LAW OFFICE OF
DAVID A. LUDDER
A Professional Limited Liability Company

November 30, 2011

Overnight Delivery
Ms. Helena Wooden-Aguilar, Assistant Director
Office of Civil Rights
U.S. Environmental Protection Agency
Mail Code 1201A
1200 Pennsylvania Ave NW
Washington, D.C. 20460

Re: **Title VI Complaint - Northwest Florida Renewable Energy Center, LLC, Port St. Joe, Florida**

Dear Ms. Wooden-Aguilar:

This complaint is filed pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and 40 C.F.R. Part 7. 40 C.F.R. § 7.35(b) provides:

> A recipient [of EPA financial assistance] shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, or sex.

"Frequently, discrimination results from policies and practices that are neutral on their face, but have the effect of discriminating. Facially-neutral policies or practices that result in discriminatory effects violate EPA's Title VI regulations unless it is shown that they are justified and that there is no less discriminatory alternative." Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits (EPA, Feb. 5, 1998) at 2 (footnote omitted) published at http://www.enviro-lawyer.com/Interim%20Guidance.pdf. "[M]erely demonstrating that the permit complies with applicable environmental regulations will not ordinarily be considered a substantial, legitimate justification." Id. at 11. And, "[i]f a less discriminatory alternative is practicable, then the recipient must implement it to avoid a finding of noncompliance with the regulations." Id. "In the event that EPA finds discrimination in a recipient's permitting program, and the recipient is not able to come into compliance voluntarily, EPA is required by its Title VI regulations to initiate procedures to deny, annul, suspend, or terminate EPA funding." Id. at 3 (footnotes omitted) (citing 40 C.F.R. §§ 7.115(e), 7.130(b), 7.110(c)). "EPA also may use any other means authorized by law to obtain compliance, including referring the matter to the Department of Justice (DOJ) for litigation. In appropriate cases, DOJ may file suit seeking injunctive relief." Id.

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I. Complainants

The complainants' names, addresses and phone numbers are as follows:

(b)(6) Privacy, (b)(7)(C) Enf. Privacy
Port St. Joe, FL 32456
(b)(6) Privacy, (b)(7)(C) Enf. Privacy

(b)(6) Privacy, (b)(7)(C) Enf. Privacy
Wewahitchka, FL 32465
(b)(6) Privacy, (b)(7)(C) Enf. Privacy

Chri(b)(6) Privacy, (b)(7)(C) Enf. Privacy
Port St. Joe, FL 32456
(b)(6) Privacy, (b)(7)(C) Enf. Privacy

The complainants are represented by their attorney, David A. Ludder. All contacts with the complainants should be made through their attorney or with the express permission of their attorney.

II. Recipient

The Florida Department of Environmental Protection (FDEP) was a recipient of financial assistance from EPA at the time of the alleged discriminatory act. *See* EPA Grant Awards Database at http://yosemite.epa.gov/oarm/igms_egf.nsf/AdvSearch?ReadForm. For example, FDEP was recently awarded the grants identified in Table 1 below.

III. Discriminatory Act

The alleged discriminatory act is the issuance of Air Permit No. 0450012-002-AC to Northwest Florida Renewable Energy Center, LLC. Attachment A. The permit authorizes "the construction of a nominal 55 megawatts (MWnet) biomass fed gasification and combined cycle (BGCC) power plant called the NWFREC." Attachment A (Permit) at 1. The "permit authorizes construction of the permitted emissions units and initial operation to determine compliance with Department rules." Attachment A (Permit) at 6. "The fuel source for the facility will be untreated woody biomass that consists primarily of wood chips but may also include agricultural crops and byproducts and logging and lumber mill residues as well as yard waste." Attachment A (Permit) at 4. The facility is located at approximately (b)(6) Privacy, (b)(7)(C) Enf. Privacy

IV. Timeliness

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving EPA financial assistance must be filed within 180 days after the alleged discriminatory act. The issuance of Air Permit No. 0450012-002-AC to Northwest Florida Renewable Energy Center, LLC occurred on June 9, 2011. This complaint is filed within the 180 after the permit was issued.

