

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

BROWARD COUNTY ENVIRONMENTAL)
QUALITY CONTROL BOARD,)
)
Petitioner,)
)
vs.)
)
STATE OF FLORIDA DEPARTMENT)
OF ENVIRONMENTAL REGULATION,)
and FLORIDA POWER & LIGHT)
COMPANY,)
)
Respondent.)
_____)

DER FILE NO. AC 06-179848

STIPULATION AND NOTICE OF VOLUNTARY DISMISSAL

WHEREAS, the Broward County Environmental Quality Control Board (Board) wishes to protect and maintain the quality of the air in Broward County, Florida; and

WHEREAS, Florida Power & Light Company (FPL) wishes to offset the increased level of volatile organic compounds (VOCs) which will be allowed from its Lauderdale Repowering Project in Broward County, Florida;

WHEREAS, the Florida Department of Environmental Regulation (DER) has issued a Notice of Intent to Issue a Permit, dated August 31, 1990 for the FPL Lauderdale Plant;

WHEREAS, the Board filed, on September 14, 1990, a Petition for Administrative Proceedings to challenge DER's Intent to Issue a Permit;

WHEREAS, FPL and the Board desire to resolve this matter at this time without further administrative proceedings;

NOW, THEREFORE, be it agreed by FPL and the Board that:

1. Florida Power & Light Company shall pay to the Broward County Environmental Quality Control Board, within 60 days of the

date the Site Certification Order for the Lauderdale Repowering Project becomes final, the sum of \$280,000.00, to be held in trust by the Board in an interest-bearing account.

2. The Board shall utilize the funds provided by Florida Power & Light Company to develop and implement a program within Broward County to offset the potential increase in emissions of volatile organic compounds.

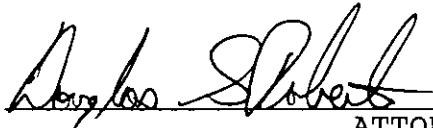
3. Said program shall be in effect for a period not to exceed two (2) years from the date of the signing of this Agreement, during which time the Board shall determine ways to offset the potential increase in emissions of VOCs within Broward County.

4. If, within said two (2) year time period, the Board determines that it is unable to effectuate appropriate offsets, the remaining funds held in trust shall be returned to Florida Power & Light Company.

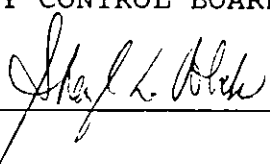
5. The Board hereby voluntarily dismisses its Petition for Administrative Proceedings regarding the Florida Department of Environmental Regulation's Intent to Issue Permit No. AC 06-179848. This Stipulation and Notice of Voluntary Dismissal shall serve as notice to DER of the Board's dismissal of this challenge.

Dated this 25th day of September, 1990.

FLORIDA POWER & LIGHT COMPANY

By: 
ATTORNEY

BROWARD COUNTY ENVIRONMENTAL
QUALITY CONTROL BOARD

By: 
ATTORNEY

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DER-BAQM

State of Florida
Department of
Environmental
Regulation
Notice of Intent
to Issue
The Department of Environmental Regulation hereby gives notice of its intent to issue a permit (AC 06-179848) to construct the existing Lauderdale Plant located on Griffin Road, Dania, Broward County, Florida, to Florida Power & Light Company, P.O. Box 078768, West Palm Beach, Florida 33407-0768. The applicant is proposing to change the type of fuel stored in an existing tank from No. 6 to No. 2 fuel oil. This project will increase volatile organic compounds (VOC) emissions from fuel storage tanks Nos. 2, 3, 4 (removed from service), and 5 by 5.41 TPY. The applicant is also requesting the Department impose federally enforceable permit restrictions on the facility, primarily by limiting the fuels burned in existing gas turbines, which would result in allowable VOC emissions being less than 100 TPY. These emissions will not cause a violation of any ambient air quality standard or interfere with reasonable further progress toward attainment of the ozone ambient air quality standard. A Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) determination was not required. The Department is issuing this Intent to Issue for the reasons stated in the Technical Evaluation and Preliminary Determination.
A person whose substantial interests are affected by the Department's proposed permitting decision may petition for an administrative proceeding (hearing) in accordance with Section 120.57, F.S. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within fourteen (14) days of publication of this notice. Petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. Failure to file a petition within this time period shall constitute a waiver of any right such person may have to request an administrative (hearing) under Section 120.57, Florida Statutes.
The petition shall contain the following information: (a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Department Permit File Number and the county in which the project is proposed; (b) A statement of how and when each petitioner received notice of the Department's action or proposed action; (c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action; (d) A statement of the material facts disputed by the Petitioner, if any; (e) A statement of facts which petition-

