

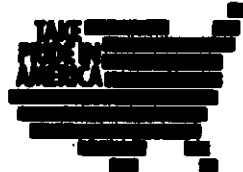


ADDRESS ONLY THE DIRECTOR,
FISH AND WILDLIFE SERVICE

United States Department of the Interior

FISH AND WILDLIFE SERVICE

WASHINGTON, D.C. 20240



November 26, 1997

Mr. John Seitz
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
Mail Drop 10
Research Triangle Park, North Carolina 27711

RECEIVED
DEC 04 1997
BUREAU OF
AIR REGULATION

RECEIVED
DEC 04 1997
BUREAU OF
AIR REGULATION

Dear Mr. Seitz:

The U. S. Fish and Wildlife Service (FWS) requests that EPA repeal the alternative fuel exemption of the Prevention of Significant Deterioration (PSD) regulations at 40 CFR 52.21(b)(2)(iii)(e)(1). We suggest that this be accomplished through the transitional New Source Review reform regulations, which we understand will be out for review shortly. FWS believes that the alternative fuel exemption rule, promulgated in the 1970's, is no longer relevant and has outlived its usefulness. In fact, the rule is now being used, contrary to its original intent, to justify the burning of waste fuels by certain sources. For example, the Florida Power Company (FPC) has recently requested the alternative fuels exemption for FPC's permit application to blend 5 percent petroleum coke with the coal burned in its Crystal River Units 1 and 2. In usual circumstances, this fuel change would trigger PSD review because sulfur dioxide emissions would increase by approximately 9400 tons per year. However, FPC asserts that a rule in Florida's State Implementation Plan exempts from PSD review the "Use of an alternative fuel or raw material which the facility was capable of accommodating before January 6, 1975,..." Florida's rule tracks the EPA rule (referenced above).

The Florida Department of Environmental Protection denied FPC's request in June 1996. EPA Region IV supported FDEP's decision in letters of February 1996 and June 1996, agreeing that the project should not be exempt from PSD review. EPA Region IV noted that petroleum coke is considered a waste product, not a fossil fuel, and adding it to coal does not make the blend an "alternative fuel." However, FPC subsequently petitioned for a Formal Administrative Hearing and, as a result of that hearing, an Administrative Law Judge ruled in favor of FPC. Apparently, the judge believed that a plain reading of the exemption rule allowed FPC's interpretation, whereas FDEP's interpretation depended on analyses of memoranda, original preambles, and interpretations of intent.

We are very concerned that the judge's decision will set a precedent for "grandfathered" facilities to blend waste fuels with their present fuels through the use of this exemption rule. As a result, substantial emissions increases will occur without PSD review, clearly an unintended consequence of the rule.

FWS believes that the alternative fuels exemption rule should be repealed to prevent similar misapplications. As you know, the rule is not mentioned in the Clean Air Act (or subsequent amendments), but first appeared in a 1971 NSPS rule. The rule was incorporated in the PSD regulations in 1974. Over 20 years have passed since the rule was promulgated, and it is reasonable to assume that any facility built prior to the passage of the PSD rule and needing the exemption to make use of their full design has already done so. Until the rule is repealed, we recommend that EPA clarify the intent of the rule to insure that it is only applied to fuel switches clearly contemplated and specified during original design. The exemptions should be very narrow in view of their absence from the Clean Air Act.

Please inform us of your decision in this matter. If you have questions, please call me (303-969-2814) or Ellen Porter (303-969-2617) at our Air Quality Branch.

Sincerely,



Sandra V. Silva
Chief, Air Quality Branch

cc: Mr. John Harkinson, Jr.
Regional Director
U.S. EPA, Region 4
100 Alabama St., SW
Atlanta, Georgia 30303

Mr. Doug Neeley, Chief
Air and Radiation Branch
U.S. EPA, Region 4
100 Alabama St., SW
Atlanta, Georgia 30303

Ms. Virginia Wetherell, Secretary
Florida Department of Environmental Protection
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Mr. Howard Rhodes
Chief, Division of Air Resources Management
Florida Department of Environmental Protection
Twin Towers Office Building
2600 Blair Stone Road
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Mr. Clair Fancy
Chief, Bureau of Air Regulation
Florida Department of Environmental Protection
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400



Department of Environmental Protection

AL

Lawton Chiles
Governor

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Virginia B. Wetherell
Secretary

November 24, 1997

Ms. Sandra V. Silva, Chief
Air Quality Branch
Fish and Wildlife Service
United States Department of the Interior
Washington, DC 20240

Dear Ms. Silva:

Secretary Wetherell asked me to respond to your November 4 letter about the recommended order from the administrative law judge (ALJ) to issue a permit to Florida Power Corporation for the planned petroleum coke utilization project at Crystal River, Florida.

