



Jeb Bush
Governor

Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

David B. Struhs
Secretary

MAILED
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November 5, 2003

- CERTIFIED MAIL - RETURN RECEIPT REQUESTED -

Mark J. Hornick
General Manager, Polk Power Station
Tampa Electric Company
Post Office Box 111
Tampa FL 33601-0111

**RE: Tampa Electric Company Polk Power Station
Modification to Conditions of Certification
DEP Case Number PA 92-32F**

ORDER MODIFYING CONDITIONS OF CERTIFICATION

Dear Mr. Hornick:

On February 22, May 13, June 28, and October 8, 1996, May 30, 2001, January 2002, and July 21, 2003, the Florida Department of Environmental Protection ("Department") received a request to modify the Conditions of Certification for the Tampa Electric Company Polk Power Station. That request included that the Conceptual Plan and conditions be modified to approve a variance from Florida Administrative Code Rule 62C-16.0051(4), (5), relating to fluctuating zones and acre-for-acre, type replacement of wetlands. In lieu of the required acre-for-acre wetland replacement, TEC has developed and proposes to donate to Polk County a 1,511 acre parcel in Polk County to be dedicated as a public fishing management area and to donate to the state 1433 upland and 589 submerged acres of TEC land bordering the Cockroach Bay Aquatic Preserve.

The Department has reviewed the modification request. On November 12, 2002, and September 3, 2003, all parties to the certification proceeding were provided with notice by certified mail of the Department's intent to modify the Conditions of Certification for this facility, along with a copy of the proposed Order Modifying Conditions of Certification. Additionally, on November 22, 2002, notice of the Department's intent to modify the Conditions of Certification for this facility was published in the Florida Administrative Weekly ("FAW"), and on September 12, 2003, on the Department's internet home page at <http://www.dep.state.fl.us/> under the link or button titled "Official Notices." Those notices specified that pursuant to Section 403.516, Florida Statutes ("F.S."), and Rule 62-17.211, Florida

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Administrative Code ("F.A.C."), all parties to the certification proceeding have 45 days from the issuance of notice by mail to such party's last address of record in which to file a written objection to the modification; that any person who is not already a party to the certification proceeding and whose substantial interests will be affected by the requested modification has 30 days from the date of publication of the public notice in the Florida Administrative Weekly to object in writing; and that the Department will issue an Order Modifying the Conditions of Certification for this facility if no written objections are received by the Department.

No objections to the modification have been received by the Department. The Conditions of Certification for the Tampa Electric Company Polk Power Station are hereby modified as follows:

XXIV. WETLAND RECLAMATION REQUIREMENTS

E. Hardwood Forest Reclamation

TEC shall plant the 31 ~~47~~ acres to be reclaimed as hardwood forest---

F. Mixed Forest Reclamation

TEC shall plant the 38 ~~295~~ acres to be reclaimed as mixed forest---

G. Herbaceous Wetland Reclamation

TEC shall plant the 252 ~~379~~ acres to be reclaimed as herbaceous wetlands

N. Drag-Line Walk Path

TEC shall retain an easement along the west side of State Road 37 sufficiently wide for use as a drag-line walk path. TEC shall be responsible for notifying the Siting Coordination Office, and the Department's Bureau of Mine Reclamation Bureau of Wetland Resource Management of a proposed usage of the drag-line walk path on the west side of SR 37 at least fifteen (15) days prior to the event. With the notification, TEC shall provide the Bureau of Mine Reclamation and the Southwest District Office Bureau with certified drawings showing any proposed modification to jurisdictional wetland areas the Payne Creek outfall. Within twenty-four (24) hours of the drag-line crossing any wetlands the Payne Creek outfall, the outfall and any adjacent areas that were impacted by the crossing, shall be restored to original grade and stabilized by either planting or sodding. Within thirty (30) days of the crossing, TEC shall provide the Bureau with certified drawings of record showing the restored areas on one foot contours with a 50 ft. Grid as verification that the outfall was restored to original grade. Use of the drag-line walk path for a future transmission line corridor will require TEC to submit an amendment to the original application and to submit a petition for modification of the applicable conditions of certification.

O. Responsibility for Reclamation Success

TEC shall retain full responsibility for the reclamation of those lands within the original site lying west of State Road 37 until reclamation areas achieve the success criteria listed in the above Conditions of Certification and TEC receives a written notification from the DEP releasing them from said responsibility. The transfer of title for the land to Polk County and its designated land manager shall not release TEC of its responsibility to reclaim the site successfully.

