

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT	:	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION,	:	SOUTHEAST FLORIDA DISTRICT
	:	
Complainant,	:	
vs.	:	OGC FILE NO. 00 - ^
	:	
Miami-Dade Dept. of Solid Waste Mgmt.	:	
	:	
Respondent.	:	
<hr/>		

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department"), and Miami-Dade Solid Waste Management ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapter 403 and 376, Florida Statutes (F.S.), and the rules promulgated thereunder, Florida Administrative Code Title 62. The Department has jurisdiction over matters addressed in this Consent Order.
2. Respondent is a person within the meaning of Section 403.031(5), Florida Statutes.
3. Respondent is the owner of a Facility located at 6990 NW 97th Avenue, Miami.
4. A review of Department records and information submitted to the Department indicates modification and operation of the modified boilers occurred without the appropriate PSD permit modifications.
5. The Department and Respondent met on March 16, 2000 to discuss the matter and to attempt to reach resolution. The discussion resulted in an acceptable settlement requiring the Respondent to apply for an after the fact permit modification for the boilers to be incorporated into their Title V permit.

Having reached resolution of this matter, the Department and Respondent mutually agree and it is,

ORDERED

6. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department \$9350.00 in settlement of the matters addressed in this Consent Order. This amount includes \$9000.00 in civil penalties for alleged violations of Section 403.161, F.S. and Department rules, and \$350.00 for costs & expenses incurred by the Department during the investigation of this matter and the preparation of this consent order. Payment shall be made by cashier's check to the Department of Environmental Protection and shall include the OGC number assigned to this Consent Order, and the notation "Ecosystem Management & Restoration Trust Fund". Payment shall be sent to the Department of Environmental Protection, Southeast District, PO Box 15425, West Palm Beach 33416.

7. Within 30 days of the effective date of this Consent Order, Respondent shall submit an after-the-fact PSD permit modification for the changes to the boilers, which shall be incorporated into the current Title V permit for Respondent's facility when approved.

8. Respondent's written response shall be due within 10 working days of any Department written request for additional information.

9. Should the permit modification be denied, the Department will assess penalties for any continued operation of the modified boilers, as well as any cost savings experienced by Respondent for not obtaining this permit previously.

10. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Order, hereby waives its right to seek judicial imposition of damages or civil penalties for alleged violations outlined in this Consent Order.

11. Respondent waives its right to an administrative hearing afforded by Sections 120.569 and 120.57, Florida Statutes, on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes, but waives that right upon signing this Consent Order.

12. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to timely comply with the requirements

of paragraphs 6, 7 and 8 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Consent Order. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to the " Ecosystem Management & Restoration Trust Fund " by cashier's check or money order and shall include thereon the OGC number assigned to this Consent Order and the notation "Pollution Recovery Fund". Payment shall be sent to the Department of Environmental Protection, Southeast District Office, P.O. Box 15425, West Palm Beach, Florida, 33416. The Department may make demands for payment at any time after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Consent Order. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in paragraph 6 of this Consent Order. If the Department is required to file a lawsuit to recover stipulated penalties under this paragraph, the Department will not be foreclosed from seeking penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this paragraph.

13. Persons who are not parties to this Consent Order but whose substantial interests are affected by this Consent Order have a right, pursuant to Sections 120.569 and 120.57, F.S., to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S.

The petition shall contain the following information:

(a) The name, address, and telephone number of each petitioner; the Department's Consent Order identification number and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of the Consent Order; (c) A statement of how each petitioner's substantial interests are affected by the Consent Order; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Consent Order; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order; (g) A

statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, F.A.C.

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, F.S., or may choose to pursue mediation as an alternative remedy under Section 120.573, F.S., before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

- (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;

(d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;

(e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;

(f) The name of each party's representative who shall have authority to settle or recommend settlement;

(g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference; and

(h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, F.S., the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, F.S., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, F.S., remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

14. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, materialman or other agent

(collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of Respondent, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this Paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Consent Order.

