Department of
Environmental Protection

Jeb Bush
Governor

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

David B. Struhs
Secretary

September 9, 2003

Mr. Gregory Kisela
Assistant City Manager of Fort Lauderdale
City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

RE: Meeting on the Port Everglades Plant ESP Project

Dear Mr. Kisela:

We have received your request for a meeting concerning the Florida Power &Light Company's Port Everglades Plant electrostatic precipitator [ESP] Project.

We would like to accommodate your request; however, please be advised that the timeframes for public comment under the permits have passed. Therefore, to the extent you are interested in a meeting to discuss the ESP project itself, we can arrange one. Such a meeting will not reopen any timeframes for comment or challenge to the permits.

Please contact Mr. Scott M. Sheplak, P.E., Program Administrator for the Title V Section at 850/921-9532 if you have any questions.

Sincerely,

Trina L. Vielhauer

Trina L. Vielhauer
Chief
Bureau of Air Regulation

Department of Environmental Protection

Jeb Bush
Governor

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

David B. Struhs
Secretary

September 9, 2003

Andrew J. Ziffer
525 SW 5th Street
Fort Lauderdale, FL 33315

RE: Florida Power & Light Company's Port Everglades facility

Dear Mr. Ziffer:

Thank you for your letter dated August 28, 2003 regarding Florida Power & Light Company's Port Everglades facility. I have discussed your letter with our permitting engineer for this project. The Bureau of Air Regulation takes the public notice and comment periods very seriously and has complied with all such requirements. I am providing a brief summary of the public notice and comment provisions set forth in Florida law for your review.

The Florida Statutes as well as the Florida Administrative Code specify what must be done to satisfy public notice on these types of permitting actions. Sections 403.815 and 403.0872 of the Florida Statutes and Rules 62-110.106 and 62-210.350 of the Florida Administrative Code require a permit applicant to publish notice in the legal advertisement section of a newspaper of general circulation in the area affected. Sections 50.011 and 50.031, F.S. address which newspapers meet such a requirement. All of these provisions are attached for your information and review.

The Department issued its intent to issue a draft construction permit as well as a draft Title V air operation permit renewal for the Port Everglades facility on June 3, 2003. FPL published notice as required on June 18, 2003 in the *Sun Sentinel.* From the date of publication, the public had 14 days to file a petition on either draft permit. In addition, the public was afforded 30 days to comment on the draft Title V air operation permit renewal and 14 days to comment on the draft construction permit. The timeframe for filing comments or petitions on both draft permits has expired. Pursuant to statute, those who did not comment or petition these permits are deemed to have waived their right to do so.

Andrew J. Ziffer
525 SW 5th Street
Fort Lauderdale, FL 33315
954.462.3135
andy@ziffer.us

August 28, 2003

Trina Vielhauer
Chief, Bureau of Air Regulation
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399

Dear Ms. Vielhauer,

I'm writing to express my concern for your department's issue to Florida Power & Light a permit for the installation of an electrostatic precipitator at their obsolete 1963 Port Everglades power plant. The Port Everglades plant is illegal by today's lowest standards yet continues to operate under a flawed grandfathered clause as I'm confident you're aware. I understand the Clean Air Act of 1970 grandfathered this 1963 plant with the tacit understanding that when it's useful life was complete; it would be brought up to current Clean Air Act standards. Instead, it gets routine facelifts, the proposed being $90 million. With such a facelift, I'm confident FPL expects to milk their Port Everglades equipment for yet another 40 years spewing 20,947 million tons of sulfur dioxide annually along with nitrous oxide to match.

As an involved resident of Broward County and an original member of the City of Fort Lauderdale Utilities Advisory Committee (formerly the FPL Citizen Advisory Committee), I'm uncertain how permitting for a power plant slipped through so easily, especially Port Everglades which is in extremely close proximity to one of the highest residential densities in the state. Your permit processed is either flawed or was not adhered to.

Being FDEP is an agency to protect Florida's environment, and your Bureau of Air Regulation in particular, I would expect your permit process to include an effective method of inviting public input. If a small ad in a local newspaper satisfies the State as "notice," I admit I was not looking for a used lawnmower the day the ad was run, if in fact such an ad appeared at all.

As a concerned citizen as well as a born, raised, and educated Floridian, I kindly request no preference be given to FPL and that FDEP honor its charge of protecting the environment. As well, please provide a legal opinion from your general counsel as to why FDEP cannot reopen the public hearing process and, if an opinion is given, then what would establish cause to reopen the permit process?

In advance I thank you for your prompt attention to this matter.

Respectfully,

Andrew J. Ziffer
Citizen of Fort Lauderdale/Broward County

c: Mr. Greg Worley
US EPA
Air Permits Section
Atlanta, GA 30303

Select Year: 2003 Go

The 2003 Florida Statutes

Title XXIX
PUBLIC HEALTH

Chapter 403
ENVIRONMENTAL CONTROL

View Entire Chapter

403.815 Public notice; waiver of hearings.--The department may publish or by rule require the applicant to publish, or the applicant may elect to publish, in a newspaper of general circulation in the area affected, notice of application for a permit submitted under this chapter or chapter 253. The notice of application shall be published within 14 days after the application is filed with the department. Notwithstanding any provision of s. 120.60, the department may publish or by rule require the applicant to publish, or the applicant may elect to publish, in a newspaper of general circulation in the area affected, notice of proposed agency action on any permit application submitted under this chapter or chapter 253. The department shall require the applicant for a permit to construct or expand a solid waste facility to publish such notice. The notice of proposed agency action shall be published at least 14 days prior to final agency action. The 90-day time period specified in s. 120.60 shall be tolled by the request of the department for publication of notice of proposed agency action and shall resume 14 days after receipt by the department of proof of publication. However, if a petition is filed for a proceeding pursuant to ss. 120.569 and 120.57, the time periods and tolling provisions of s. 120.60 shall apply. The cost of publication of notice under this section shall be paid by the applicant. The secretary may, by rule, specify the format and size of such notice. Within 14 days after publication of notice of proposed agency action, any person whose substantial interests are affected may request a hearing in accordance with ss. 120.569 and 120.57. The failure to request a hearing within 14 days after publication of notice of proposed agency action constitutes a waiver of any right to a hearing on the application under ss. 120.569 and 120.57.

History.--s. 10, ch. 80-66; s. 13, ch. 82-27; s. 44, ch. 84-338; s. 48, ch. 87-225; s. 169, ch. 96-410.

(7) A permit issued pursuant to this section shall not become a vested right in the p department may revoke any permit issued by it if it finds that the permitholder:

(a) Has submitted false or inaccurate information in his or her application;

(b) Has violated law, department orders, rules, or regulations, or permit conditions

(c) Has failed to submit operational reports or other information required by depart regulation; or

(d) Has refused lawful inspection under s. 403.091.

(8) The department shall not issue a permit to any person for the purpose of engagi attempting to engage in, any activity relating to the extraction of solid minerals not pursuant to chapter 211 within any state or national park or state or national forest activity will degrade the ambient quality of the waters of the state or the ambient a areas. In the event the Federal Government prohibits the mining or leasing of solid r federal park or forest lands, then, and to the extent of such prohibition, this act sha those federal lands.

(9) A violation of this section is punishable as provided in this chapter.

History.--s. 1, ch. 71-203; s. 4, ch. 74-133; s. 14, ch. 78-95; s. 14, ch. 82-27; s. 1, c ch. 82-122; s. 59, ch. 83-218; s. 24, ch. 84-338; s. 11, ch. 86-186; s. 2, ch. 87-125; s 393; s. 29, ch. 91-305; s. 2, ch. 92-132; s. 72, ch. 93-213; s. 1, ch. 97-103; s. 20, ch ch. 2000-304; s. 5, ch. 2003-173.

403.0871 Florida Permit Fee Trust Fund.--There is established within the departr nonlapsing trust fund to be known as the "Florida Permit Fee Trust Fund." All funds r applicants for permits pursuant to ss. 161.041, 161.053, 161.0535, 403.087(6), and 4 be deposited in the Florida Permit Fee Trust Fund and shall be used by the departm advice and consent of the Legislature to supplement appropriations and other funds the department for the administration of its responsibilities under this chapter and no case shall funds from the Florida Permit Fee Trust Fund be used for salary increa approval of the Legislature.

History.--s. 2, ch. 82-122; s. 12, ch. 86-186; s. 30, ch. 91-305; s. 362, ch. 94-356; s. s. 21, ch. 97-236.

403.0872 Operation permits for major sources of air pollution; annual operatior Provided that program approval pursuant to 42 U.S.C. s. 7661a has been received fr States Environmental Protection Agency, beginning January 2, 1995, each major sou pollution, including electrical power plants certified under s. 403.511, must obtain t department an operation permit for a major source of air pollution under this sectic operation permit is the only department operation permit for a major source of air p required for such source; provided, at the applicant's request, the department shall separate acid rain permit for a major source of air pollution that is an affected sour meaning of 42 U.S.C. s. 7651a(1). Operation permits for major sources of air polluti general permits issued pursuant to s. 403.814, must be issued in accordance with th contained in this section and in accordance with chapter 120; however, to the exter 120 is inconsistent with the provisions of this section, the procedures contained in tl prevail.

