STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

WRB ENTERPRISES, INC.,

Petitioner,

v.

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,
and ANGELO’S AGGREGATE MATERIALS, LTD., d/b/a as ANGELO’S RECYCLED MATERIALS,

Respondents.

PETITION FOR FORMAL ADMINISTRATIVE HEARING

WRB Enterprises, Inc. ("WRB"), through its undersigned counsel and pursuant to sections 120.569 and 120.57, Florida Statutes ("F.S.") respectfully submits this request for a formal administrative hearing concerning the Florida Department of Environmental Protection’s ("FDEP’s") proposed denial of Permit Application Nos. 22913-001-SC-01 and 22913-002-SO-01 (the "Permits"), and in support thereof states:

Parties

1. Petitioner, WRB, is a Florida corporation, whose mailing address is 1414 Swann Avenue, Suite 201, Tampa, FL 33606. WRB’s telephone number is (813) 251-3737.

2. WRB is represented in this matter by David Smolker and Margaret Craig, Bricklemyer, Smolker and Bolves, whose mailing address is 500 E. Kennedy Boulevard, Suite 200, Tampa, FL 33602, telephone number (813) 223-3888; and by Christopher Kise and Thomas
Maurer, Foley & Lardner, LLP, whose mailing address is 106 East College Avenue, Suite 900, Tallahassee, FL 32301-7732, telephone number (850) 222-6100.

3. Respondent, FDEP, is an agency of the State of Florida. FDEP’s address is 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, FL 32399-3000. FDEP’s file numbers in this matter are Nos. 22913-001-SC-01 and 22913-002-SO-01.

4. Respondent, Angelo’s Aggregate Materials, Ltd., d/b/a Angelo’s Recycled Materials (“Angelo’s”), is a Florida limited partnership, whose address is P.O. Box 1493, Largo, FL 33779. Angelo’s telephone number is (813) 477-1719.

Notice

5. FDEP issued its proposed agency action to deny the Permits on February 12, 2009. WRB was mailed notice of the proposed agency action on that date.

Standing

6. FDEP has proposed denial of the Permits, and WRB agrees with and supports FDEP’s proposed action. However, WRB wishes to protect its substantial interests by ensuring it will have full party status and rights with respect to FDEP’s proposed action and any modifications to the proposed activity or project, or changes in the proposed agency action. Rule 62-110.106(7), Florida Administrative Code (“F.A.C.”); Rudloe v. Florida Department of Environmental Regulation, 517 So. 2d 731 (Fla. 1st DCA 1987).

7. The Permits, if not denied, would authorize Angelo’s to construct and operate a Class I landfill in eastern Pasco County, Florida.

8. WRB owns approximately 2,000 acres of property in eastern Pasco County, Florida, in the immediate vicinity of the proposed landfill. WRB is owned by members of the Blanchard family, who are long time residents of the area.
9. The WRB property is operated as a cattle ranch, and contains two single-family residences. One residence is occupied by the ranch manager for WRB. The other is used as a weekend retreat by members of the Blanchard family.

10. Water for potable and agricultural uses on the property is provided by wells.

11. The WRB property is part of the headwaters for the Withlacoochee and Hillsborough Rivers, and as such is an important part of the water resources of the State of Florida. The property is environmentally significant, and provides important fish and wildlife habitat. Portions of WRB’s property have been preserved due to their substantial environmental value through a conservation easement to the Southwest Florida Water Management District (“SWFWMD”).

12. Members of the Blanchard family and their guests regularly engage in outdoor recreation at the WRB property, including fishing, hiking, riding, and other forms of passive recreation.

13. Construction and operation of the landfill would adversely impact WRB’s substantial interests and threaten the environmental value of the conservation easement. Specifically, if constructed and operated, the project would adversely impact water quality, water quantity, air quality, recreation, agricultural operations, and fish and wildlife on WRB’s property. The project would also adversely impact the health, safety and welfare of those residing on the property as well as the ability of the Blanchard family and their guests to use and enjoy the property.

**Factual and Legal Bases for Denying the Permits**

14. The proposed denial of the permit must be upheld because Angelo’s has failed to provide reasonable assurances required by Rules 62-4.070(2), 62-701.300, 62-701.320(9), 62-
701.340(1), and 62-701.400(3) F.A.C., that construction and operation of the landfill will not harm the water and air resources of the State.