15. Nothing herein shall be construed to limit the authority of the Department to undertake any action against any Respondent in response to or to recover the costs of responding to conditions at or from the site that require Department action to abate an imminent hazard to the public health, welfare or the environment.

16. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.

17. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.161(1)(b), F.S.

18. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties up to \$10,000 per day per violation and criminal penalties.

19. Respondent shall allow all authorized representatives of the Department access to the property and facility at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the Department.

20. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes or the rules promulgated thereunder that are not specifically addressed by the terms of this Consent Order.

21. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both the Respondent and the Department.

22. In the event of a sale or conveyance of the facility or of the property upon which the facility is located, if all of the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the property or facility, (1) notify the Department of such sale or conveyance, (2) provide the name and address of the purchaser, or operator, or person(s) in control of the facility, and (3) provide a copy of this Consent Order with all attachments to the new owner. The sale or conveyance of the facility, or the property upon which the facility is located shall not relieve the Respondent of the obligations imposed in this Consent Order.

23. Respondent shall use all reasonable efforts to obtain any necessary access for work to be performed in the implementation of this Consent Order. If necessary access cannot be obtained, or if obtained, is revoked by owners or entities controlling access to the properties to which access is necessary, Respondent shall notify the Department within five business days of such refusal or revocation. The Department may at any time seek to obtain access as is necessary to implement the terms of this Consent Order. The Respondent shall reimburse the Department for any damages, costs, or expenses, including expert and attorneys fees, that the Department is ordered to pay, or that the Department incurs in connection with its efforts to obtain access as is necessary to implement the terms of this Consent Order. Respondent shall pay these sums to the Department or arrange a payment schedule with the Department within 30 days of written demand by the Department.

24. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law.

25. This Consent Order is a final order of the Department pursuant to Section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon

the timely filing of a petition this Consent Order will not be effective until further order of the Department.

FOR THE RESPONDENT:

DATE: _____

^
^
^

DONE AND ORDERED this _____ day of _____, 2000,
in West Palm Beach, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Melissa L. Meeker
Director of District Management
Southeast District

**FILING AND ACKNOWLEDGMENT FILED, on this date, pursuant to
§120.52 Florida Statutes, with the designated Department Clerk, receipt
of which is hereby acknowledged.**

Clerk

Date

Montenay / Dade County Meeting

3/16/00

David Buff	Golden Associates	352-336-5600
Ben Gilboer	Montenay	305-593-7000
PAT COMER	DEP / OGC	(850) 921-9621
JIM PENNINGTON	DEP / BAR	(850) 921-9515
AL LINERO	DEP / BAR	850 / 921 - 9523
Scott Sheplek	DEP / BAR	850 / 921 - 9532
Clair Facey	DEP / BAR	850 921 9503
Tom Tittle	DEP / WPB	
David Dee	Landers + Parsons	850 - 681 - 0311
ANETHA LUE	Montenay	
JESS MCCARTY	DADE COUNTY ATTORNEY'S OFFICE	305-375-5480
JOSEPH KAHN	DEP - BAR	850 - 921 - 9519
LEE CASEY	DC DSWM	305-594-1670
Vicente Castro	DCSWM	305.594-1677
Steve Passage	Montenay	212-826-7054
Bruce Mitchell	FDEP	850-921-9506



Jeb Bush
Governor

Department of Environmental Protection

Southeast District
P.O. Box 15425
West Palm Beach, Florida 33416

David B. Struhs
Secretary

JAN 27 2000
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

WARNING LETTER
WL00-0001AS13SED
AP - Dade County

Vicente Castro, Assistant Director 305-594-6670
Technical Services
Department of Solid Waste Management
8675 NW 53rd Street, Suite 201
Miami, Florida 33166

Subject: Operation/Construction without a modified DEP permit at the Miami-Dade Resource Recovery Facility Located at 6990 NW 97th Ave., Miami

Dear Mr. Castro:

The purpose of this letter is to advise you of possible violations of law for which you may be responsible, and to seek your cooperation in resolving the matter. A review of Department records and information submitted to the Department indicates that a violation of Florida Statutes and Rules may exist at the above described facility. The record review showed reconstruction and operation of boilers without the appropriate permit modification.

