



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET, SW  
ATLANTA, GEORGIA 30303-8909

DEC 11 1997

4APT-ARB

Howard L. Rhodes, Director  
Air Resources Management Division  
Florida Department of Environmental Protection  
Mail Station 5500  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

SUBJ: EPA's Review of Proposed Title V Permits  
for Florida Power & Light

Dear Mr. Rhodes:

The purpose of this letter is to provide comments to the Florida Department of Environmental Protection (DEP) on the following proposed title V operating permits for Florida Power & Light (FP&L): Manatee Plant, Putnam Plant, Lauderdale Plant, Martin Plant, Port Everglades Plant, Riviera Plant, and Turkey Point Plant, which were consecutively posted on DEP's web site from October 31, 1997, to November 17, 1997. Based on the Environmental Protection Agency's (EPA's) review of these proposed permits and the supporting information for each plant, EPA formally objects, under the authority of Section 505(b) of the Clean Air Act (the Act) and 40 C.F.R. § 70.8(c) (see also Florida Regulation 62-213.450), to the issuance of all seven permits on the basis that the permits do not fully meet the periodic monitoring requirements of § 70.6(a)(3)(i). In addition, EPA objects to some of the proposed permits because they contain deviations from applicable requirements and some of the permits do not ensure practical enforceability of certain permit terms.

As you know, 40 C.F.R. § 70.8(c) requires EPA to object to the issuance of a proposed permit in writing within 45 days of receipt of the proposed permit (and all necessary supporting information) if EPA determines that the permit is not in compliance with the applicable requirements under the Act or 40 C.F.R. Part 70. Section 70.8(c)(4) and Section 505(c) of the Act further provide that if the State fails to revise and resubmit a proposed permit within 90 days to satisfy the objection, the authority to issue or deny the permit passes to EPA and EPA will act accordingly. Because the objection issues must be fully addressed within the 90 days, we suggest that the revised permits be submitted in advance in order that any outstanding issues may be addressed prior to the expiration of the 90-day period.

Pursuant to 40 C.F.R. § 70.8(c), this letter and the enclosures to it provide a statement of EPA's reasons for its objection. Enclosures 1 through 7 contain a detailed

explanation of the objection issues specific to each permit and the changes necessary to make each permit consistent with the requirements of 40 C.F.R. Part 70. In some cases, the enclosure also contains general comments with regard to the individual permit.

With regard to the objection issue relating to periodic monitoring, EPA would like to emphasize that a permit that does not contain adequate periodic monitoring, does not meet the requirements of 40 C.F.R. Part 70. Florida rule 62-213.440(1)(b)1.b. states that each Part 70 permit shall specify the following requirements with respect to monitoring:

"Where the applicable requirement does not specify a method for periodic testing or instrumental or noninstrumental monitoring, periodic monitoring sufficient to yield reliable data and demonstrate compliance with the permit. Such monitoring requirements shall assure use of recordkeeping terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement."

The cited State regulation is based on 40 C.F.R. § 70.6(a)(3)(i)(B), which requires each Part 70 permit to contain the following requirements with respect to monitoring: "Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit...."

Part 70's periodic monitoring requirements implement, in part, Section 504(a) of the Act, which requires that Part 70 permits contain "conditions as are necessary to assure compliance with applicable requirements of [the] Act, including the requirements of the applicable implementation plan" and Section 504(c), which requires "monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions." In addition, Section 114 of the Act requires "enhanced monitoring" for major stationary sources. The EPA's recently-issued compliance assurance monitoring (CAM) rule indicates that Part 70 periodic monitoring satisfies enhanced monitoring under the Act for emissions units not subject to Part 64's CAM requirements. See 62 Fed. Reg. 54900, 54904 (Oct. 22, 1997).

