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Florida Department of Environmental Protection
2600 Blair Stone Road
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Tallahassee, Florida 32399-2400

**RE: Lee County Resource Recovery Facility
Title V Air Operation Permit Revision, Project No. 0710119-006-AV
Response to Request for Public Comment**

June 12, 2009
RECEIVED

JUN 15 2009

BUREAU OF AIR REGULATION

Dear Permitting Authority:

On May 7, 2009, the Florida Department of Environmental Protection (FDEP) issued emails to the Lee County RRF (Facility) stating that a draft of the Facility's revised Title V permit was available for review and comment. On May 20, 2009, the draft revised Title V permit was public noticed in the Ft. Meyers News Press newspaper. The purpose of this letter is to submit Facility comments regarding the draft revised Title V permit to the FDEP for consideration during the official public comment period.

Title V Air Operation Permit Revision – Main Body

Page 30, Condition A.50, Page 58, Condition C.4.1, paragraph (4), and Page 71, Condition D.11

On May 10, 2006, the United States Environmental Protection Agency (EPA) issued final rules that revised a number of items in 40 CFR Part 60, Subparts Cb and Eb. Included in these revisions was increased flexibility on the frequency of annual performance tests required by the rules. An item of great concern to the Facility is the fact that the May 10, 2006 federal rulemaking failed to include the 9 month to 15 month annual performance test window for hydrogen chloride and fugitive ash (this performance test window was specified for the other regulated pollutants subject to the annual testing requirement).

The May 10, 2006 final rulemaking was originally proposed on December 19, 2005. The proposed amended testing frequency schedule is discussed in section IV.G of the proposed rulemaking (Federal Register, Vol. 70, No. 242, page 75353). The discussion contains no mention of hydrogen chloride or fugitive ash testing not being included in the proposed amended testing frequency. Following is an excerpt from the discussion, which implies that EPA did not intend to omit hydrogen chloride and fugitive ash testing from the amended schedule.

“To accommodate the need for flexibility while retaining an annual test schedule, EPA proposes to revise the testing schedule to once per calendar year, with no less than 9 months and no more than 15 months between tests.”

Unfortunately, this omission was not identified during the public comment period and the final rule issued contained the omission.

The Facility has discussed this issue with EPA personnel who agree that an error was made in the final rulemaking. This fact is verified by the email exchange between Mr. Scott Sheplak of FDEP and Mr. Walt Stevenson of EPA that is included in the record for this permitting action. However, because of workload and the voluntary remand of the MWC rules requested by and granted to EPA by the United States Court of Appeals District of Columbia Circuit, EPA currently has no plans or timeline to correct the error.

Because the test frequency issue was not resolved in discussions between FDEP and EPA during preparation of the Facility’s draft revised permit, the Facility has decided to submit a policy determination request directly to EPA requesting relief from the publication error. Assuming a favorable determination by EPA, the Facility requests the following minor language changes (in italics) to allow for the immediate incorporation of the determination upon its issuance:

Condition A.50, Item (7)

“Following the date that the initial performance test for hydrogen chloride is completed or is required to be completed under 40 CFR 60.8, the owner or operator of an affected facility shall conduct a performance test for hydrogen chloride emissions on an annual basis (no more than 12 calendar months, *or alternate period as delineated in written EPA guidance*, following the previous performance test).

[40 CFR 60.38b and 40 CFR 60.58b(f)]”

Condition C.4.1, Item (4)

“Following the date that the initial performance test for fugitive ash emissions is completed or is required to be completed under Sec. 60.8 for an affected facility, the owner or operator shall conduct a performance test for fugitive ash emissions on an annual basis (no more than 12 calendar months, *or alternate period as delineated in written EPA guidance*, following the previous performance test).

[40 CFR 60.38b and 40 CFR 60.58b(k)]”

Condition D.11., Second Full Paragraph

“Compliance tests for the other pollutants listed in specific condition D.8. shall be performed annually (unless indicated otherwise *by rule or written EPA guidance*) by using the following reference methods as described in 40 CFR 60, Appendix A and/or 40 CFR 61 Appendix B adopted by reference in Chapter 62-204, F.A.C. or any other method as approved by FDEP, in accordance with Chapter 62-297, F.A.C. Stack tests may also require Method 1, 2, 3/3A/3B and 4 tests as appropriate. Testing shall be conducted in accordance with the requirements of 40 CFR 60.58b Compliance and Performance Testing *and/or written EPA guidance*.

[Condition B.10, Permit No. 0710119-005-AC/PSD-FL-151D; Rule 62-204.800(8), F.A.C.; and, Chapter 62-297, F.A.C.]”

These minor language changes are requested now so that the Facility’s Title V permit will not need to be reopened to allow the use of a favorable response from EPA. As a note, neither Conditions A.50 nor C.4.1 references a PSD permit as its regulatory basis. Therefore, each of these permit terms can be changed without modifying an underlying PSD permit. Condition D.11 does reference an underlying PSD permit and, therefore, modification of the PSD permit term may be required prior to making the requested modification. If this is the case, the Facility asserts that the permit term, as written in the draft permit, allows for any amended testing schedule because of the parenthetical statement “unless indicated otherwise”. This otherwise indication could consist of revised rule language (e.g., the May 10, 2006 rulemaking) or written EPA guidance. The Facility requests the FDEP’s express written agreement with this assertion if the language of Condition D.11 is not modified as requested.

Thank you for your consideration of our comments. Should you have any questions, please contact me at (239-533-8933) or Mr. M. Kirk Dunbar of HDR Engineering, Inc. at (763-591-5476).

Sincerely,



Lindsey J. Sampson
Solid Waste Division Director

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