Section 403.161 (1)(b), Florida Statutes, provides that it is a violation to fail to comply with any rule, regulation, order, permit or certification adopted or issued by the Department pursuant to its lawful authority. It is a violation of Florida Administrative Code (F.A.C.) Rule 62-210.300(1) to modify any facility regulated by a PSD determination without the appropriate permit modification.

The above incident, and any other activities at your facility that may be contributing to violations of the above described statutes and rules, should be ceased immediately. Continued activity in violation of state statutes or rules may result in liability for damages and restoration. In accordance with the August 12, 1997 Department's "Settlement Guidelines for Civil Penalties", and based on the Department Air Program's Civil Penalty Matrix, the penalty which would be proposed in this case is \$9000.00 plus \$350.00 for the Department's costs & expenses.

You are requested to contact Rich Hofmann or Tom Tittle of this office at 561-681-6622 or 681-6624 within 15 days of receipt of this Warning Letter to arrange a meeting with Department personnel to discuss this matter. The Department is interested in reviewing any facts you may have that will assist in determining whether

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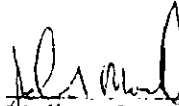
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Miami-Dade RRF
WL00-0001AS13SED
Page 2 of 2

any violations have occurred. You may bring anyone with you to the meeting that you feel may help resolve this matter.

PLEASE BE ADVISED that this Warning Letter is part of an agency investigation preliminary to agency action in accordance with Section 120.57(4), Florida Statutes. We look forward to your cooperation in completing the investigation and resolution of this matter.

Sincerely,


Melissa L. Meeker
Director of District Management
Southeast District

1/26/00
Date

MLM:IG:rh

cc: Dianne Spingler, DARM, DEP, Tallahassee
Air Enforcement Files, DEP, West Palm Beach
Patrick Wong, Dade DERM

Al, F4J.
Scott
1/25

January 25, 2000

Mr. Scott Sheplack, PE
Division of Air Resources Management
Florida Department of Environmental Protection
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Re: Miami-Dade Resources Recovery Facility – Initial Title V Draft Permit Comments

Dear Mr. Sheplack:

Enclosed please find comments to the Initial Title V Draft Permit for the Miami-Dade County Resources Recovery Facility. These comments are submitted by Miami-Dade County Department of Solid Waste Management (DSWM) as permittee for the facility and Montenay Power Corporation (MPC), the plant operator. We appreciate the opportunity to comment on the permit and request that we meet with you and the other Florida Department of Environmental Protection (FDEP) staff at a convenient time to discuss our comments. We believe that this meeting will help to minimize the time required for FDEP staff to review the comments and to help insure that the final permit reflects the currently permitted operation and equipment. The following are some general comments and background information. For ease in your review, we have prepared a redlined and annotated draft in Microsoft Word of the entire permit, which is on the enclosed disk. We have also e-mailed a copy to you. Each annotation can be read by placing the pointer in the highlighted text.

The current draft permit outlines a method for clarifying the permit status of the facility in 1989. We understand that this information should be made clear for the purpose of FDEP's records. Any additional information DSWM obtains in its research of regulatory files will be forwarded to the FDEP. Therefore, we request that conditions A.58.1 and A.58.2 in Section III Subsection A be removed. The remainder of Section III, Subsection A, describes the on-site units (before Subpart Cb retrofit). We have several modifications to this section to reflect the Fives-Cail Babcock/Zurn boilers operation as accurately as possible. We understand that this Section becomes obsolete upon completion and successful testing of the new air pollution control equipment.

