



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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Howard L. Rhodes, Director  
Department of Environmental Protection  
Division of Air Resources Management  
Mail Station 5500  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

SUBJ: EPA's Objection to Proposed Title V Permits for Florida Power Corporation  
Suwannee Power Plant - Permit No. 1210003-001-AV  
Anclote Power Plant - Permit No. 1010017-003-AV

Dear Mr. Rhodes:

This letter is being provided to follow up on a conference call held between Florida Department of Environmental Protection (FDEP) Bureau of Air Regulation staff, representatives of Florida Power Corporation (FPC), and U.S. Environmental Protection Agency (EPA) Region 4 staff on September 13, 1999. This call discussed EPA's objections to the FPC Suwannee and Anclote plant operating permits under title V of the Clean Air Act (CAA), in letters dated July 12, and July 16, 1999, respectively. It appears that all objection items in our letters were resolved, pending permit revisions, except for Objection Item 2 in both letters. This objection item requires that appropriate averaging times be specified in the title V permits to assure compliance with particulate matter emission limits drawn from the Florida state implementation plan (SIP). To address FPC's August 27, 1999, response to EPA's objections, this letter will discuss the legal authority for specifying averaging times in title V permits and provide options for establishing averaging times for particulate matter emission limits.

1. Legal Authority for Specifying Averaging Times for SIP Emission Limits in Title V Permits

According to 40 C.F.R. § 70.6(a)(1), each title V permit shall include "emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." See also F.A.C. 62-213.440(1). Section 504(a) of the Clean Air Act similarly requires permits to include "enforceable emission limitations and standards. . . and such other conditions as are necessary to assure compliance with applicable requirements of [title V], including the requirements of the applicable implementation plan." In order to assure compliance with the particulate matter emission limits in the Suwannee and Anclote plant permits in a manner that is practically enforceable, the permits must include appropriate averaging times for these limits.

EPA's views on this issue have been clear and consistent since the 1991 part 70 proposal. That proposal recognized that some SIP emission limits would be ambiguous because they contained gaps as to test methods or averaging times. 56 FR 21712, 21738 (May 10, 1991). EPA made clear that operating permits should fill those gaps (e.g., in averaging times) in order to make permits enforceable and approvable, and made equally clear that the Agency could object to permits that failed to do so:

SIP Ambiguity. Some SIP requirements will be vague as to a significant provision (e.g., averaging time, monitoring, and/or reporting requirements), requiring considerable time during the permitting process to make the operating permit enforceable. In such cases, the SIP will be ambiguous when applied to a particular source, and the State must judge how to define the enforceable permit conditions. Where the State's interpretation of a requirement is both inconsistent with the State's demonstration of attainment and maintenance of the NAAQS and undermines the level of emissions reduction EPA anticipated the rule would achieve, EPA will object to the permit. In making this decision, EPA will look to the available record, including the assumptions the State made in the SIP.

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 The permit requires certain information to make it enforceable. There are situations in which a SIP, standing alone, is an inadequate basis on which to issue an approvable (i.e., enforceable) permit. For example, the SIP may contain gaps as to test methods or averaging times. The operating permit process should, at least temporarily, fill these gaps to the extent required by title V. However, this does not relieve the State of any obligation it might have to revise the applicable SIP in response to an EPA SIP call. 56 FR at 21738.

The 1992 final part 70 regulations adopted this view that operating permits should fill gaps in the SIP, in order for permits to assure compliance with SIP requirements by ensuring that such requirements were practically enforceable. First, as noted above, § 70.6(a)(1) of the final regulations followed the proposal in requiring permits to include "emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." See 40 C.F.R. § 70.6(a)(1); 56 FR at 21774 (proposed § 70.6(a)(1)).

Moreover, in response to comments from industry claiming that title V operating permits cannot or should not be used to fill gaps in existing SIPs, including gaps in averaging time as noted in the proposal, EPA clearly rejected these views in promulgating the final regulations. See generally "Technical Support Document for Title V Operating Permit Program," 6-45 to 6-46 (May, 1992). EPA's response reiterated the position set forth in the proposal that permits must be enforceable in order to meet CAA section 504(c)'s requirement that permits "shall include enforceable emission limitations and standards . . . as necessary to assure compliance with the applicable requirements of the Act." *Id.* at 6-46. EPA concluded that "a permitting authority [could] fill the gap either by placing the missing requirement in the permit, or by revising the SIP

before issuing the permit, but the permitting authority could not issue a permit that is unenforceable." Id.

Clearly defined averaging times are an important element of practically enforceable emission limits.<sup>1</sup> They are necessary in operating permits in order to assure compliance with applicable requirements for purposes of a source's compliance certification obligations, deviation reporting, and government agency and citizen enforcement. In order to use stack test results or any other source of credible evidence to determine whether a source is in compliance with an applicable standard, it is necessary to know the averaging time for the standard. Even if a permit identifies the applicable reference test method that is used for demonstrating compliance, it is necessary to know the averaging time of the standard in order to ensure that an adequate amount of data is collected when a compliance test is conducted. For example, a typical particulate stack test consists of three one-hour runs, and this amount of data would be adequate for demonstrating compliance if the averaging time of the standard were three hours. If the actual averaging time of the standard was something other than three hours (e.g., 24 hours), however, three one-hour samples would not suffice for determining compliance. This is because evidence that the average emission rate from a source exceeded the applicable standard over a three-hour period does not necessarily mean that the emission rate from the source would have exceeded the standard over a longer period of time corresponding to the averaging time of the standard.

