STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

SIERRA CLUB,

Petitioner,

vs.

OGC Case No. 06-2157
Draft Air Permit No. PSD-FL-375
Project No. 1070025-005-AC

SEMINOLE ELECTRIC COOPERATIVE, INC, and STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondents.
_____/

ORDER DISMISSING PETITION WITH LEAVE TO AMEND

On October 16, 2006 the Department of Environmental Protection (Department) received the attached Motion For Enlargement of Time and Petition for Administrative Hearing (Petition) from the Sierra Club (Petitioner). The Petition requests an extension of time to file a petition for administrative hearing on the Department's decision to issue Permit No. 1070025-005-AC / PSD-FL-375 (permit) to Seminole Electric Cooperative, Inc., for its facility in Putnam County, Florida, and challenges the Department's decision to issue the permit.

Notice of the Department's action was published in the Palatka Daily News on September 8, 2006. Rule 62-110.106(3), Florida Administrative Code (F.A.C.), and the public notice require that persons whose substantial interests are affected by the agency's decision must file a petition for an administrative determination (hearing) in the Department's Office of General Counsel within 14 days of publication of notice or receipt of notice, whichever occurs first. Rule 62-110.106(3)(b), F.A.C., provides that the failure to file a petition within the applicable time period constitutes a waiver of any right to request an administrative proceeding under Chapter 120, Florida Statutes. The petitioner failed to timely file a petition for administrative proceeding. The Petitioner's failure to timely file the Petition in this proceeding

constitutes such a waiver of their right to request an administrative proceeding under Chapter 120. F.S.

The petitioner has not shown in the Petition any basis for excusable neglect. Furthermore, Petitioner admits in the Petition, in paragraph 21, that the Petitioner had spoken with a representative of the Department on September 5, 2006, on which date Petitioner was advised that the Department had sent a Notice of Intent to Issue Air Permit for Seminole Unit 3 to Seminole. Petitioner further states that it has 105 members in Putnam County, and 520 members in St. Johns County. The public notice was published in the Palatka Daily News, which is circulated in Putnam and St. Johns Counties, on September 8, 2006.

Therefore, the Petition must be dismissed as required by Section 120.569(2)(c), F.S.

IT IS THEREFORE ORDERED:

A. The Petition is DISMISSED as being untimely filed. This dismissal is without prejudice to the Petitioner filing an amended petition showing why the Petition dismissed in this order should be considered timely.

B. The Motion for Enlargement of time is DENIED for failure to show cause for excusable neglect.

C. Any amended petition must be filed (received) in the Office of General Counsel, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, no later than the fifteenth day after the date of this order.

D. This order constitutes final agency action of the Department, unless a timely amended petition is filed in compliance with this order.

Any party to this proceeding has the right to seek judicial review of this order under Section 120.68, Florida Statutes, by the filing of a notice of appeal under Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, 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 is filed with the clerk of the Department.

DONE AND ORDERED this 31st day of ~~November~~ October, 2006, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

GREGORY M. MUNSON
General Counsel
3900 Commonwealth Boulevard
Mail Station 35
Tallahassee, Florida 32399-3000

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

CLERK 10/31/06
Date

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail this 31st day of October, 2006, to:

Kristin Henry
Joanne Spalding
Sierra Club
85 Second Street, 2nd Floor
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STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

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STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

SIERRA CLUB,

Petitioner,

v.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

And

SEMINOLE ELECTRIC COOPERATIVE, INC,

Respondents.
_____/

Case No.:
FDEP File No. 1070025-005-AC
(PSD-FL-375)

