

DSD

August 6, 1999

Mr. Daniel Manry
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-3060

FAX to _____
- Leonard Spielvogel
Rick W.
Armin E. "Al" Lewis
Frank C.
Richard E.
Doug Brown
F.Y.I.
David D.

Dear Judge Manry:

This is in regard to Case No. 99-2581, Clarence Rowe, Petitioner.

First, I have two questions regarding the hearing:

1. Is the hearing open to the public?
2. Can a person from the general public introduce testimony before the judge? If yes, how do they go about arranging this?

Second, I request a VHS tape playback system be available in the hearing room. I will be presenting video-taped evidence.

Third, I request that Mr. Richard L. Wolfinger, Vice President, Oleander Power Project be subpoenaed as a witness. I plan on questioning Mr. Wolfinger in support of my case.

Yours truly,

Clarence Rowe

Copy to:

David Dee, Esquire
Landers & Parsons, P.A.
Post Office Box 271
Tallahassee, FL 32302-0271

RECEIVED

AUG 13 1999

BUREAU OF AIR REGULATION

DEP FILE NO. 0090180-001-AC
(PSD - FL - 258)

In re: The Matter of
OLEANDER POWER PROJECT L.P.
OLEANDER POWER PROJECT - Unit Nos. 1-5
BREVARD COUNTY

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PETITION FOR ADMINISTRATIVE HEARING

The Petitioners, by and through the undersigned attorney, file this Petition for an Administrative Hearing with the State of Florida Department of Environmental Protection on this the 12th day of April, 1999, showing as follows:

1. This Petition is filed in response to the Department's Public Notice of Intent to Issue Air Construction Permit, dated on or about March 29, 1999;
2. The name and address of each Petitioner is as follows:
 - a. *Brevard Citizens Against Pollution, Inc.*, (BCAP) a Florida not-for-profit corporation, 824 Herron Road, Cocoa, FL; (no telephone number);
 - b. *Craig Bock*, 865 Clifton Cove's Court, Cocoa, FL 32926; (407) 632-4344;
 - c. *Robert J. Knodel*, 824 Herron Road, Cocoa, FL 32926; (407) 631-0728;
 - d. *Douglas H. Sphar*, 819 Herron Road, Cocoa, FL; (407) 636-0701;
 - e. *Robert and Marlene Waters*, 5060 Palm Avenue, Cocoa, FL; (407) 639-4357;
3. The name and address of the Applicant is as follows:

Oleander Power Project, L. P.
Richard L. Wolfinger, Vice-President
250 West Pratt Street, 23rd Floor
Baltimore, MD 21201

4. The proposed project will be in Brevard County, Florida, and has been assigned DEP Permit Number 0090180-001-AC (PSD-FL-258);
5. The manner in which the Petitioners received notice of the Department's proposed action is as follows:
 - a. Petitioners BCAP, Bock, Knodel, and Waters via electronic mail, Halpin to R. Knodel, et al, *March 29, 1999*;
 - b. Petitioner Sphar via article in *Florida Today* newspaper, *March 30, 1999*;
6. The Department's proposed action to issue an Air Construction Permit will affect the substantial interests of the Petitioners in the following way(s):

BCAP directors and members are residents of central Brevard County. Petitioners Knodel, Sphar, and Bock reside within 3 kilometers of the applicant's proposed facility. Petitioners Waters reside within 5.6 kilometers of the applicant's proposed facility. The petitioners contend that their health, well being, and quality of life will be significantly damaged by air emissions from the applicant's proposed project. The petitioners will suffer economic harm due to reduced property values as a consequence of close proximity to a facility that is classified as a Major or Title V Source of air pollution.

