

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

IN RE:)
CITY OF TALLAHASSEE)
ARVAH B. HOPKINS)
POWER PLANT CERTIFICATION)
MODIFICATION REQUEST)
NO. PA 74-3)
LEON COUNTY, FLORIDA)

OGC No. ~~86-1091~~

FINAL ORDER
APPROVING A MODIFICATION OF CONDITIONS OF CERTIFICATION

Pursuant to Section 403.516, Florida Statutes, the City of Tallahassee submitted a request to modify the Conditions of Certification for its Arvah Hopkins Power Station Unit No. 2. Having considered the written request and all supporting documentation, the following Findings of Fact, Conclusions of Law, and Order are entered:

FINDINGS OF FACT

1. On April 6, 1989, the City of Tallahassee submitted a request to modify the Conditions of Certification for its Arvah Hopkins Power Plant Unit 2 so as to delete the biological monitoring program.

2. The requested modification was submitted pursuant to Section 403.516, F.S., and Special Condition 6 of the Conditions of Certification, which delegates to the Department the authority to make modifications to the conditions.

3. In May 1989, the Department's Biology Section determined that the biological monitoring could be ended.

4. On September 22, 1989, a Notice of Proposed Agency Action was served on all parties with a provision that a hearing would be held if requested on or before November 13, 1989. On September 29, 1989, A Notice of Proposed Agency Action was published in the Florida Administrative Weekly. No hearing was requested. No party has objected to the proposed modifications.

CONCLUSIONS OF LAW

1. Section 403.516, Florida Statutes, allows the Siting Board to delegate to the Department the authority to modify conditions of certification.

2. Special Condition of Certification 6 delegates to the Secretary of the Department the authority to modify conditions of certification after notice and opportunity for hearing.

3. Proper notice was given and no request for hearing was received.

4. The modification is appropriate because over ten years of biological monitoring have demonstrated that the power plant discharge is having a minimal effect.

THEREFORE, IT IS ORDERED THAT:

1. The request by the City of Tallahassee is GRANTED.
2. The Conditions of Certification for the City of Tallahassee's Arvah. B. Hopkins Power Plant are modified as follows:

1. <u>Biological Monitoring Program</u>		(Reserved)
<u>Parameter</u>	<u>Station-Ne-</u>	<u>Ne-Replicates</u>
		<u>-and-Frequency</u>
Phytoplankton-{1}	2	2/Q
Benthic-Macroinvertebrates	2	3/Q
Periphyton-{3}	2	4/Q

{1}--Phytoplankton---Counts-and-identification

{2}--Benthic-Macroinvertebrates----Counts-and-identification

{3}--Periphyton---Counts-and-identification

RIGHT TO APPEAL

Any party to this Order has the right to seek judicial review of the Order 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 in the Office of the General Counsel, 2600 Blair Stone Road, Tallahassee, Florida, 32399-2400; 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 30 days from the date of this Order is filed with the Clerk of the Department.

PETITION FOR ADMINISTRATIVE REVIEW

1. A person whose substantial interests are affected by the Department's decision may petition for an administrative

proceeding (hearing) in accordance with Section 120.57, Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the Office of the General Counsel of the Department at 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within 21 days of receipt of this Order. Petitioner shall mail a copy of the petition to the applicant at the time of filing. Failure to file a petition within this time period shall constitute a waiver of any right such person may have to request an administrative determination (hearing) under Section 120.57, Florida Statutes.

2. The Petition shall contain the following information:

- (a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Department Permit File Number and the county in which the project is proposed;
- (b) A statement of how and when each petitioner received notice of the Department's action or proposed action;
- (c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action;
- (d) A statement of the material facts disputed by petitioner, if any;
- (e) A statement of facts which petitioner contends warrant reversal or modification of the Department's action or proposed action;

(f) A statement of which rules or statutes petitioner contends require reversal or modification of the Department's action or proposed action; and

(g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action.

3. If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Order. Any person whose substantial interests will be affected by any decision of the Department with regard to the application has the right to petition to become a party to the proceeding. The petition must conform with the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at 2600 Blair Stone Road, Tallahassee, Florida 32399-2400. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Section 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-5.207, F.A.C.

4. This Order constitutes final agency action unless a petition is filed in accordance with the above paragraphs or unless a request for extension of time in which to file a peti-

tion is filed within the time specified for filing a petition and conforms to Rule 17-103.070. F.A.C. Upon timely filing of a petition or request for an extension of time this Order will not be effective until further Order of the Department.

DONE AND ORDERED this 6 day of June, 1990, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION

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

Harvey C. Carter 6-6-90
Clerk Date

Dale Twachtman
DALE TWACHTMANN
Secretary

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, FL 32399-2400
Telephone: (904) 488-9730

Certificate of Service

I hereby certify that a copy of the foregoing FINAL ORDER regarding the certification modification of the Arvah B. Hopkins Unit 2 Power Plant Site Certification was sent to the following parties by United States mail on June 7, 1990.

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