STATE OF FLORIDA
COUNTY OF BROWARD/PALM BEACH/DADE
BEFORE THE UNDERSIGNED AUTHORITY PERSONALLY
APPEARED WHO ON
OATH SAYS THAT HE/SHE IS A DULY AUTHORIZED
REPRESENTATIVE OF THE CLASSIFIED DEPARTMENT OF
THE FORT LAUDERDALE NEWS/SUN-SENTINEL, DAILY
NEWSPAPERS PUBLISHED IN BROWARD/PALM BEACH/DADE
COUNTY, FLORIDA THAT THE ATTACHED COPY OF
ADVERTISEMENT, BEING A

NOTICE

IN THE MATTER OF

LAUDERDALE PLANT

IN THE CIRCUIT COURT, WAS PUBLISHED IN SAID
NEWSPAPER IN THE ISSUES OF
C. 9/15/1X

AFFIANT FURTHER SAYS THAT THE SAID FORT
LAUDERDALE NEWS/SUN-SENTINEL ARE NEWSPAPERS
PUBLISHED IN SAID BROWARD/PALM BEACH/DADE
COUNTY, FLORIDA, AND THAT THE SAID NEWSPAPERS
HAVE HERETOFORE BEEN CONTINUOUSLY PUBLISHED IN
SAID BROWARD/PALM BEACH/DADE COUNTY, FLORIDA,
EACH DAY, AND HAVE BEEN ENTERED AS SECOND
CLASS MATTER AT THE POST OFFICE IN FORT
LAUDERDALE, IN SAID BROWARD COUNTY, FLORIDA,
FOR A PERIOD OF ONE YEAR NEXT PRECEDING THE
FIRST PUBLICATION OF THE ATTACHED COPY OF
ADVERTISEMENT; AND AFFIANT FURTHER SAYS THAT
HE/SHE HAS NEITHER PAID NOR PROVIDED ANY PERSON,
FIRM OR CORPORATION ANY DISCOUNT, REBATE,
COMMISSION OR REFUND FOR THE PURPOSE OF
SECURING THIS ADVERTISEMENT FOR PUBLICATION
IN SAID NEWSPAPERS.

.....
AUTHORIZED REPRESENTATIVE

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 15 DAY OF SEPTEMBER
A.D. 1990

.....
(SEAL)..... NOTARY PUBLIC

L. ...
A. ...
L. ...

er contends warrant reversal or modification of the Department's action or proposed action; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Department's action or proposed action; and (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accord-

ingly, 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 application 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 14 days of publication 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 Section 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 28-5.207, F.A.C.

The application is available for public inspection during business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at:

Department of Environmental Regulation
Bureau of Air Regulation
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Department of Environmental Regulation
Southeast District
1900 S. Congress Ave.
Suite A
W. Palm Beach, FL 33406
Broward County Environmental Quality Control Board

500 SW 14th Court
Ft. Lauderdale, FL 33315

Any person may send written comments on the proposed action to Mr. Barry Andrews at the Department's Tallahassee address. All comments mailed within 14 days of the publication of this notice will be considered in the Department's final determination.

September 15, 1990

News/Sun-Sentinel

News and Sun-Sentinel Company
101 N. New River Drive
Fort Lauderdale, Florida 33301-2293

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Fl. Dept. of Environmental Regulation
Twin Towers Office Bldg.
2600 Blair Stone Rd.
Tallahassee, FL 32399-2400
Attn: C M. Fancy, P.E., Chief
Bureau of Air Regulation

DER-BAQM



September 14, 1990

BROWARD COUNTY ENVIRONMENTAL QUALITY CONTROL BOARD

500 S.W. 14th Court
Fort Lauderdale, FL 33315
(305) 765-4900

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Air Section
621 S. Andrews Avenue
Ft. Lauderdale, FL 33301
(305) 765-4436

DER-BAQM

Office of the General Counsel
Florida Department of Environmental Regulation
2600 Blair Stone Road
Tallahassee, FL 32399-2400

CERTIFIED MAIL-RRR

Re: Petition for Administrative Hearing
DER Intent to Issue Permit AC 06-179848

Dear Sir:

Attached is our Petition for an Administrative Proceeding in the matter of the Intent by DER to Issue a Permit to the FPL Lauderdale Plant.