7. The material facts set forth in the Public Notice which are disputed by the petitioners include the following:

The petitioners dispute the findings of the Florida Department of Environmental Protection, herein referred to as DEP, that the applicant has demonstrated the proposed facility will not cause or contribute to, air pollution in excess of any: (a) maximum allowable increase or maximum allowable concentration for any pollutant in stipulated in the Clean Air Act of the United States, (b) the national air quality standard that is applicable for the region of the proposed project, or any other applicable emission standard or standard of performance under the Clean Air Act of the United States.

8. The Petitioners would contend that the following facts warrant reversal or modification of the Department's Intent to Issue Air Construction Permit:

- a. The petitioners contend that the DEP, acting as authorized agent of the federal government, has not done due diligence in the oversight, verification, validation, and review of the Ambient Air Quality Analysis (AAQA) that was performed by the applicant and submitted in support of its air construction permit application.

- b. The petitioners contend that the DEP should not have waived the requirement for the applicant to perform pre-construction ambient air monitoring in support of his AAQA.

Wrong

c. The petitioners contend that the applicant has not adequately demonstrated or proven that the proposed project will not adversely impact or exceed air quality standards set forth in the Clean Air Act of the United States.

wrong

d. The petitioners contend that the applicant has not been given sufficient restriction or disincentive on the combustion of distillate oil. In public meetings, the applicant has stated that the proposed facility will not operate more than 800 hours per year and they will use 18 to 21 million gallons of water per year. The applicant stated that water is primarily consumed during combustion of distillate oil. The projected high water consumption infers extensive combustion of distillate oil.

e. The petitioners contend that the applicant has not applied Best Available Control Technology to the control of nitrogen oxides (NO_x) while combusting distillate oil. The applicant states control to 42 parts per million (ppm) NO_x on oil but alternate equipment suppliers will warrant 25 ppm NO_x on oil.

f. In public statements to the press, the DEP has said that Central Florida is close to achieving non-attainment status with regard to ozone. The petitioners contend that the applicant's proposed facility is a significant emitter, as defined in Code of Federal Regulations, Title 40, Part 52.21, of constituents to the formation of ozone.

9. The rules or statutes that the Petitioners contend require a reversal or modification or the DEP actions include the following:

The petitioners contend that the DEP has not followed the letter or spirit of the Clean Air Act of the United States, Title I, Part C, Section 165, Subsection 3 which states: "the owner or operator of such facility demonstrates, as required pursuant to section 110(j), that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (A) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this part applies more than one time per year, (B) national ambient air quality standard in any air quality control region, or (C) any other applicable emission standard or standard of performance under this Act;"

The petitioners contend that the DEP has not followed the letter or spirit of the Clean Air Act of the United States, Title I, Part C, Section 165, Subsection 7 which states: "the person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under this part agrees to conduct such monitoring as may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality in any area which may be affected by emissions from such source;"

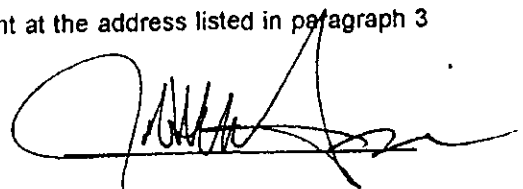
10. The relief sought by Petitioners through this Request for Administrative Hearing includes the following:

- a. Provide evidence that the DEP has written policies and procedures for the validation and verification of computer models and simulations that are used by air permit applicants in their conduct of the AAQA.
- b. Provide evidence, such as reports, minutes, memoranda for file, etc., that this applicant's computer model was verified and validated in accordance with the policies and procedures of (a).
- c. Provide evidence that the DEP has written policies and procedures for the review and approval of AAQAs.