The matter was recently remanded to the ALJ, and we are waiting on his response before further consideration by the Secretary. The Secretary and the Office of General Counsel will review the revised or updated order based on the facts and the rules. A Final Order will then be issued. At this time, intervention on the part of any public official would be ex-parte communication, which is forbidden under Florida law. However, exceptions to the Recommended Order can be filed and responded to while the matter is under consideration by the Secretary. The Final Order can be appealed to the First District Court of Appeals if action is taken within thirty (30) days of issuing Final Order.

Your concerns are consistent with the case we presented at the hearing. If you have any questions or need more information, please contact Mr. Al Linero at 850/488-1344.

Sincerely,

Howard L. Rhodes, Director
Division of Air Resources
Management

HLR/aal



U.S. FISH & WILDLIFE SERVICE AIR QUALITY BRANCH

P.O. BOX 25287, Denver, CO 80225-0287

FACSIMILE COVER SHEET

Date: 2/3

Telephone: (303) 969-2617

Fax: (303) 969-2822

To: Al Linero

From: Ellen Porter

Subject: FPC - Petcoke - EPA's reply to FWS
letter - FYI

Number of Pages:

(Including this cover sheet)

3

Office Location: 7333 West Jefferson Ave, Suite 450, Lakewood, CO 80235



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

JAN 21 1998

Ms. Sandra V. Silva
Chief, Air Quality Branch
Fish and Wildlife Service
United States Department of the Interior
Washington, D.C. 20240

Dear Ms. Silva:

This is in response to your November 26, 1997 letter requesting that the Environmental Protection Agency (EPA) repeal the alternative fuels exemption in the prevention of significant deterioration (PSD) regulations at 40 CFR 52.21(b)(2)(iii)(o)(1). You request the repeal because you believe the exemption is no longer relevant, has outlived its usefulness, and is now being used, contrary to its original intent, to justify the burning of waste fuels by certain sources. You suggest that a repeal be part of the upcoming rulemaking on new source review (NSR) regulations for transitional areas under the new 8-hour ozone standard. Although we understand your concerns and support the denial of the PSD exemption in the Florida Power Company (FPC) case described below, EPA does not plan to propose any changes to the exemption in the upcoming NSR rulemaking for transitional areas. However, as discussed below, EPA intends to review implementation of the exemption and issue guidance as needed to clarify the intent of the exemption.

In support of your request, you referred to a recent request by the FPC to the Florida Department of Environmental Protection (FDEP) for permission to blend petroleum coke with the coal burned at Crystal River units 1 and 2. Your letter states that as a result of the fuel blending the sulfur dioxide emissions from the units would increase by approximately 9400 tons per year without undergoing a PSD review. The FPC asserts that the PSD regulations exempt the burning of petroleum coke in the units since the State and EPA rules both exempt the "Use of an alternative fuel or raw material which the facility was capable of accommodating before January 6, 1975" In June 1996 the FDEP denied the FPC's request to blend petroleum coke. The EPA Region IV office supported the denial agreeing that the project should not be exempt from PSD. However, the FPC appealed the denial using the State's administrative appeals process and received a reversal of the denial from an Administrative Law Judge. Despite the Administrative Law Judge's initial finding, we understand that the denial has been remanded by the FDEP back to the Administrative Law Judge for further review.


2

We share your concerns about the use of the PSD exemption in the FPC case. Although EPA believes the PSD exemption was not intended to be used in the FPC situation, the exemption is still appropriate to allow sources to switch between fuels that would have otherwise been available prior to January 6, 1975 to the source and were otherwise considered in the design of the source. The EPA believes that since petroleum coke was not a recognized fuel prior to January 6, 1975, it would not otherwise come under the exemption. The EPA does not believe that regulatory changes to the exemption are needed at this time based solely on the FPC case. Because we share many of your concerns, EPA's Office of Enforcement and Compliance Assurance (OECA) has agreed to review implementation of the exemption by EPA and the States. After reviewing the situation, EPA may issue guidance that further clarifies the intent of the exemption.

You may contact Carol Holmes of OECA at (202) 564-8709 for questions about the EPA's review of the exemption. If you have any general questions about this response, you may contact Mike Sewell of the Integrated Implementation Group at (919) 541-0873.

I appreciate this opportunity to be of service and trust that this information will be helpful to you.