We note that this permit is intimately related with the Site Certification Application for the Lauderdale Repowering Project for which Public Hearings are scheduled here beginning September 24, 1990.

If you have any questions regarding this matter, please call A. A. Linero at 765-4436.

Yours very truly,

Victor N. Howard, P.E.
Pollution Control Officer

VNH/AAL/mr

Attachment

cc: FPL - West Palm Beach
BCEQCB Board Members
BCEQCB Staff Attorney
Jewel Harper - EPA Atlanta
Gary Carlson - BCEQCB
Broward County Attorney
Tom Henderson - BC Resource Recovery
Clair Fancy - DER Tallahassee
Isidore Goldman - DER S.E. District

PETITION FOR ADMINISTRATION PROCEEDING IN THE MATTER OF INTENT BY
DER TO ISSUE A PERMIT TO FPL LAUDERDALE PLANT

Petitioner

Broward County Environmental Quality Control Board

500 SW 14th Ct
Fort Lauderdale, Fl 33315
(305) 765-4436

DER File NO. AC 06-179848
Broward County

Notification

Broward County Environmental Quality Control Board (EQCB) received a copy on September 4, 1990 of the Intent to Issue a Permit dated August 31, 1990. We were copied as the Local Pollution Control Agency in a county affected by Department Action.

Statement of Interests

The EQCB is affected as the Local Pollution Control Agency responsible (along with the DER) with the maintenance of air quality in Broward County. At the present time the existing facility in question falls under both State and Local Permitting requirements.

With a future planned FPL project at the same site, it is quite likely that this facility will at some point no longer fall under local jurisdiction per previous interpretations by DER Counsel of the Local Role in projects covered by the Site Certification Act (SCA).

Broward County is part of a three - County area within the Southeast Florida interstate Air Quality Control Region (AQCR) designated on December 31, 1982 by EPA as "Non Attainment" with respect to ozone. This designation and the resulting attainment plans affect the material interests of Broward County residents in general and the EQCB in particular. The subject permit is primarily a preparatory administrative step toward the ultimate construction of a project which will affect ozone levels in the County, the attainment plan and hence the material interests of Broward County residents in general and the EQCB in particular. Once the subject permit is granted, the EQCB will have no remedies in effecting the controls desired of the subsequent project short of legal action since it is not a party to the proceedings on that project.

Disputed Material Facts

We dispute the following:

1.) Page 1 of Letter of Intent to Issue.

- (a) We dispute that the referenced permit is to construct the existing plant. The Lauderdale plant was constructed or modified many years ago. We dispute that any separate construction permit is required to change the type of fuel stored in existing Tank #3 from No 6 fuel oil to No 2 fuel oil. This action is already described on page 3.3.2 of the FPL Lauderdale Repowering Project Site Certification Application (SCA) as part of the conversion of both Tanks #2 and #3 to "hold No.2 oil for Lauderdale Repowering Project".
- (b) We dispute the value of 5.41 Tons Per Year (TPY) as the increase in VOC's from the described actions. We contend that this is an estimate that is no better than single-significant-figure (or even "order-of-magnitude") accuracy based on the limitations inherent in VOC estimates based on AP-42 and the paucity (if not lack) of actual historical measurements. The same goes for all subsequent VOC values given on this page and in subsequent sections of the package. We don't dispute the Sulfur Dioxide estimates and don't dispute the Nitrogen Oxide estimates to the same extent as the VOC estimates.
- (c) We dispute even the notion that the DER can impose federally-enforceable practical permit restrictions which would in-fact limit the allowable VOC emissions to less than 100 TPY.
- (d) We dispute that "Best Available Control Technology (BACT) or lowest achievable Estimate Rate (LAER) determinations was not required". This is basically the same conclusion as that given in the SCA. When the actions described in the subject draft permit and the SCA are taken together, a BACT or LAER determination is in-fact required.
- (e) While we don't dispute that the quantity of VOC emissions (5.41 TPY) given "will not cause a violation... or interfere with reasonable further progress toward attainment of the ozone..", the same cannot be said about issuance of the permit itself.
- (f) We dispute that the reasons for the Intent to Issue are stated in the Technical Evaluation and Preliminary Determination. We contend that there are some unstated reasons.

- 2.) Rest of Package. We dispute all references to the above disputed facts wherever they arise in the package.