XXV. MINE RECLAMATION CONDITIONS

A. Conceptual Plans

The conceptual plan modification TEC-PPS-CP (AGR-FG-CPG) and variance TEC-PPS-V1 (AGR-FG-TEC-V1) applications are to be incorporated into the DEP's siting certification process as part of the TEC's Polk Power Station Site Certification Application. Final agency action on these applications by the Governor and Cabinet, sitting as the Siting Board, shall take place simultaneously with the Site Certification Application under the provisions of the Florida Electric Power Plant Siting Act (FEPPSA), pursuant to Sections 403.501-403.517, F.S. Approval of the conceptual plan modification application, AGR-FG-CPG, and variance application, AGR-FG-TEC-V1, as part of the site certification of the PPS does not warrant the suitability of subject lands for any current or proposed land use and does not constitute a statement, admission, or waiver by the state of Florida concerning ownership of any interest in the subject lands within the PPS site or the conceptual plan area. Approval of the conceptual plan modification and variance applications does not relieve ~~Agrieco Chemical Company—Freeport MacMoran Resource Partners, Limited Partnership, American Cyanamid, IMC Fertilizer, Incorporated, IMC-Agrieco Phosphate Company, Cytec Industries, Incorporated,~~ and/or the current land owner or mine operator from the obligation to comply with the requirements, standards, and criteria set forth in Chapter ~~46~~ 62C-16, F.A.C., ~~reference Subsection 16C-16.0033(6)(e), F.A.C.~~

B. Changes in Ownership

All changes in land ownership ~~and operators of each applicable mine,~~ within the lands specifically identified in the TEC's Site Certification Application as the PPS site, shall be reported to the DEP's Siting Coordination Office and the Bureau of Mine Reclamation no later than thirty (30) days after the effective date of such changes, pursuant to Subsection 16C-16.006(6), F.A.C. ~~Pursuant to approval of Tampa Electric Company's Site Certification Application by the Governor and Cabinet, sitting as the Siting Board, each applicable operator (Agrieco Chemical Company—Freeport MacMoran Resource Partners, Limited Partnership, American Cyanamid, IMC Fertilizer, Incorporated, IMC-Agrieco Company) shall notify the Department within thirty (30) days of the sale or legal transfer of the land within the proposed Polk Power Station site to the TEC or any other entity(ies) claiming a fee interest in the land subject to the mandatory reclamation obligation, as defined in Section 211.32, F.S. This notification shall be in the form of a legal contract of sale or transfer agreement between TEC~~

~~each applicable operator~~ and the entity(ies) claiming a fee interest in the affected lands. The contract/agreement shall appropriately identify the rights, duties, and responsibilities that shall be assumed and delegated by the transferee and each applicable operator, and shall be signed by the transferee and the applicable operators.

C. Reclamation/Restoration

The TEC shall reclaim and restore all lands within the 4,348-acre PPS site as depicted and described in the TEC's Site Certification Application and in ~~TEC's the Agrieo Chemical Company's (a Division of the Freeport MacMoran Resource Partners, Limited Partnership)~~ conceptual plan modification application, TEC-PPS-CPA AGR-FG-CPG, in accordance with the required time schedules in Condition XXV.D and in a manner which will yield the following total (including non-mandatory acreages) post-reclamation land use acreages: 3 acres of transportation routes; 321 acres of industrial use as power plant associated facilities; 730 acres of improved pasture; 18 acres of citrus; 544 acres of shrub and brushland; 6 acres of mixed rangeland; 55 acres of upland hardwood forest; 774 acres of upland mixed forest; 264 acres of lakes; 834 acres of cooling reservoir; 61 acres of wetland hardwood forest; 310 acres of wetland mixed forests; and 428 acres of herbaceous wetlands. Of the total site acreage, 523 acres are non-mandatory acres and will exist as 201 ~~241~~ acres of improved pasture, 4 acres of shrub and brushland, 6 acres of mixed rangeland, 29 acres of upland hardwood forest, 34 acres of upland mixed forest, 165 acres of lakes, 40 acres of wetland hardwood forest, 11 acres of wetland mixed forest, and 33 ~~23~~ acres of herbaceous wetlands.

D. Time Tables

The TEC shall carry out and complete all reclamation and restoration activities in Tract A, all lands east of State Road 37, and Tract B, all lands west of State Road 37, within the Polk Power Station site in accordance with the following time tables:

TRACT	CONTOURING		REVEGETATION		ESTABLISHMENT	
	BEGINS	ENDS	BEGINS	ENDS	BEGINS	ENDS
A	06/94	11/95	12/95	05/96	06/96	05/97
B*	10/94	03/96	04/96	09/96	10/96	09/97

* In lieu of reclamation and restoration, TEC shall donate 1,511 acres of land in Tract B of the Polk Power Station site in Polk County to Polk County, donate 589 acres of submerged lands adjacent to the Cockroach Bay Aquatic preserve to the Tampa Bay Port Authority, and grant a abide by the Conservation Easement for 1433 acres of uplands adjacent to Cockroach Bay in Hillsborough County as granted to the State of Florida Board of Trustees in consideration for the variance to phosphate mine reclamation requirements and to provide significant regional benefit to wildlife and the environment as required for variances in accordance with Section 378.212(1) Florida Statutes. Such donation and transfer of ownership shall be completed by November 30, 2002 as attached as Exhibit 1 hereto and as described in the Easement recorded in Hillsborough

County Public Records Official Record Book 12822, Pages 1397 thru 1423; and the Conservation Easement as recorded in Hillsborough County Public Records Official Record Book 12822, Pages 1424 through 1452.