(1) For purposes of this section, a major source of air pollution means a stationary s pollution, or any group of stationary sources within a contiguous area and under con which emits any regulated air pollutant and which is any of the following:

(a) A major source within the meaning of 42 U.S.C. s. 7412(a)(1);

(b) A major stationary source or major emitting facility within the meaning of 42 U. or 42 U.S.C. subchapter I, part C or part D;

(c) An affected source within the meaning of 42 U.S.C. s. 7651a(1);

(d) An air pollution source subject to standards or regulations under 42 U.S.C. s. 74 provided that a source is not a major source solely because of its regulation under 4 (r); or

(e) A stationary air pollution source belonging to a category designated as a 40 C.F. source by regulations adopted by the administrator of the United States Environmen Agency under 42 U.S.C. ss. 7661 et seq. The department shall exempt those facilitie subject to this section solely because they are subject to requirements under 42 U.S solely because they are subject to reporting requirements under 42 U.S.C. s. 7412 f exemption is available under federal law.

(2) An application for an operation permit for a major source of air pollution must b accordance with rules of the department governing permit applications. The depart adopt rules defining the timing, content, and distribution of an application for a per section. A permit application processing fee is not required. The department may is operation permit for a major source of air pollution only when it has reasonable assu source applies pollution control technology, including fuel or raw material selection enable it to comply with the standards or rules adopted by the department or an ap compliance plan for that source. If two or more major air pollution sources that bel Major Group as described in the Standard Industrial Classification Manual, 1987, are single site, the owner may elect to receive a single operation permit covering all su the site.

(a) An application for a permit under this section is timely and complete if it is subi accordance with department rules governing the timing of applications and substant the information specified in completeness criteria determined by department rule i with applicable regulations of the United States Environmental Protection Agency g contents of applications for permits under 42 U.S.C. s. 7661b(d). Unless the departn additional information or otherwise notifies the applicant of incompleteness within receipt of an application, the application is complete.

(b) Any permitted air pollution source that submits a timely and complete applicati under this section is entitled to operate in compliance with its existing air permit pe conclusion of proceedings associated with its application. Notwithstanding the timin of paragraph (c) and subsection (3), the department may process applications recei first year of permit processing under this section, in a manner consistent with 42 U.S (c).

(c) The department may request additional information necessary to process a perr subsequent to a determination of completeness in accordance with s. 403.0876(1).

(3) Within 90 days after the date on which the department receives all information process an application for a permit under this section, the department shall issue a a determination that the requested permit should be denied. A draft permit must co conditions that the department finds necessary to ensure that operation of the sour compliance with applicable law, rules, or compliance plans. If the department prop the permit application, the department's determination must provide an explanatio The department shall furnish a copy of each draft permit to the United States Envir Protection Agency and to any contiguous state whose air quality could be affected c

within 50 miles of the source pursuant to procedures established by department rule

(4) The department shall require the applicant to publish notice of any draft permit with department rule. The department must accept public comment with respect to for 30 days following the date of notice publication. The notice must be published in of general circulation as defined in s. 403.5115(2). If comments received during this in a change in the draft permit, the department must issue a revised draft permit, v supplied to the United States Environmental Protection Agency and to any contiguou air quality could be affected or which is within 50 miles of the source.

(5) Any person whose substantial interests are affected by a draft permit or the der determination may request an administrative hearing under ss. 120.569 and 120.57, with the rules of the department. A draft permit must notify the permit applicant o process applicable to the permit decision of the department. The department shall rule, a suitable standard format for such notification.

(6) If a hearing is not requested under ss. 120.569 and 120.57, the draft permit will department's proposed permit but does not become final until the time for federal r proposed permit has elapsed. The department shall furnish the United States Enviro Protection Agency a copy of each proposed permit and its written response to any c regarding the permit submitted by contiguous states. If no objection to the propose made by the United States Environmental Protection Agency within the time establi U.S.C. s. 7661d, the proposed permit must become final no later than 55 days after which the proposed permit was mailed to the United States Environmental Protectic department shall issue a conformed copy of the final permit as soon as is practicabl

(7) If a draft permit is the subject of an administrative hearing under ss. 120.569 ar proposed permit containing changes, if any, resulting from the hearing process, afte conclusion of the hearing, must be issued and a copy must be provided to the applic United States Environmental Protection Agency, and to any contiguous state whose could be affected or which is within 50 miles of the source, as soon as practicable. permit shall not become final until the time for review, by the United States Enviro Protection Agency, of the proposed permit has elapsed. If comments from a contigu regarding the permit are received, the department must provide a written response applicant, to the state, and to the United States Environmental Protection Agency. I to the proposed permit is made by the United States Environmental Protection Agen time established by 42 U.S.C. s. 7661d, the proposed permit must become final no l days after the date on which the proposed permit was mailed to the United States E Protection Agency. The department shall issue a conformed copy of the final permit practicable thereafter.

(8) If the administrator of the United States Environmental Protection Agency timel proposed permit under this section, the department must not issue a final permit ur objection is resolved or withdrawn. A copy of the written objection of the administr provided to the permit applicant as soon as practicable after the department receiv days after the date on which the department serves the applicant with a copy of an the United States Environmental Protection Agency to a proposed permit, the applic written reply to the objection. The written reply must include any supporting mater applicant desires to include in the record relevant to the issues raised by the object written reply must be considered by the department in issuing a final permit to resc objection of the administrator. A final permit issued by the department to resolve a the administrator is not subject to ss. 120.569 and 120.57.

(9) A final permit issued under this section is subject to judicial review under s. 12(review of a final permit results in material changes to the conditions of the permit, department shall notify the United States Environmental Protection Agency and any contiguous to this state whose air quality could be affected or that is within 50 mile

pursuant to rules of the department.

(10) If the department is notified by the administrator of the United States Environ Protection Agency that cause exists to terminate, modify, or revoke and reissue a p section, the department shall, within 90 days after receipt of such notification, furr administrator and the permittee a proposed determination of termination, modifica revocation and reissuance as appropriate. Within 45 days after the date on which th notifies the permittee that the United States Environmental Protection Agency prop regarding its permit, the permittee may file a written response concerning the prop The written response must include any supporting materials that the permittee desi in the record relevant to the issues raised by the proposed action. The permittee's v must be considered by the department in formulating its proposed determination ur subsection.

(11) Each major source of air pollution permitted to operate in this state must pay January 15 and March 1 of each year, upon written notice from the department, an operation license fee in an amount determined by department rule. The annual ope fee shall be terminated immediately in the event the United States Environmental F Agency imposes annual fees solely to implement and administer the major source ai permit program in Florida under 40 C.F.R. s. 70.10(d).

(a) The annual fee must be assessed based upon the source's previous year's emissic calculated by multiplying the applicable annual operation license fee factor times tl regulated air pollutant (except carbon monoxide) allowed to be emitted per hour by condition of the source's most recent construction or operation permit, times the ar operation allowed by permit condition; provided, however, that:

1. The license fee factor is $25 or another amount determined by department rule that the revenue provided by each year's operation license fees is sufficient to cove direct and indirect costs of the major stationary source air-operation permit prograi by this section. The license fee factor may be increased beyond $25 only if the secr department affirmatively finds that a shortage of revenue for support of the major source air-operation permit program will occur in the absence of a fee factor adjust annual license fee factor may never exceed $35.

2. For any source that operates for fewer hours during the calendar year than allow permit, the annual fee calculation must be based upon actual hours of operation rat allowable hours if the owner or operator of the source documents the source's actua operation for the calendar year. For any source that has an emissions limit that is d the type of fuel burned, the annual fee calculation must be based on the emissions during actual hours of operation.

3. For any source whose allowable emission limitation is specified by permit per un input or heat input or product output, the applicable input or production amount m calculate the allowable emissions if the owner or operator of the source documents input or production amount. If the input or production amount is not documented, t allowable input or production amount specified in the permit must be used to calcu allowable emissions.

4. For any new source that does not receive its first operation permit until after th calendar year, the annual fee for the year must be reduced pro rata to reflect the p which the source was not allowed to operate.

5. For any source that emits less of any regulated air pollutant than allowed by per the annual fee calculation for such pollutant must be based upon actual emissions r allowable emissions if the owner or operator documents the source's actual emissior data from a department-approved certified continuous emissions monitor or from ar

monitoring method which has been approved by the United States Environmental Pr under the regulations implementing 42 U.S.C. ss. 7651 et seq., or from a method ap department for purposes of this section.

6. The amount of each regulated air pollutant in excess of 4,000 tons per year allov emitted by any source, or group of sources belonging to the same Major Group as de Standard Industrial Classification Manual, 1987, may not be included in the calculati Any source, or group of sources, which does not emit any regulated air pollutant in tons per year, is allowed a one-time credit not to exceed 25 percent of the first ann fee for the prorated portion of existing air-operation permit application fees remair commencement of the annual licensing fees.