With regard to the remaining sections of Section III (i.e. Subsection B. through F.) several conditions appear to be in error. DSWM and MPC have worked with the FDEP's New Source Review Section in Tallahassee for an entire year to modify and clarify the conditions that apply to the facility. We first met jointly with the New Source Review Section and the Office of Siting Coordination in December 1998, with the objective of modifying the construction and operating permits (Prevention of Signification Deterioration (PSD), and Conditions of Certification (COC)) to reflect the final guidelines of 40 CFR 60 Subpart Cb. Since the first meeting, MPC has submitted, on behalf of the DSWM, a great deal of information to the FDEP to clarify issues of emissions, enforceable limits, unit operating load limit and measurement method, monitor accuracy, fuel types, operator training deadlines, etc. Since a significant effort was taken to attempt to clarify these issues, we have taken the liberty of enclosing the final draft of that yearlong effort. The attached draft reflects the areas that were resolved and the final changes that were discussed with FDEP. Unfortunately, the New Source Review Section chose not to

make the changes detailed in the final draft and instead decided to use the Title V permit process as the vehicle for defining the correct emission levels. Consequently, the PSD and COC permits under which the plant is currently operating do not reflect the final Subpart Cb standards and we will look to the Title V permit for specific clarification of emission limits.

In addition to providing the attached detailed comments to the Initial Title V Draft permit, we would like to highlight a few issues pertaining to the permit.

- ◆ The permit makes reference to the facility as a 40 CFR Subpart Eb facility. We understand that certain sections of Subpart Eb apply (where referenced by Subpart Cb), however, no previous determination by FDEP or any other agency has indicated that the facility is subject to Subpart Eb in its entirety. We request that the reference to Subpart Eb be clarified so as to avoid confusion. A number of emission limits of Subpart Eb are also cited in the permit. We request that these references be amended to reflect the correct emission limits from Subpart Cb.
- ◆ Information on the steam flows and emissions for the facility was provided to the New Source Review Section during the past year in an attempt to clarify the correct unit load limits consistent with the Subpart Cb definitions. Subpart Cb specifies that unit load should be monitored by steam flow measurements taken during a 4-hour period. Presently, the facility averages steam flow over a 24-hour period to insure that the units meets the design criterion of 180,000 pounds per hour. After discussions with FDEP, DSWM agreed to restate the design conditions of the units as 180,000 lbs./hr on a 4-hour block average (for the purpose of the permit) provided that the maximum limit was established according to the provisions of Subpart Cb. Subpart Cb states that a municipal waste combustor's maximum steam flow is determined by 110 percent of the last successful compliance test. We request that the conditions regarding unit load be so stated in the Title V permit.
- ◆ Relative to the issue of capacity, we also made note of the fact that 936,000 tons per year of Refuse Derived Fuel is combusted in the units. This capacity was used to determine emissions from the facility for the PA 77-08 permit application information and it is an accurate representation of the processing capacity of the units.
- ◆ We also discussed the matter of VOC testing with FDEP. Since Subpart Cb does not require VOC monitoring, we requested that this requirement be removed from the PSD and COC permits. The facility is located in an area that is currently an attainment area for ozone. Previously, it was a non-attainment area for ozone. Therefore, the Department agreed to consider removing this requirement if the facility were able to demonstrate that emissions were below 100 tons per year. Language was added to the draft PSD to reflect this condition (see attachment).
- ◆ The requirement to test Beryllium should be deleted. We did not request that this condition be deleted previously, but it has recently come to our attention that it does not apply to this facility. We request that the requirement to test for hydrogen fluoride, arsenic and sulfuric acid mist also be removed since there are no federal or state enforceable limits for these parameters. This was previously agreed to by FDEP.

In short, DSWM respectfully requests FDEP make the changes to the permit contained in this correspondence in order to achieve the goal of EPA's March 1996 White Paper. That guidance document advises States to use the Title V process to delete obsolete conditions from permits, and to insure that all permit conditions are based on enforceable federal or state regulations. We believe FDEP and DSWM share the goal of crafting a permit, which clearly defines these requirements, is clear and understandable. We trust the information provided will help achieve this goal.