Sincerely,



John S. Seitz

Director

Office of Air Quality Planning
and Standards

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Office of the Secretary Correspondence Control

Correspond Number	Date Received	Date Written	Subject Reference	Date Due
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EO-00583 11/12/97 11/04/97 fuel at Crystal River Plant 11/26/97

Name: Sandra V Silva
Affiliated Organization: US Fish & Wildlife Serv
Address: Washington DC

City/State/Zip: Washington, DC 20240
Phone: 303-969-2814

AffiliationType: Government
Governor's Ref:
Assigned to: Air Resources
County: DC
Category: Air Program
Rules:

INSTRUCTIONS: **Respond**

Division/District Director or representative prepare response. Signature is at the discretion of the Division/District Director. State that reply is for the addressee (VW, KG, PM or LC). Blind copy Jack Pons.

COMMENTS: cc Perry O

Assigned by Jack Pons, Office of the Secretary

Phone: 487-0940 SC: 277-0940

5-12-96 Facts
cnc:blaw

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Clair - p/s draft
response my
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for

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NOV 13 1997

DIVISION OF AIR
RESOURCES MANAGEMENT

AL

A10
R
S
Chris
Howard
11/6**U.S. FISH & WILDLIFE SERVICE
AIR QUALITY BRANCH**

P.O. BOX 25287, Denver, CO 80225-0287

FACSIMILE COVER SHEET*Date: November 4, 1997**Telephone: (303) 969-2617**Fax: (303) 969-2822**To: Virginia Wetherell*

NOV 04 1997

U.S. DEPT. OF AIR
RESOURCE MANAGEMENT*From: Ellen Porter*

Subject: Florida Power Corporation's Proposal to burn Petcoke blend at Crystal River Plant. Attached letter is request to you from the U.S. Fish and Wildlife Service to either deny FPC's request for exemption from PSD review or to remand the case to the appropriate court.

*Number of Pages: 3
(Including this cover sheet)*

Office Location: 7333 West Jefferson Ave, Suite 450, Lakewood, CO 80235



ADDRESS ONLY THE DIRECTOR,
FISH AND WILDLIFE SERVICE

orig Hpro and Rhodes d. response
cc Betty Odon
United States Department of the Interior

FISH AND WILDLIFE SERVICE

WASHINGTON, D.C. 20240

TAKE
PRIDE IN
AMERICA

November 4, 1997

OFFICE OF THE SECRETARY

Ms. Virginia Wetherell
Secretary, Florida Department of Environmental Protection
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

RECEIVED

NOV 13 1997

DIVISION OF AIR
RESOURCES MANAGEMENT

Dear Ms. Wetherell:

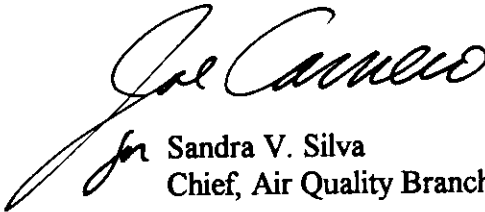
We understand that, in the near future, you will be making a decision regarding Florida Power Corporation's (FPC) request to burn a blend of petroleum coke and coal at the FPC Crystal River Plant in Citrus, Florida. The Crystal River Plant is located 21 km north of the Chassahowitzka Wilderness Area, a Class I area administered by the U.S. Fish and Wildlife Service (FWS). As you know, FPC maintains that its proposed action should be exempt from Prevention of Significant Deterioration (PSD) review, even though the action will result in an actual increase in sulfur dioxide emissions of over 9000 tons per year.

We are aware that your Department previously ruled that the FPC project should be subject to PSD review. We are also aware that EPA Region IV fully supported your Department's position on this matter. We stated FWS support of your position in letters from our Regional Director in Atlanta (FWS Region 4) to your Department in February 1996 and November 1996.

Therefore, we were very concerned to learn that, as a result of a June 1997 hearing, an Administrative Law Judge in Florida ruled in favor of FPC. Apparently the judge's interpretation of the alternative fuels exemption rule did not take into consideration the intent of the rule and subsequent EPA interpretation of the rule. The alternative fuels exemption rule was intended to allow flexibility in fuel use during a time (i.e., the 1970's) when certain fuel supplies were uncertain. It was not intended to undermine the purposes of the Clean Air Act (e.g., "to protect and enhance the quality of the Nation's air resources") by allowing sources to burn cheap, dirty fuel. Therefore, we believe that the judge's ruling is in error and we ask you to, once more, deny FPC's request for exemption from PSD review and, if necessary, remand the case for further consideration.

Please inform us of your decision in this matter. If you have questions, please call me (303-969-2814) or Ellen Porter (303-969-2617) at our Air Quality Branch.

Sincerely,



Sandra V. Silva
Chief, Air Quality Branch

cc: Doug Neeley, Chief
Air and Radiation Branch
U.S. EPA, Region 4
100 Alabama St., SW
Atlanta, Georgia 30303