

**STATE OF FLORIDA
SITING BOARD**

**IN RE: NEW HOPE POWER PARTNERSHIP)
OKEELANTA COGENERATION FACILITIES)
POWER PLANT SITING APPLICATION)
NO. PA 04-46)**

**OGC CASE NO. 04-1594
DOAH CASE NO. 04-3209EPP**

FINAL ORDER OF CERTIFICATION

On March 31, 2005, an administrative law judge with the Division of Administrative Hearings ("DOAH") submitted his Recommended Order of Certification in this proceeding. The Recommended Order indicates that copies were served upon counsel for the applicant, New Hope Power Partnership ("New Hope"), on the Florida Department of Environmental Protection ("DEP"), and on other designated state and regional agencies. A copy of the Recommended Order of Certification is attached as Exhibit A. The matter is now before the Governor and Cabinet, sitting as the "Siting Board," for action under the Florida Electrical Power Plant Siting Act ("PPSA"), §§ 403.501-403.518, Florida Statutes.

BACKGROUND

New Hope currently operates the Okeelanta Cogeneration Facility in Palm Beach County, Florida. The plant site ("Site"), approximately 82.1 acres in size, is located in an unincorporated area of western Palm Beach County, approximately six miles south of South Bay and two miles west of U.S. Highway 27. The Site is adjacent to Okeelanta Corporation's existing sugar mill, refinery, and sugar cane fields. It is surrounded by a large buffer area, which is used primarily to grow sugar cane. The nearest residence is over 3.5 miles from the Site. The existing facility primarily burns biomass, bagasse and clean wood waste with natural gas and low sulfur distillate oil as supplemental fuels. It supplies steam to the adjacent sugar mill and refinery. Excess steam

from the facility is used to generate 74.9 megawatts (net) of electricity, which is sold to utility companies, including Florida Power and Light Company.

On September 3, 2004, New Hope filed an application with DEP for authorization to construct and operate an expansion of the Okeelanta Cogeneration Facility. This application (the "Expansion Project") proposes to increase the electrical generating capacity of the existing facility by approximately 65 megawatts (net), creating a total generating capacity of approximately 140 megawatts (net). The Expansion Project will involve the installation of a new turbine/electrical generator, a cooling tower, and related equipment at the site. The Expansion Project will be constructed on approximately 0.5 acres of the Site, and will also be fueled by biomass.

The Florida Public Service Commission ("PSC") issued an order on November 18, 2004, determining there is a need for the Expansion Project.

DOAH PROCEEDINGS

DEP forwarded the matter of New Hope's requested site certification for the Expansion Project to DOAH for formal administrative proceedings, and Administrative Law Judge Charles A. Stampelos ("ALJ") was assigned to the case. On March 21, 2005, the ALJ conducted a land use hearing in this case as required by the PPSA. The ALJ subsequently entered a Land Use Recommended Order, concluding that the site of the Expansion Project is consistent and in compliance with the land use plans and zoning ordinances of Palm Beach County, Florida, with the Treasure Coast Regional Planning Council's regional policy plan, and with the State of Florida's state comprehensive plan. A proposed Land Use Order, adopting the ALJ's Land Use Recommended Order, is currently before the Siting Board for consideration.

On March 11, 2005, DEP issued its written Staff Analysis Report (revised) concerning the Expansion Project. DEP's Report contained a compilation of proposed Conditions of Certification for the Expansion Project. DEP's Report also included reports from other state, regional, and local agencies.

On March 9, 2005, a Joint Prehearing Stipulation executed by New Hope, DEP, the Florida Department of Community Affairs, the Florida Department of Transportation, the Florida Public Service Commission, the Florida Fish and Wildlife Conservation Commission, the South Florida Water Management District, the Treasure Coast Regional Planning Council and Palm Beach County was submitted to the ALJ. All of these parties either recommended certification, did not dispute that certification should be approved, or took no position with respect to certification of the Expansion Project.

