cc: Clair
orig. file (FPC pet coke)
from: Howard 1/27

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

JAN 21 1998

Mr. Howard L. Rhodes
Director, Division of Air Resources Management
Florida Department of Environmental Protection
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Dear Mr. Rhodes:

This is in response to your December 12, 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)(e)(1). The corresponding State rule under Florida's State implementation plan (SIP) closely tracks the Federal rule. 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 are also concerned that as a result of deregulation, electric utilities will have a big incentive to burn waste and dirty fuels that are cheaper than normal fuels. Although we understand your concerns and support the denial of the PSD exemption in the Florida Power Company (FPC) case described below, EPA currently has no plans to propose any changes to the regulatory exemption. 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 refer 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 also 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.

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 to the source prior to January 6, 1975 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 should 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, the 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 the 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,

Henry Thomas

John S. Seitz
for Director
Office of Air Quality Planning
and Standards

Department of Environmental Protection

Lawton Chiles
Governor

Twin Towers Office Building
2600 Blair Stone Road
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Virginia B. Wetherell
Secretary

December 12, 1997

12/12(m)

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

Re: Request to Repeal Alternative Fuel PSD Exemption

Dear Mr. Seitz:

The Florida Department of Environmental Protection (FDEP) requests that EPA repeal an exemption to its rules for the Prevention of Significant Deterioration of Air Quality (PSD) found at 40 CFR 52.21(b)(2)(iii)(e)(1). The rule exempts from PSD review "Use of an alternative fuel or raw material which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166;..." The corresponding State rule under our approved State Implementation Plan (SIP) closely tracks the federal rule. We recommend repeal of the alternative fuel part of the exemption, but not necessarily the raw material portion.

In a recent case, FDEP initially denied a permit to Florida Power Corporation (FPC) to add 5 percent petroleum coke with a sulfur dioxide emission potential of 6.57 pounds per million Btu heat input (lb SO_2/mmBtu) to the coal burned at two units at its Crystal River facility. The SO_2 limit for these units is 2.1 lb/mmBtu. In recent years, the units have emitted an average of 1.6 lb/mmBtu while burning coal. The Department determined that PSD applied to this change in method of operation because SO_2 emissions would increase, per FPC's estimate, by approximately 9400 tons per year (TPY) due to the potent sulfur characteristics of the petroleum coke to be blended with the contract coal.

FPC claimed the subject exemption from PSD contending that it could have fired a 95 percent coal/ 5 percent petroleum coke blend prior to 1975. However the FDEP determined that it did not apply because the facility was not burning coal (let alone a coal/petroleum coke blend) on January 6, 1975 and were not able to do so until several years after being ordered in mid-1975 to switch (back) to coal by the Federal Energy Administration. Major expenditures were involved to return the units to their coal firing capability in the late 1970's. Additionally the FDEP determined that the action of adding 5 percent petroleum coke was not actually a switch to an alternative fuel such that the exemption could be considered. Furthermore the FDEP determined that such a fuel use did not fit the purpose of the original exemption as described in the modification definition given in the original New Source Performance Standards (NSPS) issued in 1971 and with which the PSD rules must ultimately comport per the 1977 Clean Air Act.

The subject exemption first appeared in a 1971 NSPS rule (Federal Register, Vol. 36, No. 247 at page 24877). The EPA stated that the definition of modification was clarified to exclude "fuel switches if the equipment was originally designed to accommodate such fuels." The justification given for the exemption was to "eliminate inequities where equipment had been put into partial operation prior to the proposal of the standards." In the litigation with FPC, the Department claimed that FPC failed to demonstrate the use

of petroleum coke as a fuel was designed into the source (i.e., the construction plans and specifications did not contemplate the use of petroleum coke as a fuel). It necessarily follows that there is no equity consideration in FPC's proposed project because FPC is already able to make full use of its equipment by firing coal as originally intended. The FPC proposal to add 5 percent petroleum coke is not eligible for exemption as a "fuel switch" as discussed in the NSPS. The action is not a switch from one fuel to another, but rather the addition of small amounts of a waste fuel with potent sulfur concentrations to an approved fuel. This change in operation clearly fits within the definition of a modification.

The FDEP's position was fully supported by EPA Region IV's letters dated February 14 and June 2, 1997. EPA also commented on the absurdity that coal and minor amounts of any waste fuel, additive, or modifier might be considered an alternative fuel for the purposes of the subject exemption. A hearing was held this past June. The Administrative Law Judge ruled that the plain reading of the rule seems to support FPC's interpretation. FDEP's interpretation and analyses are consistent with memoranda, original preambles, and other EPA interpretations of the exemption. The judge agreed with FPC's claim that Region IV had misapprehended the facts in formulating its opinion.

The implications of the judge's decision are that PSD and NSPS-exempt facilities (grandfathered facilities) can blend wastes and dirty fuels they never intended to use into their regular fuel through a provision which was intended only to allow them to realize design capacity. These FPC units already operated at design capacity in terms of the fuels they were previously permitted to burn (coal, oil, and gas). The result is that substantial emissions increases from such grandfathered units can occur with relative ease. FDEP believes this is clearly an unintended consequence of a well-meaning rule.

At this time of electrical deregulation, utilities have a big incentive to add cheaper and dirtier fuels and wastes to their normal fuels. In this state the grandfathered units are now starting to compete in the waste fuel market with facilities that were specifically designed to burn such dirty fuels in a responsible manner. These grandfathered units have an advantage over cleaner, scrubber-equipped, electric units which have been required by FDEP to abate emission increases resulting from burning petroleum coke or be (re)subjected to PSD review.

FDEP recommends repeal of the alternative fuel exemption portion of the rule. It has outlived its expected useful lifetime just as many of the sources seeking to use it have outlived their intended useful lifetimes. Twenty-six (26) years have passed since the NSPS fuel exemption was promulgated while 23 years have passed since the PSD version of the exemption was promulgated. It is reasonable to assume that any facility built prior to the passage of the rule and needing it to make use of its full design capacity has already done so. Until the rule is repealed, we recommend that EPA clarify the intent of both versions of the rule to insure that they are applied only to fuel switches clearly contemplated and specified during original design. The exemptions should be very narrow in view of their absence from the CAA.

Our contacts at Region IV were Brian Beals and Gregg Worley at 404/562-9098 and 562-9141 respectively. They were extremely helpful during our evaluation of this case and can provide you with some of the details and implications from their perspective. If you have any questions, please call me at 850/488-0114.

Sincerely,

Howard L. Rhodes

Howard L. Rhodes, Director
Division of Air Resources Management

cc: Mr. Winston Smith, EPA Region IV