Table 1
RECENT EPA GRANTS AWARDED TO THE
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Grant Number	Recipient	Project Title	Recipient Type	CumAward	AwdDate
00402911-0	FL Dept of Environmental Protection		State	$511,953	12/29/2010
00435211-0	FL Dept of Environmental Protection		State	$46,675	12/22/2010
00402010-2	FL Dept of Environmental Protection		State	$1,691,204	12/09/2010
12000110-0	FL Dept of Environmental Protection		State	$68,776,000	09/21/2010
83426901-1	FL Dept of Environmental Protection		State	$115,184	07/01/2010
12000109-0	FL Dept of Environmental Protection		State	$25,950,193	09/14/2009
99451510-0	FL Dept of Environmental Protection		State	$7,564,200	08/10/2010
99451509-0	FL Dept of Environmental Protection		State	$7,564,200	09/01/2009
98452209-0	FL Dept of Environmental Protection		State	$36,792,000	09/18/2009
97460302-7	FL Dept of Environmental Protection		State	$1,976,000	09/28/2009
96495708-3	FL Dept of Environmental Protection		State	$1,605,000	03/31/2010
96490610-0	FL Dept of Environmental Protection		State	$39,000	08/06/2010
96490608-2	FL Dept of Environmental Protection		State	$242,562	09/17/2009
96479507-4	FL Dept of Environmental Protection		State	$471,520	08/09/2010
96480007-2	FL Dept of Environmental Protection		State	$485,318	06/07/2010
95465910-0	FL Dept of Environmental Protection		State	$174,000	07/15/2010
95465810-0	FL Dept of Environmental Protection		State	$552,000	07/15/2010
95454310-0	FL Dept of Environmental Protection		State	$36,000	02/22/2010
95453210-0	FL Dept of Environmental Protection		State	$165,127	02/22/2010
95447009-1	FL Dept of Environmental Protection		State	$1,608,066	07/14/2010
95445909-0	FL Dept of Environmental Protection		State	$174,000	09/18/2009
95439109-1	FL Dept of Environmental Protection		State	$6,316,000	06/03/2010
95439509-1	FL Dept of Environmental Protection		State	$1,620,832	08/18/2010
95439009-1	FL Dept of Environmental Protection		State	$2,400,000	07/07/2010
95409308-2	FL Dept of Environmental Protection		State	$1,001,202	07/15/2010
95423109-2	FL Dept of Environmental Protection		State	$88,074,000	01/04/2011
95445809-1	FL Dept of Environmental Protection		State	$848,000	12/01/2010
95420709-1	FL Dept of Environmental Protection		State	$45,000	08/16/2010
95411308-1	FL Dept of Environmental Protection		State	$264,000	06/08/2010
95421409-2	FL Dept of Environmental Protection		State	$1,730,000	07/01/2010
95423009-1	FL Dept of Environmental Protection		State	$132,286,300	10/15/2009
95423609-2	FL Dept of Environmental Protection		State	$1,336,300	10/09/2009
96433705-3	FL Dept of Environmental Protection		State	$900,000	04/27/2010

Source: EPA Grant Awards Database at http://yosemite.epa.gov/oarm/igms_egf.nsf/AdvSearch?ReadForm.

V. Impacts

The impacts resulting from the authorized activities include (1) human exposure to facility emissions, particularly carcinogens; (2) light "pollution" resulting from operation of an elevated flare; and (3) increased traffic congestion, accident risk, vehicular emissions and noise from increased truck traffic.

Facility emissions are described in Tables 2 through 6 below.

Table 2
SELECTED START-UP AND SHUTDOWN EMISSIONS

Emission Component	Source	Turnaround Shutdowns, TPY	Emergency Shutdowns, TPY	Start-up, TPY	Controlled Emissions, TPY	Total Annual Emissions (TPY)
NOx	Combustion Duct Burner			0.06		
	Gasifier Duct Burner			0.09		
	Char			0.36		
	Wood Combustion			3.56		
	Gasifier Island Flare	0.025	0.06	0.82		
Total NOx		0.025	0.06	4.83		**4.915**
PM		0.0025	0.0005	0.52	0.02	**0.523**
PM		0.0025	0.0005	0.51	0.01	**0.521**
CO	Gasifier Island Flare	0.0011	0.0008			**0.0019**
VOC	Gasifier Island Flare	0.0003	0.0002			**0.0005**
SO_2	Gasifier Island Flare	0.009	0.006			**0.015**

* Based upon information from Schultes and AP-42 Section 1.1 for Cyclonic Furnace, Bituminous
** Based on an estimated 6 planned shutdowns per year and an estimated 4 emergency shutdowns per year

Source: Construction Permit Application - Northwest Florida Renewable Energy Center, LLC, Golder Associates, Inc. (Jan. 2011) at Table 2-2.