7. If the department has not received the fee by February 15 of the calendar year, must be sent a written warning of the consequences for failing to pay the fee by Ma is not postmarked by March 1 of the calendar year, the department shall impose, in fee, a penalty of 50 percent of the amount of the fee, plus interest on such amount accordance with s. 220.807. The department may not impose such penalty or intere amount underpaid, provided that the permittee has timely remitted payment of at l of the amount determined to be due and remits full payment within 60 days after re of the amount underpaid. The department may waive the collection of underpayme be required to refund overpayment of the fee, if the amount due is less than 1 perc up to $50. The department may revoke any major air pollution source operation per that the permitholder has failed to timely pay any required annual operation license or interest.

8. Notwithstanding the computational provisions of this subsection, the annual oper fee for any source subject to this section shall not be less than $250, except that th operation license fee for sources permitted solely through general permits issued ur shall not exceed $50 per year.

9. Notwithstanding the provisions of s. 403.087(6)(a)4.a., authorizing air pollution permit fees, the department may not require such fees for changes or additions to a of air pollution permitted pursuant to this section, unless the activity triggers permi requirements under Title I, Part C or Part D, of the federal Clean Air Act, 42 U.S.C. Costs to issue and administer such permits shall be considered direct and indirect cc major stationary source air-operation permit program under s. 403.0873. The depar however, require fees pursuant to the provisions of s. 403.087(6)(a)4.a. for the cons new major source of air pollution that will be subject to the permitting requirement section once constructed and for activities triggering permitting requirements under or Part D, of the federal Clean Air Act, 42 U.S.C. ss. 7470-7514a.

(b) Annual operation license fees collected by the department must be sufficient tc reasonable direct and indirect costs required to develop and administer the major s source air-operation permit program, which shall consist of the following elements t that they are reasonably related to the regulation of major stationary air pollution s accordance with United States Environmental Protection Agency regulations and gui

1. Reviewing and acting upon any application for such a permit.

2. Implementing and enforcing the terms and conditions of any such permit, exclud or other costs associated with any enforcement action.

3. Emissions and ambient monitoring.

4. Preparing generally applicable regulations or guidance.

5. Modeling, analyses, and demonstrations.

6. Preparing inventories and tracking emissions.

7. Implementing the Small Business Stationary Source Technical and Environmental Assistance Program.

8. Any audits conducted under paragraph (c).

(c) An audit of the major stationary source air-operation permit program must be c years after the United States Environmental Protection Agency has given full approv program to ascertain whether the annual operation license fees collected by the de used solely to support any reasonable direct and indirect costs as listed in paragrapl audit must be performed biennially after the first audit.

(12) Permits issued under this section must allow changes within a permitted facilit requiring a permit revision, if the changes are not physical changes in, or changes ir operation of, the facility which increase the amount of any air pollutant emitted by which result in the emission of any air pollutant not previously emitted by the facili changes do not exceed the emissions allowable under the permit (whether expresse rate of emissions or in terms of total emissions), provided that the facility provides administrator and the department with 30 days' written, advance notice of the prop The department shall adopt rules implementing this flexibility requirement.

(13)(a) In order to ensure statewide consistency in the implementation of the natio Deposition Control Allowance Transfer System, a department district office or local control program may not issue or administer permits under this section for any elec plant or any source that participates in the allowance transfer system.

(b) For emission units that are subject to continuous monitoring requirements unde 7661-7661f or 40 C.F.R. part 75, compliance with nitrogen oxides emission limits sh demonstrated based on a 30-day rolling average, except as specifically provided by 60 or part 76.

(14) In order to ensure statewide consistency in the permitting of major sources, a control program may not issue permits under this section for sources that belong to 26, Paper and Allied Products; for sources that belong to Major Group 28, Chemicals Products; or for sources that belong to Industry Number 2061, Cane Sugar, Except R defined in the Standard Industrial Classification Manual, 1987.

(15) Any permittee that operates in compliance with an air-operation permit issued section is deemed to be in compliance with applicable permit requirements of the C and all implementing state, local, and federal air pollution control rules and regulat provisions of this chapter, relating to air pollution, and rules adopted thereunder.

(16) The department shall adopt a rule to provide for a procedure for notice to the approved local pollution control programs, pursuant to s. 403.182, of any draft perm draft permits, or final permits issued by the department.

(17) The administrator of the United States Environmental Protection Agency may i matter of right in any administrative or judicial proceeding relating to an operation major source of air pollution required under this section.

(18) The department shall require certification of all applications, submittals, and responsible official of a major source of air pollution and shall require the inclusion specific federal requirements listed at 42 U.S.C. s. 7661a(f)(1), (2), and (3) in all pe

such terms apply.

History.--s. 3, ch. 92-132; s. 3, ch. 93-94; s. 2, ch. 94-321; s. 1, ch. 95-223; s. 3, ch ch. 96-370; s. 130, ch. 96-410; s. 8, ch. 97-222; s. 22, ch. 97-236; s. 18, ch. 97-277; 153; s. 59, ch. 2000-158; s. 13, ch. 2000-211; s. 13, ch. 2000-304.

403.08725 Citrus juice processing facilities.--

(1) COMPLIANCE REQUIREMENTS; DEFINITIONS.--Effective July 1, 2002, all existing c processing facilities shall comply with the provisions of this section in lieu of obtaini construction and operation permits, notwithstanding the permit requirements of ss. 403.0872. For purposes of this section, "existing juice processing facility" means any currently has air pollution construction or operation permits issued by the departme processing capacity of 2 million boxes per year or more. For purposes of this section means all emissions units at a plant that processes citrus fruit to produce single-stre concentrated juice and other products and byproducts identified by Major Group Sta Industrial Classification Codes 2033, 2037, and 2048 which are located within a cont are owned or operated under common control, along with all emissions units locate contiguous area and under the same common control which directly support the ope citrus juice processing function. For purposes of this section, facilities that do not o peel dryer are not subject to the requirements of paragraph (2)(c). For purposes of "department" means the Department of Environmental Protection. Notwithstanding provision of law to the contrary, for purposes of the permitted emission limits of thi sources" means emissions units constructed or added to a facility on or after July 1, "existing sources" means emissions units constructed or modified before July 1, 2002

(2) PERMITTED EMISSIONS LIMITS.--All facilities authorized to construct and operate section shall operate within the most stringent of the emissions limits set forth in pa (g) for each new and existing source:

(a) Any applicable standard promulgated by the United States Environmental Protec

(b) Each facility shall comply with the emissions limitations of its Title V permit, ar issued and certified valid preconstruction permits, until October 31, 2002, at which requirements of this section shall supersede the requirements of the permits. Nothi paragraph shall preclude the department's authority to evaluate past compliance wi department rules.

(c) After October 31, 2004, for volatile organic compounds, the level of emissions a 50 percent recovery of oil from citrus fruits processed as determined by the method in subparagraph (4)(a)1. One year after EPA approval pursuant to subsection (9), for organic compounds, the level of emissions achievable by a 65 percent recovery of oi fruits processed as determined by the methodology described in subparagraph (4)(a)

(d) After October 31, 2004, no facility shall fire fuel oil containing greater than 0.1 by weight. No source shall fire any fuel other than fuel oil, natural gas, ethanol, prc limonene, or biogas. No source shall fire used oil.

(e) All new boilers and coolers must have a stack height of at least 2.5 times the he adjacent buildings, and no more than 65 meters, measured from the ground-level el base of the stack.

(f) After October 31, 2004, for particulate matter of 10 microns or less, the emissio expressed in pounds per million British thermal units of heat input, unless otherwise established for the following types of new and existing sources:

(3) The Department shall prepare a notice of intended agency action on the petition for a variance under Section 373.414(17) or 403.201. The Department shall publish this notice once in the Florida Administrative Weekly, and the petitioner shall publish notice of intended agency action on the petition once, at his own expense, in a newspaper of general circulation (as defined in Section 50.031 of the Florida Statutes) in the county in which the property for which the variance is sought is located.

(4) Renewals of variances shall be applied for in the same manner as the initial variance.

(5) Requests for variances from the permitting requirements for air operations shall be governed by Rule 62-212.400(4)(a)3.-6. drinking water variances shall be governed by Rule 62-560.510, those for variances for wastewater facilities discharging to surface waters shall be governed by Rule 62-620.100(3)(p) (incorporating The Department of Environmental Protection Guide to Wastewater Permitting), and those for phosphate land reclamation variances under Section 378.212 shall be governed by Rule 62C-16.0045.

(6) Requests for waivers of chlorination requirements for public drinking water systems shall be governed by Rule 62-560.530, those for waivers of requirements for certified operators for such systems shall be governed by Rule 62-560.540, those for waivers of monitoring requirements for such systems shall be governed by Rule 62-560.545, and those for waivers of monitoring requirements for asbestos, dioxin, or butachlor in such systems shall be governed by Rule 62-560.546.