SIERRA CLUB'S MOTION FOR ENLARGMENT OF TIME AND PETITION FOR ADMINISTRATIVE HEARING

Petitioner, Sierra Club, a non-profit corporation, on behalf of its more than 33,000 Florida members, hereby files this Motion for Enlargement of Time and Petition for Administrative Hearing challenging the Florida Department of Environmental Protection's ("DEP") Intent to Issue Air Permit for Permit No. 1070025-005-AC (PSD-FL-375) ("Draft Permit") to Seminole Electric Cooperative, Inc. ("Seminole"). The Air Permit would allow the construction of a seven hundred fifty (750) megawatt pulverized coal-fired supercritical steam generating unit ("Seminole 3") at the existing Seminole Generating Station, 890 North U.S. Highway 17, approximately seven miles north of Palatka, in Putnam County, Florida. As grounds for this Enlargement of Time and Administrative Hearing, the Sierra Club states:

1. The Sierra Club is a non-profit corporation with over 750,000 members. The Sierra Club's Florida Chapter has over 33,000 members, with 105 and 520 members

in Putnam and St. Johns Counties, respectively. The Sierra Club's Florida offices are located at 111 Second Avenue N.E., St. Petersburg, Florida 33701. The Sierra Club has its national headquarters at 85 Second Street, Second Floor, San Francisco, California, 94105.

2. The DEP is the permitting authority in this proceeding and has its offices located at 111 S. Magnolia Drive, Suite 4, Tallahassee, Florida 32301. (The mailing address for the DEP's Bureau of Air Regulation is 2600 Blair Stone Road, MS #5505, Tallahassee, Florida, 32399-2400.)

3. Petitioners are represented in this proceeding by David Guest, Earthjustice, 111 South Martin Luther King Jr. Boulevard, Tallahassee, Florida 32301, (850) 681-0031, (850) 681-0020 (facsimile).

4. Seminole Electric Cooperative, Inc., has its offices located at 16313 North Dale Mabry, Tampa, Florida, 33618.

SUBSTANTIAL INTEREST

5. The Florida Chapter of the Sierra Club has over 33,000 members, with 105 and 520 members in Putnam and St. Johns Counties, respectively. Many Sierra Club members are Florida citizens who live in the area that will be adversely affected by Seminole 3, and whose property, recreational, aesthetic, business and/or environmental interests will be harmed. The Sierra Club and its members therefore have a substantial interest in this proceeding.

6. A substantial number of Sierra Club members own property in the region that will be affected by air pollution from Seminole 3. Air pollution from Seminole 3 will adversely affect the rights of Sierra Club members to use and enjoy their property.

7. As acknowledged by the Public Notice of Intent to Issue Air Permit, the Permit would authorize the emissions of particulate matter (PM), carbon monoxide (CO), volatile organic compounds (VOCs), and fluorides (HF) in quantities that exceed the levels that the State of Florida has established as significant under its Prevention of Significant Deterioration (PSD) regulations. In addition, Seminole 3 will emit sulfur dioxide (SO_2), sulfuric acid mist (SAM), nitrogen oxides (NO_x) and mercury (Hg), all pollutants that are harmful to human health and the environment. Draft Permit, p. 8. The substantial interests of the Sierra Club's Florida members, particularly those in the vicinity of the Seminole Generating Station, will be affected by these harmful emissions from Seminole 3.

8. The emissions limits in the Draft Permit rely on erroneous and incomplete technical information, as well as incorrect legal analysis. These errors and omissions will allow Seminole to emit excess harmful air pollutants, adversely affecting the interests of Sierra Club members.

9. Sierra Club members use and enjoy the outdoors throughout the state of Florida, including areas that will be affected by pollution from Seminole 3, for outdoor recreation and scientific study of various kinds, including nature study, bird-watching, photography, backpacking, camping, solitude, and a variety of other activities.

10. As confirmed by Seminole's Air Permit Application, three Class I areas are located within 200 kilometers of Seminole 3: the Okefenokee, Wolf Island, and Chassahowitzka National Wilderness Areas ("NWA"). Seminole Application at 59. The nearest Class I area is the Okefenokee National Wildlife Area, which includes the Okefenokee Wildlife Refuge within its borders, located approximately 108 kilometers

north of the Seminole Generating Station. The Chassahowitzka National Wildlife Refuge is located 137 kilometers to the southeast of the Seminole Generating Station, and the Wolf Island National Wildlife Refuge is located 186 kilometers to the north. Sierra Club members use these Class I areas for outdoor recreation and scientific study of various kinds.