Table 3
NORMAL OPERATING EMISSIONS

Pollutant [1]	CTG	Char Combustor	Cooling Towers	Material Handling [2]	Aux. Boiler	Flares TO	Emergency Equipment	Total
SO_2	11.9	59.1	0	0	0.09	3.64	negligible	74.73
PM	61.6	2.5	1.03	12.5	0.03	neg	0.07	77.73
PM_{10}	61.6	2.5	0.73	7.0	0.03	neg	0.07	71.93
NO_X	118.1	42.0	0	0	1.47	3.18	1.24	165.99
CO	72.3	67.7	0	0	1.24	17.34	1.24	159.82
VOC	13.7	7.0	negligible	0	0.08	6.56	0.15	27.49
SAM [3]	1.2	5.9			negligible [4]			7.1
HAP	5.8	5.2			negligible			11.0
Hg	Neg.	6 lb/yr			negligible			6 lb/yr
NH_3 [5]	5.2	3.4			negligible			8.6
F [6]				negligible				~0
Pb				negligible				~0

1. Pollutants listed above are PSD-pollutants except HAP and Hg.
2. Includes emission from biomass dryer.
3. SAM - sulfuric acid mist. The Department estimated SAM 10% of SO_2 emissions.
4. Negligible (Neg.) means zero (0) or that it does not affect the last significant figure in the estimate.
5. Emissions of NH_3 are primarily from "slip" of reagent used in the SCR and SNCR NO_X control systems.
6. F fluoride.

Source: Technical Evaluation and Preliminary Determination, FDEP (Apr. 27, 2011) at 13.

As shown in Table 3, the Hazardous Air Pollutant (HAP) emissions from the proposed facility are estimated at 11.0 tons per year. These emissions are described in greater detail the Tables 4 through 6 below.

Table 4
HAZARDOUS AIR POLLUTANT EMISSIONS FROM PROJECT NATURAL GAS AND PRODUCT GAS-FIRING

Parameter		Emission Rate (lb/hr) firing Gas for Operating Conditions of Base Load (1)		Natural Gas Maximum Annual Emissions (TPY) (3)	
Ambient Temperature (°F)		55 °F	CT	55 °F 1 CT HRSG	55 °F 3 CTs HRSGs
HHR (MMBtu/hr)		156			
HAPs (Section 112(b) of Clean Air Act)					
1,3-Butadiene		0.000867		0.0003	0.0009
Acetaldehyde		0.0062		0.0274	0.0821
Acrolein		0.0040		0.0044	0.0131
Benzene		0.0019		0.0082	0.0246
Ethylbenzene		0.0050		0.0219	0.0657
Formaldehyde		0.403		1.7663	5.2988
Naphthalene		0.00020		0.0009	0.0027
Polycyclic Aromatic Hydrocarbons (PAH)	(3)	0.00034		0.0015	0.0045
Propylene Oxide		0.0045		0.0198	0.0595
Toluene		0.0052		0.0226	0.0677
Xylene		0.010		0.0438	0.1314
Antimony		0.0		0.0000	0.0000
Arsenic		0.0		0.0000	0.0000
Beryllium		0.0		0.0000	0.0000
Cadmium		0.0		0.0000	0.0000
Chromium		0.0		0.0000	0.0000
Lead		0.0		0.0000	0.0000
Manganese		0.0		0.0000	0.0000
Mercury		0.0		0.0000	0.0000
Nickel		0.0		0.0000	0.0000
Selenium		0.0		0.0000	0.0000
HAPs (Total)		0.438		2.88	5.8

Source: Air Construction Permit Application - Northwest Florida Renewable Energy Center, LLC, Golder Associates, Inc. (Jan. 2011) at Table 3-3.

Table 5
HAZARDOUS AIR POLLUTANT EMISSIONS
FROM GASIFIER COMBUSTER

HAPs (Section 112(b) of Clean Air Act)	Emission Factor (lb/ton)	Emissions (lb/hr)	(TPY)
Biphenyl	0.025	0.133	0.584
Naphthalene	0.130	0.693	3.036
Phenanthrene (PAH)	0.007	0.036	0.159
Arsenic	1.9E-04	0.0010	0.004
Antimony	BDL	BDL	BDL
Beryllium	3.1E-04	0.0017	0.007
Cadmium	7.1E-05	0.0004	0.002
Chromium	2.8E-02	0.1493	0.654
Manganese	3.6E-03	0.0192	0.084
Mercury	1.3E-04	0.0007	0.003
Nickel	2.6E-02	0.1386	0.607
Selenium	1.3E-03	0.0069	0.030
HAPs (Total)		**1.2**	**5.2**

Source: Air Construction Permit Application - Northwest Florida Renewable Energy Center, LLC, Golder Associates, Inc. (Jan. 2011) at Table 3-4a.

