

# TAB 3

## **POINT PAPER**

### **DISCUSSION REGARDING ERIE ROAD LANDFILL MARCH 17, 2008**

**ISSUE:** The City of Palmetto owns the property located in Manatee County whereon the County's landfill lies. This landfill is being monitored under a closure permit between the County and the FDEP. Manatee County government has suggested that the City of Palmetto take over responsibilities associated with the closure permit.

**BACKGROUND:** See attached chronology and point paper from February 13, 2008. City staff has recently received and reviewed documents made available by the County Utilities Department. City staff has requested to review relevant documents from the County Attorney's Office but has not received word that these documents are ready for inspection. A prior appointment to review FDEP files in Tampa had to be cancelled due to a scheduling conflict, but staff anticipates reviewing said documents shortly. Once staff has thoroughly reviewed all documents from other agencies Commission will be advised of any pertinent information.

**City Commission should review the attached to provide staff with direction and to prepare for the joint City-County meeting scheduled for April 7, 2008.**

City of Palmetto  
Point Paper  
on  
Erie Road Landfill  
February 13, 2008

ISSUE:

Manatee County has suggested that its responsibilities as the “permittee” under the FDEP closure permit for the Erie Road landfill (“Landfill”) have been met, and that operation of the Landfill should revert back to the City of Palmetto pursuant to an agreement entered into between the County and the City in 1982 (“Agreement”). Based on information currently available to the City, City staff is of the opinion that the County has not satisfied its obligation under said Agreement and that operation of the landfill should remain with the County. The definition of the word “closure”, as used in the Agreement and in applicable FDEP regulations, is at the center of the parties’ disagreement.

BACKGROUND:

Some time ago the City Commission approved amendments to the lease entered into between Manatee County Radio Controllers. The amendments authorized use of Landfill property for a paintball operation provided that certain terms and conditions were met. The City Commission also approved a sublease entered into between the Radio Controllers and Bradenton Lawn & Fun, who planned to operate the paintball facility. Without the City’s knowledge, the paintball operator installed certain improvements on the subleased property and did not obtain prior approval from Manatee County. Upon discovering the unauthorized improvements, the County informally notified the City that said installation constituted both a code violation and a violation of the FDEP closure permit. The City promptly contacted the Radio Controllers and the paintball operator, and issued a Stop Work order.

Over the last year, City staff has met with County administrators, staff and attorneys on a number of occasions to discuss the Landfill. Initial discussions centered on resolving the situation cause by installation of the unauthorized improvements. The parties agreed that no further activity would take place on the paintball site, and that Manatee County would submit a permit modification request to FDEP to see what, if any, additional regulation and costs would result from operation of a paintball park. While the modification was pending with FDEP, County staff first raised the issue of the City taking over as permittee under the closure permit. At that time City staff agreed to enter into negotiations addressing the possible transfer of the permit to the City. After being apprised of the situation by County staff at several Board meetings, the County Commission more than once directed County staff to pursue such negotiations. Although the City has provided a draft agreement to County staff that is consistent with the County Commission’s direction, County staff now appears to be advocating for the immediate transfer of operation of the Landfill to the City. County staff also has withdrawn the permit modification request relating to operation of the paintball park.

In a County Commission meeting on February 12, 2008 the Board approved the scheduling of a joint meeting with the City Commission and directed the county utilities staff to ask FDEP to terminate the landfill closure permit; i.e., to seek a declaration from FDEP that there is no longer a risk to the environment from the site and no longer a need to continue monitoring the site for environmental impacts. County staff reported that this would be the third time the County has sought to terminate the permit and that FDEP was unlikely to approve termination at this time. A joint meeting of the Manatee County Board of County Commissioners and the Palmetto City Commission is proposed for March 17, 2008.

Manatee County chose to assume responsibility for closure of the Landfill as part of a bargained-for agreement, and has been fulfilling that responsibility for more than two decades. It is unclear to the City why County staff - - only now - - is insisting that the permit be transferred to the City. Given the fact that the City has not participated in closure activities during that time period, and given the unknown liability associated with the Landfill, City staff believes that a hasty transfer of the closure permit is not in the best interest of the City. Assuming FDEP declines to grant the County's request for termination of the closure permit, Staff suggests that the more prudent course of action would be to gather as much information as possible about existing and potential liabilities associated with the Landfill and then resume negotiations with Manatee County.

