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BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D. C.

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ENVIR. APPEALS BOARD

In the matter of:

PSD Appeal No.08-09

In Re Seminole Electric Cooperative, Inc.  
\_\_\_\_\_ /

**FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION'S  
BRIEF IN SUPPORT OF ITS  
REQUEST TO DENY REVIEW AND MOTION FOR SUMMARY DISPOSITION**

On October 9, 2008, the United States Environmental Protection Agency (EPA) in Washington, D.C. notified the Florida Department of Environmental Protection (FDEP) that a petition had been filed with the Environmental Appeals Board (Board) by Sierra Club in the matter of a PSD permit issued by FDEP to Seminole Electric Cooperative, Inc. (Seminole), on September 5, 2008. The permit authorized construction of a 750 MW pulverized coal-fired supercritical steam generating unit at the Seminole Generating Station in Palatka, Putnam County, Florida. The letter instructed FDEP that any Response Seeking Summary Disposition must be filed by October 24, 2008. FDEP hereby files its Response Seeking Summary Disposition, styled REQUEST TO DENY REVIEW AND MOTION FOR SUMMARY DISPOSITION seeking that Board deny review of the petition and dismiss the matter for lack of jurisdiction for the reasons stated below.

**ARGUMENT**

- A. The Permit Was Not Issued By Or Under Delegation From EPA But By a Fully Approved State Program

The Seminole PSD permit was issued September 5, 2008, by FDEP, as is alleged in the petition. FDEP was fully approved to issue PSD permits to electric power plants on June 27, 2008, effective July 28, 2008. (See, Exhibit A, 73 FR 36435-36439, attached). FDEP has been fully approved for all other PSD permitting for many years.

The history of the latest approval is discussed in the approval notice itself, but generally is that EPA published a direct final rule May 25, 2007, to fully approve FDEP's program for electric power plants (72 FR 29287) but withdrew the direct final rule after receiving adverse comments from, inter alia, the petitioner and re-proposed full approval April 4, 2008 (73 FR 18466-18473).

In the approval of the FDEP PSD program for electric power plants, USEPA stated that:

This final approval means that Florida's SIP-approved PSD permitting program, including the final conditional approval of the State's PSD revisions noted above, applies to electric power plants in Florida in lieu of the current federally delegated PSD program (73 FR 36435-36439 at 36437).

Because FDEP was fully approved to issue the PSD permit pursuant to its own approved state rules and procedures when the permit was issued, the permit was not issued by EPA or under EPA-delegated authority.

**B. The Board Does Not Exercise Jurisdiction Over Permits Issued By Approved State Programs**

The jurisdiction of the Environmental Appeals Board is set forth in Title 42 Part 124 of the Code of Federal Regulations (CFR). Specifically, 42 CFR section 124.1(e) states particularly that: "Part 124 does not apply to PSD permits issued by an approved State". The Board has addressed this particular issue only rarely in the recent past but in each instance has applied the rule as written.

In the case *In re Milford Power Plant*, 8 E.A.D. 670 (EAB 1999), the Board discussed availability of appeal of PSD permits saying:

Significantly for purposes of this case, the Board's authority to review PSD permits is not all-encompassing. The regulations specifically restrict the Board's scope of review to federal requirements, stating, "Part 124 does *not* apply to PSD permits issued by an approved State." *Id.* § 124.1(e) (emphasis added); *accord* Environmental Appeals Board, *Practice Manual* 3 (Nov. 1994) (citing *In re Great Lakes Chem. Corp.*, 5 E.A.D. 395, 396-97 (EAB 1994)). An "approved state" is defined in the regulations as a state that administers an "approved program." 40 C.F.R. § 124.41. An "approved program," for its part, is a SIP that contains procedures for the issuance of PSD permits and that has been approved by EPA in accordance with the CAA and its implementing regulations.

Similarly, in the matter of *In re Carlton, Inc. North Shore Power Plant*, 9 E.A.D. 690 (EAB 2001), the Board dismissed a petition against a permit because the permit was issued pursuant to an approved state minor source program rather than by PSD program delegation from EPA.