- d. Provide evidence, such as reports, minutes, memoranda for file, etc., that this applicant's assumed or estimated baseline ambient atmosphere that formed the basis for the input data set to the applicant's AAQA, was reviewed by the DEP and deemed correct and proper for the purposes of the AAQA.
- e. Provide evidence, such as reports, minutes, memoranda for file, etc., that the DEP reviewed and concurs in the computer model's options and switches that were selected by the applicant for use in the AAQA, as mandated by Code of Federal Regulations, Title 40, Part 52.21.
- f. Provide evidence, such as reports, minutes, memoranda for file, etc., that the DEP conducted a comprehensive review of the results of the applicant's AAQA.
- g. Require the applicant to perform at least one year of pre-construction monitoring of the pollutants identified in the Code of Federal Regulations, Title 40, Part 52.21. Monitoring shall be in accordance with the United States Environmental Protection Agency (EPA) document *Ambient Monitoring Guidelines for Prevention of Significant Deterioration*.
- h. Require the applicant to use the measured data of (g) in his revised AAQA prior to issuance of a construction permit.
- i. Review and approve the AAQA that uses the data from (g).
- j. Restrict the hours of combustion of distillate oil to a maximum 30 percent of the projected total operating hours per calendar year. If this percentage is exceeded in a calendar year, the next calendar year's combustion of distillate oil shall be reduced by the number of hours in excess of 30 percent.

WHEREFORE, it is respectfully requested that the Department grant an Administrative Review Hearing pursuant to sections 120.569 and 120.57, Florida Statutes (1997) for any and all lawful purposes, including but not limited to reviewing, reconsidering and modifying the previously-issued Notice of Intent to Issue Air Construction Permit to the Applicant at the Brevard County site.

I HEREBY CERTIFY that on this the 12th day of April, 1999, the original of the foregoing Petition for Administrative Hearing was forwarded by first-class United States Mail to the Office of the General Counsel of the Department of Environmental Protection, 3900 Commonwealth Blvd., Mail Station #35, Tallahassee, FL 32399-3000; and via facsimile transmission to (850) 487-4938; and that a true and correct copy was mailed to the Applicant at the address listed in paragraph 3 above.



JOHN M. HARRIS
STADLER & HARRIS, P.A.
1820 Garden Street
Titusville, FL 32796
(407) 264-8800

Petition for Administrative Hearing

Petitioners:

Robert C. and Marlene A. Waters
5060 Palm Avenue
Cocoa, FL 32926
Telephone: (407) 639-4357 (home) or (407) 268-0923 (business)

Applicant:

Oleander Power Project, L.P.
Mr. Richard L. Wolfinger, Vice President
250 West Pratt Street, 23rd Floor
Baltimore, MD 21201

Permit File Number: DEP File No. 0090180-001-AC (PSD-FL-258)

County in Which Project is Proposed: Brevard

Statement of how petitioners received notice:

Via electronic mail, Halpin to R. Knodel, et al, March 29, 1999

Statement of when petitioners received notice:

Via electronic mail, Halpin to R. Knodel, et al, March 29, 1999

Statements of how petitioner's substantial interests are affected by proposed action:

The petitioners are residents of central Brevard County who resides within 3 kilometers of the applicant's proposed facility. The petitioner contends that his health, well being, and quality of life will be significantly damaged by air emissions from the applicant's proposed project. The petitioner will suffer economic harm due to reduced property values as a consequence of close proximity to a facility that is classified as a Major or Title V Source of air pollution.

Statement of material facts disputed by the petitioners:

The petitioner disputes the findings of the Florida Department of Environmental Protection, herein referred to as DEP, that the applicant has demonstrated the proposed facility will not cause or contribute to, air pollution in excess of any: (a) maximum allowable increase or maximum allowable concentration for any pollutant in stipulated in the Clean Air Act of the United States, (b) the national air quality standard that is applicable for the region of the proposed project, or any other applicable emission standard or standard of performance under the Clean Air Act of the United States.

Statement of the facts the petitioners contend warrants reversal or modification:

The petitioner contends that the DEP, acting as authorized agent of the federal government, has not done due diligence in the oversight, verification, validation, and review of the Ambient Air Quality Analysis (AAQA) that was performed by the applicant and submitted in support of his air construction permit application.

The petitioners contend that the DEP should not have waived the requirement for the applicant to perform pre-construction ambient air monitoring in support of his AAQA.