Pursuant to § 403.508(3), Florida Statutes, the ALJ held a formal administrative hearing on site certification of the Expansion Project in Palm Beach County on March 21, 2005. New Hope and DEP presented expert testimony and other evidence in support of site certification. No other party presented testimony or evidence. No members of the general public testified at the certification hearing.

RECOMMENDED ORDER

On March 31, 2005, the ALJ entered his Recommended Order of Certification for the Expansion Project. Included in the Recommended Order is the ALJ's basic conclusion that New Hope met its burden of proof of demonstrating at the certification hearing that the Expansion Project complies with all of the criteria for certification under the PPSA. The ALJ specifically concluded that the unrebutted evidence at the hearing demonstrated that the construction and operational safeguards for the Expansion Project are sufficient to protect the public welfare. The

ALJ further concluded that the Project will result in minimal adverse affects on human health, the environment, the ecology of the land and its wildlife, and the ecology of state waters and their aquatic life. The ALJ ultimately recommended that the Siting Board grant certification for the expansion of the Okeelanta Cogeneration Facility to a total capacity of 140 megawatts (net) of electricity, in accordance with the application and the Conditions of Certification set forth in DEP's Certification Hearing Exhibit 3.

CONCLUSION

No Exceptions were filed in this administrative proceeding challenging any of the ALJ's findings or conclusions in the Recommended Order of Certification. Furthermore, the record in this proceeding is devoid of objections by any governmental agencies to site certification of the Expansion Project. Based on a review of the record and the governing law, the Siting Board concludes that New Hope's Expansion Project complies with the certification requirements of the PPSA and that site certification of the Project fully balances the increasing demands for electrical power plant location and operation with the broad interests of the public.

It is therefore ORDERED that:

A. The Recommended Order of Certification (Exhibit A) is adopted and incorporated by reference herein.

B. Certification of the location, construction, and continued operation of the New Hope Okeelanta Cogeneration Facility as described in New Hope's site certification application and by the evidence presented at the certification hearing is APPROVED, subject to the Conditions of Certification contained in DEP Exhibit 3.

C. Authority to assure and enforce compliance by New Hope and its agents with all of the Conditions of Certification imposed by this Final Order is hereby delegated to DEP, except

that any proposed modification to burn fuels other than biomass (bagasse and clean wood), with natural gas and low sulfur distillate oil as supplemental fuels, shall be reviewed by the Siting Board.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department 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 30 days from the date this Final Order is filed with the clerk of the Department.

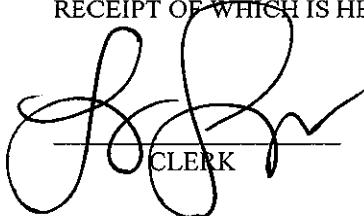
DONE AND ORDERED this 17th day of May, 2005, in Tallahassee, Florida, pursuant to a vote of the Governor and Cabinet, sitting as the Siting Board, at a duly noticed and constituted Cabinet meeting held on May 17, 2005.

THE GOVERNOR AND CABINET
SITTING AS THE SITING BOARD



THE HONORABLE JEB BUSH
GOVERNOR

FILING IS ACKNOWLEDGED ON THIS DATE,
PURSUANT TO § 120.52 FLORIDA STATUTES,
WITH THE DESIGNATED DEPARTMENT CLERK,
RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED



CLERK

5/26/05
DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order of Certification has been sent by United States Postal Service to:

James V. Antista, Esquire
Florida Fish and Wildlife
Conservation Commission
620 South Meridian Street
Bryant Building, Room 108
Tallahassee, FL 32399-1600

Sarah Nall, Esquire
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Hobe Sound, FL 33401-3345

Jennifer Brubaker, Esquire
Public Service Commission
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Ann Cole, Clerk and
Charles A. Stampelos,
Administrative Law Judge
Division of Administrative Hearings
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Haydon Burns Building
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Mail Station 58
Tallahassee, FL 32399-0458

and by hand delivery to:

Scott A. Goorland, Esquire
Department of Environmental Protection
3900 Commonwealth Blvd.
Mail Station 35
Tallahassee, FL 32399-3000

this 26th day of May, 2005.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: NEW HOPE POWER	)	
PARTNERSHIP OKEELANTA	)	
COGENERATION FACILITIES POWER	)	Case No. 04-3209EPP
PLANT SITING APPLICATION NO. PA	)	
04-46.	)	
	)	

RECOMMENDED ORDER OF CERTIFICATION

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Charles A. Stampelos, held a certification hearing in the above-styled case on March 21, 2005, in Palm Beach County, Florida.

APPEARANCES

For Petitioner New Hope Power Partnership ("New Hope"):

David S. Dee, Esquire
Landers & Parsons
310 West College Avenue
Tallahassee, Florida 32301

For the Florida Department of Environmental Protection:

Scott A. Goorland, Esquire
Department of Environmental Protection
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Mail Station 35
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

The issue to be determined in this case is whether the Governor and Cabinet, sitting as the Siting Board, should grant certification to New Hope for the expansion of the Okeelanta cogeneration facility to a total net steam electrical generating capacity of 140 megawatts ("MW").

PRELIMINARY STATEMENT

On September 3, 2004, New Hope filed an application ("Application") with the Florida Department of Environmental Protection ("Department" or "DEP") for authorization to construct and operate a 65 MW expansion (the "Expansion Project" or "Project") of the Okeelanta cogeneration facility in Palm Beach County, Florida. The Okeelanta cogeneration facility ("Facility") is an existing electrical power plant that burns biomass (e.g., bagasse and wood) to generate 74.9 MW of electricity. New Hope's application is subject to the requirements of the Florida Electrical Power Plant Siting Act ("PPSA"), Sections 403.501-.518, Florida Statutes. (All statutory references are to the 2004 codification of the Florida Statutes.) The Department transmitted New Hope's Application to the Division of Administrative Hearings for appropriate proceedings under the PPSA. In compliance with Section 403.508(3), Florida Statutes, the certification hearing (the "Certification Hearing") in this case was scheduled for March 21, 2005.

On March 9, 2005, a "Prehearing Stipulation for Land Use and Certification Hearings" ("Prehearing Stipulation") was filed by New Hope, DEP, the Florida Department of Community Affairs ("DCA"), the Florida Department of Transportation ("DOT"), the Florida Public Service Commission ("PSC"), the Florida Fish and Wildlife Conservation Commission ("FFWCC"), the South Florida Water Management District ("SFWMD"), the Treasure Coast Regional Planning Council ("TCRPC"), and Palm Beach County (the

"County"). In the Prehearing Stipulation, all of the signatories either recommended certification of the Project, or did not dispute, or took no position concerning the certification of the Project, provided that the Project is constructed and operated in compliance with the Conditions of Certification. Prehearing Stipulation at 10-17.

On March 21, 2005, a Certification Hearing was conducted in compliance with Section 403.508(3), Florida Statutes. At the Certification Hearing, New Hope called one witness, Kennard Kosky (accepted as an expert concerning the permitting of electrical power plants and air pollution control). New Hope introduced Exhibits 1-39 (Ex.) into evidence without objection. New Hope's Amended Exhibit List was also admitted into evidence as New Hope Power Exhibit A, and New Hope was permitted to supplement the record with the transcript of the land use hearing in this case.

By Order dated March 3, 2005, the Administrative Law Judge granted New Hope's request to take official recognition of the "Amended Final Order Granting Determination of Need" (dated November 18, 2004) of the PSC. This document was included with the exhibits introduced into evidence at the Certification Hearing. Ex. 22.

The Department called one witness, Hamilton S. Oven (accepted as an expert concerning power plant site certification in the State of Florida). The Department introduced three exhibits (DEP Exhibits 1-3) into evidence, without objection.

