

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

BOB KRASOWSKI,

Petitioner,

vs.

**OGC CASE NO. 13-1133
PERMIT 0222355-012-JN**

**COLLIER COUNTY and
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,**

Respondents.

**FINAL ORDER DISMISSING SECOND AMENDED PETITION
WITH PREJUDICE**

On September 30, 2013, the Petitioner, Bob Krasowski, filed a second amended petition for administrative hearing (Second Amended Petition) in response to the Department's September 17, 2013, Order Dismissing Amended Petition with Leave to Amend. The Second Amended Petition challenged the Department's decision to issue a permit modification (Permit Modification No. 0222355-012-JN) to Collier County for beach renourishment activities.

Rule 28-106.201(2), Florida Administrative Code, the notice provided to the Petitioner, and the Order Dismissing Amended Petition explain what must be included in a petition for a formal administrative hearing. The Second Amended Petition does not contain all of the information required by the rule and the notice. Therefore, the Second Amended Petition is not sufficient to entitle the Petitioner to a formal administrative hearing.

Timeliness

Rule 62-110.106(3)(b), F.A.C., provides that the failure to file a petition within the applicable time period constitutes a waiver of any right to request an administrative proceeding under Chapter 120, Florida Statutes. The Petitioner stated he received notice of the initial agency action via electronic mail on July 26, 2013. He timely filed his initial petition on August 9, 2013. The Department dismissed his initial petition on August 23, 2013, giving 10 days within which

to file an amended petition with the Department's Office of General Counsel by 5:00 p.m. on the tenth day. Petitioner timely filed his Amended Petition on September 3, 2013. The Department dismissed the amended petition on September 17, 2013, again giving Petitioner 10 days within which to file an amended petition with the Department's Office of General Counsel by 5:00 p.m. on the tenth day. The Second Amended Petition clearly states on page 5 that Petitioner received "notice" by email on September 17, 2013. The Petitioner's Second Amended Petition was received after 5:00 pm on the deadline of September 27, 2013 and was therefore docketed on Monday, September 30, 2013. See Fla. Admin. Code R. 28-106.104(3)("Any document received by the office of the agency clerk . . . after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day.").

Petitioner, though *pro se*, demonstrates a clear understanding of the filing requirements in this matter. The prior two petitions were timely filed.

This failure to timely file the Second Amended Petition in this proceeding constitutes such a waiver of Petitioner's right to request an administrative proceeding under Chapter 120, Florida Statutes. See Fla. Admin. Code R. 62-110.106(3)(b); *Envtl. Resource Assoc. of Florida, Inc. v. Dep't of General Services*, 624 So. 2d 330, 331 (Fla. 1st DCA 1993)(reflecting that appellant waived its right to a hearing when it failed to avail itself of the opportunity provided by agency's notice).

Enforcement Actions cannot be brought by a third party

Page six (6) of the Second Amended Petition, paragraph (e), alleges that "[t]he permit modification contains inaccurate information and is misleading, there will be no dredge pumping of sand and the state amounts of sand to be deposited are incorrect. This warrants a suspension or revocation of the permit." The Petitioner then cites to the rule standard for suspension or revocation of a permit by the Department. An administrative complaint for suspension or revocation is an enforcement action. A third party (who is not the agency charged with enforcement) is not authorized to bring an administrative cause of action for enforcement. See generally *Morgan v. Dep't of Env'tl. Protection*, 98 So. 3d 651 (Fla. 3d DCA 2012).

Failure to allege specific facts

Petitioner alleges that "[t]he permit modification application contains inaccurate information and is misleading, there will be no dredge pumping of sand and the stated amounts

of sand to be deposited are incorrect.” Further, Petitioner cites section 379.2431(h), Fla. Stat. *[sic]*, alleging that “the Permittee did not provide accurate information about the actual scope of the project....” and states that “DEP should ask for an updated plan and suspend all activity until the new information is provided and verified.”

Petitioner has not provided specifics concerning what information is incorrect, and how that information relates to the project description in the Department’s agency action on the permit modification, which he seeks to challenge. *See Fla. Admin. Code R. 28-106.201(2).*

Conclusory statements

In the Second Amended Petition, the Petitioner fails to allege disputed issues of material fact, and any ultimate facts, including specific facts, he contends warrant the reversal of the proposed permit. He makes conclusory allegations questioning the reasons for extension of the construction window into the late and early portions of the marine turtle nesting season. The Petitioner fails to offer any specific facts, however, substantiating his conclusory allegations; and fails to explain how the allegations relate to any specific rules or statutes that require reversal or modification of the Department’s proposed action. *See Fla. Admin. Code R. 28-106.201(2).* In his Second Amended Petition, Petitioner continues to allege harm to sea turtles but fails to specify how the beach nourishment will do so. Specifically, he fails to explain how the placement of sand would cause any adverse impact to sea turtles.

In view of the above, the Second Amended Petition must be dismissed as required by Section 120.569(2)(c), Florida Statutes. *See also Brookwood Extended Care Center of Homestead, L.L.P. v. Agency for Healthcare Admin.*, 870 So. 2d 834, 841 (Fla. 3d DCA 2003).

IT IS THEREFORE ORDERED:

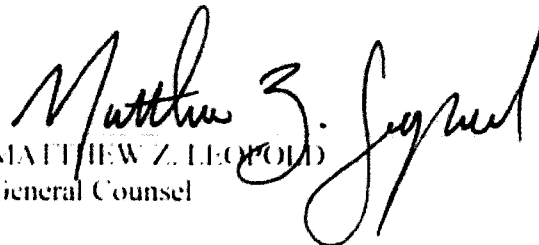
- A. The Second Amended Petition is DISMISSED, with prejudice.
- B. This order constitutes final agency action of the Department.

Any party to this proceeding has the right to seek judicial review of this order under Section 120.68, Florida Statutes, by filing a notice of appeal under Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fee with the

appropriate district court of appeal. The notice of appeal must be filed within thirty days after the date this order is filed with the clerk of the Department.


DONE AND ORDERED this 30th day of September, 2013, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


MATTHEW Z. LEOPOLD
General Counsel

3900 Commonwealth Boulevard - MS 35
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.

 9/30/13
CLERK DATE

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CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been furnished via ELECTRONIC MAIL ONLY on this ^{30th} day of September, 2013, to:

Bob Krasowski

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STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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