Table 6
HAZARDOUS AIR POLLUTANT EMISSIONS FROM THE AUXILIARY BOILER

HAPs (Section 112(b) of Clean Air Act)	Emission Factor ($lb/10^6 scf$)	Emissions (lb/hr)	Emissions (TPY)
Formadelhyde	7.5E-02	4.6E-03	1.1E-03
Hexane	1.8E+00	1.1E-01	2.7E-02
Naphthalene	6.1E-04	3.7E-05	9.3E-06
Toluene	3.4E-03	2.1E-04	5.2E-05
Arsenic	2.0E-04	1.2E-05	3.0E-06
Beryllium	< 1.2E-05	7.3E-07	1.8E-07
Cadmium	1.1E-03	6.7E-05	1.7E-05
Chromium	1.4E-03	8.5E-05	2.1E-05
Cobalt	8.4E-05	5.1E-06	1.3E-06
Manganese	3.8E-04	2.3E-05	5.8E-06
Mercury	2.6E-04	1.6E-05	3.9E-06
Nickel	2.1E-03	1.3E-04	3.2E-05
Selenium	< 2.4E-05	1.5E-06	3.6E-07
HAPs (Total)		**0.11**	**0.03**

Source: Air Construction Permit Application - Northwest Florida Renewable Energy Center, LLC, Golder Associates, Inc. (Jan. 2011) at Table 3-7a.

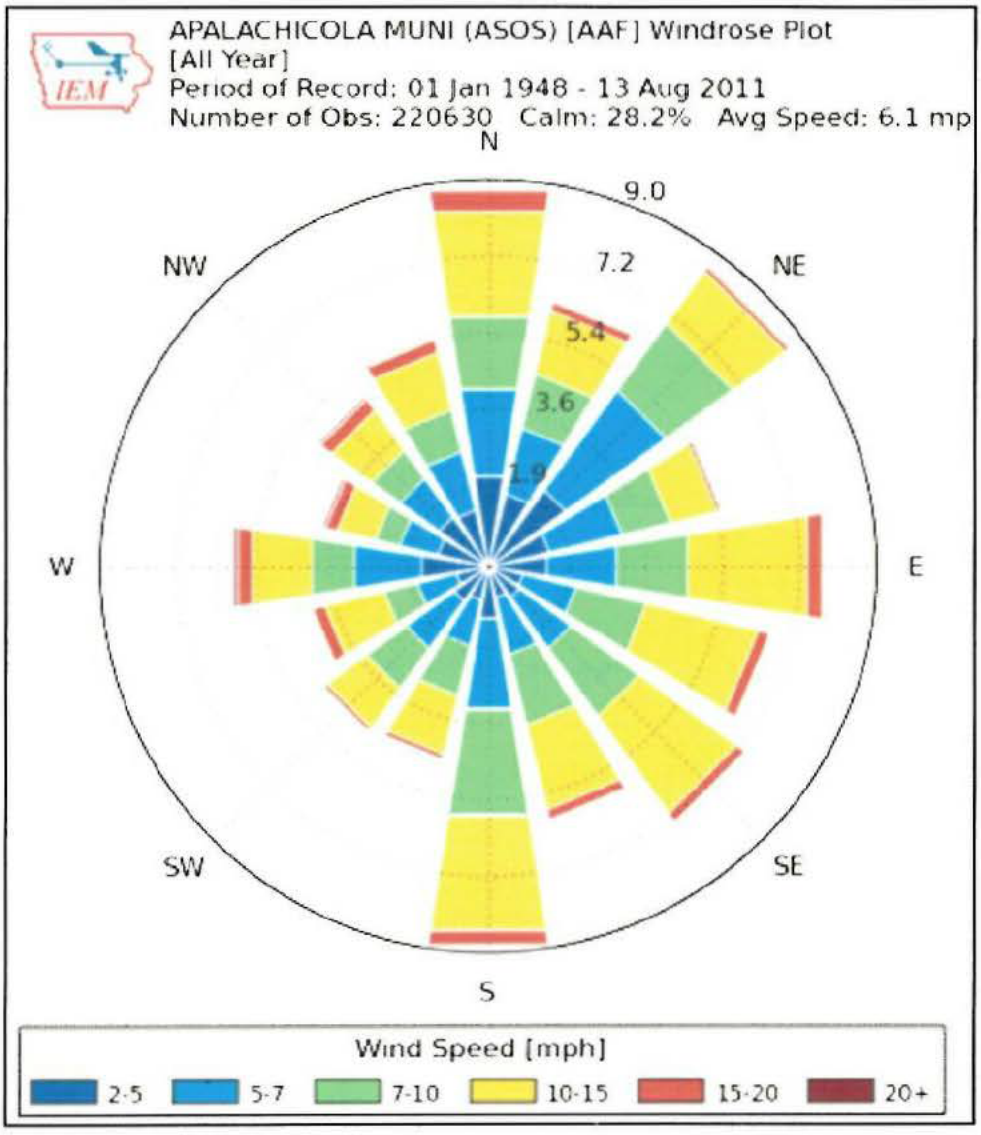
Many of the foregoing hazardous air pollutants have been identified as carcinogens. Table 7.