E. Standards

The TEC shall ~~carry out and complete conduct~~ all reclamation and restoration activities within the Polk Power Station site in accordance with the required time schedules as previously stated in Condition XXV.D. and in accordance with the requirements, criteria, and standards as set forth in Sections 62C 16C-16.0051 and 16C-16.0053, F.A.C., (reference attached copy of these rules), with the following exceptions:

Variances for the following rules adopted pursuant to Chapter 378, F.S. shall be granted in accordance with the provision of Subsection 378.212(1)(a), F.S.:

1. No minimum annual zone of fluctuation shall be required for the 834-acre cooling reservoir, rather than the twenty-five (25) percent required by Subsection ~~62C 16C-~~16.0051(5)(a), F.A.C.;

2. Approximately eight (8) percent (60 acres) of the low water surface of the cooling reservoir will consist of a zone between the annual low water line and six feet below the annual low water line to provide fish bedding areas and submerged vegetation zones, rather than the 20 percent required by Subsection ~~62C 16C-~~16.0051(5)(b), F.A.C.; and,
Variances for the following rules adopted pursuant to Chapter 378, F.S. shall be granted in accordance with the provision of Subsection 378.212(1)(f), F.S.:

~~3. 4. The herbaceous and mixed forest wetlands shall be reclaimed in reduced amounts, rather than the acre-for-acre and type-for-type restoration required by Subsection 62C-16.0051(4), F.A.C. Reclamation and restoration activities within the Polk Power Station site shall be conducted and completed in accordance with the required time schedules as stated previously in Condition XXV.D.~~

4. No minimum zone of annual fluctuation shall be required for lakes west of SR 37, rather than the 25% required by Subsection 62C-16.0051(5)(a), F.A.C.

5. Some islands within the reclaimed lakes west of SR 37 may have steeper slopes than the 4:1 slopes required by Subsection 62C-16.0051(2)(a), F.A.C.

F. Right of Entry

All authorized representatives of the Department, on presentation of appropriate credentials to the applicable land owner and/or mine operator, or its authorized representatives, shall have the right of entry to, on, or through all lands subject to Chapter ~~62C 16C-~~16, F.A.C. Inspections shall be conducted in accordance with the requirements mandated in Subsections ~~62C 16C-~~16.0067(1)-(9), F.A.C.

G. Release Procedures

Upon fulfillment of the requirements, standards, and criteria, as dictated above in Conditions XXV. B. and C., within Tracts A and B of the TEC's PPS site, the authorized agent of the TEC or the applicable land owner ~~and/or mine operator~~ shall submit a release request to the Department that identifies the post-reclamation land use acreages to be released. The release request shall include a statement certifying that the requirements, standards, and criteria, as required in the Conditions XXV.B.,C.,D.,E., and F. above, have been met. This request shall be submitted to:

Department of Environmental Protection
Bureau of Mine Reclamation
2051 East Dirac Drive,
Tallahassee, Florida 32310.

Release procedures shall be followed in accordance with the requirements set forth in Subsections 62C-16.0068(2)-(6), F.A.C.

H. Cockroach Bay

~~Prior to~~ After transferring ownership of the approximately 589 acres of submerged lands in Hillsborough County adjacent to the Cockroach Bay Aquatic Preserve to the Tampa Bay Port Authority and a the Conservation Easement for 1433 acres of uplands and wetlands and to the State of Florida Board of Trustees as described in Condition XXV.D. above and Exhibit 1, TEC shall provide the State with easements for access and for management purposes including permanent State access to the uplands north of the Reeder property and at the shell pits located at the southwest side of the parcel as described in Exhibit 1. If TEC should decide to sell lands they hold in ownership that buffer the 1433 acres of uplands property, TEC shall offer a public entity including the State, Hillsborough County, or Southwest Florida Water Management District, or a non profit entity, whose mission is conservation, the right of first refusal.

XXX. POLK COUNTY

A.- H. - No change

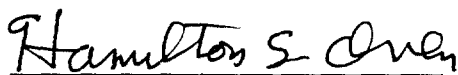
I. Fishing Lake

1. TEC shall construct the recreational fishing lakes on the parcel west of SR 37 as proposed in the 1996, submissions to the DEP. The ungraded "nesting islands" in the fishing lakes shall be planted with native trees as recommended by the Fish and Wildlife Conservation Commission.

2. TEC shall donate the 1,511 acres of land in Tract B west of State Road (SR) 37 to the Polk County by December 31, 2003.

Any party to the this Order has a right to seek judicial review of it pursuant to Section 120.68, Florida Statutes by filing a Notice of Appeal, pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department of Environmental Protection in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 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 from the date this Order is filed with the Clerk of the Department of Environmental Protection.

Executed in Tallahassee, Florida.



Hamilton S. Oven, P.E.

Administrator, Siting Coordination Office

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to §120.52

Florida Statutes, with the designated

Department Clerk, receipt of which is

hereby acknowledged.

 Clerk 11/5/03 Date

Tampa Electric Company Polk Power Station
Order Modifying Conditions of Certification
DEP Case Number PA 92-32C
November 5, 2003

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