Facts Warranting Reversal or Modifications

The relevant facts warranting Reversal or Modifications are:

- 1.) The matter of the subject draft permit can and should be addressed under the Site Certification Process and not as a separate matter.
- 2.) The permit requested is not required for FPL to take a (presently unpermitted) tank storing fuel oil No 2 out of service and switch another (presently unpermitted) tank from fuel oil No 6 to fuel oil No 2 service.
- 3.) Nothing was submitted with the Permit Application indicative of a "Construction". For example there were no engineering drawings, pollution control equipment descriptions, nor site work plans, etc.
- 4.) For the reasons given in the previous sections, the permit will not result in federally enforceable permit restrictions which can be shown in any practical manner to actually limit VOC emissions to less than 100 TPY.
- 5.) Issuance of this permit will facilitate avoidance by FPL of a Non-Attainment New Source Review (NSR) for Ozone in the Lauderdale Repowering Project. This avoidance should not be facilitated. The review should in-fact be encouraged in every way.
- 6.) Avoidance of NSR prevents discussion of power plant impacts on Ozone. These were previously believed to be due to VOC emissions, but are now known to be affected by Nitrogen Oxides (which the Lauderdale project will emit in very substantial quantities).
- 7.) FPL is trying to avoid implementing the BACT determinations (Selective Catalytic Reduction - SCR) of EPA which FPL implied were "capricious" and "arbitrary". This avoidance of SCR will increase Nitrogen Oxides in Broward County.
- 8.) The increase in Broward County of Nitrogen Oxides interferes with "Reasonable Further Progress (RFP)" towards Ozone Attainment. It may also cause or contribute to violations of the Ozone standard.
- 9.) The residents of this County all will be subjected to very strict measures under the Motor Vehicle Inspection Program to control both Nitrogen Oxides and VOC's the purpose of which is to reduce Ozone formation.

- 10.) Among the unstated reasons for the draft subject permit are the expectation that NSR for Ozone will result in (expensive) LAER requirements for VOC's and the lack of VOC Offsets in Broward County. We note that Implementation of "Stage II" VOC controls at service stations in Broward County would provide sufficient offsets. Also per 40 CFR 51 S.IV.D the location of the offsets can be anywhere in the AQCR (Dade, Broward, Palm Beach, etc.) The implementation of SCR for Nitrogen Oxides will further promote RFP toward Ozone attainment. These latter considerations are sound bases for exemption from LAER. The apparently contradictory controls of SCR for Nitrogen Oxides and Catalytic Oxidation for VOC's will add further rationale for exemption from LAER. Thus there is no reason to facilitate avoidance of NSR for the Lauderdale Repowering Project.
- 11.) Issuance of the subject draft permit will lead to or even cause the scenario described above.
- 12.) The implication that no PSD/BACT nor NSR/LAER issues are involved, unfairly limits the time for Public Comment to less than the 30-day requirement when such issues are involved.

Rules or Statutes Requiring Reversal or Modification

- 1.) Chapter 17.2.200 Rules of the FDER, Statement of Intent. The subject source does indeed pose the possibility of degrading ambient air quality. Issuance of the Permit will facilitate in avoidance of New Source Review in the Lauderdale Repowering Project. The proponent has not yet given reasonable assurances that BACT for Nitrogen Oxides (which will help limit Ozone formation) will be a part of that project. Therefore DER cannot be sure that the scenario facilitated or caused by issuance of the subject draft permit will not occur.
- 2.) We will research other specific DER Rules and Policies which will support our position with respect to this specific permit. We consider the subject draft permit to have little merit and our arguments above to stand on their merits.
- 3.) We have researched and found specific Federal Rules, Regulations and Decisions which will require FPL to perform the NSR for Ozone for the subsequent Repowering Project if the draft subject permit is denied. We do not need to enumerate those here. Approval can be seen as part of an effort to circumvent those Rules, Regulations and Decisions.

Statement of Relief Sought

- 1.) We request that DER deny the permit and make the issue part of the Site Certification Procedure for the Lauderdale Repowering Project.
- 2.) If DER will not deny the permit then get commitments that Selective Catalytic Reduction will be part of the Lauderdale Repowering Project.
- 3.) Advise FPL that VOC offsets do exist and can be obtained by implementation of stage II in Broward County or anywhere in the non-Attainment part of the AQCR.
- 4.) Require New Source Review for Ozone for the Lauderdale Repowering Project as should have been required initially.
- 5.) Evaluate feasibility (or infeasibility) of VOC LAER requirements given that Nitrogen Oxide/BACT will promote RFP towards Ozone Attainment.
- 6.) Submit the entire matter of draft permit application and Repowering Project to EPA for an NSR "Non Applicability Determination."