

Enclosure 1

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION REGULATION OF ELECTRIC UTILITY INDUSTRIAL SOLID WASTE DISPOSAL FACILITIES

Pursuant to Chapter 403, Florida Statutes, management/disposal of CCRs (e.g., fly ash, bottom ash, slag, FGD waste, and other co-managed wastes) at coal-fired power plants (like Seminole Electric Cooperative Inc.'s (SECI) Seminole Generating Station (SGS)) is authorized either by power plant site certification orders and conditions thereunder issued by Florida's Siting Board (comprised of Florida's Governor and Cabinet) under Part II of Chapter 403, Florida Statutes or permits/authorizations issued by FDEP. These regulatory authorizations routinely include extensive groundwater monitoring and reporting and other environmental protection requirements for CCR disposal units and activities, including required compliance with FDEP's groundwater protection program. The SGS and the FGD landfill (including Increments 1 and 2) are governed by a power plant site certification order issued by Florida's Siting Board. See Seminole Units 1, 2 & 3, PA 78-10L (March 2010). Specifically, Conditions V and XII of that order address the FGD landfill, Increments 1 and 2, and related solid waste management activities at the SGS.

Generally, design and operational criteria for industrial solid waste disposal facilities (like the FGD landfill and Increments 1 and 2) are established on a case-by-case basis using scientific data and other information to ensure reasonable assurance that applicable FDEP standards will be met. Thus, over these many years, FDEP's Solid Waste Section, Siting Office, and District Office staff have been asked to make decisions about the proper management requirements for disposal of CCRs (an industrial solid waste that is not hazardous waste).

Chapter 62-701, F.A.C., regulates all solid waste management facilities but contains few specific requirements that would distinguish industrial solid waste from other types of waste. In 1993, FDEP attempted to clarify the disposal requirements for these wastes in Rule 62-701.720, F.A.C. This rule subjected all industrial solid waste disposal facilities to the same requirements as Class I landfills, but also contained procedures for specific facilities or industry groups to seek exemptions from those requirements. The Florida Pulp and Paper Association, the Florida Electric Power Coordinating Group, Inc. (FCG) (of which SECI is a member) and an individual chemical manufacturing facility all submitted exemption requests and provided data to support these requests. See, e.g., "Evaluation of Solid Waste Management Practices and Requirements-Florida Electric Utility Industry" (Woodward-Clyde, 1994). FDEP granted all three requests, noting that Class I landfill standards would not automatically apply to facilities operated by these entities, that such disposal facilities would continue to be evaluated on a case-by-case basis, and that the agency anticipated initiating rulemaking to address industrial solid waste disposal.

Rule 62-701.720, F.A.C., having served its purpose, was repealed in 1996. Current Rule 62-701.220(4), F.A.C. references now repealed Rule 62-710.720, F.A.C. and provides that the

FDEP written determinations made pursuant to that repealed rule section are still in legal effect until FDEP modifies these determinations through rulemaking. Such agency rulemaking has not yet been completed. A copy of the relevant FDEP written determinations applicable to solid waste management activities at the SGS, the FGD landfill, and Increments 1 and 2 are attached.



Department of Environmental Protection

Lawton Chiles
Governor

Twin Towers Office Building
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Virginia B. Wetherell
Secretary

October 10, 1994

Mr. Thomas M. DeRose
Hopping Boyd Green & Sams
123 South Calhoun Street
Post Office Box 6526
Tallahassee, Florida 32314

Dear Mr. DeRose:

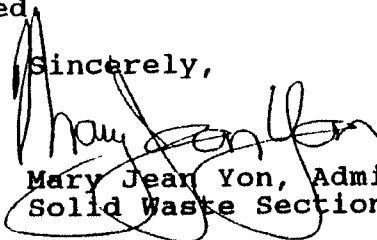
The Department has received the report for the Florida Electric Power Coordinating Group (FCG) entitled "Evaluation of Solid Waste Management Practices and Requirements" which was submitted to us on July 6, 1994 in accordance with the provisions of Rule 62-701.720(3), Florida Administrative Code (F.A.C.). The Department has determined that this submittal generally includes the information specified in Rule 62-701.720(4), F.A.C., and therefor the provisions of Rule 62-701.720(1), F.A.C., shall not apply to the industrial operations covered by your report.

After we have finished reviewing this report we will provide comments to FCG, and may request additional information. Upon determination that this application is complete, the Department intends to initiate rulemaking in order to set standards for the construction, operation and closure of solid waste disposal facilities at industrial operations. At that time, it may be helpful to schedule a meeting to discuss the Department's comments in more detail and to discuss the rulemaking schedule. Until this rulemaking is complete, you should be aware that the Department will continue to evaluate any applications for industrial waste disposal units on a case-by-case basis, and will require the applicant to provide reasonable assurance that such units will not cause pollution in violation of Department water quality standards. While Class I landfill standards will not automatically apply, some or all of these standards may be required in individual cases.