**C. Petitioner's Retroactivity Argument Is Meritless**

The petitioner, Sierra Club, admits that the permit was issued by FDEP as an approved state program stating at page 4 of the petition that "FDEP issued the draft PSD permit under a federal delegation of authority but issued the final PSD permit after the Environmental Protection Agency ("EPA") approved the portion of Florida's State Implementation Plan ("SIP") covering PSD permits for electric

power plants.” Sierra Club argues, however, that the Board should consider the appeal because “the current SIP-approved state rules, if applied retroactively, could cut off review in state court”. FDEP admits that at the time the draft permit was issued the Florida PSD program was considered delegated by EPA and that the full approval of the program occurred between issuance of the draft permit and issuance of the final permit. FDEP also admits that Sierra Club attempted unsuccessfully to participate in a FDEP state administrative appeal during the permitting process. But Sierra Club does not allege that any change to FDEP’s state administrative procedures occurred during the processing of the permit so the failure of Sierra Club to fully participate in the state administrative appeal process was not due to any retroactive application of Florida administrative appeals procedures. Sierra Club’s retroactivity allegation is simply that differences may exist between federal and state administrative procedures. Any differences between state and federal administrative processes are the appropriate consideration in the program approval rulemaking process.

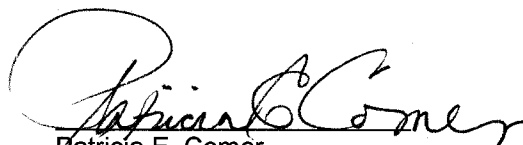
In approving the FDEP PSD program, the EPA fully considered the issue and determined that FDEP “has adequate and effective procedures for full implementation of the State’s PSD program” (73 FR at 36437). Appropriate appeal of that rulemaking determination is to the United States Court of Appeal rather than to the Environmental Appeals Board in a permit review petition.

#### CONCLUSION

For the reasons set forth above, FDEP respectfully requests that this Board deny review of the Seminole Electric Cooperative, Inc., permit and summarily dispose of the Sierra Club petition through dismissal for lack of jurisdiction.

Date: October 22, 2008

Respectfully Submitted,



Patricia E. Comer  
Senior Assistant General Counsel  
Florida Bar No. 224146  
Florida Department of Environmental Protection  
3900 Commonwealth Boulevard – MS 35  
Tallahassee FL 32399-3000  
Telephone: 850-245-2288 fax:850-245-2302

operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded, under the Instruction, that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because it establishes a safety zone.

A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” will be available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Record Keeping Requirements, Security Measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

- 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

- 2. A temporary section in 165.T13–035 is added to read as follows:

#### § 165.T13–035 Safety Zone: Wreckage of the M/V NEW CARISSA, Pacific Ocean 3 Nautical Miles North of the Entrance to Coos Bay, Oregon.

(a) Location. The following area is a safety zone: The waters of the Pacific Ocean encompassed by a 1000 yard radius surrounding the wreckage of the M/V NEW CARISSA located 3 NM north of the entrance to Coos Bay, Oregon.

(b) Enforcement period. This rule will be in effect from 10 a.m. June 05, 2008, to 11:59 p.m. August 31, 2008.

(c) Regulations. In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representative.

Dated: June 5, 2008.

**F.G. Myer,**

*Captain, U.S. Coast Guard, Captain of the Port Portland.*

[FR Doc. E8–14616 Filed 6–26–08; 8:45 am]

**BILLING CODE 4910–15–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R04–OAR–2006–0130–200814; FRL–8684–4]

#### Approval and Promulgation of Implementation Plans Florida; Prevention of Significant Deterioration

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to conditionally approve revisions to the Florida State Implementation Plan (SIP) submitted by the State of Florida on February 3, 2006. The SIP revisions modify the Florida Prevention of Significant Deterioration (PSD) program to address changes to the federal new source review (NSR) regulations, which were promulgated by EPA on December 31, 2002, and reconsidered with minor changes on November 7, 2003 (commonly referred to as the “2002 NSR Reform Rules”). In addition EPA is approving Florida’s concurrent February 3, 2006, request to make the State’s PSD permitting program applicable to electric power plants, which are also subject to the Florida Electrical Power Plant Siting Act (PPSA). EPA proposed conditional approval of these revisions on April 4, 2008; no comments were received on that proposal.

**DATES:** *Effective Date:* This rule will be effective July 28, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2006–0130. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy

form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the Florida State Implementation Plan, contact Ms. Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9074. Ms. LeSane can also be reached via electronic mail at [lesane.heidi@epa.gov](mailto:lesane.heidi@epa.gov). For information regarding New Source Review, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. The telephone number is (404) 562–9214. Ms. Adams can also be reached via electronic mail at [adams.yolanda@epa.gov](mailto:adams.yolanda@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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#### I. What action is EPA taking?

