



HENDRY COUNTY
Board of County Commissioners
P.O. Box 2340
LaBelle, Florida 33975-2340

D. Wayne O'Neal
County
Administrator

Mark F. Lapp
County
Attorney

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Clerk
of the Courts

April 18, 2008

SENT VIA FACSIMILE
561-640-3050
AND U.S. MAIL

Jon D. Derrevere, Esquire
Derrevere, Hawkes & Black
470 Columbia Drive, Building B
West Palm Beach, FL 33409

Subject: Craig A. Smith & Associates, Inc.

Dear Mr. Derrevere:

This is in response to your letter dated March 6, 2008. You provided no response to the four items of malpractice alleged by Hendry County.

As to the items raised in your letter, the County offers the following:

1. While CAS provided some additional services in expanding the plant capacity, they were not significant and certainly weren't worth \$200,000. Moreover, providing additional services gratis does not excuse malpractice for services provided.
2. Retention of another engineering firm to function as Resident Project Representative and to provide construction management services did not relieve CAS for its design errors. The County, the contractor and TetraTech used CAS's final, signed and sealed plans to build the plant. This is not a case where a partially-completed design was completed by another firm, nor was CAS's design discarded and a new design prepared. CAS's design work was final and complete and used in construction of the plant. Therefore, the engineering rule you cite is inapplicable, and CAS remained as Engineer of Record for design. There is no principle of engineering practice that would hold that an engineer is absolved of malpractice if he does not handle a project from beginning to end.
3. The change in location for the plant was wholly unrelated to the four claimed items of malpractice. Moreover, the change in location of the plant was due to a questionable action by CAS in failing to perform soil borings where the building was to be placed. These borings were particularly in order due to the fact that the building was slated to be placed on top of a lime waste pond. The June 19, 2006, PLUS advisory board meeting minutes referenced in your letter do not support CAS's argument. The cost savings referenced in the minutes are that the extra design cost *for relocating the plant* might be offset in less fill costs than would have been incurred at the original plant location. Relocating the plant did

not result in any design savings for the four items listed in my January 25, 2008 letter.

4. The fact that the errors amounted to only 1.7% of the construction cost is irrelevant. There is no threshold for malpractice. Damage is damage. Hendry County has very limited resources. The USDA refused to pay for the extra design expense associated with the errors. The County should not be left with any bills for errors committed by the professionals it hired to do the job.

Your letter is more focused on the perceived inequity of the County making a claim for errors than it is on the errors themselves. Equities are not pertinent, in my opinion, but one equity in the County's favor that certainly is present in this matter is the fact that CAS took much longer in its design than was reasonable. During this time, construction costs went up substantially.

Please advise whether CAS is willing to make any settlement offer. If not, the County will explore further options for recovery.

Sincerely,



Mark F. Lapp
County Attorney

MFL

cc: Shane Parker, P.E.
Roger Greer
John Capece, Ph.D.