(7) Rule 62-620.800 shall govern requests for variances for discharges regulated under Section 403.0885, authorizing the federally approved state National Pollutant Discharge Elimination System (NPDES) Program for discharges of pollutants into waters of the state.

(8) Rules 62-160.400(6)-(8) shall govern applications for approval of alternative procedures to the laboratory and field analytical and quality control requirements otherwise imposed by Rule 62-160.400.

(9) Rule 62-297.620 shall govern requests for approval of alternative procedures or requirements for any air pollution "emissions unit" as defined in Rule 62-210.200(111).

(10) Rule 62-601.400(1)(b) shall govern requests for approval of alternative methods for sampling and testing for wastewater facilities.

(11) Rule 62-701.310 shall govern requests for approval of alternative procedures and requirements for solid waste management facilities.

(12) For approval of variances and waivers for technical and financial audits under Section 376.3071(12)(k)5.a., a petitioner shall comply with Rule 28-104, except that the petition need not show why the variance or waiver requested would serve the purposes of the underlying statute.

Specific Authority 120.54(5), 373.044, 373.113, 373.414(9),(17), 378.212, 403.061(7), 403.087, 403.088, 403.0885, 403.08851, 403.853(3), 403.861(9) FS. Law Implemented 373.414(9),(17), 376.3071, 378.212, 403.031, 403.061, 403.0877, 403.088, 403.0885, 403.201, 403.852(12),(13), 403.853, 403.854(1),(4), 403.857 FS. History–New 7-1-98.

62-110.105 Formal Determinations of the Landward Extent of Wetlands and Surface Waters.

Requests for formal determinations of the landward extent of wetlands and surface waters shall be governed by Rule 62-343.040.

Specific Authority 120.54(5), 373.026, 373.043, 373.044, 373.421 FS. Law Implemented 120.60, 373.026, 373.117, 373.421 FS. History–New 7-1-98.

62-110.106 Decisions Determining Substantial Interests.

(1) Service. Service of any document shall be deemed complete upon being properly addressed, stamped, and deposited in the United States Mail, or upon receipt of the complete document by the clerk of the Department or any other party to whom a document is sent by facsimile transmission or hand delivery (including express or courier services such as Federal Express).

(2) "Receipt of Notice of Agency Action" Defined. As an exception to Rule 28-106.111(2), for the purpose of determining the time for filing a petition for hearing on any actual or proposed action of the Department as set forth below in this rule, "receipt of notice of agency action" means either receipt of written notice or publication of the notice in a newspaper of general circulation in the county or counties in which the activity is to take place, whichever first occurs, except for persons entitled to written notice personally or by mail under Section 120.60(3) or any other statute. For purposes of this section, "publication of the notice" for hazardous waste permits shall mean the publication of the notice in a newspaper or the broadcast of the notice over a local radio station (both of which are required) in accordance with Rule 62-730.220(9), whichever is later. "Notice of agency action" shall include notice of intended agency action as well as actual agency action. For applications reviewed concurrently under Section 373.427, "notice of agency action" shall mean only the consolidated notice of intent to grant or deny. Except where otherwise provided by statute or this rule chapter, a timely petition requesting an administrative hearing shall be filed within twenty-one days of such receipt of notice of agency action.

(3) Time for Filing Petition.

(a) A petition shall be in the form required by Rule 28-106.201 or 28-106.301 and must be filed (received) in the office of General Counsel of the Department within the following number of days after receipt of notice of agency action, as defined in subsection (2) of this rule above:

1. Petitions concerning Department action or proposed action on applications for permits under Chapter 403 and related authorizations under Section 373.427 (except permits for hazardous waste facilities): fourteen days;

2. Petitions concerning Department action or proposed action on applications for hazardous waste facility permits: forty-five days;

3. Petitions concerning notices of violation: twenty days after receipt of the notice of violation;

4. Petitions concerning Department action or proposed action on applications for permits under statutes other than Chapter 403 or Section 373.427, or concerning other Department actions or proposed actions: twenty-one days.

The petitioner shall also serve a copy of the petition on all other parties to the proceeding, as identified in the notice, at the time of filing.

(b) Failure to file a petition within the applicable time period after receiving notice of agency action shall constitute a waiver of any right to request an administrative proceeding under Chapter 120, Florida Statutes.

(4) Enlargement of Time. For good cause shown, the Secretary of the Department (or the Secretary's designee) may grant an enlargement of time for the doing of any act required or allowed to be done under an order of the Department, the Uniform Rules of Procedure, or any rule of the Department or notice given under such a rule, if the request for such enlargement is made before the expiration of the period to be enlarged, or may allow the act to be done even if the period has expired, upon motion showing that the failure to act was the result of excusable neglect.

(5) Notices: General Requirements. Each person who files an application for a Department permit or other approval may publish or be required to publish a notice of application or other notice as set forth below in this section. Except as specifically provided otherwise in this paragraph, each person publishing such a notice under this section shall do so at his own expense in the legal advertisements section of a newspaper of general circulation (i.e., one that meets the requirements of Sections 50.011 and 50.031 of the Florida Statutes) in the county or counties in which the activity will take place or the effects of the Department's proposed action will occur, and shall provide proof of the publication to the Department within seven days of the publication. For federally enforceable general permits approved by the Department for air operations, however, notice of a draft permit shall be published in the Florida Administrative Weekly, in accordance with 40 C.F.R. sec. 70.7(h)(1). In addition to the provisions of this section, other specific requirements for notices are as follows: notices for variances and waivers are governed by Rule 62-110.104, notices for federally enforceable air operation permits are governed by Rule 62-210.350, notices for exemptions from water quality criteria are governed by Rule 62-4.243(1)(a), those for exemptions for water bodies classified for navigation, utility, and industrial use are governed by 62-4.243(2)(a), notices for exemptions from the limitations imposed on mixing zones are governed by Rule 62-4.244(1)(c), notices for general permits are generally governed by 62-4.530(5), notices on site-specific alternative criteria are governed by 62-302.800(4)(c)7, notices for "noticed general permits" in the environmental resource permitting program are governed by Rules 62-343.090(1)(d)-(e), (2)(c), and (2)(h)-(j), notices on permits for underground injection wells are governed by Rule 62-528.315, notices on wastewater facility permits are governed by Rule 62-620.550, notices for general permits for solid waste transfer stations are governed by Rule 62-701.801(7), and notices (including the federal requirement for such notice to be broadcast over one or more local radio stations) for hazardous waste permits are governed by Rules 62-730.220(9) and (11).

(6) Notice of Application. Publication of a notice of application shall be required for those projects that, because of their size, potential effect on the environment or natural resources, controversial nature, or location, are reasonably expected by the Department to result in a heightened public concern or likelihood of request for administrative proceedings. If required, the notice shall be published by the applicant one time only within fourteen days after a complete application is filed and shall contain the name of the applicant, a brief description of the project and its location, the location of the application file, and the times when it is available for public inspection. The notice shall be prepared by the Department and shall comply with the following format:

Notice of Application

The Department of Environmental Protection announces receipt of an application for permit from [name of applicant] to [brief description of project]. This proposed project will be located at [location] in [city, if applicable] in [county]. This application is being processed and is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at [name and address of office].

A notice of application for an environmental resource permit shall also contain the information required by Sections 373.413(3)-(4) of the Florida Statutes.

(7) Notice of Proposed Agency Action on Permit Application. After processing a permit application, the Department shall give the applicant either a notice of permit issuance (or denial) or a notice of the Department's intent to issue (or deny). Each such notice shall comply with the requirements for format, content, and publication as set forth below in this subsection.

(a) The Department shall require publication of notice of the Department's proposed action on an application in the following circumstances:

1. The Department shall require applicants to publish an intent to issue for all construction permits for domestic wastewater treatment plants, industrial wastewater treatment plants, Class I, Class III, or major Class V underground injection control wells, solid waste disposal facilities, hazardous waste facilities, and air pollution sources, as well as any other project (including any environmental resource or wetland resource project) that the Department finds is reasonably expected to result in a heightened public concern or likelihood of a request for administrative proceedings because of its size, potential effect on the environment or natural resources, controversial nature, or location. In addition, all applicants shall publish a notice of intent to issue under Rule 62-210.350 for federally enforceable air operation permits, permit revisions, and permit renewals, including those processed under the provisions of Chapter 62-213 of the Florida Administrative Code, but not for permit revisions meeting the requirements of Rule 62-213.412(1).

2. Applicants for construction permits for drinking water treatment plants whose facilities will discharge to surface or ground water and will be required to obtain a permit to discharge or any other permit from the Department shall publish a notice of intent to issue a permit.

3. Applicants for construction or expansion of solid waste facilities shall publish a notice of intent to deny a permit.

4. After publication of a notice of intent to issue or intent to deny a permit application, the applicant shall publish an additional notice if the subject activity or project is substantially modified by the applicant and the Department proposes to issue the permit with the modification. The additional notice shall not be required for applications for which a notice of administrative proceeding on a permit application has been published under paragraph (7)(e) below. For the purposes of this subparagraph, the phrase "substantially modified" means a relocation or modification of the activity or project that is reasonably expected to cause new or significantly greater adverse environmental impacts.