No one contested the evidence presented by New Hope and DEP at the Certification Hearing. None of the signatories to the Prehearing Stipulation participated at the Certification Hearing, except New Hope and DEP. Except for New Hope and DEP, the parties to this proceeding did not call any witnesses or proffer any exhibits.

The public was given an opportunity to provide oral and written comments at the Certification Hearing. However, no members of the public appeared or testified at the Certification Hearing. No one testified or proffered any exhibits in opposition to the Project at the Certification Hearing.

The one-volume Transcript (T) of the Certification Hearing was filed with the Division of Administrative Hearings on March 25, 2005, and the parties were allowed until March 28, 2005, to submit proposed recommended orders. New Hope and DEP timely filed a joint proposed recommended order on March 28, 2005. No other party filed a proposed recommended order.

FINDINGS OF FACT

The Applicant

1. The Applicant, New Hope Power Partnership, is a Florida partnership that owns the existing Okeelanta cogeneration Facility. Ex. 1 at 1-1, 3-1. New Hope will also own the Project. See id.

The Site

2. The Facility is located in an unincorporated area in western Palm Beach County, Florida. Ex. 1 at 2-1; Ex. 4 at 6; T 17. It is approximately six miles south of South Bay and two

miles west of U.S. Highway 27. Id. The Facility is located on a site (the "Site") that is approximately 82.1 acres in size.

Ex. 1 at 2-1; Ex. 4 at 8; T 19. The Site is adjacent to Okeelanta Corporation's existing sugar mill, sugar refinery, and sugarcane fields. Ex. 1 at 2-1; Ex. 4 at 6; T 17, 20.

The Surrounding Area

3. There are large buffer areas around the Site. See Ex. 1 at 2-1, 2-2, 2-4; Ex. 4 at 6; T 17-18. Almost all of the land within five miles of the Site is used for agricultural purposes (sugarcane farming). Id.

4. The community nearest the Site is South Bay. Ex. 1 at 2-2; Ex. 4 at 6; T 17. The nearest home is more than 3.5 miles northeast of the Site. Ex. 1 at 2-4; Ex. 5 at 9; T 17-18.

5. The Facility is adjacent to an existing electrical substation (Florida Power & Light Company's Okeelanta Substation). See Ex. 1 at 1-2. An existing electrical transmission line connects the Facility to the substation. Ex. 1 at 3-1.

The Existing Facility

6. The Facility uses biomass fuels (e.g., bagasse from the sugar mill; clean wood waste) to generate steam and up to 74.9 MW of electricity (net). Ex. 1 at 1-1, 3-1; Ex. 4 at 6-7; T 18. The Facility supplies steam to the sugar mill during the sugarcane harvest (October through March) and it supplies steam to the refinery throughout the year. Ex. 1 at 1-2, 3-1; Ex. 4 at 7; see T 18. Excess steam from the Facility is used to

generate electricity, which is sold to utility companies, including Florida Power & Light Company. Ex. 1-3; Ex. 4 at 7; See T 50-51.

7. The existing Facility includes three steam boilers, one steam turbine/electrical generator, a cooling tower, an electrical switchyard, materials handling and storage facilities for biomass fuels, and ancillary equipment. Ex. 1 at 2-1, 3-1; Ex. 4 at 7; T 20-21.

The Expansion Project

8. The Expansion Project will increase the Facility's electrical generating capacity by 65 MW (net), creating a total generating capacity of 140 MW (net). Ex. 1 at 1-1, 1-3, 2-1; Ex. 4 at 7; T 18. The Expansion Project will involve the installation of a new turbine/electrical generator, a cooling tower, and related equipment at the Site. Ex. 1 at 1-3, 2-1; Ex. 4 at 8; T 19.

Construction of the Expansion Project

9. Approximately 0.5 acres of the Site will be occupied by the new equipment that will be installed for the Expansion Project. Ex. 1 at 2-1; Ex. 4 at 8; T 19. The construction of the Project will occur in disturbed upland areas that already are used for industrial operations. Ex. 1 at 3-2, 4-1; Ex. 4 at 9; T 20. No construction will take place in any wetland, wildlife habitat, environmentally sensitive area, or 100-year flood plain. Ex. 1 at 2-2, 2-18, 4-1; Ex. 4 at 9; T 20.

