equipment.

29. At the time of the final hearing, the preponderance of the evidence established more incidents of unauthorized open-burning of solid waste; and continuing unauthorized mechanical compaction of processed and unprocessed material. The evidence also established that the South Yard does not encroach on Seminole's real property interest.

30. The Department did not issue an NOV for the North Yard. The preponderance of the evidence established that there were repeated rule violations at the North Yard. These violations formed the basis for denying the North Yard's registration as outlined in paragraph 8 above.

31. The Department deferred to Lee County's enforcement action for violations of County rules as resolution of the violations of Department rules. At the time of the final hearing, however, the preponderance of the evidence established more incidents of unauthorized open burning of solid waste, and continuing unauthorized mechanical compaction of processed and unprocessed material at the North Yard.

Petitioners' Response and Explanation

32. Approximately two and one-half years before the date of the hearing in this case, Hurricane Irma, a category four hurricane, made landfall in the state of Florida. It was September 10, 2017, and Hurricane Irma significantly impacted the southwest coast of Florida, where Petitioners' facilities are located.

33. Hurricane Irma caused extensive damage, including the destruction of trees, vegetation, and other horticultural waste which required disposal. Massive amounts of such yard waste and horticultural debris were deposited on roadways and streets throughout Lee County, creating a significant issue that needed to be addressed by local governments, and state and federal agencies.

34. Due to the threat posed by Hurricane Irma, the state of Florida declared a state of emergency on September 4, 2017, for every county in Florida. This state of emergency was subsequently extended to approximately March 31, 2019, for certain counties, including Lee County, due to the damage caused by Hurricane Irma.

35. An overwhelming volume of material needed to be processed and disposed of following Hurricane Irma. The Petitioners' facilities were inundated with material brought there by Lee County, the Florida Department of Transportation, the Federal Emergency Management Agency, and others.

36. After Hurricane Irma, haulers took considerable time just to get the materials off the streets, and processors like the Petitioners, ran out of space because there was limited space permitted at the time. As a result, these materials stacked up and had to be managed over time at facilities, including Petitioners' facilities.

37. To accommodate the material, Petitioner MW-NFM added the temporary site that was labeled the "lake pile" or "southern unprocessed yard trash debris pile" in Department inspection and compliance reports of the North Yard.

38. In order to address the volume of material on the site after Hurricane Irma, Petitioner MW-NFM requested approval from the Department to move the material off-site to other locations in order to reduce the size of the piles at the North Yard's lake pile. For reasons that remain unclear, such authorization was not obtained, and Petitioner MW-NFM believes that this would have size-reduced the piles and prevented accumulation of material in violation of Department rules.

39. In order to process the North Yard's lake pile and move it off-site more quickly, Petitioner MW-NFM requested permission from Lee County and the Department to grind unprocessed material on site, which would have size-reduced the lake pile and allowed it to be moved off-site more quickly. Because existing zoning did not authorize this grinding, the request was denied in spite of the fact that a state of emergency had been declared which Petitioner MW-NFM believes would have permitted such an activity. This further hampered Petitioner MW-NFM's ability to size-reduce the lake pile leading to more issues with hot spots and fires.

40. Because the material was of such volume, and was decomposing, a major fire erupted in 2018 at the North Yard's lake pile. Petitioners' fire safety engineer, Jeff Collins, wrote reports to address this issue and recommended to the local fire department that the pile be smothered in dirt until the fire was extinguished. The request was denied by the Bayshore Fire District, which instead directed that Petitioners break into the pile in order to extinguish the fire. When Petitioners did so, the piles immediately erupted into flames as predicted by Petitioners' fire safety engineer. Moving the smoldering material to the South Yard also led to fires at the South Yard.

41. In spite of the large volume of material at the North Yard's lake pile, Petitioners made steady progress in size reducing the material and moving it off-site. However, as of the date of the final hearing, both the North Yard and the South Yard were still completely full of large, tall, and long piles of processed and unprocessed material except for a perimeter roadway around each site and paths that meandered between the piles themselves.

Mechanical Compaction

42. Each party presented testimony regarding the question of whether Petitioners' facilities violated the prohibition that any processed or unprocessed material shall not be mechanically compacted. The parties disagreed over how the prohibition against mechanical compaction was applied to yard trash transfer facilities. In March of 2018, Petitioners' representative, Denise Houghtaling, wrote an email to the Department requesting clarification of the Department's definition of "mechanical compaction" because it is undefined in the rules.