NSR Reform Revisions. EPA is taking final action to conditionally approve revisions to the Florida SIP (Florida Administrative Code (F.A.C.) Chapters 62–204, 62–210, and 62–212) as submitted by the Florida Department of Environmental Protection (FDEP) on February 3, 2006, which included changes to Florida’s PSD program. As part of the current conditional approval, Florida has agreed to (1) revise the definition of “new emissions unit” to be consistent with the federal definition or revise the definition to define what is meant by “beginning normal operation” and provide an equivalency demonstration supporting the revised definition; (2) revise the definition of “significant emissions rate” to include ozone depleting substances; (3)

withdraw the request that EPA include a significant emissions rate for mercury in the Florida SIP, specifically F.A.C. Chapter 62–210.200(243)(a)2; and (4) revise the recordkeeping requirements at F.A.C. section 62–212.300(3)(a)1 to be consistent with federal requirements found at 40 CFR 51.166(r)(6).

Applicability of Florida's SIP-approved PSD permitting program to electric power plants. In addition to and in conjunction with the conditional approval of Florida's PSD SIP revisions, EPA is approving Florida's concurrent February 3, 2006, request to make the State's PSD permitting program applicable to electric power plants subject to the Florida PPSA. This means that Florida's SIP-approved PSD permitting program, including the conditional approval of the State's PSD revisions noted above, will apply to electric power plants in Florida in lieu of the current federally delegated PSD program.

On April 4, 2008 (73 FR 18466), EPA published a notice of proposed rulemaking (NPR) in the **Federal Register**, proposing to conditionally approve the Florida SIP revisions and proposing to approve Florida's request to make the State's PSD program applicable to electric power plants, which are also subject to the Florida PPSA. The April 4, 2008, NPR provides additional information about the proposed Florida SIP revisions and the rationale for this final action. The public comment period for the proposed action ended on May 5, 2008. No comments were received on EPA's proposed action. EPA is now taking final action to conditionally approve the February 3, 2006, SIP revision from Florida and to approve Florida's request to make the State's PSD permitting program applicable to electric power plants subject to the Florida PPSA.

## II. What is the background of EPA's action on the Florida PSD rule revisions?

On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the Clean Air Act ("CAA" or "Act") PSD and nonattainment new source review (NNSR) programs. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on its reconsideration of the December 31, 2002, final rule changes. In that November 7, 2003, final action, EPA added the definition of "replacement unit," and clarified an issue regarding plant-wide applicability limitations. Collectively, these EPA final actions are referred to as the "2002 NSR Reform Rules." On June 13, 2007 (72 FR

32526), EPA took final action to revise the 2002 NSR Reform Rules to exclude the clean units and PCP provisions that were vacated by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) on June 24, 2005. Further, on December 21, 2007, EPA took final action on the portion of the 2002 NSR Reform Rules remanded by the D.C. Circuit Court, regarding the reasonable possibility in recordkeeping provision. The "reasonable possibility" provision identifies, for sources and reviewing authorities, the circumstances under which a major stationary source undergoing a modification that does not trigger major NSR must keep records. On December 21, 2007, EPA established that a "reasonable possibility" exists where source emissions equal or exceed 50 percent of the CAA NSR significance levels for any pollutant (72 FR 72607). These changes became effective on January 22, 2008, and the final action on that provision explains the process that states should follow if a SIP revision is necessary.<sup>1</sup>

The Florida SIP revisions being approved today revise Florida's PSD program consistent with the federal program. In so doing, Florida not only provided substantive revisions to its rules, but also reorganized the rules to better follow the outline of the corresponding federal rules. This reorganization does not have any substantive impact on the PSD program as a whole, or its relationship with Florida's operating permits program (CAA title V program). Florida's PSD program continues to work in concert with its title V operating permit program to ensure that applicable requirements, including any applicable PSD requirements, are a part of lawful operation of a source under Florida's title V program.

