



February 23, 2004

THE CITY OF KEY WEST
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Bruce
RECEIVED

FEB 26 2004

BUREAU OF AIR REGULATION

Mr. John Glunn
FDEP
Office of Policy Analysis and
Program Management
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Re: Final Control Plan compliance schedule
Southernmost Waste to Energy Facility
Permit No. **0870047-001 AV**

Dear Mr. Glunn:

The City of Key West (City) submitted a Final Control Plan for the Southernmost Waste-to-Energy Facility (SWTE) to the FDEP on September 26, 2001. The compliance date requested submitted was March 1, 2004. We have since sent a letter to the FDEP dated September 17, 2002 to request a change of the final compliance date to October 30, 2005. The reasons for that request are outlined in the September 17th letter.

A technical advisory committee (TAC) was approved and assembled by the City Commission to advise the City of the best options for our future solid waste needs. Mr. Bill Hinkley, Solid Waste Bureau Chief of the FDEP, was a voting member on this TAC. Our last update stated that City staff and the TAC are working on an "accelerated" schedule to get a "final" decision from the City Commission in July of 2003. This milestone was not achieved.

At the January 14, 2004 City Commission meeting, a resolution was passed requiring the closure of the facility in favor of a transfer station operation. Due to this decision, the City would like to modify its Final Control Plan.

The Title V permit that the facility currently operates under is due to expire May 13, 2004. The City will not be submitting an application for renewal. Instead, the City will operate a transfer station on the same site as the facility.

The City will stop combusting waste on or before April 30, 2004. The City will surrender its Title V permit to the FDEP on or before May 13, 2004.

| | |
|------------------------------|-----------------------|
| Submit Final Control Plan | Completed |
| Award Contracts | N/A |
| Begin Onsite Construction | N/A |
| Complete Onsite Construction | N/A |
| Achieve Final Compliance | April 30, 2004 |

We wish to thank the department for its understanding and cooperation in this matter. Please contact my office if you have any questions or need any further information.

R.B. Havens



Plant Manager
Southernmost Waste-to-Energy Facility
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cc: Scott M. Sheplak, P.E., FDEP Tallahassee
Ronald Blackburn, FDEP Fort Meyers
Jim Edds, FDEP Marathon
Julio Avel, City Manager
E. David Fernandez, Utilities Director
File

xcc: Greg Worley, O&A Reg 4
Bruce Mitchell, O&A



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Envirowire News Feature

D.C. Circuit Rejects Emissions Limits For Small Municipal Waste Combustors

By Steve Cook

A federal appeals court Feb. 24 rejected Environmental Protection Agency emissions limits for hazardous air pollutants from small municipal solid waste combustors (Northeast Maryland Waste Disposal Authority v. EPA, D.C. Cir., No. 01-1053, 2/24/04).

The U.S. Court of Appeals for the District of Columbia Circuit agreed with the Sierra Club, which challenged the rule along with industry petitioners, that EPA unlawfully relied on emissions levels in state operating permits to set emissions limits.

In an unsigned per curiam decision, judges David Sentelle, Karen Henderson, and Merrick Garland said available evidence shows some small municipal waste combustors may be achieving much higher levels of emissions control than what is required in state permits.

EPA Must Show Evidence of Actual Emissions

The court said that in previous cases, it had already rejected EPA's use of permit levels to set hazardous air pollutant emissions limits. As in those cases, EPA in the small municipal waste combustors rule stated only that it "believes" state permit limits reasonably reflect the performance of the best performing units on which basis the agency is required to set emissions limits. EPA must show evidence that its emissions limits reflect the performance of the best performing units, the court said.

"This is a huge victory for the health of our communities," said Jim Pew, an attorney for Earthjustice who represented the Sierra Club, as well as the New York Public Interest Research Group Inc. (NYPIRG) in the case. "Exposure to these emissions can lead to an increased risk of birth defects, cancer, developmental delays and learning disorders," he said.

According to EarthJustice, the facilities affected by the ruling emit significant levels of dangerous air toxins, such as mercury, lead, dioxins, and PCBs. The ruling affects about 90 garbage incinerators known as small municipal waste combustors, the group said.

EPA is required under Section 129 of the Clean Air Act to set hazardous air pollutant emissions limits for solid waste incinerators. The agency must set limits based on maximum achievable control technology (MACT), defined as the emissions control level achieved at the best-performing 12 percent of sources.

EPA published the emissions standards for small municipal solid waste combustors in 2000 (65 Fed. Reg. 76,378).

The court also agreed with several other Sierra Club arguments but said they do not need to consider them because it is remanding the MACT standard back to EPA.

EPA Failed to Explain Subcategories, Court Says

The court also agreed with the industry petitioner Northeast Maryland Waste Disposal Authority that EPA did not explain its decision to establish subcategories for small municipal waste combustion units based on the total plant capacity of the facilities in which the unit is located.

"Did EPA explain its decision to establish subcategories based on aggregate plant capacity?" the court asked. "We are, frankly, stunned that it did not.

"As the agency concedes, there is not one word in the proposed or final rule that explains why the Agency chose to distinguish among small MWCs on the basis of the aggregate capacities of the plants at which they are located," the court said.

However, the court rejected other industry arguments that EPA lacked the statutory authority to establish subcategories for small municipal waste combustors. The agency is owed deference under the Supreme Court's Chevron v. NRDC test to use reasonable interpretations of the law where the statutory language is ambiguous, the court said.

Timothy Henderson, who represented the Northeast Maryland Waste Disposal Authority, called the decision "a partial pyrrhic victory."

"The one issue that we won on was pretty significant," Henderson said. The rule holds identical units to different standards depending on where they are located, Henderson said. At the same time, dissimilar units are held to the same standard if they are located at similar size facilities, he said.

Ruling Creates Uncertainty for Industry

Because the court remanded the rule back to EPA but did not vacate it, small municipal waste combustors still have to meet a 2005 deadline for complying with the rule, Henderson said.

"Any facility [that is in the] position of trying to meet the deadline, and is in the middle of retrofit or planning a retrofit, is put in a state of uncertainty," Henderson said. They do not know what standard they are being required to follow, he said.

"This creates a lot of uncertainty for small units, and creates the strong potential that small units will be held to more stringent standard than large units," he said.

The industry petitioners have not decided how they will respond to the decision, but possible options include requesting a motion for a stay of the rule's deadline pending agency action on the remand, Henderson said. Other options include asking the court for a rehearing by the three-judge panel, or requesting an en banc hearing by the full court of appeals, he said.

The court heard oral arguments in the case on Nov. 13, 2003.

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