43. On April 3, 2018, Lauren O' Connor, a government operations consultant for the Department's Division of Solid Waste Management, responded to Petitioners' request. The response stated that the Department interprets "mechanical compaction" as the use of heavy equipment over processed or unprocessed material that increases the density of waste material stored. Mechanical compaction is authorized at permitted disposal

sites and waste processing facilities, but is not permissible under a registration for a yard trash transfer facility.[2] Mechanical compaction contributes to spontaneous combustion fires, which is the primary reason for its prohibition at yard trash transfer facilities.

44. Petitioners' interpretation of mechanical compaction as running over material in "stages" or "lifts" was not supported by their expert witnesses. Both David Hill and Jeff Collins agreed with the Department's interpretation that operating heavy equipment on piles of material is mechanical compaction.

45. The persuasive and credible evidence established that Petitioners mechanically compact material at their facilities. Mechanical compaction was apparent at both sites by either direct observation of equipment on the piles of material, or by observation of paths worn into the material by regular and repeated trips. Department personnel observed evidence of mechanical compaction on eight separate inspections between December 2017 and January 2019. Additional compaction was observed at the South Yard on June 7, 2019, and in aerial surveillance footage from August 28, 2019, September 5, 2019, January 30, 2020, and February 12, 2020.

46. Petitioners' fire safety engineer, who assisted them at the North Yard lake pile, testified that the fire code required access ramps or pathways for equipment onto the piles in order to suppress or prevent fire. However, Captain Underwood and Fire Marshal Lennon testified they do not and have never required Petitioners to maintain such access ramps or paths on the piles. The fire code provision cited by Petitioners' expert does not apply to their piles. *See* Tr. Vol. II, pgs. 78-80. In addition, Fire Marshal Lennon testified that placing firefighting equipment on top of piles is not an acceptable and safe way to fight fires at the site by his fire department.

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[2] Rule 62-701.710 prohibits the operation of a waste processing facility without a permit issued by the Department. *See also* Fla. Admin. Code R. 62-701.803(4). Rule 62-701.320(16)(b) contemplates the availability of *equipment* for excavating, spreading, *compacting*, and covering waste at a permitted solid waste disposal facility.

47. Despite receiving clarification from the Department in April of 2018, Petitioners choose to ignore the Department's prohibition against mechanically compacting unprocessed or processed material piles. In addition, the persuasive and credible evidence suggests that Petitioners blanket the piles with dirt to both suppress fires and accommodate the "access roads" or "paths" on the piles.[3]

Ultimate findings

48. The persuasive and credible evidence established the violations cited in the Department's registration denial for the North Yard. The Department also established by a preponderance of the evidence the alleged subsequent violations through to the time of the final hearing.

49. The persuasive and credible evidence established the violations cited in the Department's registration denial for the South Yard. The Department also established by a preponderance of the evidence the alleged subsequent violations through to the time of the final hearing.

50. The persuasive and credible evidence established that Petitioners did not consistently comply with Department rules over the two and one-half years prior to the final hearing. However, Petitioners established through persuasive and credible evidence that because of the impacts of Hurricane Irma, and the subsequent circumstances, they could not have reasonably prevented the violations. The totality of the evidence does not justify labeling the Petitioners as irresponsible applicants under the relevant statute and Department rule.

51. However, Petitioners did not provide reasonable assurances that they would comply with Department standards for annual registration of yard trash transfer facilities.

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[3] The evidence suggests that Petitioners may prefer to follow the advice of their hired experts with regard to the practice of mechanical compaction and blanketing the piles with dirt. *See, e.g.,* Petitioners' Ex. 16. However, the evidence suggests that the experts' level of experience is with large commercial composting and recycling facilities that may be regulated by solid waste management facility permits and not simple annual registrations.

CONCLUSIONS OF LAW

Nature and Scope of this Proceeding

52. This is a de novo proceeding for the purpose of formulating final agency action. *See Capeletti Bros. v. Dep't of Gen. Servs.*, 432 So. 2d 1359, 1363-64 (Fla. 1st DCA 1983).

Burden and Standard of Proof

53. Petitioners, as the applicants for the registrations, have the burden to prove that they are entitled to the registrations by meeting all applicable regulatory criteria. *See* Fla. Admin. Code R. 62-709.320; *Fla. Dep't of Transp. v. J.W.C. Co. Inc.,* 396 So. 2d 778 (Fla. 1st DCA 1981).

54. Rule 62-701.320(9) directs the Department to deny a solid waste permit if reasonable assurance is not provided that the requirements of chapters 62-4 and 62-701 will be satisfied. *See also* Fla. Admin. Code R. 62-4.070(2). A solid waste permit may include registrations. *See* § 403.707(1), Fla. Stat.