The February 3, 2006, SIP submittal consists of revisions to the following FDEP rules: F.A.C. Chapter 62–204, "Air Pollution Control—General Provisions;" F.A.C. Chapter 62–210, "Stationary Sources—General Provisions;" and F.A.C. Chapter 62–212, "Stationary Sources—Preconstruction Review." The revisions were made to update the Florida PSD program to make it consistent with the December 31, 2002, changes to the federal NSR program. EPA is conditionally approving the February 3, 2006, SIP submittal consistent with section 110(k)(4) of the

<sup>1</sup> Florida's regulations do not include the "reasonable possibility" language. Florida's SIP revisions require all modifications that use the actual-to-projected-actual methodology to meet the recordkeeping requirements. Thus, with regard to the reasonable possibility issue, Florida's rules are at least as stringent as the current federal rules.

CAA. As part of the conditional approval, Florida will have twelve months from the date of EPA's final conditional approval of the SIP revisions in which to further revise its PSD rules, as described herein, to be consistent with existing federal law.

Pursuant to section 110(k)(4) of the CAA, EPA may conditionally approve a portion of a SIP revision based on a commitment from the state to adopt specific, enforceable measures no later than twelve months from the date of final conditional approval. If the state fails to make the changes within the twelve month period, EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval. The necessary revisions to the Florida SIP will materially alter the existing SIP-approved rule. As a result, Florida must also provide a new SIP submittal to EPA for approval that includes the rule changes. As with any SIP revision, Florida must provide an opportunity for public notice and comment, and allow for a public hearing (and any other procedures required by State law) on the proposed rule changes. If Florida timely revises its rules and submits the revised SIP submittal, EPA will process that SIP revision consistent with the CAA.

With regard to the conditional approval of the PSD program, Florida must: (1) Revise the definition of "new emissions unit" to be consistent with the federal definition or revise the definition to define what is meant by "beginning normal operation" and provide an equivalency demonstration supporting the revised definition; (2) revise the definition of "significant emissions rate" to include ozone depleting substances; (3) withdraw the request that EPA include a significant emissions rate for mercury in the Florida SIP, specifically F.A.C. 62–210.200(243)(a)2; and (4) revise the recordkeeping requirements at F.A.C. 62–212.300(3)(a)1 to require a record of the amount of emissions excluded pursuant to the projected actual emissions requirements, an explanation as to why these emissions were excluded, and any netting calculations if applicable, consistent with the federal recordkeeping requirements at 40 CFR 51.166(r)(6).

The April 4, 2008, NPR and the docket for this action provide more details about the SIP revisions being approved and the rationale for EPA's final action. For additional information on EPA's 2002 NSR Reform Rules, see 67 FR 80186 (December 31, 2002), and <http://www.epa.gov/nsr>.

### III. What is the background of EPA's action on Florida's PSD program for electric power plants?

Electric power plants subject to the Florida PPSA have historically been permitted by FDEP (through a federal delegation of authority from EPA) under the federal PSD program rather than the Florida SIP-approved PSD permitting program. The Florida PSD program was initially approved by EPA into the Florida SIP on December 22, 1983 (48 FR 52713). The approval transferred to FDEP the legal authority to process and issue PSD permits to sources in Florida that are required to obtain PSD permits.

One category of sources not covered by EPA's 1983 approval of Florida's PSD program was electric power plants. This was because, at the time, a separate Florida law known as the Florida PPSA, Florida Statutes Section 403.501 *et seq.*, required permits for electric power plants to be issued solely by the Power Plant Site Certification Board under the PPSA, rather than by FDEP under Florida's PSD regulations. Such a conflict between the PPSA and Florida's PSD program created impediments to implementation and enforcement of the State's PSD program by FDEP for such power plants and precluded EPA's SIP-approval of Florida's PSD program as to these sources. As a result, for electric power plants subject to the PPSA, FDEP has been operating under either a partial or full delegation of authority to implement the federal PSD program since 1983, while various attempts to amend the PPSA to correct the conflict were made. Currently, FDEP is operating under a full delegation of authority to implement the federal PSD program for electric power plants, following further amendments to the PPSA in 1993. The 1993 PPSA amendment made clear that FDEP is the final permitting authority for PSD and new source review permits and can act in a manner different from the PPSA Siting Board if Florida's PSD or new source review regulations require such different action. The statutory amendment to the PPSA made by the Florida Legislature in 1993 forms the basis of the State's 2006 request for EPA approval to make Florida's SIP-approved State PSD program, rather than the federal PSD program, applicable to sources subject to the PPSA. In addition, during EPA's review of this request, the PPSA was again amended (on June 19, 2006), to among other things, further extricate Florida's PSD permitting process from its PPSA process. See, Florida Public Health Code 403.0872.