11. The emissions from the proposed unit will degrade regional air quality. The air in a region has limited carrying capacity, defined as the increment between current air quality and ambient air quality standards or significant impact levels. Each new facility that locates in a region and emits pollutants will consume part of this carrying capacity. The Draft Air Permit relies on a flawed and illegal analysis to demonstrate compliance with Class I increment requirements for SO_2. Seminole's failure to comply with Class I increment requirements will adversely affect the ability of Sierra Club members to use and enjoy these Class I areas.

12. The DEP, by failing to compel new power plants to comply with federal and state pollution control laws, unlawfully allows regional air quality to be degraded.

13. Florida Chapter members of the Sierra Club have a substantial interest in protecting the regional air quality. The interests of the Sierra Club members in the region affected by pollution from Seminole 3 are substantial enough to support standing for those members individually. The Sierra Club appears here as an association to represent the interests of these members.

14. The Sierra Club's purpose encompasses protecting the substantial interests of its members in clean and healthy air. The Sierra Club is dedicated to the protection and preservation of the natural and human environment, including protecting public

health. One of the Sierra Club's national priorities is the Smart Energy Solutions Conservation Initiative, which tackles the pressing problems of global warming, air pollution, and our national dependence on dirty, non-renewable energy sources such as nuclear power, oil and coal.

15. The organizational purposes of the Sierra Club and the substantial interests of Sierra Club's Florida Chapter members are within the zone of interest that the Clean Air Act and the Florida statutes and regulations implementing it, including the provisions allowing hearings on air permits, are designed to protect.

BACKGROUND

16. Seminole is proposing to construct, own and operate a seven hundred and fifty megawatt (750 MW) pulverized coal-fired supercritical steam generating unit located adjacent to the existing Units 1 and 2 at the Seminole Generating Station. The primary fuels will be eastern U.S. bituminous coals and petroleum coke with coals, and the unit will have a maximum capacity of approximately 2.8 million tons/year of fuel.

17. On March 9, 2006, Seminole submitted to the DEP its application to construct Seminole 3.

18. With a letter dated August 24, 2006, the DEP transmitted to Seminole its Public Notice of Intent to Issue Air Permit ("Notice").

19. The Notice fails to inform the public of violations of PSD Class I increment requirements. It states:

> Maximum predicted impacts due to proposed emissions from the project are less than the applicable PSD Class I and Class II significant impact levels applicable to all PSD Class I and II areas and including the nearest PSD Class I area which is the Okeefenokee National Wildlife Area. Based on the required analyses, the Department has reasonable assurance that the proposed project will not cause or contribute to a violation of any state or federal ambient air quality standard.

Contrary to this statement, the analysis of the plant's impact on Class I areas is flawed, and the modeling data shows that plant will exceed the allowable increment for sulfur dioxide in the Okefenokee and Chassahowitzka National Wildlife Refuges.

20. The Notice also misinforms the public with regard to emissions of SO_2, NO_x, SAM and mercury. It states:

> No increase in facility-wide SO_2, NO_x, SAM and mercury when compared to historical (Baseline) air emissions. The applicant has accepted facility-wide caps for each above pollutant eliminating the requirement for a PSD review.

The emissions caps to which the notice refers are not enforceable as a practical matter, so the Notice fails to provide adequate and correct information regarding the potential impact of the Seminole 3 permitting decision.

21. On or about September 5, 2006, counsel for the Sierra Club spoke with a DEP staff person by telephone and learned that DEP has sent to Seminole a Notice of Intent to Issue Air Permit for Seminole Unit 3. The staff person stated that he did not know whether Seminole had published the Notice or in what publication the Notice would appear. He stated that Seminole was required to provide proof of publication to the DEP, and that the DEP would post the publication date on its website when it received that information.

22. On information and belief, Seminole published the Notice in the Palatka Daily News on September 8, 2006. Neither counsel for the Sierra Club nor Sierra Club members working on other issues related to the Seminole Generating Station saw the Notice in the Palatka Daily News.