Table 7
CARCINOGENIC HAZARDOUS AIR POLLUTANTS

Hazardous Air Pollutant	Carcinogenic Classification	Cancer Type	Cancer Risk Concentration at 10^{-6} Risk Level
Acetaldehyde	Probable Human Carcinogen	Nasal squamous cell carcinoma or adenocarcinoma	5×10^{-1} µg/m^3
Arsenic	Human Carcinogen	Lung Cancer	2×10^{-4} µg/m^3
Benzene	Human Carcinogen	Leukemia	4.5×10^{-1} µg/m^3
1,3-Butadiene	Human Carcinogen	Leukemia	3×10^{-2} µg/m^3
Beryllium	Probable Human Carcinogen	Lung Cancer	4×10^{-4} µg/m^3
Cadmium	Probable Human Carcinogen	Lung, trachea, bronchus cancers	6×10^{-4} µg/m^3
Chromium (VI)	Human Carcinogen	Lung Cancer	8×10^{-5} µg/m^3
Formaldehyde	Probable Human Carcinogen	Nasal squamous cell carcinoma	8×10^{-2} µg/m^3
Naphthalene	Possible Human Carcinogen	Respiratory epithelial neuroblastoma	2.9×10^{-2} µg/m^3
Nickel	Human Carcinogen	Lung Cancer	4×10^{-3} µg/m^3
Propylene Oxide	Probable Human Carcinogen	Nasal cavity hemangioma or hemangiosarcoma	3×10^{-1} µg/m^3

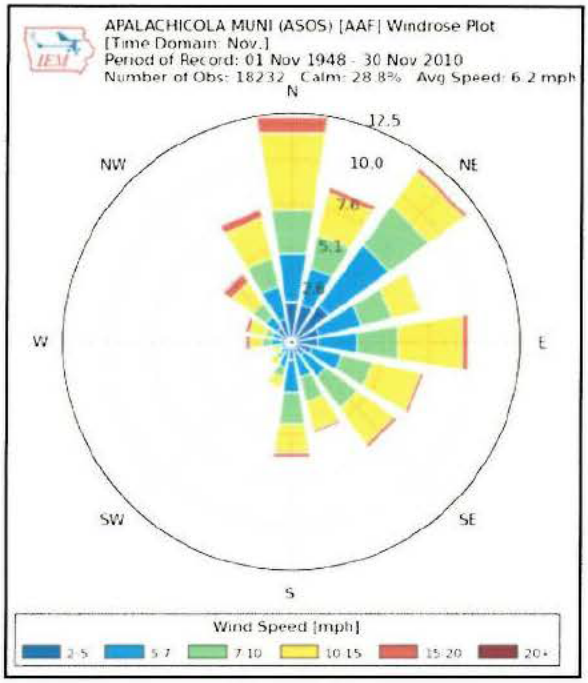
Wind direction data collected at Apalachicola over a period of sixty-two years show that North winds are common. See Figure 1. During this period, North winds have been dominant during the months of November through February. See Figure 2. North winds will carry facility emissions in the direction of Millville. See Figure 3. East-Southeast winds occur with less frequency, but will carry emissions in the direction of the Highland View-Milltown community. See Figures 1 and 3.

Figure 1
SIXTY-TWO YEAR WIND ROSE FOR APALACHICOLA, FL

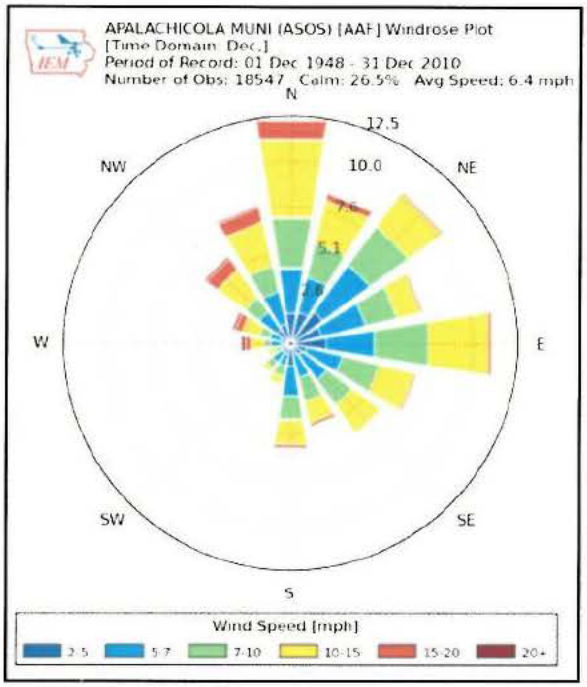


Source: Iowa Environmental Mesonet at http://mesonet.agron.iastate.edu/sites/windrose.phtml?station=AAF&network=FL_ASOS

