Florida Department of Environmental Protection

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Secretary

Charles.Grawey@Vercipia.com
Charles E. Grawey, Vice President
Highlands Ethanol, LLC
5100 West Lemon Street, Suite 114
Tampa, Florida 33609

Re: Project No. 0550061-002-AC / PSD-FL-406A
Highlands Ethanol Facility
Cellulosic Ethanol Production
Extension of Air Permit No. 0550061-001-AC / PSD-FL-406

Dear Mr. Grawey:

On August 9, 2011, the Department received your attached request for an extension of the expiration date to December 31, 2014 on air construction Permit No. 0550061-002-AC / PSD-FL-406A for the Highlands Ethanol Facility. The location is in Highlands County north of State Road 70 and approximately 1.7 miles east, northeast of Brighton, Florida. The UTM coordinates are Zone 17, 493.2 kilometers (km) East and 3167.5 km North.

Highlands Ethanol, LLC requests additional time to complete construction largely due to delays related to the permitting and construction of access and road improvement projects so that the facility can be constructed in a safe and efficient manner.

Determination: The original air construction permit was issued on March 22, 2010 pursuant to the rules for the Prevention of Significant Deterioration (PSD) at Section 62-212.400, Florida Administrative Code (F.A.C.). Section 2, Specific Condition 7, Source Obligation, Paragraph (a) states:

"Authorization to construct shall expire if construction is not commenced within 18 months after receipt of the permit, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. This provision does not apply to the time period between construction of the approved phases of a phased construction project except that each phase must commence construction within 18 months of the commencement date established by the Department in the permit".

The definition of "commence construction" is given in Section 62-210.200(Definitions), F.A.C.

"Commence Construction" – As applied to the construction or modification of a facility, means that the owner has all preconstruction permits and approvals required under federal air pollution control laws and regulations and those air pollution control laws and regulations which are part of the State Implementation Plan (SIP) or which are part of Chapter 62-210 or 62-212, F.A.C., to the extent that the provisions of these laws and regulations specify conditions or requirements for obtaining a state construction permit for an emissions unit, and:

(a) Begins a continuous program of actual on-site construction or physical modification of the facility, to be completed within a time commensurate with the nature of the construction project; or

(b) Enters into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction or physical modification of the facility to be completed within a time commensurate with the nature of the construction project; or

(c) Begins those on-site activities, other than preparatory activities, which mark the initiation of a change in the method of operation of the facility.

The Department reviewed the Project Status Update Report attached to the request. Highlands Ethanol has invested more than $50 million in the design, permitting and initial construction activities for the facility all of which are for the sole purpose of accommodating the emission units that will be installed. The Department concludes that construction commenced within 18 months of receipt of the permit.

According to Section 62-4.080(3), F.A.C.

"A permittee may request that a permit be extended as a modification of the permit. Such a request must be submitted to the Department in writing before the expiration of the permit. Upon timely submittal of a request for extension, unless the permit automatically expires by statute or rule, the permit will remain in effect until final agency action is taken on the request. For construction permits, an extension shall be granted if the applicant can demonstrate reasonable assurances that, upon completion, the extended permit will comply with the standards and conditions required by applicable regulation".

The Department continues to rely on the original permit application and the subsequent technical evaluation issued by the Department as reasonable assurance that, upon completion, the extended permit will comply with the standards and conditions required by applicable regulation and original permit.

For reference, the Department issued two PSD permits for crop to ethanol projects since issuance of the permit to Highlands Ethanol. Both included best available control technology (BACT) determinations. The Department compared the emission limits for those projects with the BACT determination for the Highlands Ethanol project and concludes that the latter is at least as stringent as the other determinations and would constitute BACT for the Highlands Ethanol project if issued today.

Based on the circumstances and information provided, the Department approves this request. This letter extends the authorization to construct through December 31, 2014. The additional time granted by this action will allow the applicant to complete physical construction of the project, conduct shakedown activities, demonstrate compliance and prepare and submit an application for a Title V Operation Permit.