15. The proposed landfill, if not denied, would be located on and near vitally important, highly sensitive State water resources that could be adversely impacted by the proposed project. Potential impacts include, among others, degradation of water quality, degradation of fish and wildlife habitat, adverse impacts to recreational opportunities, and adverse impacts to public water supply. The proposed site is:

a. adjacent to Green Swamp, which is the headwaters for the Withlacoochee and Hillsborough Rivers, and much of which has been purchased by the public to preserve and protect water resources;

b. on the saddle of the Brooksville Ridge, a large karst feature riddled with active and relic sinkholes and numerous known and unknown lineaments and other solution pathways potentially having direct connections to a potentiometric high in the underlying Floridan Aquifer;

c. near the Withlacoochee River, an Outstanding Florida Water, large portions of which have purchased by the public for water resource protection purposes;

d. near the Hillsborough River, which serves as surface drinking water supply for the City of Tampa and large nearby portions of which have also been purchased for water resource protection purposes;

e. near Crystal Springs, a private commercial water bottling operation with local economic significance;

f. on or near numerous small local streams, lakes, ponds and wetlands; and

g. potentially vulnerable to groundwater contamination due to general
absence of geologic confining layers and potentially quick downgradient disbursal of pollutants from the Floridan Aquifer potentiometric high along preferential pathways north to the Withlacoochee River and south to Crystal Springs and the Hillsborough River.

16. FDEP rules prohibit the proposed landfill because reasonable assurances that surface or groundwater will not be polluted were not provided. Specifically, the applicant failed to comply with the following applicable rules:

a. Rules 62-701.300(1)(b), and 62-701.340(1), F.A.C. require the applicant to provide reasonable assurances that the landfill will not adversely impact air, surface water or groundwater quality standards;

b. Rules 62-701.300(2)(a), 62-701.340(4)(a), and 62-701.400(3)(a)2, F.A.C. prohibit location of Class I Landfill in an area where geologic formations or other subsurface features will not provide adequate support for solid waste;

c. Rule 62-701.300(e), F.A.C. prohibits location of a Class I Landfill in natural or artificial waterbodies;

d. Rules 62-701.400(1) and 62-701.400(6), F.A.C. require landfills, including liners and leachate collection and removal systems, be designed and constructed to ensure that leachate will not reach sub-surface soils so as to violate State water quality standards;

e. Rules 62-701.400(10)(1)(a)(3) and 62-701.400(10)(1)(c), F.A.C. require identification of on-site hydraulic connections between aquifers and location of existing areas of contamination;

f. Rule 62-701.410, F.A.C. requires adequate hydrogeologic investigation of the project area; and

g. Rules 62-520.600(3) and 62-701.510(2) F.A.C. require a groundwater
monitoring plan taking into account among other items, compilation and review of data within a one-mile radius to determine potential pollution sources and the history of construction and land development in the area.

17. The landfill site and surrounding area are in an area of sensitive karst geology subject to "moderate to high" risk of sinkholes and subsidence according to a site-specific report prepared for FDEP by the Florida Geologic Survey. The landfill proposes a liner with a leachate collection system proposed to be located such that the bottom of the liner will be located within groundwater on relic sinkholes more than 100 feet deep on a site and within a surrounding area characterized by numerous lineament features, solution cavities, preferred paths, and other overburden inconsistencies. The nearby Class III landfill also operated by Angelo's recently experienced subsidence along one of these lineaments. Clearly, these geologic formations and subsurface features may not provide adequate support for the solid waste. Sinkholes or subsidence in the area of the landfill could result in spills or seepage of leachate into the environment contaminating surface and groundwaters and resulting in catastrophic environmental harm.

18. Angelo's has not demonstrated by adequate site specific geological, design or operational features that failure of the liner system, leachate collection system and leachate storage tanks would not occur as a result of subsidence or collapse of the foundation soils below the proposed landfill. The liner system will fail and breach if a large sinkhole develops beneath the landfill footprint. Even a smaller sinkhole can cause the leachate collection system to clog, crimp or otherwise fail to function, and there will be no means to repair this damage. Sinkhole development beneath the landfill may also lead to liner system damage that is not detectable for some time. The design and location of the leachate collection system places pipes and liner
system penetrations in areas of high stress. As a result, the proposed landfill presents an unacceptable risk of undetected groundwater pollution. Specifically:

a. the FDEP Sinkhole Database relied upon is not comprehensive nor current and does not address sinkhole risk;

b. site-specific borings within the landfill footprint were haphazard, failed to adequately evaluate the hydrogeologic aspects of on-site lineaments, failed to establish a depth to limestone within various paleosinks and, in general, were not reasonably calculated to accurately reveal subsurface conditions;

c. site-specific follow up on Ground Penetrating Radar studies was not reasonably calculated to accurately measure the character, dimensions or depth to limestone of various identified subsurface anomalies;

d. neither potential hydraulic connections between aquifers nor existing areas of contamination have been determined by the landfill design and operation plan;

e. the landfill design and operation plan fails to account for highly variable elevation and strength of upper limestone/soil zone;

f. the application fails to address a major subsidence event;

g. the landfill design and operation plan fails to address or provide necessary precautionary design features to mitigate a limited subsidence event beneath critical areas of the liner system, leachate collection system and leachate sumps;