Following EPA review of both the 1993 and June 19, 2006, amendments to the PPSA, the Agency published a direct final rule on May 25, 2007, finding that the PPSA amendments provided FDEP the authority to fully implement and enforce Florida's PSD program for electric power plants located within the State, and we granted it full approval to implement the State's PSD program for electric power plants subject to the PPSA. 72 FR 29287 (May 25, 2007). However, because adverse comments on the direct final rule were received, EPA withdrew the rule on June 28, 2007 (72 FR 35355) and indicated that the rule would not take effect.

As is described in greater detail in the April 4, 2008, proposal, the 1993 and June 2006 Florida legislative amendments to the State's PPSA rectified past concerns that the Florida PPSA infringed on FDEP's authority to issue State PSD permits to sources subject to both the State's PSD regulations and the Florida PPSA in such a manner that SIP-approval of the State's PSD program for those sources was precluded. By proposing this SIP-approval through this new rulemaking process, and in conjunction with our proposed action on the Florida PSD program SIP revisions, we have addressed the main concerns raised by commenters in response to our May 25, 2007, direct final rule. For additional information on the concerns raised by commenters, see the April 4, 2008, proposal.

EPA is now approving Florida's February 3, 2006, request that EPA grant Florida SIP-approval to implement the State's PSD program for electric power plants subject to the PPSA. EPA is approving this specific request under section 110 of the Act because there is no longer a conflict between the State's PSD regulations and the PPSA and because FDEP now has adequate and effective procedures for full implementation of the State's PSD program for electric power plants. The April 4, 2008, NPR and the docket for this action provide more details about the approval of Florida's PSD program for electric power plants and the rationale for EPA's final action.

### IV. Final Action

EPA is taking final action to conditionally approve changes to the Florida Administrative Code Chapter 62-204 entitled "Air Pollution Control—General Provisions"; Chapter 62-210 entitled "Stationary Sources—General Provisions"; and Chapter 62-212 entitled "Stationary Sources—Preconstruction Review," as submitted

by the State of Florida on February 3, 2006, as revisions to the Florida SIP.

In addition to and in conjunction with the conditional approval of Florida's PSD SIP revisions, EPA is taking final action to approve Florida's concurrent February 3, 2006, request to make the State's PSD permitting program applicable to electric power plants subject to the Florida PPSA. As a result of this final action, EPA's October 26, 1993, federal delegation of PSD authority to FDEP will be withdrawn effective July 28, 2008. This final approval means that Florida's SIP-approved PSD permitting program, including the final conditional approval of the State's PSD revisions noted above, applies to electric power plants in Florida in lieu of the current federally delegated PSD program.

### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 26, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 16, 2008.

J.I. Palmer, Jr.,  
Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart K—Florida**

■ 2. Section 52.519 is revised to read as follows:

**§ 52.519 Identification of plan-conditional approval.**

EPA is conditionally approving a revision to the Florida State Implementation Plan (SIP) consisting of revisions to Florida Administrative Code Chapters 62–210 and 62–212. Based upon a commitment from the State, Florida must (1) revise the definition of "new emissions unit" to be consistent with the federal definition or revise the definition to define what is meant by "beginning normal operation" and provide an equivalency demonstration supporting the revised definition; (2) revise the definition of "significant emissions rate" to include ozone depleting substances; (3) withdraw the request that EPA include a significant emissions rate for mercury in the Florida SIP, specifically F.A.C. 62–210.200(243)(a)2; and (4) revise the recordkeeping requirements at F.A.C. 62–212.300 to be consistent with federal requirements. If the State fails to meet its commitment by June 29, 2009, the approval is treated as a disapproval.

