

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of:)	Permit No.: 1230001-007-AV
)	
Buckeye Florida)	
)	
Petitioner.)	File No.: 03-K-AP

ORDER ON REQUEST
FOR
ALTERNATE PROCEDURES AND REQUIREMENTS

Pursuant to Rule 62-297.620, Florida Administrative Code (F.A.C.), Buckeye Florida located in Taylor County, has petitioned for approval of an alternate sampling procedure for monitoring total reduced sulfur (TRS). The Petitioner has requested approval for the use of electronic data recording and storage systems for TRS continuous emissions monitoring systems (CEMS) to replace the strip chart technology required by Rule 62-296.404, F.A.C. The basis for this request is the Petitioner's assertion that strip chart recording technology is quickly being replaced with more modern electronic recording instruments and it is becoming increasingly difficult to obtain parts and supplies for the existing strip chart recorders.

Having considered Petitioner's written request and all supporting documentation, the following Findings of Fact, Conclusions of Law, and Order are entered:

FINDINGS OF FACT

1. On July 25, 2003, the Department received Petitioner's request for "approval of the use of alternative data storage procedures for Continuous Emission Monitoring Systems (CEMS) subject to the requirements of 62-296.404(5)(b) 2.a." Specifically, the Petitioner requested the approval for the use of "electronic data recording and storage systems for TRS CEMS to replace the older strip chart technology." [Exhibit 1]
2. Petitioner stated that the data collection and storage system "collects and stores continuous data readings, is backed up routinely, has proven reliability of approximately 99.9%, and can instantly produce graphical representations for the data over a selected time period." [Exhibit 1]
3. Further, Petitioner stated that, "There will be no functionality lost by the conversion to an electronic system. In fact, the graphical capabilities are superior to the strip chart technology since multiple parameters can be charted together." [Exhibit 1]
4. Petitioner also stated, "Active data is available directly from the system for a two-year period and inactive data is archived on storage media and available for at least five years." [Exhibit 1]
5. As justification for the use of the proposed alternate sampling procedure, Petitioner stated, "Strip chart recording technology is quickly being replaced with more modern electronic recording instruments. It is becoming increasingly difficult to obtain repair parts and supplies for the existing strip

chart recorders. Our existing strip chart recorders that are integrated with the plant-wide Distributed Controls System (DCS) are no longer being supported by the DCS manufacturer.” [Exhibit 1]

6. Rule 62-296.404(5)(b)2.a., F.A.C., states, “The data output of the continuous emission monitoring system may, at the owner's or operator's option, include a numerical format showing individual numerical readings and averages in addition to the required strip chart format with legible ink tracings and calibration information. All data output shall be clearly and properly identified by the operator. All system breakdowns, repairs, and calibration checks, span adjustments and periods of excess emissions shall legibly appear on all data output.”

7. Electronic data collection and storage systems are commonly used with CEMS as the sole means of data collection. For example, CEMS subject to the requirements of 40 CFR Part 75 (acid rain regulations) rely exclusively on electronic systems rather than analog strip chart recorders. Also, the Department has eliminated the use of strip charts in the ambient monitoring network due to maintenance difficulties.

CONCLUSIONS OF LAW

1. The Department has jurisdiction to consider Petitioner’s request pursuant to Section 403.061, Florida Statutes (F.S.), and Rule 62-297.620, F.A.C.

2. Petitioner has provided reasonable justification that it is not practical to continue using strip charts as a means of data collection and storage and that the alternate proposed method (electronic data recording and storage) is acceptable. The Department's conclusion is based upon review of standard data collection and storage procedures of existing ambient and emission monitoring CEMS and dialogue with established professionals in this field.

ORDER

Having considered Petitioner’s written request and supporting documentation, it is hereby ordered that:

1. ~~Petitioner~~ shall not be required to continue to collect and store TRS CEMS data using strip charts.

2. The strip chart technology used for TRS CEMS shall be replaced with an electronic data recording and storage system.

3. Any calculations performed by the data handling system are subject to review by the Department and the system must be available for inspection upon request.

4. This Order shall not abrogate Petitioner’s obligation to comply with any monitoring requirements established pursuant to the provisions of the federal Clean Air Act (42 USC 1857, et seq) as amended in 1990.

5. This Order shall expire on August 25, 2013.

PETITION FOR ADMINISTRATIVE REVIEW

The Department's proposed agency action will become final upon expiration of the petition period described below unless a timely petition for an administrative hearing is filed pursuant to Sections 120.569 and 120.57 F.S., before the deadline for filing a petition. The procedures for petitioning for a hearing are set forth below.

A person whose substantial interests are affected by the proposed 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. Petitions filed by the permit applicant or any of the parties listed below must be filed within twenty-one days of receipt of this notice of intent. 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 twenty-one days of publication of the public notice or within twenty-one days of receipt of this notice, whichever occurs first. Under Section 120.60(3), however, any person who asked the Department for notice of agency action may file a petition within twenty-one days of receipt of that notice, regardless of the date of publication. A 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 F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention will be only at the approval 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:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner, the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of how and when petitioner received notice of the agency action or proposed action;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts upon 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 on the application have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation is not available in this proceeding.

NOTICE OF APPEAL RIGHTS

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 of Environmental Protection 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 must be filed within thirty days after this order is filed with the clerk of the Department.

DONE AND ORDERED this 22 day of September, 2003 in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Michael G. Cooke

MICHAEL G. COOKE, Director
Division of Air Resource Management
Mail Station 5500
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400
(850) 488-0114

Clerk Stamp

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to §120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Martha Jane Wise 9/22/03
(Clerk) (Date)