10. No new electrical transmission lines will need to be built to accommodate the additional electrical power generated by the Expansion Project. See Ex. 1 at 3-1, 6-1.

11. During construction, there will be a temporary increase in sound levels due to the heavy equipment associated with the construction process. Ex. 1 at 4-9 through 4-10; Ex. 5 at 9; T 42-43. Given the remote location of the Site, the sounds generated by the construction of the Expansion Project will not interfere with human activities or otherwise cause a nuisance at any residential locations. Id.

12. The construction of the Expansion Project will result in a temporary increase in traffic on some roads near the Site, but these roads will continue to operate at acceptable traffic levels. Ex. 1 at 4-8 through 4-9; Ex. 5 at 9; T 42.

Operation of the Expansion Project

13. The Facility currently operates at its full capacity during the sugarcane harvest. See Ex. 30, Technical Evaluation at 2. The Expansion Project will enable the Facility to operate at its full capacity year-round. See Ex. 1 at 3-1 through 3-2; Ex. 30, Technical Evaluation at 2. Although the Facility will generate more electricity after the Expansion Project is completed, the basic operation of the Facility will not change. Ex. 4 at 10; Ex. 5 at 6; T 22.

14. The Facility has a water use permit issued by the South Florida Water Management District, which authorizes the Facility to use water from the Miami/North New River Canal System, the surficial aquifer, and the Floridan aquifer. Ex. 1

at 3-11; Ex. 5 at 7; T 40-41. The Okeelanta Corporation also may provide water to the Facility, in accordance with the SFWMD water use permit for the Okeelanta Corporation's sugar mill. Ex. 5 at 7; T 41. After the Expansion Project is completed, the amount of water used by the Facility will increase, commensurate with the increased use of the Facility. Ex. 5 at 7; DEP Ex. 2, Staff Analysis Report at 3; T 41. The additional water will be obtained from the cooling pond/rock pit located at the adjacent sugar mill. Id. In March 2005, the SFWMD issued a water use permit that allows the Okeelanta Corporation to increase the amount of water provided to the Facility from 0.4 mgd to 2.0 mgd. Ex. 37; see T 41.

15. The Facility's stormwater and process water are routed to a 600-acre area that is divided into four percolation basins. Ex. 1 at 3-16; Ex. 5 at 8; T 41. Each basin is used on a rotating basis--i.e., the basin is used for percolation for one year and then it is used for growing sugarcane for three years. Ex. 5 at 8; T 41. Each percolation basin is designed to hold all of the Facility's process water, plus all of the contact and non-contact stormwater runoff from a 100-year, three-day storm event. Id. The Facility does not discharge any stormwater or process water to any surface water. Ex. 1 at 5-9; Ex. 5 at 8; T 41-42. The Facility's use of the percolation ponds has not caused and is not expected to cause any violations of any ground water quality standards. Ex. 5 at 8.

16. The Facility generates fly ash and bottom ash from the combustion of biomass fuels. Ex. 1 at 3-16, 5-10; Ex. 5 at 9; T 42. These materials are taken to a landfill for disposal. Id.

17. The operation of the Expansion Project will not have any significant impacts on traffic. Ex. 1 at 5-17; Ex. 5 at 9; T 42. The local roads will continue to operate at an acceptable level of service. Id.

Air Quality Regulations

18. The Facility must comply with New Source Performance Standards ("NSPS") and Best Available Control Technology ("BACT") requirements, both of which impose strict limits on the Facility's airborne emissions. See Ex. 1 at 3-5; Ex. 30, Technical Evaluation at 3. The Facility also must comply with Ambient Air Quality Standards ("AAQS") and Prevention of Significant Deterioration ("PSD") standards, which establish criteria for the protection of ambient air quality. Id. The Facility previously was reviewed and approved under the PSD program. Ex. 1 at 3-5; Ex. 5 at 6; Ex. 30, Technical Evaluation at 2; T 39-40.