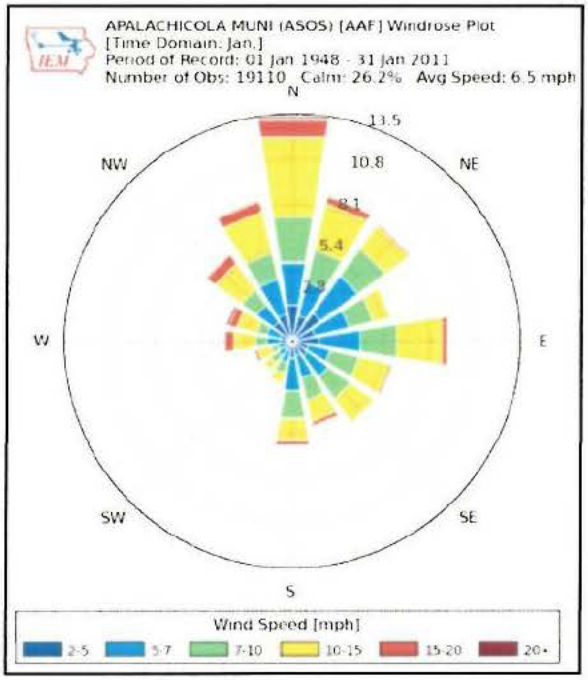
Figure 2
SIXTY-TWO YEAR WIND ROSE FOR APALACHICOLA, FL



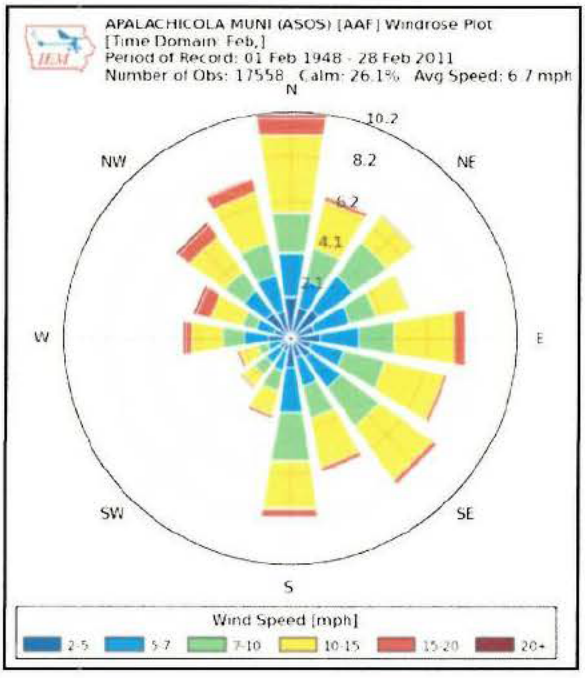
November



December



January



February

The NWFREC plans to operate an elevated, open design flare system 100 hours per year. "There are three operating conditions under which the flare system may potentially be needed: startup, planned shutdown and emergency shutdown (i.e., in the event of a gasifier trip)." Air Construction Permit Application - Northwest Florida Renewable Energy Center, LLC, Golder Associates, Inc. (Jan. 2011) at 8. "The flare type would likely be of an open design with a height close to 30 feet." Id. at 20. This flare will be visible for miles and visible to the residents of Millville and Highland View-Milltown communities, especially at night.

The NWFREC will generate an annual average daily traffic rate of 250 vehicle-trips to and from the facility. Traffic Impact Analysis for the Northwest Florida Renewable Energy Center (Sept. 2009) at 1. One-hundred sixty (160) of these vehicle-trips will be feedstock delivery trucks. Id. The increased traffic congestion on US 98, State Highway 71, and County Road 382 will increase traffic congestion, traffic accidents, vehicular emissions and noise that the residents of the Millview and Highland View-Milltown communities will experience.