23. Over the next four weeks, counsel for the Sierra Club checked the DEP website frequently, but never saw any indication that Seminole had published the notice.

On information and belief, the website still does not include a proof of publication or any information regarding the publication of the Notice, including the date on which it was published.

24. On or about October 6, 2006, counsel for the Sierra Club spoke with DEP staff and was told that the Notice had been published in the Palatka Daily News on September 8, 2006, that the deadline for filing a petition for an administrative hearing was on September 22, 2006, and that the deadline for comments was on October 9, 2006.

25. The Sierra Club filed comments on the Draft Permit on October 9, 2006.

ENLARGEMENT OF TIME

26. The Sierra Club seeks an enlargement of time for filing a petition for hearing on the proposed Permit pursuant to 62 F.A.C. § 62-110.106(4), which states, in relevant part:

> 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 . . . even if the period has expired, upon motion showing that the failure to act was the result of excusable neglect.

I. THE SIERRA CLUB'S DELAY IN FILING A PETITION FOR HEARING IS EXCUSABLE AND SEMINOLE WILL NOT BE PREJUDICED BY ALLOWING THE SIERRA CLUB TO FILE THIS PETITION.

27. The Sierra Club has been actively participating in the administrative hearing on Seminole's Unit 3 Power Plant Siting Application (Case No. 06-0929EPP). As a non-profit, public interest organization, the Sierra Club has limited resources to dedicate to even the most important environmental issues. Because the Florida Chapter has already committed a significant amount of resources to the hearing on the Siting Application, it did not have the additional resources available to evaluate the Draft Air Permit.

28. Neither Sierra Club's counsel in the Siting Application proceeding nor Sierra Club members active in challenging the Seminole expansion saw the Public Notice of Intent to Issue Air Permit that was apparently published on September 8, 2006, in the Palatka Daily News.

29. In early September, 2006, staff attorneys at the Sierra Club's San Francisco headquarters became involved in the Seminole permitting process. Because the Florida Chapter was focusing its resources on the Siting Application, Sierra Club staff attorneys offered to help the Chapter to review the Air Permit and submit comments if appropriate. While Sierra Club staff attorneys have substantial experience related to permits issued under the PSD provisions of the Clean Air Act, they have no prior experience working in Florida administrative proceedings, or in any other state where the administrative scheme requires a hearing petition on a PSD permit to be filed before the deadline for submitting comments on the draft permit.

30. Sierra Club attorneys diligently sought and eventually retained expert witnesses who could assist the attorneys in reviewing the Draft Permit and its supporting technical documents. Due to prior commitments, the Sierra Club's lead expert was not available to review the Draft Permit and supporting documents until October 5, 2006. At that time, she began her review and discovered serious deficiencies in the technical analysis that supported the Draft Permit.

31 On or about October 6, 2006, a Sierra Club staff attorney based in San Francisco had a telephone conversation with DEP staff, who stated that the Notice had been published on September 8, 2006, that the deadline for filing a petition for hearing on

Seminole 3 had passed, and that comments were due on October 9, 2006. The Sierra Club submitted timely comments on the Draft Permit. See Exhibit A.

32. Equitable tolling is a defense to the untimely filing of a petition for hearing on a decision that affects substantial interests. F.S.A. § 120.569(2)(c). In this case, the equities favor granting the Sierra Club's motion for enlargement of time. Sierra Club attorneys contacted DEP staff as soon as the Sierra Club's expert had the opportunity to review the Draft Permit and identify serious flaws. The Sierra Club submitted timely comments on the Draft Permit and is submitting this petition within fewer than 14 days after discovering the issues that warrant a hearing.

33. It seems unreasonable to expect Florida citizens and public interest, non-profit organizations with limited resources to be able to find and retain experts, review the air permit and supporting technical documents, ascertain the disputed issues of material fact, analyze potential legal claims, and draft and file a petition in a mere fourteen days after publication of the Notice, particularly in comparison with the many months that the project applicant and DEP have to develop and evaluate the permit information.