The petitioners contend that the applicant has not adequately demonstrated or proven that the proposed project will not adversely impact or exceed air quality standards set forth in the Clean Air Act of the United States.

The petitioners contend that the applicant has not been given sufficient restriction or disincentive on the combustion of distillate oil. In public meetings, the applicant has stated that the proposed facility will not operate more than 800 hours per year and they will use 18 to 21 million gallons of water per year. The applicant stated that water is primarily consumed during combustion of distillate oil. The projected high water consumption infers extensive combustion of distilled oil.

The petitioners contend that the applicant has not applied Best Available Control Technology to the control of nitrogen oxides (NOx) while combusting distillate oil. The applicant states control to 42 parts per million (ppm) NOx on oil but alternate equipment suppliers will warrant 25 ppm NOx on oil.

In public statements to the press, the DEP has said that Central Florida is close to achieving non-attainment status with regard to ozone. The petitioners contend that the applicant's proposed facility is a significant emitter, as defined in Code of Federal Regulations, Title 40, Part 52.21, of constituents to the formation of ozone.

Statement of the rules or statutes that the petitioner contends requires a reversal or modification or the DEP actions:

The petitioners contend that the DEP has not followed the letter or spirit of the Clean Air Act of the United States, Title I, Part C, Section 165, Subsection 3 which states: "the owner or operator of such facility demonstrates, as required pursuant to section 110(j), that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (A) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this part applies more than one time per year, (B) national ambient air quality standard in any air quality control region, or (C) any other applicable emission standard or standard of performance under this Act,"

The petitioners contend that the DEP has not followed the letter or spirit of the Clean Air Act of the United States, Title I, Part C, Section 165, Subsection 7 which states: "the person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under this part agrees to conduct such monitoring as may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality in any area which may be affected by emissions from such source;"

Statement of relief sought by the petitioners:

- a. Provide evidence that the DEP has written policies and procedures for the validation and verification of computer models and simulations that are used by air permit applicants in their conduct of the AAQA.
- b. Provide evidence, such as reports, minutes, memoranda for file, etc., that this applicant's computer model was verified and validated in accordance with the policies and procedures of (a).
- c. Provide evidence that the DEP has written policies and procedures for the review and approval of AAQAs.
- d. Provide evidence, such as reports, minutes, memoranda for file, etc., that this applicant's assumed or estimated baseline ambient atmosphere that formed the basis for the input data set to the applicant's AAQA, was reviewed by the DEP and deemed correct and proper for the purposes of the AAQA.
- e. Provide evidence, such as reports, minutes, memoranda for file, etc., that the DEP reviewed and concurs in the computer model's options and switches that were selected by the applicant for use in the AAQA that is mandated by Code of Federal Regulations, Title 40, Part 52.21.
- f. Provide evidence, such as reports, minutes, memoranda for file, etc., that the DEP conducted a comprehensive review of the results of the applicant's AAQA.
- g. Require the applicant to perform at least one year of pre-construction monitoring of the pollutants identified in the Code of Federal Regulations, Title 40, Part 52.21. Monitoring shall be in accordance with the United States Environmental Protection Agency (EPA) document *Ambient Monitoring Guidelines for Prevention of Significant Deterioration*.
- h. Require the applicant to use the measured data of (g) in his revised AAQA prior to issuance of a construction permit.
- i. Review and approve the AAQA that uses the data from (g).
- j. Restrict the hours of combustion of distillate oil to a maximum 30 percent of the projected total operating hours per calendar year. If this percentage is exceeded in a calendar year, the next calendar year's combustion of distillate oil shall be reduced by the number of hours in excess of 30 percent.