19. The DEP has determined that the Expansion Project is not subject to PSD pre-construction review. Ex. 5 at 6; Ex. 30, Technical Evaluation at 5; T 38. The cooling towers will be the only new source of air pollution associated with the Expansion Project. Ex. 1 at 3-5; Ex. 5 at 6; T 38. The water droplets leaving the cooling tower will evaporate, causing small amounts of particulate matter to enter the atmosphere near the Site. Ex. 5 at 6; T 38. However, the emissions from the cooling tower

are so small that the cooling tower is exempt from the permitting requirements established by the DEP. Id.

Best Available Control Technology

20. A BACT determination is required for each pollutant for which PSD review is required. Ex. 1 at 3-5; Ex. 5 at 7; DEP Ex. 2, Staff Analysis Report at 15. BACT is a pollutant-specific emission limit that provides the maximum degree of emission reduction, after taking into account the energy, environmental, and economic impacts and other costs. Ex. 1 at 3-5; Fla. Admin. Code R. 62-210.200(38).

21. As part of its BACT analyses for the Facility, DEP determined that mechanical cyclone dust collectors and an electrostatic precipitator ("ESP") will control the Facility's emissions of particulate matter, a selective non-catalytic reduction system ("SNCR") will control oxides of nitrogen ("NOx"), use of low-sulfur fuels will control sulfur dioxide emissions, and proper facility design and operating methods will control other pollutants. Ex. 1 at 3-6 through 3-8; Ex. 30, Draft Permit at D-1; T 40. Accordingly, these air pollution control systems and techniques are utilized at the Facility. Id.

22. The Facility also uses an array of continuous emissions monitors to ensure that the Facility is continuously in compliance with the BACT emission limits. Ex. 1 at 5-14; Ex. 30, Draft Permit at E-1 through E-2.

Protection of Ambient Air Quality

23. The EPA has adopted "primary" and "secondary" National Ambient Air Quality Standards ("NAAQS"). See Ex. 1 at 2-21. The primary NAAQS were promulgated to protect the health of the general public with an adequate margin of safety. See Ex. 1 at 2-21; see also 42 U.S.C.A. § 7409(b) (1997). The secondary NAAQS were promulgated to protect the public welfare, including vegetation, soils, visibility and other factors, from any known or anticipated adverse effects associated with the presence of pollutants in the ambient air. Id. Florida has adopted EPA's primary and secondary NAAQS, and has adopted some Florida AAQS ("FAAQS") that are more stringent than EPA's NAAQS. See id.

24. The Facility's potential impacts on ambient air quality were evaluated by DEP, based on the continuous operation of the Facility at full load, following completion of the Project. Ex. 30, Technical Evaluation at 4. DEP concluded that the maximum impacts from the Facility will not cause or contribute to any violations of AAQS. Ex. 1 at 5-10 through 5-14; Ex. 5 at 6-7; Ex. 30, Technical Evaluation at 4; Ex. 5 at 6; T 39.

Other PSD Analyses

25. The PSD program provides protection for those areas that have good air quality. See Ex. 1 at 2-22; Ex. 30, Technical Evaluation at 3-4. Different areas of Florida have been designated as PSD "Class I" or "Class II" areas, depending upon the level of protection that is to be provided under the PSD program. Id. In this case, the Project is located in a PSD

Class II area. Id. The nearest PSD Class I area is the Everglades National Park ("Everglades"), which is approximately 92 kilometers ("km") south of the Site. Ex. 1 at 2-22.

26. The DEP's analyses demonstrate that the Facility's impacts on ambient air quality will not violate any applicable PSD requirement for the Class I and Class II areas. Ex. 1 at 5-14; Ex. 5 at 6; Ex. 30, Technical Evaluation at 4; DEP Ex. 2, Staff Analysis Report at 16-17; T 39.

