

RESOLUTION 97-217

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY AUTHORIZING ITS COUNSEL TO SEEK PERMISSION OF THE SECOND DISTRICT COURT OF APPEAL TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION IN PINEY POINT PHOSPHATES, INC. V. DEPARTMENT OF ENVIRONMENTAL PROTECTION (CASE NUMBER 97-03828)

WHEREAS, on May 4, 1997, Piney Point Phosphates, Inc. ("Piney Point"), filed a Petition for Declaratory Statement with the Florida Department of Environmental Protection ("DEP") regarding the applicability of DEP's rules to Piney Point's plan to spend approximately \$16.9 million (\$16,900,000) to rebuild and restart an old sulfuric acid plant (the "Facility") located in Manatee County; and

WHEREAS, Piney Point's Facility was built in 1966, modified in the mid-1970's, and shut down in June 1992; and

WHEREAS, Manatee County has informed DEP in writing and verbally of the County's belief that Piney Point must comply with certain DEP regulations and obtain a DEP permit before Piney Point begins to reconstruct the Facility; and

WHEREAS, on August 12, 1997, FDEP issued a "Final Order On Petition For Declaratory Statement" ("Final Order") wherein DEP concluded that Piney Point's proposed changes to the Facility: (a) do not constitute "routine maintenance"; (b) will result in a change in the "rate and amount of emissions" from the Facility; (c) qualify as both a "modification" and "major modification" of the Facility; (d) are subject to the DEP requirements for "Preconstruction Review" and "Best Available Control Technology"; and (e) must be approved in a DEP construction permit before Piney Point commences construction; and

WHEREAS, on September 9, 1997, Piney Point filed a "Notice of Administrative Appeal" in the Florida Second District Court of Appeal (the "Court") and thereby indicated that Piney Point intends to appeal DEP's Final Order (the "Appeal"); and

WHEREAS, if Piney Point is successful in the Appeal, Piney Point will rebuild and restart the Facility, without undergoing the DEP Preconstruction Review process, and without using the Best Available Control Technology to minimize the airborne emissions from the Facility; and

WHEREAS, DEP's Final Order indicates that, under Piney Point's plan to resume operations at the Facility, there could be airborne emissions from the Facility in the amount of 2,920,000 pounds (1,460 tons) of sulfur dioxide and 110,000 pounds (55 tons) of sulfuric acid mist, each and every year; and

WHEREAS, Manatee County is substantially affected by Piney Point's plan to rebuild and restart the Facility because the citizens and the environment in Manatee County will suffer the most direct and immediate adverse impacts caused by the air pollution from Piney Point's Facility; and

WHEREAS, the resumption of operations at the Facility will burden the County's airshed with a level of air pollution that has not existed for at least five (5) years; and

WHEREAS, the Board of County Commissioners and the citizens of Manatee County are keenly interested in the quality of the County's air and environment; and

WHEREAS, there have been industrial and environmental problems at the Facility in the past; and

WHEREAS, the County wants DEP to review Piney Point's plans carefully to ensure that the potential for adverse environmental impacts or other future problems at the Facility is minimized; and

WHEREAS, Manatee County has retained expert consultants and legal counsel to assist the County with its evaluation of the environmental issues associated with Piney Point's plans for the Facility; and

WHEREAS, Manatee County had no formal opportunity to participate as a party in the DEP proceedings that lead to the issuance of DEP's Final Order, but Manatee County and its experts did participate informally by providing written analyses of the relevant issues to DEP; and

WHEREAS, Manatee County was not a party to the DEP proceedings and thus cannot be a party to the Appeal, but Manatee County would like to participate as an amicus curiae in the Appeal because the County believes that it can provide helpful analyses and insights to the Court concerning the legal and factual issues involved in the Appeal; and

WHEREAS, given the adverse impacts that Piney Point's emissions will have on the substantial interests of the County and its citizens, and given the unique perspective that can be offered by the County in the Appeal, and given Manatee County's active participation in the earlier DEP proceedings that resulted in the issuance of the Final Order, the Board of County Commissioners of Manatee County believes that it is appropriate and proper for Manatee County to participate in the Appeal as an *amicus curiae*.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA THAT:

1. The Board of County Commissioners hereby authorizes its counsel to file a motion, pursuant to Rule 9.170, Florida Rules of Appellate Procedure, requesting the Court's permission to file an *amicus curiae* brief in support of FDEP's Final Order.
2. If the Court grants the County's request, the Board of County Commissioners hereby authorizes its counsel to file an *amicus curiae* brief supporting FDEP's Final Order.

DULY PASSED AND ADOPTED WITH A QUORUM PRESENT AND VOTING THIS 21st DAY OF OCTOBER, 1997



ATTEST:
R.B. Shore
R.B. SHORE
Clerk of the Circuit Court

10/21/97
1 copy to Co Lett - Thomas
1 copy to Int Audit
ryh