In determining whether a permit application has appropriate periodic monitoring to assure compliance with all permit terms and conditions and all applicable requirements, a permitting authority must first determine whether an applicable requirement

already requires periodic testing or instrumental or noninstrumental monitoring. See 40 C.F.R. § 70.6(a)(3)(i)(B); 62-213.440(1)(b)1.b, F.A.C. Whether an underlying applicable requirement contains periodic monitoring or testing must be judged according to the criteria defining and governing periodic monitoring: namely, whether it is sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. In order for each permit to include monitoring that is sufficient to assure compliance with all applicable requirements, an applicant or permitting authority may have to enhance or supplement monitoring or testing in an existing applicable requirement through periodic monitoring that yields reliable and representative compliance data.<sup>1</sup> Alternatively, the underlying applicable requirement may already contain monitoring or testing sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, in which case the periodic monitoring requirement is satisfied and no additional monitoring is necessary.

We understand DEP's view of periodic monitoring to be that "additional monitoring requirements are to be imposed only when the applicable requirement does not specify or require any monitoring." [Letter from C.H. Fancy, Chief, Bureau of Air Regulation, Florida DEP to R. Douglas Neeley, Chief, Air and Radiation Technology Branch, Air, Pesticides and Toxics Management Division, U.S. EPA Region 4, (Nov. 6, 1997) (emphasis in original).] DEP has asserted that "[t]he 'adequacy' of such monitoring is not addressed nor defined in either Part 70 or Chapter 62-213, F.A.C." Id. We do not agree. As discussed above, periodic monitoring under Part 70 — which is identical in material respects to Florida's regulations — is defined by the criteria that govern the adequacy of periodic monitoring, whether that monitoring is contained in an applicable requirement or supplements an applicable requirement. All monitoring must be sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit.

One of our concerns is that DEP's view of periodic monitoring means that monitoring in an existing applicable requirement — no matter how infrequent and no matter how inadequate to the task of compliance assurance — may never be enhanced in order to assure compliance with an applicable

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<sup>1</sup> See, e.g., 62 Fed. Reg. at 54904 ("Part 70 currently requires all title V operating permits to include monitoring to assure compliance with the permit. This includes all existing monitoring requirements as well as additional monitoring (generally referred to as 'periodic monitoring') if current requirements fail to specify appropriate monitoring. ... [E]xisting monitoring when supplemented as necessary by periodic monitoring is sufficiently enhanced for emissions units not subject to part 64.")

requirement of the Clean Air Act. We do not believe that this gives the meaning due "enhanced monitoring" under Section 114 of the Act. If existing monitoring is inadequate to assure compliance and we accept DEP's view that the adequacy of such monitoring may not be addressed through supplemental periodic monitoring, then Title V permits would not meet the statutory and regulatory requirement to contain monitoring that is adequate to assure compliance with all applicable requirements. An applicable requirement which contains any monitoring that recurs on some cyclical basis — which presumably could be once every year, five years, ten years or more — does not mean such monitoring is "periodic" for purposes of Title V and the Clean Air Act.

Where EPA determines that permits do not contain periodic monitoring that will assure compliance with a permit's terms and conditions, EPA may object to those proposed permits and require that any final issued permits be reopened to address any deficiencies. EPA Region 4 will work with DEP to determine whether any of the State's final issued permits must be reopened to address issues relative to periodic monitoring.

We regret that we were unable to resolve these issues with your office prior to the expiration of the 45-day review period. However, we are fully confident that Florida DEP will act to respond to these concerns in a timely manner. If you have any questions or wish to discuss this further, please contact Mr. Douglas Neeley, Chief, Air & Radiation Technology Branch or Ms. Carla Pierce, Chief, Operating Source Section at (404) 562-9105. Should your staff need additional information they may contact Ms. Yolanda Adams, Title V Technical Expert at (404) 562-9116, Mr. David McNeal, Monitoring Expert, at (404) 562-9102, or Ms. Lynda Crum, Associate Regional Counsel, at (404) 562-9524.

Sincerely,

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Director

Air, Pesticides & Toxics  
Management Division

Enclosures

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