**ERIE ROAD LANDFILL TIMELINE**

- 5-27-05 City approves MCRC Lease Amendment allowing paintball operation.
- 6-30-05 MCRC enters into sublease with Bradenton Lawn and Fun
- 9-14-05 Letter from County to FDEP acknowledging that the County received a request from MCRC to operate a paintball facility, and asking FDEP if a permit modification would be required.
- 9-30-05 Letter from County to City stating that there was no approval for buildings on paintball site and advising of Stop Work Order.
- 10-6-05 Meeting with County staff; Gus DiFonzo, in attendance; Gus reports that County has submitted proposal to FDEP showing what's on the ground at paintball location and asking if a modification would be necessary; Dan Gray suggestion that City take back landfill and County pay \$\$ to City; E. Padgett suggestion the County consider accepting landfill property from City but only after City remedies paintball problems.
- 10-19-05 City issues Notice of Default to MCRC.
- 10-20-05 MCRC issues Notice of Default to Bradenton Lawn and Fun.
- 1-19-06 FDEP inspects landfill and identifies unpermitted utilities and paintball facilities.
- 2-3-06 D. Gray letter to C. Lukowiak requesting that City "not pursue" paintball park; stating "As the permit holder . . . the County will continue to work diligently with the City to provide a balanced recreational facility that meets FDEP approval"
- 2-13-06 C. Lukowiak letter to D. Gray requesting a meeting between City and County staffs, and FDEP representatives.
- 3-15-06 C.Lukowiak letter to FDEP [Referenced in 3-31-06 E. Padgett letter]
- 3-31-06 E. Padgett letter to C. Lukowiak asserting that County has no records showing that the City was billed for or paid its 40% of expenses from 1988 until the present.
- 7-5-06 Joint meeting between City and County re multiple issues, including landfill

- 7-11-06 G. DiFonzo email to B. Dilworth: “. . . [T]he joint decision to proceed with the permit modification for the paintball field is only exploratory at this point. There should be no expectation that the County has agreed to file and accept a permit mod for the paintball field / operation. The County made it clear that it will pursue the permit mod, but acceptance and initiation of the permit mod by the County will be dependent on the conditions, both operational and financial, imposed by DEP.”
- 7-25-06 C. Lukowiak letter to D. Rothfuss memorializing 7-5-06 joint meeting between City and County re multiple issues; landfill discussion is recapped as follows:
- “The County has agreed to file a minor modification request to FDEP . . . for the paintball operation. When the FDEP response [sic] to the request, both staffs will reconvene to discuss the constraints or other requirements FDEP may place on the operation, including regulatory oversight, costs, liabilities, etc., at this time, the feasibility of the Paint Ball Operation remaining in place will be determined.”
- 6-19-07 BOCC discussion of landfill; County staff directed to pursue “possible” transfer of permit to City; BOCC minutes state that the motion, as amended, was to “formalize interlocal agreement with possible transfer of permit to City of palmetto”; motion passed 7-0
- 6-19-07 BOCC meeting minutes re landfill discussion: “D. Gray stated he will submit the application to FDEP and identify stipulations resulting from the application and will begin discussions with the City of Palmetto to formalize the agreements among the parties.”
- 6-19-07 County staff memo in BOCC agenda materials provides background info for BCC discussion; memo addresses 6-27-06 joint City/County meeting as follows:
- “The primary purpose of the meeting was to address the county’s request that all improvements on the property associated with the paintball operation be removed no later than 120 days, or June 6, 2006. To date, there was no action to remove any f the structures / facilities affiliated with the Paintball Park. After much debate, the meeting concluded with the County Administrator agreeing to at least submit a request for a permit Modification . . . for the construction and operation of a Paintball Park. The County Administrator agreed to this action with the understanding that the County would not any expend funds, and if the County disagreed with the stipulations that FDEP proposed with the Permit Modification, the County reserved the

right to withdraw the permit modification request, and not support the paintball activity at the [landfill].”

- 6-20-07 City publicly apologizes for taking supporting paintball operation without consulting County.
- 8-27-07 Joint meeting between City and County re landfill; County staff says City should take the permit back and then seek their own permit modification; City says County should apply for modification; permit transfer is a separate issue; E. Hunzeker agrees to ask BOCC if they would agree to permit modification prior to transfer of permit to City (per MSH notes from meeting).
- 8-27-07 BOCC discusses landfill at workshop meeting. No minutes located.
- 9-14-07 G. DiFonzo email to C. Lukowiak stating that County has requested additional time from FDEP to review draft permit.
- 9-26-07 C. Lukowiak letter to D.Gray proposing compromise, accepting responsibility for all costs and liability associated with paintball facility and agreeing to negotiate transfer of permit to City in 2014.
- 11-20-07 E. Hunzeker letter to Mayor giving City ultimatum and deadline for response; draft FDEP modified permit with revisions applicable to paintball facility is attached to letter; E. Hunzeker says County will not agree to conditions included in draft permit.
- 12-7-07 Mayor letter to E. Hunzeker recounting history of landfill.
- 12-10-07 D. Gray letter to FDEP requesting withdraw of application for permit modification.
- 12-14-07 Mayor letter to A. Stein seeking clarification of BOCC direction given at 6-19-07 meeting
- 1-8-08 BOCC discussion of landfill; T. Williams comment on ambiguity of the word “closure”.
- 2-7-08 Mayor notified by phone of landfill item being placed on BOCC 2-12-08 agenda.