34. Granting the Sierra Club's request for an extension will not result in prejudice to Seminole. Because the Sierra Club is a party in the siting hearing for Seminole 3, Seminole is aware of the Sierra Club's opposition to the proposed project and will not suffer prejudice from a brief delay in filing a petition.

35. The public interest will be harmed if this request for an extension is denied. The Draft Permit suffers from serious flaws that render some of the limits it imposes inadequate and some unenforceable. The issuance of this flawed permit with no

opportunity for a hearing will mean that serious concerns regarding public health and the environment will be ignored.

II. REGULATIONS INDICATE THAT A REQUEST FOR HEARING IS TIMELY IF FILED WITHIN FOURTEEN DAYS AFTER NOTICE OF THE FINAL DETERMINATION TO APPROVE THE PERMIT.

36. Although the Notice states that a petition for an administrative hearing must be filed within fourteen days of publication of the Notice, the regulations are ambiguous and confusing regarding the timeframe for filing a petition. The ambiguity arises in the language used to describe the action being contested. The language in 62 F.A.C. § 62-110.106(2) indicates that a person with substantial interests can file a petition on either an "actual or proposed action of the Department." The rule creates a distinction between "intended agency action" (which seems to be synonymous with "proposed action") and "actual agency action," but states that "notice of agency action" includes notice of both. Id. The rule creates the impression that a person with substantial interests can choose whether to petition for a hearing on either the actual action or the intended action.

37. This impression is corroborated by the language and scheme in 62 F.A.C. § 62-210.350, dealing with public notice and comment on agency action. That regulation seems to use the phrases "final agency action" and "final determination" synonymously. Compare 62 F.A.C. § 62-210.350(a) with 62 F.A.C. § 62-210.350(f). It requires the Department to consider public comments submitted on the proposed agency action in making its "final determination." 62 F.A.C. § 62-210.350(f). Presumably, that "final determination" is the "actual agency action" referred to in 62 F.A.C. § 62-110.106(2). Until a person with substantial interests knows what the "final determination" will be,

and whether the Department will modify the proposed action in response to comments, it would seem premature to petition for a hearing.

III. THE PUBLIC NOTICE IS DEFICIENT.

38. Florida's Clean Air regulations require DEP to provide public notice of "the degree of PSD increment consumption expected" as a result of the proposed Seminole 3. 62 F.A.C. § 62-210.350(2)(a)(3). DEP violated this requirement because it failed to provide public notice of the actual impact of the Seminole 3's sulfur dioxide pollution on the Local Air Quality Standard in the nearby Okefenokee and Chassahowtzka NWA Class I Areas.

39. The analysis of the impact of the Seminole plant's emissions on the Air-Quality Standards suffers serious flaws. In demonstrating the impacts of Seminole Units 1 and 2 on the Local Air Quality Standard for sulfur dioxide at nearby Okefenokee and Chassahowitzka National Wildlife Refuges, Seminole arbitrarily excluded all sources except the power plant itself – despite the acknowledged absence of any technical or legal basis to so limit the analysis. Seminole Electric Cooperative Request for Modification for Seminole Units 1 and 2, Appendix C, Air Quality Modeling Analysis. Even without those additional sources of air pollution, the analysis indicated that the increment would almost be exceeded for the Units 1 and 2 modification. See Table 3-6 (the Class I increment for sulfur dioxide for the 24-hour concentration is 5.00 $\mu g/m^3$ and the Seminole plant will contribute 4.99 $\mu g/m^3$). This would leave only 0.01 $\mu g/m^3$ for all future development in the area, including the new Unit 3. The Class I increment analysis for Seminole 3 relied upon these erroneous calculations related to Seminole 1 and 2.

40. The Class I increment analysis for Seminole 3 also relied on an arbitrary and unenforceable emissions rate from Seminole 1 and 2. The modeling was based on an annual cap for sulfur dioxide that assumed an emissions rate of 0.38 lb/MMBtu for both Seminole 1 and 2. This annual cap, however, is not an enforceable emissions limit, and is dramatically lower than the rate allowed by the draft permit for Seminole 1 and 2 (0.67 lb/MMBtu). Thus, Seminole failed to demonstrate compliance with Class I increment requirements, because it based its modeling on a completely unenforceable emission limit, left to be implemented at the discretion of the permittee.