h. the landfill design and operation plan fails to avoid locating leachate tanks, temporary hazardous water storage areas, near stormwater ponds created by removing overburden;

i. the landfill design and operation plan fails to adequately address the
potential geological or hydraulic impacts of excavation of 13.6 million cubic yards of surface soils for construction of the landfill down to depths as great as 65 feet below surface and as much as 20 feet below the seasonal high water table;

j. the landfill design and operation plan risks cutting into the top of the limestone formation in connection with excavating the bottom of Cell #6;

k. the landfill design and operation plan employs a liner/leachate collection system design having too many penetrations and too much piping to be sufficiently reliable given sinkhole or other subsidence risk;

l. the landfill design and operation plan utilizes subsidence risk mitigation measures that are not proven or generally accepted by engineers as being adequate in the case of karstic areas;

m. the landfill design and operation plan employs overly restrictive vertical groundwater leakance assumptions that are inconsistent with low curve numbers used in surface water management modeling;

n. the landfill design and operation plan employs soil arching analysis sinkhole size assumptions that are inconsistent (i.e., smaller) with site-specific GPR data shows;

o. the landfill design and operation plan employs HELP model which demonstrably underestimates leachate volumes under Florida conditions;

p. the landfill design and operation plan relies upon a dysfunctional bioreactor design and operation;

q. the application fails to address the duration and potential impact of dewatering groundwater while installing a wet well and the leachate collection system; and

r. Angelo’s fails to provide adequate financial assurances of long term
leachate collection system maintenance and operation.

19. Furthermore, FDEP rules prohibit the proposed landfill because it is proposed to be located within a flood prone area without adequate surface water quantity or quality protection or compensatory storage. Such location would violate Rules 62-701.300(2)(d) and 62-701.340(4)(b), F.A.C., which preclude location of Class I landfills in flood prone areas or within the 100-year floodplain absent adequate flood protection and compensatory storage; and Rule 62-701.400(9), F.A.C., which requires that stormwater be controlled in accordance with Part IV, Ch. 373, F.S. and SWFWMD rules adopted thereunder, specifically including but not limited to Rules 40D-4.301(1)(a), (b), (c) and (e), F.A.C. No Environmental Resource Permit (ERP) has been issued for this project. To date, the applicant has failed to obtain an ERP for the stormwater management system for this project, and the application for the ERP contains numerous deficiencies. WRB specifically reserves its right to raise issues related to the ERP if and when FDEP takes action on that application.

20. The applications demonstrate a pattern of hiding and spinning data in a misleading manner. Angelo’s withheld vital information from consultants when asking them to provide opinions regarding the project. Additional examples of these deceptive practices include leaving out key data points from cross sections, misapplication of the formula for arching calculations, and selective location of boring sites.

21. WRB also questions whether Angelo’s has provided reasonable assurances that it has complied with the airport notification requirements set forth in Rule 62-701.320(13), F.A.C., and the new municipal solid waste facility siting requirements of 49 U.S.C. §44718(d)(1). The Zephyrhills Municipal Airport appears to be within 6 miles of the proposed landfill, when measured from property boundary to property boundary, as required by the Federal Aviation
Administration ("FAA") in its Advisory Circular for Construction or Establishment of Landfills Near Public Airports, AC NO. 150/5200-34A, dated January 26, 2006. However, Angelo’s has not provided the required notice to the FAA and Florida Department of Transportation, and has not taken adequate measures to ensure airport safety.

22. Angelo’s has also failed to provide reasonable assurances that it has ownership or control of the project area, as required by Rule 62-701.320(7)(g), F.A.C. Specifically, Angelo’s has proposed to construct portions of the project over property owned by Earl Singletary, without Mr. Singletary’s consent. Angelo’s has also failed to demonstrate it has adequate ownership or control of an adequate right of way for the proposed access road to the project.

23. WRB also questions whether Angelo’s is an “irresponsible” applicant, as described in Rules 62-4.070(5) and 62-701.320(3), F.A.C., based upon Angelo’s repeated violations of rules at facilities currently operated by Angelo’s. Angelo’s has been involved in six consent orders in the last five years, which calls into serious question the company’s ability and willingness to comply with applicable rules and permits.

24. WRB reserves its right to raise additional disputed issues of material fact that may be identified in the future as a result of its further review of FDEP’s files, as a result of any petition filed in regard to the denial of the Permits by Angelo’s or another party, or through discovery in this matter.

25. For the above stated reasons, WRB urges FDEP to continue to deny the Permits.

WHEREFORE, WRB Enterprises, Inc., respectfully requests that the Florida Department of Environmental Protection deny Permit Application Nos. 22913-001-SC-01 and 22913-002-SO-01.
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