Compliance With Air Standards

27. New Hope has provided reasonable assurance that the Expansion Project and the Facility will comply with all of the applicable air quality standards and requirements. Ex. 5 at 7; Ex. 30; DEP Ex. 2, Staff Analysis Report at 17; T 38-40.

Environmental Benefits of the Project

28. The Expansion Project will provide environmental benefits. Ex. 1 at 7-3 through 7-4; Ex. 5 at 10; T 43-44. For example, the Project will be capable of producing approximately 65 MW (net) of electricity in Southeast Florida, which needs new electrical generating capacity. Ex. 1 at 7-3 through 7-4; Ex. 5 at 10; T 43-44. The Expansion Project will also enhance fuel diversity by using renewable biomass fuels to generate electricity. Id. Over 20 years, the Project may displace the use of approximately 5,600,000 barrels of oil worth nearly \$170,000,000 (assuming oil prices of \$30 per barrel). Id. In addition, the Expansion Project will beneficially reuse clean wood waste, which otherwise would likely be placed in a landfill for disposal. Ex. 1 at 7-4; Ex. 5 at 10; T 44. The Facility

receives wood waste and biomass materials from Miami-Dade County, the Palm Beach County Solid Waste Authority, and approximately 25 private recycling companies, thus assisting them with their solid waste management programs. Ex. 5 at 10; T 44. The Facility also burns melaleuca trees that have been removed pursuant to land clearing programs for the eradication of this nuisance species. Ex. 5 at 10.

Socioeconomic Benefits of the Project

29. The Expansion Project will provide jobs for an average of 70 construction workers during the 12-month construction phase of the Project. Ex. 1 at 7-1 through 7-2; Ex. 5 at 10; T 43. Approximately \$3.5 million will be paid in wages for construction employees working on the Expansion Project. Id.

Consistency with Land Use Plans and Zoning Ordinances

30. The proposed use of the Site is consistent and in compliance with Palm Beach County's comprehensive land use plan and zoning ordinances. Ex. 1 at 2-2 through 2-4; Ex. 4 at 16; Ex. 23; Ex. 24; Ex. 38; Ex. 39; T 28-29. The Facility and Project have both been reviewed and approved by the Palm Beach County Board of County Commissioners. Ex. 4 at 11-12; Ex. 23; Ex. 24; T 23-25.

Compliance with Environmental Standards

31. New Hope has provided reasonable assurance that the Facility and Project will comply with all of the nonprocedural land use and environmental statutes, rules, policies, and requirements that apply to the Project, including but not limited to those requirements governing the Project's impacts on

air quality, water consumption, stormwater, and wetlands. Prehearing Stipulation at 24, paragraph 5.B.3.; Ex. 5 at 11; DEP Ex. 2, Staff Analysis Report at 22; T 44-45, 60. The location, construction and operation of the Facility and Project will have minimal adverse effects on human health, the environment, the ecology of the State's lands and wildlife, and the ecology of the State's waters and aquatic life. Ex. 5 at 12; DEP Ex. 2, Staff Analysis Report at 20; T 45-46, 61-62. The Facility and Project will not unduly conflict with any of the goals or other provisions of any applicable local, regional or state comprehensive plan. Ex. 4 at 16; Ex. 23; Ex. 24; Ex. 38; Ex. 39; T 28-29. The Conditions of Certification establish operational safeguards for the Facility and Project that are technically sufficient for the protection of the public health and welfare. Ex. 5 at 13; T 46-47, 61.

Agency Positions and Conditions of Certification

32. On November 18, 2004, the PSC issued an Order (No. PSC-04-1105A-FOF-EI) granting New Hope's petition for determination of need for the Expansion Project. Ex. 22; DEP Ex. 2, Staff Analysis Report at 4-6, 12-13. The PSC determined, consistent with the criteria of Section 403.519, Florida Statutes, that the Expansion Project is needed. Id.