January 25, 2000

We look forward to meeting with you and your staff to provide any further clarification to resolve the issues contained herein. Please contact me at (305) 594-1670 should you have any questions.

Sincerely,

Lee S. Casey
Chief, Environmental Compliance Division

Enclosures: Final Draft Proposed PSD
Disk w/comments

Cc:	V. Castro-DSWM	W. Uchdorf-DSWM	A. Lue-MPC	F. Screve-MPC
	S. Agara-B&C	H. Oven-FDEP/Tal	T. Heron-FDEP/Tal	D. Buff-Golder
	E. F. Smith-B&C	I. Goldman-FDEP/WPB		



Jeb Bush
Governor

Department of Environmental Protection

Southeast District
P.O. Box 15425
West Palm Beach, Florida 33416

David B. Struhs
Secretary

FAX TRANSMITTAL

DATE 1-20-00 # OF PAGES (including this page) 3 FROM: T. LONG

TO: AL LINERO

PERSON SENDING FAX: _____

AGENCY: FDEP-TALL

TRANSMITTAL ON A HITACHI/HIFAX/35

FAX NUMBER: SC 292 6979

FAX NUMBER: (407) 681-6790-(AIR PROGRAM FAX)

IF ANY OF THE PAGES ARE NOT CLEARLY RECEIVED PLEASE CALL SENDER AT: (407) - 681-6600
S/C 226-6600

COMMENTS: FYI

K.m. - cc.

RECEIVED

JAN 21 2000

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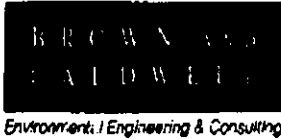
Tel: (305) 418-4090
Fax: (305) 418-4824

RECEIVED

JAN 19 2000

DEPT OF ENV PROTECTION
WEST PALM BEACH

January 14, 2000



Ms. Terri H. Long
Florida Department of Environmental Protection
400 N. Congress Avenue
P.O. Box 15425
West Palm Beach, FL 33416

17929

Subject: NO_x Control at Miami-Dade County
Resources Recovery Facility

Dear Ms. Long:

This letter serves to summarize our discussion on January 11, 2000, regarding the need to install a Selective Non Catalytic Reduction (SNCR) system at the subject Facility.

During our discussion, I explained that several Miami-Dade County Department of Solid Waste Management (DSWM) personnel were of the understanding that installation of an SNCR system was required by the FDEP. Furthermore, they understood that only by proceeding with an SNCR system installation would the FDEP consider the Facility to be still in the construction phase, rather than in start-up, which requires MACT Compliance within 180 days, according to the State Implementation Plan.

The above issues were clarified by you as follows:

Since 40 CFR 60 Subpart Cb, which requires compliance with MACT standards, does not specify a control device or means of achieving those standards, the FDEP is not requiring an SNCR system be installed at this time. However, because certain boiler modifications were performed in the late 1980's without obtaining a revised PSD permit, the FDEP will seek enforcement action against Miami-Dade County. A likely condition or requirement resulting from the enforcement action is that the County apply and receive an "after-the-fact" PSD. That "after-the-fact" PSD may trigger BACT, which in turn may require installation of an SNCR system. If the SNCR system is required by the FDEP, it would be a condition of the PSD permit, a consent order, or some other agreement resulting from the enforcement action. The timetable for completion of the project would be negotiated as part of the permit, consent order or agreement.

The FDEP considers the Facility to be in construction (rather than start-up), since the County will perform certain fuel feed and secondary air system modifications, and

Ms. Terri H. Long
January 14, 2000
Page 2

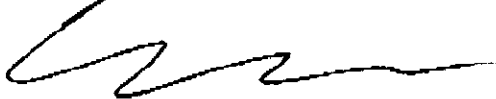
other related projects to meet the carbon monoxide and NO_x standards by November 13, 2000.