As specified in Florida's SIP, the particulate matter emission limit in question for "Fossil Fuel Steam Generators with more than 250 million Btu per Hour Heat Input" is "0.1 pound per million Btu heat input, as measured by applicable compliance methods." See F.A.C. 62-295.405(1)(b). The particulate matter test method is specified in F.A.C. 62-296.405(1)(e)2., as EPA Methods 17, 5, 5B, or 5F. Since the SIP specifies that compliance with this emission limit is "as measured by applicable compliance methods," an averaging time corresponding to the stack test method is implied. However, without an explicit averaging time for comparison with the national ambient air quality standard for particulate matter, the particulate matter emission limit in the Florida SIP, on its own, is not practically enforceable.

## II Options for Establishing Averaging Times in the Permit for the Particulate Matter Emission Limit

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<sup>1</sup> EPA has long viewed specification of averaging times as a necessary element of practical enforceability with respect to SIP emission limits. "SIP rules should describe explicitly the compliance time frame associated with each emission limit (e.g. instantaneous, stack test, 3 hour average or daily)." Memorandum from Michael S. Alushin, Alan W. Eckert & John S. Seitz, "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency," (Sept. 23, 1987) at 3. "Each compliance provision must list how compliance is to be determined and the appropriate test method to be used. The allowable averaging times should be explicit. Both the test method and averaging times employed must be sufficient to protect the ambient standard involved." Id. at 4. Following promulgation of the final part 70 regulations, as noted above, operating permits are to specify averaging times for SIP emission limits where there are gaps in such requirements. EPA may still pursue SIP calls to address deficiencies with SIP emission limits, and states should make such regulatory fixes as appropriate.

Each permit must be revised to establish an averaging time for the particulate matter emission limit. In our objection letters, we suggested that one possible way to address the lack of averaging times for the particulate matter emission standards in the Suwannee and Anclote permits would be to include language in each permit indicating that the averaging time of the standard is based upon the run time of the test method(s) used for determining compliance. In its August 27 response to EPA's objections, FPC contended that such language would not resolve our objection since the duration of each of the three particulate sampling runs that are conducted during a test could vary between one and four hours under the terms of the Suwannee and Anclote permits.

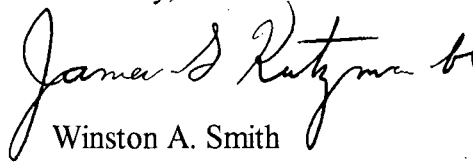
Since FPC has asserted that a statement linking the averaging time to the duration of the applicable reference test method will not work at Suwannee and/or Anclote, one option for addressing the title V requirement to specify averaging times in permits would be to explicitly state the averaging time along with the numerical emission standard in Condition A.7. If this option is used, it is our opinion that the averaging time referenced in Condition A.7 should be three hours, because the majority of reference tests conducted to measure particulate emissions consist of three one-hour runs. If FPC believes that the averaging time should be set at something other than three hours, however, the company should submit any information that it considered in reaching its conclusion. We will review any such submittal as expeditiously as possible, and if the company has a valid justification for a different set averaging time, this value can be added to Condition A.7 in the Suwannee/Anclote permits.

Since both the Suwannee and Anclote plants co-fire, or plan to co-fire, oil and natural gas fuels, it is possible that a set averaging time of three hours may not be appropriate for particulate matter emissions at these sites. To accommodate the potential for changes in fuel usage at these facilities over their permit terms, another option would be to add language to Condition A.7 of the permits stating that the averaging time for particulate matter emission limits is based on or tied to the run time of the *most recently* conducted test for each unit, using the applicable reference test method. As a result, the averaging time would evolve with operating practices, yet be fixed and practically enforceable between tests. This should be sufficient since the testing frequency is set on a site-specific basis to be representative of operations for that period and to ensure compliance with the emission limits.

EPA will consider all objection items to be resolved upon receipt of verbal or written confirmation that some form of averaging time will be added to the particulate matter emission standard in Condition A.7 of the Suwannee/Anclote permits. Further discussion on selection of averaging times would then occur through finalization of the permits for these facilities.

If you have any questions or wish to discuss this further, please contact Mr. Gregg Worley, Chief, Operating Source Section at (404) 562-9141. Should your staff need additional information they may contact Ms. Elizabeth Bartlett, Florida Title V Contact, at (404) 562-9122, Mr. David McNeal, Regional Expert for Stack Testing and CEMS, at (404)562-9102, or Ms. Angelia Souder-Blackwell, Associate Regional Counsel, at (404) 562-9527.

Sincerely,

A handwritten signature in cursive script that reads "Winston A. Smith". The signature is written in black ink and is positioned above the printed name.

Winston A. Smith  
Director  
Air, Pesticides & Toxics  
Management Division

cc: Mr. Scott H. Osbourn, FPC