(b) The applicant shall cause the notice to be published as soon as possible after notification by the Department of its intended action. The provisions of Section 120.60(1) of the Florida Statutes shall be tolled by the request of the Department for publication of the notice and shall resume fourteen days after receipt of proof of publication, at the address specified by the Department in its request for publication.

(c) The notice shall be prepared by the Department and shall contain the following:

1. The name of the applicant and a brief description of the proposed activity and its location;

2. The location of the application file and the times when it is available for public inspection;

3. A statement of the Department's intended action; and

4. A notification of the opportunity to request an administrative hearing and mediation (if available) that reads substantially as set forth in paragraph (12) of this rule, below.

(d) The notice required by this subsection shall read substantially as follows:

Notice of Intent to [insert "Issue" or "Deny" as appropriate] Permit

The Department of Environmental Protection gives notice of its intent to [issue] [deny] a permit to [name and address of applicant] to [brief description of project or activity]. The application is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at [name and address of office].

[Insert the language setting forth the notice of rights, as provided in paragraph (12) of this rule, below.]

(e) Notice of Administrative Proceeding. If the applicant initiates an administrative proceeding on a permit denial or an intent to deny and the project or activity is one for which publication of a notice of intent to issue would have been required under subparagraph (7)(a)1. above, the applicant shall publish a notice of administrative proceeding on permit application.

1. The notice shall be published at the applicant's expense either

a. Within fifteen days after the applicant's petition for administrative proceeding has been forwarded to the Division of Administrative Hearing (DOAH) or within fifteen days after the initiation of an administrative proceeding before the Department under Section 120.569 of the Florida Statutes; or, at the applicant's option,

b. Within fifteen days after the applicant has filed a request for an extension of time in which to file a petition for an administrative proceeding.

2. The notice shall read substantially as follows:

Notice of Administrative Proceeding on Permit Application

The Department of Environmental Protection gives notice of receipt of a [insert "request for an extension of time in which to file a" if appropriate] petition for an administrative proceeding (hearing) on the Department's [intent to deny] [denial of] a permit to [name and address of applicant, application number, OGC file number, and DOAH case number, if applicable] to [brief description of activity or project and of location].

The administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the proposed agency action and may result in the issuance of a permit as requested by the applicant or as modified in the course of the proceeding or by settlement.

[Insert the language setting forth the notice of rights, as provided in paragraph (12) of this rule, below.]

(f) Notices of intent to issue a permit for hazardous waste facilities shall be in the format set forth above but shall include the time frames and meet the federal requirements set forth in Rule 62-730.220(9) of the Florida Administrative Code.

(8) Notice of Proposed Agency Action (Non-permitting). On a matter other than a permit application, the Department or any applicant, petitioner for a variance or waiver, party to a consent order, or person seeking the Department's authorization or approval of a report, plan, proposal, or other request (excluding any request for hearing) may publish or be required to publish notice of the proposed action in substantially the following format:

State of Florida Department of Environmental Protection Notice of Proposed Agency Action

The Department of Environmental Protection gives notice that it proposes [insert phrase describing the agency action proposed (e.g., to approve a consent order)] in reference to [a description and location of the subject matter or activity covered by the action, the Department's identification number, and the name and address of any person to whom the action is directed]. Complete copies [of any document and accompanying material expressing the proposed agency action] are available for public inspection during normal business hours 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at [name and address of office].

[Insert the language setting forth the notice of rights, as provided in paragraph (12) of this rule, below, except that references in that notice to deadlines of fourteen days shall be replaced by references to twenty-one days.]

(9) Proof of Publication. Notice to substantially affected persons on applications for Department permits or other authorizations is an essential and integral part of the state environmental permitting process. Therefore, no application for a permit or other authorization for which published notice is required shall be granted until proof of publication of notice is made by furnishing a uniform affidavit in substantially the form prescribed in Section 50.051 of the Florida Statutes to the office of the Department issuing the permit or other authorization. Applicants for hazardous waste permits must also comply with Rule 62-730.220(11).

(10)(a) Any applicant or person benefiting from the Department's action may elect to publish notice of the Department's intended or proposed action (or notice of a proceeding on such intended action) in the manner provided by subsection (7) or (8) above. Upon presentation of proof of publication to the Department before final agency action, any person who has elected to publish such notice shall be entitled to the same benefits under this rule as a person who is required to publish notice. Since persons whose substantial interests are affected by a Department decision may petition for an administrative proceeding within the time provided in this rule (at subsection (3) above) after receipt of notice of agency action, and since receipt of such notice can occur at any time unless notice is given or published as prescribed in this rule, the applicant or other person requesting a particular action by the Department cannot justifiably rely on the finality of the Department's decision unless the notice has been duly published or otherwise provided to all persons substantially affected by the decision.

(b) The notices required by this rule may be combined with other notices required by the Department under Chapters 373, 376, 378, or 403 of the Florida Statutes, or title 62 of the Florida Administrative Code. For applications concurrently reviewed under Section 373.427, the provisions of that statute shall govern.

(c) The provisions of this section shall also apply to the permitting and regulation of hazardous waste facilities, except that Rules 62-730.220(9), 62-730.220(11), and 62-730.310(6) shall govern to the extent that they provide for a different time or notice procedure than that set forth in this section.

(d) In issuing notices on permits or administrative orders under a federally delegated or approved program, the Department shall follow the procedures approved by the federal government for the Department's implementation of the program: Rule 62-210.350 of the Florida Administrative Code for air quality programs, Rule 62-528.315 for the underground injection control program, Rule 62-620.550 for the National Pollutant Discharge Elimination System program, and Rules 62-730.220(9) and 62-730.220(11) for the program regulating hazardous wastes. In general, those rules require that the Department or the applicant give public notice that a draft permit (or an order that is not the result of a hearing under Section 120.569 of the Florida Statutes) has been prepared, including a statement whether a public meeting has been scheduled on the permit or order. Public notice of such a permit or order shall allow at least thirty days for public comment for air, underground injection control, and national pollution discharge elimination system permits, and forty-five days for such public comment on hazardous waste permits. If a public meeting on such a permit or order is scheduled, public notice of the meeting shall be given at least thirty days before the meeting. The two notices may be combined.

(11) Failure to publish any notice of application, notice of intent to issue permit, or notice of agency action required by the Department shall be an independent basis for the denial of the permit or other pertinent approval or authorization.

(12) Notice of Right to Hearing and to Mediation. Every notice under this section required to include a notice of the right to an administrative hearing and to mediation (when available) shall read substantially as follows, in pertinent part:

[Insert either "The Department will issue the permit with the attached conditions" or "The Department's proposed agency action shall become final"] unless a timely petition for an administrative hearing is filed under Sections 120.569 and 120.57 of the Florida Statutes before the deadline for filing a petition. [If mediation is available, insert: "Persons who have filed such a petition may seek to mediate the dispute, and choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement."] The procedures for petitioning for a hearing are set forth below [if mediation is available, insert ", followed by the procedures for pursuing mediation"].

A person whose substantial interests are affected by the Department's proposed [insert either "permitting decision" or "agency action"] may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

[For written notice, insert the following: "Petitions by the applicant or any of the parties listed below must be filed within [insert "fourteen", "twenty", or "twenty-one", or "forty-five" as specified for the kind of agency action under subsection (3) of this rule, above] days of receipt of this written notice. Petitions filed by other persons"]

[For published notice related to a permit, insert the following: "Petitions filed by any persons other than those entitled to written notice under Section 120.60(3) of the Florida Statutes"] must be filed within [insert "fourteen", "twenty", or "twenty-one", or "forty-five" as specified for the kind of agency action under subsection (3) of this rule, above] days of publication of the notice or receipt of the written notice, whichever occurs first. [For written notice, insert the following: "Under Section 120.60(3), however, any person who asked the Department for notice of agency action may file a petition within fourteen days of receipt of such notice, regardless of the date of publication."] The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57 of the Florida Statutes, or to

intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205 of the Florida Administrative Code.

A petition that disputes the material facts on which the Department's action is based must contain the following information: [insert the categories of required information listed in Rule 28-106.201(2)]. A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that 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 such final decision of the Department have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

[Insert either the statement that "Mediation is not available in this proceeding," or the following statement:

In addition to requesting an administrative hearing, any petitioner may elect to pursue mediation. The election may be accomplished by filing with the Department a mediation agreement with all parties to the proceeding (i.e., the applicant, the Department, and any person who has filed a timely and sufficient petition for a hearing). The agreement must contain all the information required by Rule 28-106.404. The agreement must be received by the clerk in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within ten days after the deadline for filing a petition, as set forth above. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement.

As provided in Section 120.573 of the Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57 for holding an administrative hearing and issuing a final order. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons seeking to protect their substantial interests that would be affected by such a modified final decision must file their petitions within [insert "fourteen", "twenty", or "twenty-one", or "forty-five" as specified for the kind of agency action under subsection (3) of this rule, above] days of receipt of this notice, or they shall be deemed to have waived their right to a proceeding under Sections 120.569 and 120.57. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57 are resumed.]