In summary the FDEP: 1) does not require installation of an SNCR system at this time, nor is one required to be installed by November 13, 2000, the assumed MACT Compliance date; and 2) considers the Facility to be in the construction phase.

I appreciate you taking the time to clarify these issues. If you do not agree with the content of this letter, please call me or Matt Manzione immediately at (305) 418-4090.

Regards,

BROWN AND CALDWELL

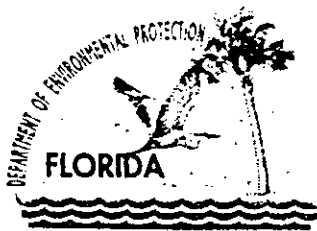


Eduardo F. Smith
Client Service Manager

EFS/sc

Cc: Vicente Castro, DSWM
Lee Casey, DSWM
Matt Manzione, BC
Anetha Leu, Montenay

cc: C. Fancay
M. Hewett
T. Devon
B. Mitchell
J. Pennington



Jeb Bush
Governor

Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

David B. Struhs
Secretary

December 8, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Vicente Castro, Assistant Director,
Technical Services
Department of Solid Waste Management
8675 N.W. 53rd Street, Suite 201
Miami, Florida 33166

Re: DEP File No. PSD-FL-006C and PA 77-08
Dade County Resource Recovery Facility (Units 1-4)
Permit Modifications, Fuel Use, NSPS Requirements, After-the-Fact PSD Permit

Dear Mr. Castro:

Further to the above-referenced Permit Modification dated December 8, 1999, the Department hereby advises you of certain issues related to that permitting action but that are not specifically part of the permitting action.

The Department believes that this facility may need an after-the-fact PSD permit for past modifications to the boilers. The recently-distributed Draft Title V permit includes a compliance requirement concerning the modification of the boilers that provides for submittal of an application for an after-the-fact PSD permit application. This matter will be specifically addressed separately from this permit modification.

The Department recognizes that the facility must comply with the emission limits of 40 CFR 60 Subpart Cb in accordance with Florida's schedule for existing municipal waste combustion facilities. However, to avoid confusion between this permitting action and the future after-the-fact PSD permitting action, the emissions limits in the existing PSD-FL-006A permit (issued in 1994) were not revised in the permitting action of December 8, 1999.

A revised fuel slate was included in the Draft Title V permit. Any requests for changes to the fuel slate can be handled as part of the after-the-fact permit PSD permitting action. A condition adopting steam flow as the indicator of unit load (in lieu of waste tonnage) consistent with Subpart Cb can also be addressed as part of the after-the-fact PSD permit action.

Please note that SNCR could be required as BACT as part of the after-the-fact PSD permitting action described above. In this case, the after-the-fact PSD permit could specify that SNCR is required for the purpose of complying with BACT. Therefore the on-going project to reduce-NO_x emissions by combustion controls should not defeat the purpose of SNCR.

If you have any questions regarding this matter, please contact me at 850/921-9523

Sincerely

C.H. Fancy, P.E., Chief
Bureau of Air Regulation

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PS Form 3800, April 1995

Florida Department of Environmental Protection

Memorandum

To: Al Linero, P.E.
New Source Review Section

From: Joseph Kahn, P.E. 
New Source Review Section

Date: November 22, 1999

Re: Miami-Dade RRF, PSD Applicability

Per your request, I have reviewed the records available for the Miami-Dade RRF to determine if the reconstruction of the boilers triggered PSD.

Miami-Dade County Department of Solid Waste Management owns the Miami-Dade County Resources Recovery Facility, and Montenay International Corp. operates the facility. The facility combusts refuse derived fuel in four combustor units. The facility has been operational since 1982, and received its original PSD permit authorizing construction in 1978 (PSD-FL-006). The facility is a major source of air pollution as defined by Department rules.