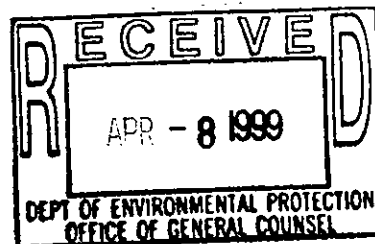
PETITION FOR ADMINISTRATIVE HEARING

Petitioner:

Michael H. Stallings
121 Rosewood Dr.
Cocoa, Florida, 32926
President, Forest Lakes of Cocoa, a Condominium
Phone 407-636-3619
Fax 407-631-4801

Applicant:

Oleander Power Project, L.P.
Mr. Richard L. Wolfinger, VP
250 Pratt St. 23rd Floor
Baltimore, MD. 21201



Permit File Number: DEP File NR. 0090180-001-AC (PSD-FL-258)

Proposed Project to be located in Brevard County, Florida

Notice received by electronic mail from DEP on 29 Mar 1999.

Substantial interests of myself and the residents of Forest Lakes of Cocoa, a Condominium, are affected by this project. Forest Lakes is a 246 unit condominium located one mile south west of the proposed project. We contend that the health, well being, property values and quality of life of each unit owner will be significantly damaged by air emissions from the applicant's proposed project. We further contend that the quality of the 38-acre fresh water lake that comprises the condominium's major asset could also be damaged or degraded by fallout from this project.

Facts disputed by petitioner: We dispute the findings of the Florida Department of Environmental Protection, (DEP) that the applicant has demonstrated the proposed facility will not cause or contribute to air pollution in excess of any maximum allowable increase or maximum allowable concentration for any pollutant stipulated in the Clean Air Act of the United States.

Facts we contend warrant reversal or modification: We contend that the DEP should not have waived the requirement for the applicant to perform pre-construction ambient air monitoring in support of his air construction permit application. We further contend that the applicant has not adequately demonstrated or proven that the proposed project will not adversely impact or exceed air quality standards set forth in the Clean Air Act of the United States. We have had our lake tested each month for the past 9 years by the University of Florida Lake Watch Program. This lake is in the top 10% for cleanliness, fishing, swimming and general use. We contend that the applicant has made no study of the impact of emissions fallout on the quality of our lake. We also contend that the DEP has not placed sufficient restrictions on the use of fuel oil during the operation of this plant.

Rules or statutes that we believe require reversal or modification of DEP actions: We contend that the DEP has not followed the letter and spirit of the Clean Air Act of the United States, Title 1, Part C, Section 165, Subsection 3 which states: " the owner or operator of such facility demonstrates, as required pursuant section 110(j), that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (A) maximum

allowable increase or maximum allowable concentration for any pollutant in any area to which this part applies more than one time per year, (B) national ambient air quality standard in any air quality region, or (C) any other applicable emission standard or standard of performance under this Act;" We also contend that the DEP has not followed the letter and spirit of the Clean Air Act of the United States, Title 1, Part C, Section 165, Subsection 7 which states: "the person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under this part agrees to conduct such monitoring as may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality in any area which may be affected by emissions from such source;"

Petitioner seeks the following relief.

1. Require the applicant to perform at least one year of pre-construction monitoring of the pollutants identified in the Code of Federal Regulations, Title 40, Part 52.21.
2. Conduct a study on the impact of expected fallout on the lake at Forest Lakes.
3. Restrict the hours of combustion of fuel oil to a maximum of 20% of the total operating hours per calendar year. Should this percentage be exceeded in any calendar year, the next year's oil combustion hours would be reduced by that number of hours over 20%.