- 3. Section 52.520(c) is amended by:
  - a. Revising entries under Chapter 62–204 for "62–204.200," and "62–204.260," under Chapter 62–210 for "62–210.200," "62–210.300," "62–210.350" and "62–210.370," under Chapter 62–212 for "62–212.300," "62–212.400," and "62–212.500" and
  - b. Adding in numerical order a new entry under Chapter 62–212 for "62–212.720" to read as follows:

**§ 52.520 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED FLORIDA REGULATIONS**

State citation	Title/subject	State effective date	EPA approval date	Explanation
<b>Chapter 62–204 Air Pollution Control—General Provisions</b>				
62–204.200	Definitions	02/12/06	06/27/08 [Insert citation of publication].	
62–204.260	Prevention of Significant Deterioration Maximum Allowable Increases (PSD Increments).	02/12/06	06/27/08 [Insert citation of publication].	
<b>Chapter 62–210 Stationary Sources—General Requirements</b>				
62–210.200	Definitions	02/02/06	06/27/08 [Insert citation of publication].	Except for the following definitions which are being conditionally approved: (1) "New emissions unit," and (2) "significant emissions rate."

## EPA-APPROVED FLORIDA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
62-210.300	Permits Required	02/02/06	06/27/08 [Insert citation of publication].	
62-210.350	Public Notice and Comment	02/02/06	06/27/08 [Insert citation of publication].	
62-210.370	Emissions Computation and Reporting.	02/02/06	06/27/08 [Insert citation of publication].	
<b>Chapter 62-212 Stationary Sources—Preconstruction Review</b>				
62-212.300	General Preconstruction Review Requirements.	02/02/06	06/27/08 [Insert citation of publication].	Except provisions at 62-212.300(3)(a)1, which are being conditionally approved.
62-212.400	Prevention of Significant Deterioration (PSD).	02/02/06	06/27/08 [Insert citation of publication].	
62-212.500	Preconstruction Review for Non-attainment Areas.	02/02/06	06/27/08 [Insert citation of publication].	
62-212.720	Actuals Plantwide Applicability Limits (PALs).	02/02/06	06/27/08 [Insert citation of publication].	

\* \* \* \* \*

■ 4. Section 52.530 is amended by revising paragraph (a) to read as follows:

**§ 52.530 Significant deterioration of air quality.**

(a) EPA approves the Florida Prevention of Significant Deterioration program, as incorporated into this chapter, for power plants subject to the Florida Power Plant Siting Act.

\* \* \* \* \*

[FR Doc. E8-14400 Filed 6-26-08; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R10-OAR-2007-0998; FRL-8684-1]

**Approval and Promulgation of State Implementation Plans: Washington; Vancouver Air Quality Maintenance Area Second 10-Year Carbon Monoxide Maintenance Plan**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the State of Washington. The Washington State Department of

Ecology submitted the Vancouver Air Quality Maintenance Area Second 10-year Carbon Monoxide Maintenance Plan on April 25, 2007. In accordance with the requirements of the Federal Clean Air Act (the Act), EPA is approving Washington's revision because the State adequately demonstrates that the Vancouver Air Quality Maintenance Area will maintain air quality standards for carbon monoxide (CO) through the year 2016.

**DATES:** This rule is effective on August 26, 2008, without further notice, unless EPA receives adverse comment by July 28, 2008. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2007-0998, by any of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* [vaupel.claudia@epa.gov](mailto:vaupel.claudia@epa.gov).
- *Mail:* Claudia Vergnani Vaupel, U.S. EPA Region 10, Office of Air, Waste and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* U.S. EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Claudia Vergnani Vaupel, Office of Air,

Waste and Toxics, AWT-107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R10-OAR-2007-0998. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in



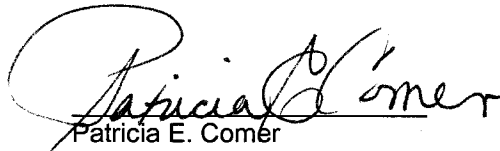
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing, Florida Department of Environmental Protection's Request to Deny Review and Motion for Summary Disposition and Brief and Support has been furnished via U.S. Mail this 22 day of October, 2008, to:

Joanne Spalding, Esq.  
Kristen Henry, Esq.  
Counsel for Sierra Club  
85 Second Street  
San Francisco, CA 94105-3441

James S. Alves  
Counsel for Seminole Electric  
P.O. Box 6526  
Tallahassee, Florida 32314

David G. Guest, Esq.  
Counsel for Sierra Club  
P.O. Box 1329  
Tallahassee, FL 32302



Patricia E. Comer  
Senior Assistant General Counsel  
Florida Bar No. 224146  
Florida Department of Environmental Protection  
3900 Commonwealth Boulevard – MS 35  
Tallahassee FL 32399-3000  
Telephone: 850-245-2288 fax:850-245-2302