Permitting Authority: Applications for air construction permits are subject to review in accordance with the provisions of Chapter 403, Florida Statutes (F.S.) and Chapters 62-4, 62-210 and 62-212, F.A.C. The Permitting Authority responsible for making a permit determination for this project is the Bureau of Air Regulation in the Department of Environmental Protection's Division of Air Resource Management. The Permitting Authority's physical address is: 111 South Magnolia Drive, Suite #4, Tallahassee, Florida 32301. The Permitting Authority's mailing address is: 2600 Blair Stone Road, MS #5505, Tallahassee, Florida 32399-2400. The Permitting Authority's telephone number is 850/717-9000.

Petitions: A person whose substantial interests are affected by the proposed permitting decision may petition for an administrative hearing in accordance with Sections 120.569 and 120.57, F.S. The petition must contain the information set forth below and must be filed with (received by) the agency clerk in the Office of General Counsel of the Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station #35, Tallahassee, Florida 32399-3000. Petitions must be filed within 21 days of receipt of this exemption from air permitting requirements. A petitioner shall mail a copy of the petition to the applicant at the address indicated above, at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the approval of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

A petition that disputes the material facts on which the Permitting Authority's action is based must contain the following information: (a) The name and address of each agency affected and each agency's file or identification number, if known; (b) The name, address, and telephone number of the petitioner; the name, address and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination; (c) A statement of when and how each petitioner received notice of the agency action or proposed decision; (d) A statement of all disputed issues of material fact. If there are none, the petition must so state; (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action; (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action including an explanation of how the alleged facts relate to the specific rules or statutes; and, (g) A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the agency to take with respect to the agency's proposed action. A petition that does not dispute the material facts upon which the Permitting Authority's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Permitting Authority's final action may be different from the position taken by it in this action. Persons whose substantial interests will be affected by any such final decision of the Permitting Authority on the application have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation: Mediation is not available in this proceeding.

Effective Date: This permitting decision is final and effective on the date filed with the clerk of the Permitting Authority unless a petition is filed in accordance with the above paragraphs or unless a request for extension of time in which to file a petition is filed within the time specified for filing a petition pursuant to Rule 62-110.106, F.A.C., and the petition conforms to the content requirements of Rules 28-106.201 and 28-106.301, F.A.C. Upon timely filing of a petition or a request for extension of time, this action will not be effective until further order of the Permitting Authority.

Judicial Review: Any party to this permitting decision (order) has the right to seek judicial review of it under Section 120.68, F.S., by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department of Environmental Protection in the Office of General Counsel, Mail Station #35, 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The notice must be filed within 30 days after this order is filed with the clerk of the Department.

Executed in Tallahassee, Florida
For the Division of Air Resource Management

_____ _____
Jeffery F. Koerner, Administrator (Date)
Office of Permitting and Compliance

JFK/aal

CERTIFICATE OF SERVICE

The undersigned duly designated deputy agency clerk hereby certifies that this Extension of Air Construction Expiration Date was sent by electronic mail, or a link to these documents made available electronically on a publicly accessible server, with received receipt requested before the close of business on _____ to the persons listed below.

Charles E. Grawey, V.P., Highlands Ethanol, LLC: charles.grawey@vercipia.com
Santiago Arcila, Vercipia Biofuels: santiago.arcila@vercipia.com
Kyle Kekeisen, Vercipia Biofuels: kyle.kekeisen@vercipia.com
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Rick Helms, Highlands County: rhelms@hcbcc.org
Jim Shore, Esq., General Counsel, Seminole Tribe of Florida: c/o amotlow@semtribe.com
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Barbara Friday, DEP OPC: barbara.friday@dep.state.fl.us
Lynn Scearce, OPC Reading File: lynn.scearce@dep.state.fl.us

FILING AND ACKNOWLEDGMENT FILED, on this date, pursuant to Section 120.52(7), Florida Statutes, with the designated agency clerk, receipt of which is hereby acknowledged.

_____ _____
(Clerk) (Date)