Michael H. Stallings

President

Forest Lakes of Cocoa, a condominium

Petition for Administrative Hearing

Petitioner:

Craig Bock
865 Clifton's Cove Court
Cocoa, FL 32926
Telephone: (407) 632-4344

Applicant:

Oleander Power Project, L.P.
Mr. Richard L. Wolfinger, Vice President
250 West Pratt Street, 23rd Floor
Baltimore, MD 21201

Permit File Number: DEP File No. 0090180-001-AC (PSD-FL-258)

County in Which Project is Proposed: Brevard

Statement of how petitioners received notice:

Via electronic mail, Halpin to R. Knodel, et al, March 29, 1999

Statement of when petitioners received notice:

Via electronic mail, Halpin to R. Knodel, et al, March 29, 1999

Statements of how petitioner's substantial interests are affected by proposed action:

The petitioner is a resident of central Brevard County who resides within 3 kilometers of the applicant's proposed facility. The petitioner contends that his health, well being, and quality of life will be significantly damaged by air emissions from the applicant's proposed project. The petitioner will suffer economic harm due to reduced property values as a consequence of close proximity to a facility that is classified as a Major or Title V Source of air pollution.

Statement of material facts disputed by the petitioners:

The petitioner disputes the findings of the Florida Department of Environmental Protection, herein referred to as DEP, that the applicant has demonstrated the proposed facility will not cause or contribute to, air pollution in excess of any: (a) maximum allowable increase or maximum allowable concentration for any pollutant in stipulated in the Clean Air Act of the United States, (b) the national air quality standard that is applicable for the region of the proposed project, or any other applicable emission standard or standard of performance under the Clean Air Act of the United States.

Statement of the facts the petitioners contend warrants reversal or modification:

The petitioner contends that the DEP, acting as authorized agent of the federal government, has not done due diligence in the oversight, verification, validation, and review of the Ambient Air Quality Analysis (AAQA) that was performed by the applicant and submitted in support of his air construction permit application.

The petitioner contends that the DEP should not have waived the requirement for the applicant to perform pre-construction ambient air monitoring in support of his AAQA.

The petitioner contends that the applicant has not adequately demonstrated or proven that the proposed project will not adversely impact or exceed air quality standards set forth in the Clean Air Act of the United States.

The petitioner contends that the applicant has not been given sufficient restriction or disincentive on the combustion of distillate oil. In public meetings, the applicant has stated that the proposed facility will not operate more than 800 hours per year and they will use 18 to 21 million gallons of water per year. The applicant stated that water is primarily consumed during combustion of distillate oil. The projected high water consumption infers extensive combustion of distilled oil.

The petitioner contends that the applicant has not applied Best Available Control Technology to the control of nitrogen oxides (NOx) while combusting distillate oil. The applicant states control to 42 parts per million (ppm) NOx on oil but alternate equipment suppliers will warrant 25 ppm NOx on oil.

In public statements to the press, the DEP has said that Central Florida is close to achieving non-attainment status with regard to ozone. The petitioners contend that the applicant's proposed facility is a significant emitter, as defined in Code of Federal Regulations, Title 40, Part 52.21, of constituents to the formation of ozone.

Statement of the rules or statutes that the petitioner contends requires a reversal or modification or the DEP actions:

The petitioner contends that the DEP has not followed the letter or spirit of the Clean Air Act of the United States, Title I, Part C, Section 165, Subsection 3 which states: "the owner or operator of such facility demonstrates, as required pursuant to section 110(j), that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (A) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this part applies more than one time per year, (B) national ambient air quality standard in any air quality control region, or (C) any other applicable emission standard or standard of performance under this Act,"

The petitioner contends that the DEP has not followed the letter or spirit of the Clean Air Act of the United States, Title I, Part C, Section 165, Subsection 7 which states: "the person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under this part agrees to conduct such monitoring as may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality in any area which may be affected by emissions from such source,"

Statement of relief sought by the petitioner:

- a. Provide evidence that the DEP has written policies and procedures for the validation and verification of computer models and simulations that are used by air permit applicants in their conduct of the AAQA.
- b. Provide evidence, such as reports, minutes, memoranda for file, etc., that this applicant's computer model was verified and validated in accordance with the policies and procedures of (a).
- c. Provide evidence that the DEP has written policies and procedures for the review and approval of AAQAs.
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- f. Provide evidence, such as reports, minutes, memoranda for file, etc., that the DEP conducted a comprehensive review of the results of the applicant's AAQA.
- g. Require the applicant to perform at least one year of pre-construction monitoring of the pollutants identified in the Code of Federal Regulations, Title 40, Part 52.21. Monitoring shall be in accordance with the United States Environmental Protection Agency (EPA) document *Ambient Monitoring Guidelines for Prevention of Significant Deterioration*.
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- j. Restrict the hours of combustion of distillate oil to a maximum 30 percent of the projected total operating hours per calendar year. If this percentage is exceeded in a calendar year, the next calendar year's combustion of distillate oil shall be reduced by the number of hours in excess of 30 percent.

Douglas H. Sphar

April 9, 1999

Department of Environmental Protection
Office of General Counsel
3900 Commonwealth Boulevard, MS 35
Tallahassee, FL 32399-3000

Re: Oleander Power Project; DEP File No. 009-180-001-AC (PSD-FL-258)

Dear Sir:

Please find attached my petition for an Administrative Hearing relative to the referenced DEP permitting action.

Yours truly,



819 Heron Road
Cocoa, FL 32926-2320

Petition for Administrative Hearing

Petitioner:

Douglas H. Sphar
819 Heron Road
Cocoa, FL 32926
Telephone: (407) 636-0701

Applicant:

Oleander Power Project, L.P.
Mr. Richard L. Wolfinger, Vice President
250 West Pratt Street, 23rd Floor
Baltimore, MD 21201

Permit File Number: DEP File No. 0090180-001-AC (PSD-FL-258)

County in Which Project is Proposed: Brevard

Statement of how petitioners received notice:

Via article in *Florida Today* newspaper, March 30, 1999

Statement of when petitioners received notice:

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Statement of the rules or statutes that the petitioner contends requires a reversal or modification or the DEP actions:

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The petitioner contends that the DEP has not followed the letter or spirit of the Clean Air Act of the United States, Title I, Part C, Section 165, Subsection 7 which states: "the person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under this part agrees to conduct such monitoring as may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality in any area which may be affected by emissions from such source;"

Statement of relief sought by the petitioner:

- a. Provide evidence that the DEP has written policies and procedures for the validation and verification of computer models and simulations that are used by air permit applicants in their conduct of the AAQA.
- b. Provide evidence, such as reports, minutes, memoranda for file, etc., that this applicant's computer model was verified and validated in accordance with the policies and procedures of (a).
- c. Provide evidence that the DEP has written policies and procedures for the review and approval of AAQAs.
- d. Provide evidence, such as reports, minutes, memoranda for file, etc., that this applicant's assumed or estimated baseline ambient atmosphere that formed the basis for the input data set to the applicant's AAQA, was reviewed by the DEP and deemed correct and proper for the purposes of the AAQA.
- e. Provide evidence, such as reports, minutes, memoranda for file, etc., that the DEP reviewed and concurs in the computer model's options and switches that were selected by the applicant for use in the AAQA that is mandated by Code of Federal Regulations, Title 40, Part 52.21.
- f. Provide evidence, such as reports, minutes, memoranda for file, etc., that the DEP conducted a comprehensive review of the results of the applicant's AAQA.
- g. Require the applicant to perform at least one year of pre-construction monitoring of the pollutants identified in the Code of Federal Regulations, Title 40, Part 52.21. Monitoring shall be in accordance with the United States Environmental Protection Agency (EPA) document *Ambient Monitoring Guidelines for Prevention of Significant Deterioration*.
- h. Require the applicant to use the measured data of (g) in his revised AAQA prior to issuance of a construction permit.
- i. Review and approve the AAQA that uses the data from (g).
- j. Restrict the hours of combustion of distillate oil to a maximum 30 percent of the projected total operating hours per calendar year. If this percentage is exceeded in a calendar year, the next calendar year's combustion of distillate oil shall be reduced by the number of hours in excess of 30 percent.