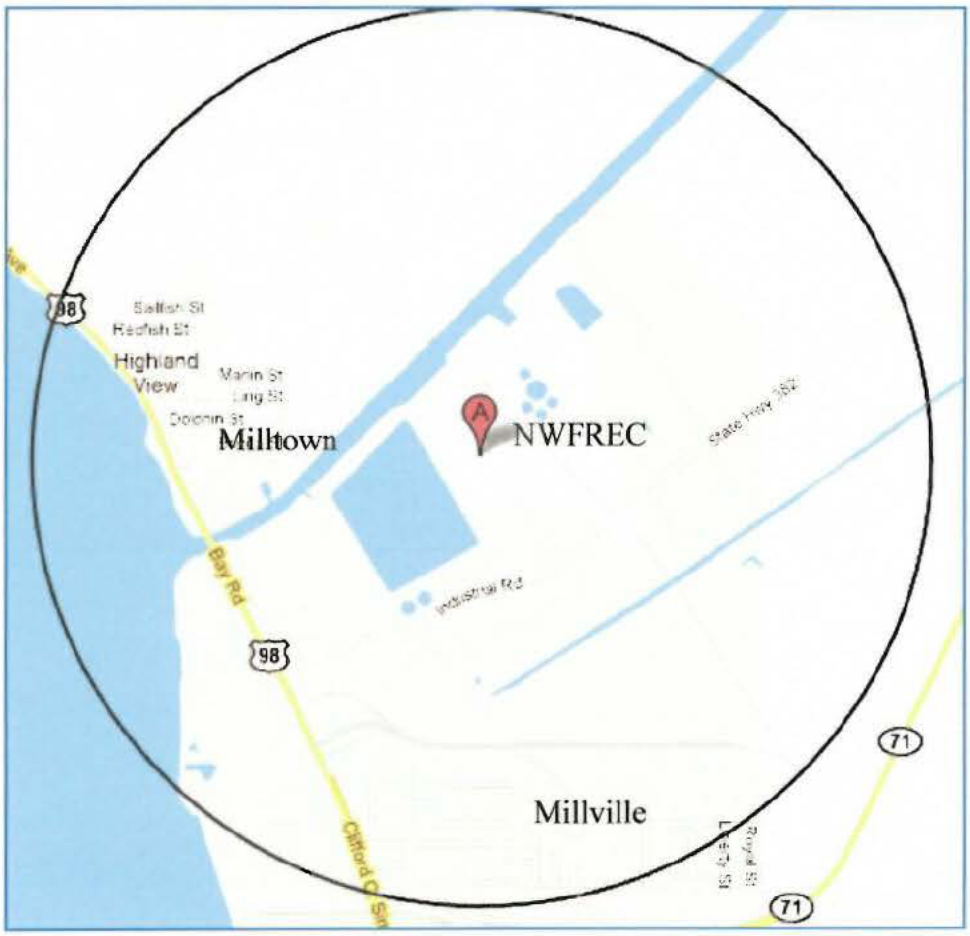
Figure 3
TRANSPORTATION ROUTES

Figure 4
PROXIMITY OF RESIDENTIAL COMMUNITIES TO PROPOSED FACILITY

Source: Map generated using Acme Mapper at http://mapper.acme.com/. Distance determined using Google Maps Distance Measurement Tool at http://maps.google.com/maps?showlabs=1.

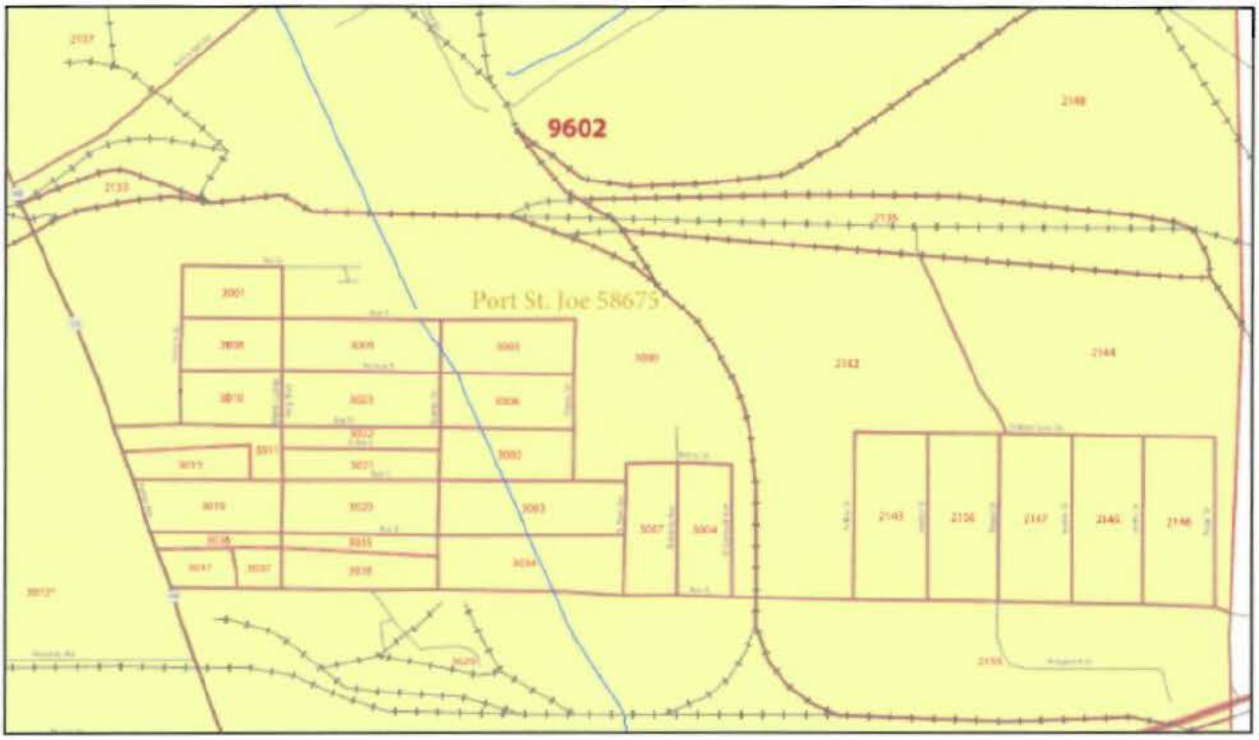
The impacts described above will potentially affect an estimated population of at least 1,133 within a 2.0 km radius, including the communities of Millville and Highland View-Milltown. See Figures 5 through 7 and Table 8.