Mr. Thomas M. DeRose
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Thank you for your timely submittal of this information.
We will contact you and your client as soon as our
completeness review is concluded.

Sincerely,



Mary Jean Yon, Administrator
Solid Waste Section

MJY/lr

cc: Phil Coram
Chris McGuire
District Waste Program Administrators



Department of Environmental Protection

Lawton Chiles
Governor

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Virginia B. Wetherell
Secretary

February 5, 1996

William D. Preston
Hopping Green Sams & Smith, P.A.
123 South Calhoun Street
Tallahassee, Florida 32301

RE: Rule 62-701.720, F.A.C.

Dear Mr. Preston:

Your client, the Florida Electric Power Coordinating Group, Inc., has filed a rule challenge to the Department's proposed repeal of Rule 62-701.720, F.A.C. As you know, that rule specifically applied Class I landfill standards to many industrial waste disposal areas, but allowed facilities or industry groups to exempt themselves from those standards by submitting certain information to the Department. The Florida Electric Power Coordinating Group, Inc. did submit such information, and the Department determined that it was sufficient to qualify for the exemption.¹ As a result, disposal areas at power plants are now subject to a case-by-case determination of appropriate design and operational criteria.

Your clients now fear that the repeal of this rule could be interpreted to also repeal this exemption, and thus subject disposal areas at power plants to all Class I landfill standards. Let me assure you that this is not the case. If the rule is repealed, the requirement for industrial waste disposal areas to meet Class I landfill standards will also be repealed, and the Department has no intention of reinstituting this requirement. Even if it did, it is the Department's position that the exemption already granted to the Florida Electric Power Coordinating Group, Inc. would remain valid. If, at some point, additional rulemaking was initiated to regulate industrial waste disposal, your clients would have the opportunity to participate in that rulemaking.

Nonetheless, the Department has no objection to adding language to Chapter 62-701, F.A.C., to clarify this position. The Florida Pulp and Paper Association has submitted proposed language which it believes does this. Assuming that the repeal of Rule 62-701.720, F.A.C., goes forward, the Department agrees

¹ Of course, this exemption applies only to the requirement that all Class I landfill standards apply; it does not mean that none of the Class I landfill standards can ever be applied on a case-by-case basis.

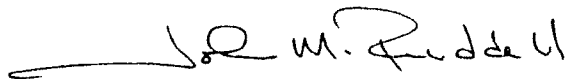
to file a Notice of Change adding this language, or language which accomplishes the same purpose, before certifying the repeal. The Department also agrees to consult with you prior to filing such Notice.

Your client also has concerns about the repeal of Rule 62-710.100, F.A.C., specifically language stating that the Department intended regulate used oil in a manner consistent with the Federal regulations and interpretations thereof promulgated by the U.S.E.P.A. While the Department's intent has not changed, we have no objection to clarifying this in the rule. You have submitted proposed language which essentially restates the Department's intent in a different rule section. Assuming that the repeal of Rule 62-710.100, F.A.C., goes forward, the Department agrees to file a Notice of Change adding this language, or language which accomplishes the same purpose, before certifying the repeal. The Department agrees to consult with you prior to filing such Notice. I would also note that the Department will be initiating rulemaking shortly to address more substantive issues in Chapter 62-710, thus providing your client an opportunity to address used oil regulation in more detail.

Finally, your client has expressed concern that the various repeals and consolidations of intent, definition, alternate procedures, and forms sections in the solid waste rules would be confusing to the general public, and has recommended that, if the rule repeals go forward, language be placed into each rule chapter informing the reader where to find relevant definitions, forms, etc. The Department agrees that this would be helpful, and further agrees to work with the Secretary of State to find a way to include such information without decreasing the number of rules repealed. The Department agrees to use the language you have submitted as a basis for either rule changes or explanatory notes, and agrees to consult with you prior to filing any Notice of Change.

It is my understanding that, as a result of this letter, you will agree to a continuance of the rule hearing you requested regarding the solid waste rules until a time mutually agreeable to all parties. Of course, this does not mean that you give up your right to proceed with the rule challenges. If my understanding is incorrect, please let me know as soon as possible so that I may reconsider the Department's position and prepare for the rule hearing.

Sincerely,



John M. Ruddell, Director
Division of Waste Management

cc: Chris McGuire
Mary Jean Yon