41. Because the DEP failed to provide adequate notice to the public regarding increment consumption, the Notice violates Florida regulations requiring disclosure of the "degree of PSD increment consumption expected." 62 F.A.C. § 62-210.350(2)(a)(3). The Notice is legally flawed and must be reissued. In the Matter of: Hadson Power 14 – Buena Vista, 4 E.A.D., 258, 271-72 (E.A.B. 1992).

DISPUTED ISSUES OF MATERIAL FACT

42. Whether DEP conducted an adequate analysis to determine the Best Available Control Technology ("BACT") for CO, VOCs, fluoride, particulate matter, and mercury.

43. Whether a BACT analysis is required for mercury and sulfuric acid mist.

44. Whether the emissions limits in the Draft Permit reflect BACT for CO, VOCs, fluoride, particulate matter, sulfuric acid mist, mercury, and opacity.

45. Whether the analysis supporting the Draft Permit included appropriate modeling of SO_2 emissions with regard to their impact on Class I areas.

46. Whether the analysis supporting the Draft Permit included an adequate assessment of how emissions from Seminole 3 may impair soils and vegetation.

47. Whether DEP must include consideration of Integrated Gasification Combined Cycle ("IGCC") technology as BACT.

48. Whether the Draft Permit limits for VOCs, fluorides, PM, SAM, NH3, and mercury are enforceable.

49. Whether the permit limits for Seminole Units 1 and 2 are enforceable such that they support emissions credits for Seminole Unit 3.

50. Whether the startup and shutdown exemption in the Draft Permit were appropriately modeled.

51. Whether the startup and shutdown exemption in the Draft Permit reflect BACT.

52. Whether Seminole conducted adequate pre-construction monitoring.

53. Whether DEP considered reasonable alternatives to Seminole 3.

54. Whether the Draft Permit limits will adequately protect public health.

55. Whether the construction of Seminole 3 will have a disproportionate impact on minority or economically disadvantaged communities.

ULTIMATE FACTS WARRANTING REVERSAL

56. The Draft Permit would allow Seminole 3 to emit air pollution that would be harmful to public health and the environment and that exceeds levels allowed under the Clean Air Act and Florida law.

STATUTES AND RULES VIOLATED BY THE PERMIT

The Draft Permit violates the following statutes and rules:

57. The Clean Air Act's Prevention of Significant Deterioration ("PSD") provisions, which govern construction of new major sources of air pollution in regions that attain the national ambient air quality standards ("NAAQS"). 42 U.S.C. § 7475.

58. The PSD rules codified at 40 CFR Part 52 and incorporated as a Florida State Implementation Plan ("SIP") approved program into 62 F.A.C. § 62-212.400. See 62 F.A.C. § 62-204.800. These rules require that applicants reduce their emissions by employing the "best available control technology" ("BACT") for pollutants that would be emitted in levels that exceed the PSD significance thresholds, see 62 F.A.C. § 62-210.200(264), or that would cause or contribute to air pollution in violation of any applicable maximum allowable increase over the baseline concentration in any area, see 62 F.A.C. §§ 62-212.400, 62-204.200, 62-204.220, 62-204.260.

59. The regulation defining BACT as:

> An emission limitation, including a visible emissions standard, based on the maximum degree of reduction of each pollutant emitted which the Department, on a case by case basis, taking into account:
>
> 1. Energy, environmental and economic impacts, and other costs;
>
> 2. All scientific, engineering, and technical material and other information available to the Department; and
>
> 3. The emission limiting standards or BACT determinations of Florida and any other state;
>
> determines is achievable through application of production processes and available methods, systems and techniques (including fuel cleaning or treatment or innovative fuel combustion techniques) for control of each such pollutant.