Figure 5
2.0 KM RADIUS



Source: Map generated using Acme Mapper at http://mapper.acme.com/. Distance determined using Google Maps Distance Measurement Tool at http://maps.google.com/maps?showlabs=1.

Figure 6
MILLVILLE AREA CENSUS BLOCKS 2010



Census Blocks: 2142, 2143, 2144, 2145, 2146, 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3012, 3015, 3017, 3019, 3020, 3021, 3022, 3023, 3034, 3035, 3036, 3037, 3038

Source: U.S. Census Bureau, http://www2.census.gov/geo/maps/dc10map/GUBlock/st12_fl/place/p1258675_port_st_joe/ (DC10BLK_P1258675_003.pdf)

Figure 7
HIGHLAND VIEW-MILLTOWN AREA CENSUS BLOCKS 2010

Census Blocks: 1141, 1146, 2084, 2085, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2127

Source: U.S. Census Bureau, http://www2.census.gov/geo/maps/dc10map/GUBlock/st12_fl/place/p1258675_port_st_joe/(DC10BLK_CS1204592863_D01.pdf)

Table 8
POPULATION IN MILLVILLE AND
HIGHLAND VIEW-MILLTOWN COMMUNITIES

Census Blocks	Millville	Highland View-Milltown
Highland View-Milltown: 1141, 1146, 2084, 2085, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2127 Millville: 2142, 2143, 2144, 2145, 2146, 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3012, 3015, 3017, 3019, 3020, 3021, 3022, 3023, 3034, 3035, 3036, 3037, 3038	780	353

Source: U.S. Census Bureau American Factfinder, Table P1 at http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t

In addition, the impacts to the affected population caused by the permitted activity will aggravate and compound historical impacts suffered by the population from other facilities within the area. Such facilities are identified in Table 9 and are depicted in Figure 8.

Table 9
AREA INDUSTRIES CAUSING LEGACY POLLUTION

Facility	Status	Emissions
Premier Chemicals, LLC (now "Premier Magnesia, LLC")	Active	See Attachment B
Preferred Materials, Inc.	Active	See Attachment C
Arizona Chemicals Co., LLC	Closed	See Attachment D
Florida Coast Paper Co., LLC	Closed	See Attachment E
General Chemical, LLC	Closed	?

Figure 8
AREA INDUSTRIES CAUSING LEGACY POLLUTION

Source: EPA EnviroMapper at http://www.epa.gov/emefdata/em4ef.html?ve=12,29.83537,-85.30082&pText=29.83537, -85.30082, select Program Systems, check Air Emissions and Toxic Releases.

Disparate Impact

The adverse impacts described above will fall disparately upon members of the African-American race. This is illustrated in the data included in Table 10. The populations within 2.0 km from the proposed facility are approximately 73.0% African-American. This compares to 18.7% in all of Gulf County and 16.0% in the State of Florida.

Table 10
TOTAL AND AFRICAN AMERICAN POPULATIONS IN MILLVILLE AND HIGHLAND VIEW-MILLTOWN AREAS

Area	Total Population	African American Population	Percent
Millville and Highland View-Milltown Census Blocks: 1141, 1146, 2084, 2085, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2127, 2142, 2143, 2144, 2145, 2146, 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3012, 3015, 3017, 3019, 3020, 3021, 3022, 3023, 3034, 3035, 3036, 3037, 3038	1133	827	73.0
Gulf County	15,863	2,962	18.7
State of Florida	18,801,310	2,999,862	16.0

Request

Based upon the foregoing, Complainants request that the U.S. Environmental Protection Agency - Office of Civil Rights conduct an investigation to determine whether the Florida Department of Environmental Protection violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. Part 7 in the issuance of Air Permit No. 0450012-002-AC to Northwest Florida Renewable Energy Center, LLC on June 9, 2011. If the Florida Department of Environmental Protection is unable to voluntarily implement a less discriminatory siting alternative that is practicable, Complainants further request that EPA initiate procedures to deny, annul, suspend, or terminate EPA funding to the Department.

Sincerely,

David A. Ludder
Law Office of David A. Ludder, PLLC
Attorney for Complainants