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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.  
ATLANTA, GEORGIA 30365

OCT 26 1993

4APT-AEB

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Virginia B. Wetherell  
Secretary  
Florida Department of Environmental  
Protection  
Twin Towers Office Building  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

RE: Notice of Full Delegation of PSD Permitting Authority  
for Power Plants

Dear Ms. Wetherell:

This is in response to your letter of September 27, 1993, requesting that the Environmental Protection Agency (EPA) grant full delegation of permitting authority for sources subject to both the federal Prevention of Significant Deterioration (PSD) regulations and the Florida Electrical Power Plant Siting Act (PPSA), §403.501 et seq., Florida Statutes (1991).

We have reviewed the pertinent laws of the State of Florida and the rules and regulations thereof, and have determined that they provide an adequate and effective procedure for full implementation of the PSD program by the State of Florida.

In 1985, EPA and the Florida Department of Environmental Regulation (FDER) recognized that Florida's original PSD State Implementation Plan (SIP) submittal and EPA's subsequent 1983 conditional SIP-approval for PSD did not apply to sources subject to the PPSA since the PPSA's Site Certification Board was, by State law, the sole permit-issuing authority for power plants in Florida. Accordingly, for power plants subject to the PPSA, the full delegation of PSD authority under which FDER had been operating since 1983 was revoked on November 5, 1985, and Florida was given partial delegation to conduct the technical and administrative portion of the federal PSD program. At that time, EPA resumed final PSD permit issuance and enforcement authority for PPSA sources only.

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On July 1, 1986, the Florida Legislature amended the PPSA in an effort to extricate the implementation of PSD regulations and allow FDER to issue PSD permits to sources subject to the PPSA. On its face, the 1986 PPSA amendment appeared to provide FDER with authority to fully implement (i.e. issue and enforce) federal PSD regulations for sources subject to the PPSA. Thus, on September 25, 1986, EPA restored full PSD delegation authority to Florida for these sources.

A State appellate court decision in TECO Power Services Corp. v. Florida Department of Environmental Regulation, First DCA Case No. 91-300, December 20, 1991, declared that the 1986 PPSA amendment does not confer on FDER authority to issue a federally-enforceable PSD permit containing conditions which differ from those imposed by the PPSA Siting Board. The practical effect of the TECO decision was to render ineffective the 1986 PPSA amendment and to require, in the absence of further PPSA amendments, that EPA resume final permitting and enforcement authority over PSD permits for new PPSA sources. Consequently, by letter dated August 7, 1992, EPA revoked full delegation of PSD authority for power plants in Florida and returned to the partial delegation agreement outlined in the November 5, 1985, letter which granted the State the authority to implement the technical and administrative portions of the PSD program for PPSA sources.

Your letter presents amendments to the PPSA which took effect on April 22, 1993. These amendments expressly provide that the "[D]epartment's action on a federally required new source review or prevention of significant deterioration permit shall differ from the actions taken by the siting board regarding the certification if the federally approved state implementation plan requires such a different action to be taken by the department. Nothing in this part [the PPSA] shall be construed to displace the department's authority as the final permitting entity under the federally approved permit program." EPA has determined that the current PPSA statute gives the State the appropriate authority to issue and enforce PSD permits to sources subject to the PPSA.

We have determined that the procedures for new source review by the State of Florida provide an adequate and effective procedure for the implementation of the PSD program for the sources described above. Therefore, pursuant to 40 C.F.R. Subpart A (General Provisions), 40 C.F.R. §52.06 (Legal Authority), and 40 C.F.R. §52.21(u) (Delegation of Authority), we hereby delegate our authority for all portions of the Federal PSD program, as described in 40 C.F.R. §52.21, to the State of Florida for

sources subject to review under the PPSA located or to be located in the State of Florida and subject to review under the federal regulations for PSD, promulgated at 40 C.F.R. §52.21 as follows:

- A. EPA delegates its authority for the review of all sources which are subject to or reviewed under the Electrical Power Plant Siting Act located or to be located in the State of Florida and subject to review under federal regulations for the Prevention of Significant Air Quality Deterioration, promulgated in 40 C.F.R. §52.21.
- B. EPA delegates to the State of Florida its authority and procedures for technical review and evaluation of new sources and public participation pursuant to 40 C.F.R. §124.3-124.14, and its authority under 40 C.F.R. §124.15-124.19 to take final action on an application.
- C. For purposes of and in accordance with paragraph B above, the State of Florida shall follow the procedures in 40 C.F.R. §§124.3-124.19, except that the word "Director" and the phrase "Regional Administrator" shall mean "State Director." A copy of the State's preliminary determination, a copy of all materials submitted by the owner or operator of the source seeking the PSD permit, a copy or summary of the materials (if any) considered by the State in making its preliminary determination, and a copy of the notice shall be sent to the EPA Regional Office immediately upon issuance of a preliminary determination. Immediately upon issuance of a final determination, the state shall forward a copy of the final determination and final permit to the EPA Regional Office.
- D. This delegation is based upon the following conditions:
  1. Quarterly reports containing pertinent information relating to the status of sources subject to 40 C.F.R. §52.21 (or other reports as required by the Regional Administrator) will be submitted to EPA by the State of Florida as part of the existing reports normally submitted to EPA through program plan reporting.
  2. In accomplishing the delegated PSD review, the State of Florida will apply all applicable federal air permitting rules and follow the applicable federal permit processing procedures. If at any time it is determined that the state rules or statutes prohibit the Department from applying any such standard or procedure, the pertinent portion of the delegation may be revoked.

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3. If the Regional Administrator determines that the state procedure for implementing the PSD program is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Florida Department of Environmental Protection.
4. Acceptance of this delegation of presently promulgated PSD regulations (40 C.F.R. §52.21, as amended 02/03/92) does not commit the State of Florida to accept responsibility for new federal standards or requirements promulgated after the effective date of this delegation.
5. Public availability of information shall be in accordance with 40 C.F.R. §52.21(q).
6. Enforcement of PSD in the State of Florida will be the primary responsibility of the Department of Environmental Protection. If the State determines that such enforcement is not feasible and so notifies EPA, or where the State acts in a manner inconsistent with the terms of this granted authority, EPA will exercise its concurrent enforcement authority pursuant to Sections 113 and 167 of the Clean Air Act, as amended, with respect to sources within the State of Florida subject to PSD requirements. In accordance with 40 C.F.R. 52.21(s) and Sections 113 and 167 of the Clean Air Act, 42 U.S.C. 7413 and 7477, the Environmental Protection Agency reserves the right to commence an enforcement action against any entity in violation of Prevention of Significant Deterioration should the State of Florida fail to take such an enforcement action or, in the opinion of EPA, fail to pursue a timely or appropriate enforcement action.
7. The State of Florida will ensure, through its interstate intergovernmental cooperation procedures, that all potential source interactions along State boundaries are properly determined.

The State and EPA will develop a system of communication sufficient to guarantee a program that includes the items described below:

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- A. Each agency is informed of the current compliance status of subject sources in the State of Florida consistent with the State/EPA Enforcement Agreement.
- B. Prior EPA concurrence is obtained on any matter involving interpretation of 40 C.F.R. §52.21 (including unique questions of applicability of the standards).

This delegation of authority should not be construed as a transfer of PSD responsibility under Section 110(a)(2)(J) of the Clean Air Act, as amended. As you are aware, such transfer involves different procedures and considerations.

A notice announcing the granting of the full delegation of PSD authority to the State will be published in the Federal Register in the near future. The notice will state, among other things, that effective immediately, all reports required pursuant to PSD regulations by covered sources located in or to be located in the State of Florida should be submitted to the Bureau of Air Regulation, Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida, 32399-2400.

Since the delegation of authority is effective immediately, there is no requirement that the State notify EPA of its acceptance. Unless EPA receives from the State written notice of objections within ten (10) days of receipt of this letter, the State will be deemed to have accepted all of the terms of the delegation.

Sincerely yours,



Patrick Tobin  
Acting Regional Administrator

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