

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  
REQUEST TO DENY REVIEW AND MOTION FOR SUMMARY DISPOSITION**

The Florida Department of Environmental Protection (FDEP) hereby files this Request to Deny Review and Motion for Summary Disposition in response to the petition filed by Sierra Club on October 6, 2008, in the matter described above. FDEP requests that the Environmental Appeals Board (Board) dismiss the petition for lack of jurisdiction because the Prevention of Significant Deterioration (PSD) permit that is the basis of the petition was issued by FDEP under an approved PSD program and not by or under delegation from the United States Environmental Protection Agency (EPA). In support thereof, FDEP states:

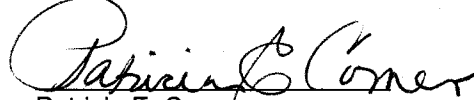
1. The permit PSD-FL-375 identified in the petition was issued September 5, 2008, by FDEP, as alleged in the petition.
2. FDEP was fully approved to issue PSD permits to electric power plants on June 27, 2008, effective July 28, 2008. (See, Exhibit A, 73 FR 36435-36439, attached).
3. The petitioner, Sierra Club, admits that the permit was issued by FDEP as an approved state program but argues 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.

And any differences between state and federal administrative processes are the appropriate consideration in the program approval rulemaking process.

WHEREFORE, the FDEP requests that the Board summarily dispose of the petition by dismissal since the petition requests review of a permit issued by the FDEP under an approved state PSD program

Date: October 22, 2008

Respectfully Submitted

A handwritten signature in cursive script, reading "Patricia E. Comer". The signature is written in black ink and is positioned above the typed name.

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