Any party to this order has the right to seek judicial review of it under Section 120.68 of the Florida Statutes, by filing a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this order if filed with the clerk of the Department.

Specific Authority 120.54(5), 403.061, 403.0876, 403.722(7), 403.815 FS. Law Implemented 120.54(5), 120.569, 120.57, 120.60, 161.0535, 373.413(4), 373.4145, 373.427, 403.0872(4)-(5), 403.0876, 403.121(2)(c), 403.201(3), 403.722, 403.814, 403.815 FS. History–New 7-1-98.

62-110.107 Licensing.

(1) In addition to the requirements for the processing of applications under Rule 28-107.002(2), Rules 62-4.055(1), 62-312.006(5), 62-343.090(2)(f), 62-343.040, and 62-620.510 govern the processing of applications by the Department, providing that an applicant or petitioner must respond to a request for additional information within a specified time period or the application or petition will be denied or dismissed. For hazardous waste permits, Rule 62-730.220(9) governs, providing in accordance with federal requirements and Section 403.722(10)(c) of the Florida Statutes that the Department must give notice of its intent to issue or deny such a pemit within 135 days (instead of the ninety-day period provided by Section 120.60(1)) after receipt of the original permit application, the last item of timely requested additional information, or the applicant's written request to begin processing the application. For Title V permits for air operations, Rule 62-213.420(1)(b) governs, in accordance with federal requirements.

(2) When the Department has determined that immediate action is necessary to abate an imminent or currently existing serious threat to the public health, safety, welfare, or the environment, the Department shall issue an emergency order authorizing or directing activities necessary to abate the emergency. When such an order is issued in whole or part under the authority of Section 373.119(2) of the Florida Statutes, it may also be based on a serious threat to reasonable recreational, commercial, industrial, or agricultural uses. Such an order shall recite the factual basis for it in accordance with Section 120.569(2)(l) and include all conditions (including a limitation on the duration of the emergency authorization) required to ensure that the activity authorized or directed does not exceed that which is necessary to abate the threat. When the activity conducted under such an order has an operational or maintenance aspect that continues beyond the emergency, any necessary permits shall be applied for as soon as practicable. Rule 62-210.700 shall govern the authorization of excess emissions of air contaminants because of startup, shutdown, or malfunction, Rule 62-256.450(4) shall govern authorization of otherwise unapproved devices and fuels for outdoor heating in the event of prolonged cold weather and shortage of approved fuels, Rules 62-256.500(4), 62-256.600(1), and 62-296.320(3)(b) shall govern the emergency authorization of open burning, and Rule 62-296.404(3)(a)3. shall govern the approval of contingency plans for emergency threats to air quality at pulp and paper mills. For the authorization of anticipated bypasses of wastewater discharges

Citrus By-Products and Processing Technology, Section 12.3.1.2 Analysis, John Wiley & Sons, NY, pp. 180 to 181," hereby adopted by reference. Copies of these documents may be obtained by contacting the Division of Air Resource Management at 2600 Blair Stone Road, Mail Station 5500, Tallahassee, FL 32399.

6. In addition to the annual testing required above, each facility containing any emissions unit which has an emissions limit for particulate matter (PM), particulate matter of ten microns or less in size (PM10) or visible emissions, but which is not equipped with a continuous opacity monitor, shall periodically check for proper operation of the unit by visual observation of stack emissions from the unit at least daily for all days during which the unit is operating, except that visual observation shall not be required for the following units: any combustion unit, other than peel dryers, on any day during which only natural gas is burned provided the fuel usage is documented and the documentation is available for Department inspection; biogas flares; pellet coolers and cooling reels; lime silos; emergency generators; and VOC emission control incinerators. The visual observation shall be performed for a minimum duration of three minutes. The results of the observation, whether visible emissions were or were not observed, shall be recorded on a log. The person performing each observation shall note the unit observed, the time and date of the observation, and his or her name and title and shall initial the entry. In lieu of daily visual observation of stack emissions at peel dryer units, the facility may observe water flow into the scrubber system daily. The person performing each observation shall record results in a log and shall include identification of the unit being monitored, the date and time of observation, and his or her name and title, and shall initial the entry. The log(s) and fuel documentation records shall be maintained at the facility for a period of five years from the date of last entry and shall be made available for inspection by the Department.

Specific Authority 403.08725 FS. Law Implemented 403.08725 FS. History–New 12-17-02.

62-210.350 Public Notice and Comment.

(1) Public Notice of Proposed Agency Action.

(a) A notice of proposed agency action on permit application, where the proposed agency action is to issue the permit, shall be published by any applicant for:

1. An air construction permit;

2. An air operation permit, permit renewal or permit revision subject to paragraph 62-210.300(2)(b), F.A.C., (i.e., a FESOP), except as provided in sub-subparagraph 62-210.300(2)(b)1.b., F.A.C.; or

3. An air operation permit, permit renewal, or permit revision subject to Chapter 62-213, F.A.C., except Title V air general permits and those permit revisions meeting the requirements of subsection 62-213.412(1), F.A.C.

(b) The notice required by paragraph 62-210.350(1)(a), F.A.C., shall be published in accordance with all otherwise applicable provisions of Rule 62-110.106, F.A.C. A public notice under subparagraph 62-210.350(1)(a)1., F.A.C., for an air construction permit may be combined with any required public notice under sub-subparagraph 62-210.350(1)(a)2. or 3., F.A.C., for air operation permits. If such notices are combined, the public notice must comply with the requirements for both notices.

(c) Except as otherwise provided at subsections 62-210.350(2) and (5), F.A.C., each notice of intent to issue an air construction permit shall provide a 14-day period for submittal of public comments.

(2) Additional Public Notice Requirements for Emissions Units Subject to Prevention of Significant Deterioration or Nonattainment-Area Preconstruction Review.

(a) Before taking final agency action on a construction permit application for any proposed new or modified facility or emissions unit subject to the preconstruction review requirements of Rule 62-212.400 or 62-212.500, F.A.C., the Department shall comply with all applicable provisions of Rule 62-110.106, F.A.C., and provide an opportunity for public comment which shall include as a minimum the following:

1. A complete file available for public inspection in at least one location in the district affected which includes the information submitted by the owner or operator, exclusive of confidential records under Section 403.111, Florida Statutes, and the Department's analysis of the effect of the proposed construction or modification on ambient air quality, including the Department's preliminary determination of whether the permit should be approved or disapproved;

2. A 30-day period for submittal of public comments; and

3. A notice, by advertisement in a newspaper of general circulation in the county affected, specifying the nature and location of the proposed facility or emissions unit, whether BACT or LAER has been determined, the degree of PSD increment consumption expected, if applicable, and the location of the information specified in paragraph 1. above; and notifying the public of the opportunity for submitting comments and requesting a public hearing.

(b) The notice provided for in subparagraph 62-210.350(2)(a)3., F.A.C., shall be prepared by the Department and published by the applicant in accordance with all applicable provisions of Rule 62-110.106, F.A.C., except that the applicant shall cause the notice to be published no later than thirty (30) days prior to final agency action.

(c) A copy of the notice provided for in subparagraph 62-210.350(2)(a)3., F.A.C., shall also be sent by the Department to the Regional Office of the U.S. Environmental Protection Agency and to all other state and local officials or agencies having cognizance over the location of such new or modified facility or emissions unit, including local air pollution control agencies, chief executives of city or county government, regional land use planning agencies, and any other state, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the new or modified facility or emissions unit.

(d) A copy of the notice provided for in subparagraph 62-210.350(2)(a)3., F.A.C., shall be displayed in the appropriate district, branch and local program offices.

(e) An opportunity for public hearing shall be provided in accordance with Chapter 120, Florida Statutes, and Rule 62-110.106, F.A.C.

(f) Any public comments received shall be made available for public inspection in the location where the information specified in subparagraph 62-210.350(2)(a)1., F.A.C., is available and shall be considered by the Department in making a final determination to approve or deny the permit.

(g) The final determination shall be made available for public inspection at the same location where the information specified in subparagraph 62-210.350(2)(a)1., F.A.C., was made available.

(h) For a proposed new or modified emissions unit which would be located within 100 kilometers of any Federal Class I area or whose emissions may affect any Federal Class I area, and which would be subject to the preconstruction review requirements of Rule 62-212.400 or 62-212.500, F.A.C.:

1. The Department shall mail or transmit to the Administrator a copy of the initial application for an air construction permit and notice of every action related to the consideration of the permit application.

2. The Department shall mail or transmit to the Federal Land Manager of each affected Class I area a copy of any written notice of intent to apply for an air construction permit; the initial application for an air construction permit, including all required analyses and demonstrations; any subsequently submitted information related to the application; the preliminary determination and notice of proposed agency action on the permit application; and any petition for an administrative hearing regarding the application or the Department's proposed action. Each such document shall be mailed or transmitted to the Federal Land Manager within fourteen (14) days after its receipt by the Department.