60. F.A.C. § 62-210.200(39). See also 42 U.S.C. § 7479(3); 40 C.F.R. § 52.21(b)(12). Specifically, the Draft Air Permit violates Florida's Prevention of Significant Deterioration ("PSD") provisions, 62 F.A.C. § 62-212.400, by failing to

require Seminole to use the Best Available Control Technology ("BACT") for CO, VOCs, PM, SAM, Hg, and visible emissions. The technical analyses regarding the BACT decisions for these pollutants suffer from serious flaws. In some cases, DEP failed to require a BACT analysis even though pollution levels allowed by the permit exceed the PSD significance thresholds. In other cases, the technology selected as BACT is not in fact BACT-level technology.

61. The regulations requiring an assessment of the "impairment to * * * soils and vegetation that would occur as a result of the source" before issuing a PSD permit. 40 C.F.R. § 52.21(o); 62 F.A.C. § 62-212.720(8)(a).

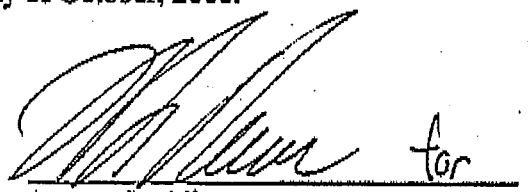
62. The Clean Air Act requirement that an emission limitation apply to emissions of air pollutants "on a continuous basis." 42 U.S.C. § 7602(k).

63. The Clean Air Act requirement that requires consideration of alternatives to a major new source of air pollution. 42 U.S.C. § 7475(a).

RELIEF SOUGHT

Petitioners respectfully request that the Motion for Enlargement of Time be granted and that this Petition be forwarded to the Division of Administrative Hearings to conduct a formal administrative hearing, and that DEP issue a final order denying Permit No. 1070025-005-AC (PSD-FL-375).

Respectfully submitted this 16th day of October, 2006.



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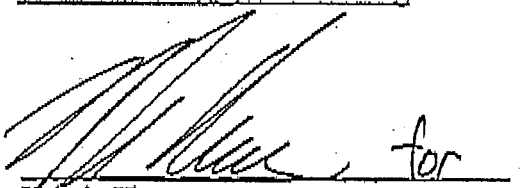

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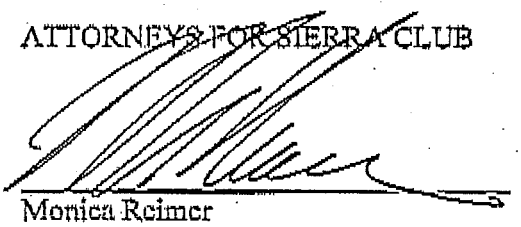

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(850) 681-0020 (facsimile)

LOCAL COUNSEL

CERTIFICATE OF SERVICE

I, Monica K. Reimer, certify and declare as follows:

My business address is 111 South Martin Luther King Jr. Boulevard, Tallahassee, Florida 32301 which is located in the county where the mailing described below took place.

On October 16, 2006, I served a copy of the Sierra Club's Motion for Enlargement of Time and Petition for Administrative Hearing on the recipients listed below via regular U.S. mail and facsimile.

Department's Agency Clerk
Office of General Counsel
Department of Environmental Protection
3900 Commonwealth Boulevard
Mail Station #35
Tallahassee, FL 32399-3000
(850) 245-2241 (Telephone)
(850) 245-2303 (Facsimile)

On October 16, 2006, I served a copy of the Sierra Club's Motion for Enlargement of Time and Petition for Administrative Hearing on the recipients listed below via regular U.S. mail.

Authorized Representative:
James R. Frauen
Project Director, SGS -3
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Tampa, Florida, 33618

Trina Vielhauer
Florida Dept. of Environmental Protection
Bureau of Air Regulation
2600 Blair Stone Road
MS #5505
Tallahassee, FL 32399-2400

I certify and declare under penalty of perjury under the laws of the State of Florida that the foregoing is true and correct.

Executed on October 16, 2006.

Monica K. Reimer