In 1986, the wet process garbage processing operation was shut down and the plant was converted to processing garbage and trash in a dry process. From 1987 to 1990 the boilers were upgraded through a capital improvement construction program. As part of this project, the owner and operator rebuilt the four combustion units and among other changes increased the physical size of the four combustion units, replaced boiler tubes and bull noses affected by corrosion from firing the wet-processed waste, and replaced the sides of the units. The internals of the boilers were changed from B&W components to Zurn components. These changes increased the combustion weight capacity from 19.55 TPH (39,100 lb/hr) to 27 TPH each, an increase of 38%. Although available records suggest that the permitted steam generating capacity was increased (perhaps from 175,000 to 180,000 pounds per hour) we do not have sufficient information to determine the actual extent of such an increase. It is obvious that there would have been an actual increase in steam generating capacity given the deteriorated condition of the units prior to reconstruction and modification. These physical changes extended the useful life of the facility, regained lost generating capacity, and increased the capacity of this plant. Miami-Dade County and Montenay performed these physical changes without obtaining New Source Review ("NSR") permits authorizing the construction and operation of physical modifications of its boiler units as required by Department rules and the Clean Air Act.

In January 1989 EPA sent Miami-Dade County a Section 114(a) request for information regarding construction activities at the Resources Recovery Facility, to which the county responded on March 9, 1989. As part of the response, the county characterized the physical changes to the boilers as maintenance, repair or replacement as defined under 40 CFR 60.14(e)(1). This rule provides for maintenance, repair or replacement activities to be exempted from the definition of modification provided that such activities are determined by the EPA Administrator to be routine. The county's implication is that the reconstruction of the boilers was routine, which it was not as further described below. Miami-Dade County's letter to EPA on June 8, 1989 describes a verbal understanding between the county and EPA that that PSD did not apply to the modifications, but there is no record in Department files that EPA ever responded in writing about this issue.

It seems clear that the physical changes did constitute a modification pursuant to Department rules, and it seems likely these changes would result in a significant increase in emissions using EPA's netting calculus. Department rules require that no construction or operation of a major modification of a major source occur unless authorized by an air construction permit. Florida has a fully delegated PSD program with respect to power plants subject to the Power Plant Siting Act. Florida implements this delegation

under 40 CFR 52.21, whose provisions are incorporated by reference into the Florida SIP pursuant to 40 CFR 52.530. For the modifications described above, neither the owner nor operator of the facility obtained a PSD permit, nonattainment NSR permit or a minor source permit. Nor was this project exempt from permitting.

None of the modifications fall within the "routine maintenance, repair and replacement" exemption found at 40 CFR 52.21(b)(2)(iii)(a) and Department Rule 62-210.200(183)(a)1.a., F.A.C. Each of these changes was an expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life. In each instance, the change was performed to increase capacity, regain lost capacity, and/or extend the life of the unit. In many instances, the original component was replaced with a component that was substantially redesigned in a manner that increased emissions. That the "routine maintenance, repair and replacement" exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld by the court of appeals in 1990. Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

None of these modifications fall within the "increase in hours of operation or in the production rate" exemption found at 40 CFR 52.21(b)(2)(iii)(f), or Florida Rule 62-210.200(183)(a)2., F.A.C. This exemption is limited to stand-alone increases in operating hours or production rates, not where such increases follow or are otherwise linked to construction activity. That the hours of operation/rates of production exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld twice by the court of appeals, in 1989 and in 1990. Puerto Rican Cement Co. v. EPA, 889 F.2d 292 (1st Cir. 1989); Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

It seems clear that the reconstruction of the boilers constituted a modification. The reconstruction was a physical change that would have resulted in increases in emissions exceeding the PSD significance criteria. EPA's current actions against coal-fired boilers for failure to obtain PSD permits for less extensive changes demonstrate that the physical changes at Dade RRF required a PSD permit. Particularly in light of EPA's current nationwide emphasis on detecting and remedying failures of owners and operators to obtain PSD permits, the Department should require an after-the-fact PSD permit for the reconstruction of the boilers at the Miami-Dade Resources Recovery Facility.