(3) Additional Public Notice Requirements for Facilities Subject to Operation Permits for Title V Sources.

(a) Before taking final agency action to issue a new, renewed, or revised air operation permit subject to Chapter 62-213, F.A.C., the Department shall comply with all applicable provisions of Rule 62-110.106, F.A.C., and provide an opportunity for public comment which shall include as a minimum the following:

1. A complete file available for public inspection in at least one location in the district affected which includes the information submitted by the owner or operator, exclusive of confidential records under Section 403.111, Florida Statutes; and

2. A 30-day period for submittal of public comments.

(b) The notice provided for in paragraph 62-210.350(3)(a), F.A.C., shall be prepared by the Department and published by the applicant in accordance with all applicable provisions of Rule 62-110.106, F.A.C., except that the applicant shall cause the notice to be published no later than thirty (30) days prior to final agency action. If written comments received during the 30-day comment period on a draft permit result in the Department's issuance of a revised draft permit in accordance with subsection 62-213.430(1), F.A.C., the Department shall require the applicant to publish another public notice in accordance with paragraph 62-210.350(1)(a), F.A.C.

(c) The notice shall identify:

1. The facility;

2. The name and address of the office at which processing of the permit occurs;

3. The activity or activities involved in the permit action;

4. The emissions change involved in any permit revision;

5. The name, address, and telephone number of a Department representative from whom interested persons may obtain additional information, including copies of the permit draft, the application, and all relevant supporting materials, including any permit application, compliance plan, permit, monitoring report, and compliance statement required pursuant to Chapter 62-213, F.A.C., (except for information entitled to confidential treatment pursuant to Section 403.111, F.S.), and all other materials available to the Department that are relevant to the permit decision;

6. A brief description of the comment procedures required by subsection 62-210.350(3), F.A.C.;

7. The time and place of any hearing that may be held, including a statement of procedure to request a hearing (unless a hearing has already been scheduled); and

8. The procedures by which persons may petition the Administrator to object to the issuance of the proposed permit after expiration of the Administrator's 45-day review period.

(4) Additional Public Notice Requirements for Facilities Subject to Federally Enforceable State Operation Permits (FESOPs) for Non-Title V Sources.

(a) Before taking final agency action to issue a new, renewed (if materially changed), or revised air operation permit pursuant to paragraph 62-210.300(2)(b), F.A.C., the Department shall comply with all applicable provisions of Rule 62-110.106, F.A.C., and provide an opportunity for public comment which shall include as a minimum the following:

1. A complete file available for public inspection in at least one location in the district affected which includes the information submitted by the owner or operator, exclusive of confidential records under Section 403.111, Florida Statutes;

2. A 14-day period for submittal of public comments; and

3. A notice, by advertisement in a newspaper of general circulation in the county affected, containing the information specified in paragraph 62-210.350(4)(c), F.A.C., except as provided in subparagraph 62-210.300(2)(b)3., F.A.C.

(b) The notice provided for in paragraph 62-210.350(4)(a), F.A.C., shall be prepared by the Department and published by the applicant in accordance with all applicable provisions of Rule 62-110.106, F.A.C., except that the applicant shall cause the notice to be published no later than fourteen (14) days prior to final agency action.

(c) The notice shall identify:

1. The facility;

2. The name and address of the office at which processing of the permit occurs;

3. The activity or activities involved in the permit action;

4. The emissions change involved in any permit revision;

5. The name, address, and telephone number of a Department representative from whom interested persons may obtain additional information, including copies of the permit draft, the application, and all relevant supporting materials, including any permit application (except for information entitled to confidential treatment pursuant to Section 403.111, F.S.), and all other materials available to the Department that are relevant to the permit decision;

6. A brief description of the comment procedures required by subsection 62-210.350(4), F.A.C.; and

7. The time and place of any hearing that may be held, including a statement of procedure to request a hearing (unless a hearing has already been scheduled).

(d) A copy of the notice provided for in subparagraph 62-210.350(4)(a)3., F.A.C., along with the Department's proposed permit shall be sent by the Department to the Regional Office of the U.S. Environmental Protection Agency, if requested by the regional office, and to any approved local air pollution control program having cognizance over the county in which the facility is located.

(e) A copy of the notice provided for in subparagraph 62-210.350(4)(a)3., F.A.C., shall be displayed in the appropriate district, branch, and local program offices.

(f) Any public comments received shall be made available for public inspection in the location where the information specified in subparagraph 62-210.350(4)(a)1., F.A.C., is available and shall be considered by the Department in making a final determination to approve or deny the permit.

(g) The final permit shall be made available for public inspection at the same location where the information specified in subparagraph 62-210.350(4)(a)1., F.A.C., was made available and shall be sent by the Department to the Regional Office of the U.S. Environmental Protection Agency, if requested by the regional office, and to any local air pollution control program having geographical jurisdiction over the county in which the facility is located.

(5) Additional Public Notice Requirements for Emissions Units Subject to the Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act section 112(g).

(a) Before taking final agency action on any air construction permit application for a proposed new or reconstructed facility or emissions unit subject to the preconstruction review requirements of subparagraph 62-204.800(10)(d)2., F.A.C., the Department shall comply with all applicable provisions of Rule 62-110.106, F.A.C., and provide an opportunity for public comment which shall include at a minimum the following:

1. A complete file available for public inspection in at least one location in the district affected which includes the information submitted by the owner or operator, exclusive of confidential records under Section 403.111, Florida Statutes, including the Department's proposed MACT determination and preliminary determination of whether the permit should be approved or disapproved;

2. A 30-day period for submittal of public comments; and

3. A notice, by advertisement in a newspaper of general circulation in the county affected, specifying the nature and location of the proposed facility or emissions unit, and the location of the information specified in paragraph 1. above; and notifying the public of the opportunity for submitting comments and requesting a public hearing.

(b) The notice provided for in subparagraph 62-210.350(5)(a)3., F.A.C., shall be prepared by the Department and published by the applicant in accordance with all applicable provisions of Rule 62-110.106, F.A.C., except that the applicant shall cause the notice to be published no later than thirty (30) days prior to final agency action.

(c) A copy of the notice provided for in subparagraph 62-210.350(5)(a)3., F.A.C., along with the Department's proposed permit shall be sent by the Department to the Regional Office of the U.S. Environmental Protection Agency and to any approved local air pollution control program having cognizance over the county in which the facility is located.

(d) A copy of the notice provided for in subparagraph 62-210.350(5)(a)3., F.A.C., shall be displayed in the appropriate district, branch, and local program offices.

(e) Any public comments received shall be made available for public inspection in the location where the information specified in subparagraph 62-210.350(5)(a)1., F.A.C., is available and shall be considered by the Department in making a final determination to approve or deny the permit.

(f) The final permit shall be made available for public inspection at the same location where the information specified in subparagraph 62-210.350(5)(a)1., F.A.C., was made available and shall be sent by the Department to the Regional Office of the U.S. Environmental Protection Agency and to any local air pollution control program having geographical jurisdiction over the county in which the facility is located.

Specific Authority 403.061 FS. Law Implemented 403.031, 403.061, 403.087 FS. History–Formerly 17-2.220, Amended 11-28-93, Formerly 17-210.350, Amended 11-23-94, 1-2-96, 11-13-97, 2-11-99.

62-210.360 Administrative Permit Corrections.

(1) A facility owner shall notify the Department by letter of minor corrections to information contained in a permit. Such notifications shall include:

(a) Typographical errors noted in the permit;

(b) Name, address or phone number change from that in the permit;

(c) A change requiring more frequent monitoring or reporting by the permittee;

(d) A change in ownership or operational control of a facility, subject to the following provisions:

1. The Department determines that no other change in the permit is necessary;

2. The permittee and proposed new permittee have submitted an Application for Transfer of Air Permit, and the Department has approved the transfer pursuant to subsection 62-210.300(7), F.A.C.; and

3. The new permittee has notified the Department of the effective date of sale or legal transfer.

(e) Changes listed at 40 C.F.R. 72.83(a)(1), (2), (6), (9) and (10), adopted and incorporated by reference at Rule 62-204.800, F.A.C., and changes made pursuant to subsections 62-214.340(1) and (2), F.A.C., to Title V sources subject to emissions limitations or reductions pursuant to 42 USC ss. 7651-7651o;

(f) Changes listed at 40 C.F.R. 72.83(a)(11) and (12), adopted and incorporated by reference at Rule 62-204.800, F.A.C., to Title V sources subject to emissions limitations or reductions pursuant to 42 USC ss. 7651-7651o, provided the notification is accompanied by a copy of any EPA determination concerning the similarity of the change to those listed at paragraph 62-210.360(1)(e), F.A.C.; and

(g) Any other similar minor administrative change at the source.

(2) Upon receipt of any such notification, the Department shall within 60 days correct the permit and provide a corrected copy to the owner.

(3) After first notifying the owner, the Department shall correct any permit in which it discovers errors of the types listed at paragraphs 62-210.360(1)(a) and (b), F.A.C., and provide a corrected copy to the owner.