55. Findings of fact must be based on a preponderance of the evidence. *See* § 120.57(1)(j), Fla. Stat.

Registration Criteria

56. Rule 62-709.320(1)(a) states that owners or operators of yard trash processing facilities, facilities composting vegetative waste, animal byproducts or manure with or without yard trash, and manure blending operations that meet the criteria of rules 62-709.320, 62-709.330, and/or 62-709.350, shall register with the Department in lieu of obtaining a solid waste management facility permit. It further states that if these criteria are not met, then a solid waste management facility permit is required in accordance with chapter 62-701 for disposal operations, or with chapter 62-709 for recycling operations.

57. Rule 62-709.320(2) sets forth the design and operating criteria that must be met by a facility seeking to register in lieu of obtaining a solid waste management facility permit. The rule provides:

(2) Design and operating requirements.

(a) The facility shall have the operational features and equipment necessary to maintain a clean and orderly operation. Unless otherwise specified in Rule 62-709.330 or 62-709.350, F.A.C., these provisions shall include:
1. An effective barrier to prevent unauthorized entry and dumping into the facility site;
2. Dust and litter control methods; and,
3. Fire protection and control provisions to deal with accidental burning of solid waste, including:
a. There shall be an all-weather access road, at least 20 feet wide, all around the perimeter of the site,
b. None of the processed or unprocessed material shall be mechanically compacted; and,
c. None of the processed or unprocessed material shall be more than 50 feet from access by motorized firefighting equipment.

(b) The facility shall be operated in a manner to control vectors.

(c) The facility shall be operated in a manner to control objectionable odors in accordance with subsection 62-296.320(2), F.A.C.

(d) Any drains and leachate or condensate conveyances that have been installed shall be kept clean so that flow is not impeded.

(e) Solid waste received at a registered facility must be processed timely as follows:
1. Any yard trash, including clean wood, received at the facility shall be size-reduced or removed within 6 months, or within the period required to receive 3,000 tons or 12,000 cubic yards, whichever is greater. However, logs with a diameter of 6 inches or greater may be stored for up to 12 months before they are size-reduced or removed, provided the logs are separated and stored apart from other materials onsite.

> 2. Any putrescible waste such as vegetative wastes, animal byproducts or manure received at a facility shall be processed and incorporated into the composting material, or removed from the facility, within 48 hours of receipt.
>
> (f) If any of the following materials are discovered, they shall be immediately containerized and removed from the facility: treated or untreated biomedical waste; hazardous waste; or any materials containing a polychlorinated biphenyl (PCB) concentration of 50 parts per million or greater.
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> (g) When a registered facility ceases operation, all residuals, solid waste, and recyclable materials shall be removed from the site and recycled, or disposed of pursuant to the requirements of Chapter 62-701, F.A.C. Any remaining processed material shall be used in accordance with the requirements of this rule or disposed of pursuant to the requirements of Chapter 62-701, F.A.C.

58. Petitioner MW did not prove by a preponderance of the evidence that it would meet the design and operating requirements for yard trash processing facilities. More specifically, Petitioner MW did not provide reasonable assurances that it would meet the requirements that none of the processed or unprocessed material shall be mechanically compacted, and that none of the processed or unprocessed material shall be more than 50 feet from access by motorized firefighting equipment.

59. Petitioner MW-NFM did not prove by a preponderance of the evidence that it would meet the design and operating requirements for yard trash processing facilities. More specifically, Petitioner MW-NFM did not provide reasonable assurances that it would meet the requirements that none of the processed or unprocessed material shall be mechanically compacted, and that none of the processed or unprocessed material shall be more than 50 feet from access by motorized firefighting equipment.

60. Petitioners did not provide reasonable assurance that they can effectively control and prevent unauthorized open burning at the North Yard and South Yard. *See* Fla. Admin Code R. 62-701.300(3).

Irresponsible Applicant

61. Rule 62-701.320(3) defines an "irresponsible applicant" as one that "owned or operated a solid waste management facility in this state, including transportation equipment or mobile processing equipment used by or on behalf of the applicant, which was subject to a state or federal notice of violation, judicial action, or criminal prosecution for activities that constitute violations of chapter 403, F.S., or the rules promulgated thereunder, *and could have prevented the violation through reasonable compliance with Department rules.*" (Emphasis added).

62. The preponderance of the evidence established that Petitioners did not consistently comply with Department rules over the two and one-half years prior to the final hearing. However, Petitioners established through persuasive and credible evidence that because of the impacts of Hurricane Irma, and the subsequent circumstances, they could not have reasonably prevented the violations. The totality of the evidence does not justify labeling Petitioners as irresponsible applicants under the relevant Department rule.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Environmental Protection enter a final order denying Petitioners' annual registration renewal applications for the North Yard and South Yard.

DONE AND ENTERED this this 17th day of September, 2020, in Tallahassee, Leon County, Florida.

FRANCINE M. FFOLKES
Administrative Law Judge
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.