(4) For Title V source permits, other than general permits, a copy of the corrected permit shall be provided to EPA and any approved local air program in the county where the facility or any part of the facility is located.

Specific Authority 403.061 FS. Law Implemented 403.031, 403.061, 403.087, 403.0872 FS. History–New 11-28-93, Formerly 17-210.360, Amended 11-23-94, 2-11-99, 4-16-01, 6-2-02.

62-210.370 Reports.

(1) Facility Relocation. Unless otherwise provided by rule or more stringent permit condition, the owner or operator of a relocatable facility must submit a Facility Relocation Notification Form (DEP Form No. 62-210.900(6)) to the Department at least thirty (30) days prior to the relocation. A separate form shall be submitted for each facility in the case of the relocation of multiple facilities which are jointly owned or operated.

(2) Notification of Intent to Construct Air Pollution Control Equipment – (Reserved).

(3) Annual Operating Report for Air Pollutant Emitting Facility.

(a) The Annual Operating Report for Air Pollutant Emitting Facility (DEP Form No. 62-210.900(5)) shall be completed each year for the following facilities:

1. All Title V sources.

2. All synthetic non-Title V sources.

3. All facilities with the potential to emit ten (10) tons per year or more of volatile organic compounds or twenty-five (25) tons per year or more of nitrogen oxides and located in an ozone nonattainment area or ozone air quality maintenance area.

4. All facilities for which an annual operating report is required by rule or permit.

(b) Notwithstanding paragraph 62-210.370(3)(a), F.A.C., no annual operating report shall be required for any facility operating under an air general permit.

(c) The annual operating report shall be submitted to the appropriate Department of Environmental Protection (DEP) District or DEP-approved local air pollution control program office by March 1 of the following year unless otherwise indicated by permit condition or Department request. However, for reporting year 1995, the annual operating report shall be submitted by April 15, 1996.

Specific Authority 403.061 FS. Law Implemented 403.021, 403.031, 403.061, 403.087 FS. History–New 2-9-93, Formerly 17-210.370, Amended 11-23-94, 3-21-96, 2-11-99, 6-21-01.

62-210.550 Stack Height Policy.

(1) General. The degree of emission limitation required of any emissions unit for control of any air pollutant on a continuous basis shall not be affected by so much of any emissions unit's stack height that exceeds good engineering practice, as provided in subsection 62-210.550(3), F.A.C., or by any other dispersion technique, as provided in subsection 62-210.550(2), F.A.C. This

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Chapter 50
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CHAPTER 50

LEGAL AND OFFICIAL ADVERTISEMENTS

50.011 Where and in what language legal notices to be published.--Whenever by statute an official or legal advertisement or a publication, or notice in a newspaper has been or is directed or permitted in the nature of or in lieu of process, or for constructive service, or in initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, or for any purpose, including all legal notices and advertisements of sheriffs and tax collectors, the contemporaneous and continuous intent and meaning of such legislation all and singular, existing or repealed, is and has been and is hereby declared to be and to have been, and the rule of interpretation is and has been, a publication in a newspaper printed and published periodically once a week or oftener, containing at least 25 percent of its words in the English language, entered or qualified to be admitted and entered as periodicals matter at a post office in the county where published, for sale to the public generally, available to the public generally for the publication of official or other notices and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public.

History.--s. 2, ch. 3022, 1877; RS 1296; GS 1727; s. 1, ch. 5610, 1907; RGS 2942; s. 1, ch. 12104, 1927; CGL 4666, 4901; s. 1, ch. 63-387; s. 6, ch. 67-254; s. 21, ch. 99-2.

Note.--Former s. 49.01.

50.021 Publication when no newspaper in county.--When any law, or order or decree of court, shall direct advertisements to be made in any county and there be no newspaper published in the said county, the advertisement may be made by posting three copies thereof in three different places in said county, one of which shall be at the front door of the courthouse, and by publication in the nearest county in which a newspaper is published.

History.--RS 1297; GS 1728; RGS 2943; CGL 4667; s. 6, ch. 67-254.

Note.--Former s. 49.02.

50.031 Newspapers in which legal notices and process may be published.--No notice or publication required to be published in a newspaper in the nature of or in lieu of process of any kind, nature, character or description provided for under any law of the state, whether heretofore or hereafter enacted, and whether pertaining to constructive service, or the initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, by any court in this state, or any notice of sale of property, real or personal, for taxes, state, county or municipal, or sheriff's, guardian's or administrator's or any sale made pursuant to any judicial order, decree or statute or any other publication or notice pertaining to any affairs of the state, or any county, municipality or other political subdivision thereof, shall be deemed to have been published in accordance with the statutes providing for such publication, unless the same shall have been published for the prescribed period of time required for such publication, in a newspaper which at the time of such publication shall have been in existence for 1 year and shall have been entered as periodicals matter at a post office in the county where published, or in a newspaper which is a direct successor of a newspaper which together have been so published; provided, however, that nothing herein contained shall apply where in any county there shall be no newspaper in existence which shall have been published for the length of time above prescribed. No legal publication of any kind, nature or description, as herein defined, shall be valid or binding or held to be in compliance with the statutes providing for such publication unless the same shall have been published in accordance with the provisions of this section. Proof of such publication shall be made by uniform affidavit.

History.--ss. 1-3, ch. 14830, 1931; CGL 1936 Supp. 4274(1); s. 7, ch. 22858, 1945; s. 6, ch. 67-254; s. 1, ch. 74-221; s. 22, ch. 99-2.

Note.--Former s. 49.03.

50.041 Proof of publication; uniform affidavits required.--

(1) All affidavits of publishers of newspapers (or their official representatives) made for the purpose of establishing proof of publication of public notices or legal advertisements shall be uniform throughout the state.

(2) Each such affidavit shall be printed upon white bond paper containing at least 25 percent rag material and shall be $8^1/_2$ inches in width and of convenient length, not less than $5^1/_2$ inches. A white margin of not less than $2^1/_2$ inches shall be left at the right side of each affidavit form and upon or in this space shall be substantially pasted a clipping which shall be a true copy of the public notice or legal advertisement for which proof is executed.

(3) In all counties having a population in excess of 450,000 according to the latest official decennial census, in addition to the charges which are now or may hereafter be established by law for the publication of every official notice or legal advertisement, there may be a charge not to exceed $2 for the preparation and execution of each such proof of publication or publisher's affidavit.

History.--s. 1, ch. 19290, 1939; CGL 1940 Supp. 4668(1); s. 1, ch. 63-49; s. 26, ch. 67-254; s. 1, ch. 76-58.

Note.--Former s. 49.04.

50.051 Proof of publication; form of uniform affidavit.--The printed form upon which all such affidavits establishing proof of publication are to be executed shall be substantially as follows:

NAME OF NEWSPAPER

Andrew J. Ziffer
525 SW 5th Street
Fort Lauderdale, FL 33315
954.462.3135
andy@ziffer.us

RECEIVED
SEP 02 2003
BUREAU OF AIR REGULATION

August 28, 2003

Trina Vielhauer
Chief, Bureau of Air Regulation
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399

Dear Ms. Vielhauer,

I'm writing to express my concern for your department's issue to Florida Power & Light a permit for the installation of an electrostatic precipitator at their obsolete 1963 Port Everglades power plant. The Port Everglades plant is illegal by today's lowest standards yet continues to operate under a flawed grandfathered clause as I'm confident you're aware. I understand the Clean Air Act of 1970 grandfathered this 1963 plant with the tacit understanding that when it's useful life was complete; it would be brought up to current Clean Air Act standards. Instead, it gets routine facelifts, the proposed being $90 million. With such a facelift, I'm confident FPL expects to milk their Port Everglades equipment for yet another 40 years spewing 20,947 million tons of sulfur dioxide annually along with nitrous oxide to match.

As an involved resident of Broward County and an original member of the City of Fort Lauderdale Utilities Advisory Committee (formerly the FPL Citizen Advisory Committee), I'm uncertain how permitting for a power plant slipped through so easily, especially Port Everglades which is in extremely close proximity to one of the highest residential densities in the state. Your permit processed is either flawed or was not adhered to.

Being FDEP is an agency to protect Florida's environment, and your Bureau of Air Regulation in particular, I would expect your permit process to include an effective method of inviting public input. If a small ad in a local newspaper satisfies the State as "notice," I admit I was not looking for a used lawnmower the day the ad was run, if in fact such an ad appeared at all.

As a concerned citizen as well as a born, raised, and educated Floridian, I kindly request no preference be given to FPL and that FDEP honor its charge of protecting the environment. As well, please provide a legal opinion from your general counsel as to why FDEP cannot reopen the public hearing process and, if an opinion is given, then what would establish cause to reopen the permit process?

In advance I thank you for your prompt attention to this matter.

Respectfully,

Andrew J. Ziffer
Citizen of Fort Lauderdale/Broward County

c: Mr. Greg Worley
US EPA
Air Permits Section
Atlanta, GA 30303