33. The DEP, DOT, DCA, and SFWMD all recommend certification of the Expansion Project, subject to the Conditions of Certification. Prehearing Stipulation at 10-11, 13-16. New Hope has accepted, and has provided reasonable assurance that it will comply with, the Conditions of

Certification. Prehearing Stipulation at 24-25, paragraph V.B.4; Ex. 5 at 11-12; T 45, 61-62.

Public Notice of the Certification Use Hearing

34. On September 29, 2004, New Hope published a "Notice of Filing of Application for Electrical Power Plant Site Certification" in the Palm Beach Post, which is a newspaper of general circulation published in Palm Beach County, Florida. Ex. 31; see also Ex. 5 at 16; T 49.

35. On October 1, 2004, the Department published "Notice of Receipt of Application for Power Plant Certification" in the Florida Administrative Weekly. Ex. 35; see also Ex. 5 at 16; T 49.

36. On February 2, 2005, New Hope published notice of the Certification Hearing in the Palm Beach Post. Ex. 33; see also Ex. 5 at 16; T 49.

37. On February 4 and 11, 2005, the Department published notice of the Certification Hearing in the Florida Administrative Weekly. Ex. 36; see also Ex. 5 at 16; T 49.

38. The public notices for the Certification Hearing satisfy the informational and other requirements set forth in Section 403.5115, Florida Statutes, and Florida Administrative Code Rules 62-17.280 and 62-17.281(4). Prehearing Stipulation at 24, paragraph V.B.2,3; Ex. 5 at 17; T 49, 63-64.

CONCLUSIONS OF LAW

39. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this

proceeding pursuant to Sections 120.569, 120.57(1), and 403.508, Florida Statutes.

40. New Hope and DEP provided timely public notices concerning the Expansion Project and the Certification Hearing, which satisfied the notice requirements contained in the PPSA, Chapter 120, Florida Statutes, and Florida Administrative Code Chapter 62-17. Prehearing Stipulation at 26, paragraph VI.B.3.; Ex. 5 at 16-17; Ex. 31; Ex. 33; Ex. 35; Ex. 36; T 49, 63-64. All necessary and required governmental agencies participated in the certification process, and the required reports and studies were issued by the DEP and the other agencies in accordance with their statutory duties. DEP Ex. 2, Staff Analysis Report at 12-14, 21-22; T 56, 62.

41. The PSC determined there is a need for the electrical generating capacity to be supplied by the Expansion Project, as required by Sections 403.508(3) and 403.519, Florida Statutes. Ex. 22; DEP Ex. 2, Staff Analysis Report at 4-6, 12-13.

42. The issue for determination in this case is whether certification should be granted to New Hope to construct and operate the Expansion Project on the Site. Under Section 403.502, Florida Statutes, the Legislature provides in part:

It is the policy of this state that, while recognizing the pressing need for increased power generation facilities, the state shall ensure through available and reasonable methods that the location and operation of electrical power plants will produce minimal adverse effects on human health, the environment, the ecology of the land and its wildlife, and the ecology of state waters

and their aquatic life and will not unduly conflict with the goals established by the applicable local comprehensive plans. It is the intent to seek courses of action that will fully balance the increasing demands for electrical power plant location and operation with the broad interests of the public. Such action will be based on these premises:

(1) To assure the citizens of Florida that operation safeguards are technically sufficient for their welfare and protection.

(2) To effect a reasonable balance between the need for the facility and the environmental impact resulting from construction and operation of the facility, including air and water quality, fish and wildlife, and the water resources and other natural resources of the state.

(3) To meet the need for electrical energy as established pursuant to s. 403.519.

43. The competent, substantial, and uncontested evidence presented by New Hope and DEP at the Certification Hearing demonstrates that the Expansion Project has met all of the criteria required to obtain certification under the PPSA. New Hope has provided reasonable assurance that the Project, if constructed and operated in accordance with the Conditions of Certification, will comply with all of the non-procedural requirements that are applicable to the Project. Certification of the Project will serve and protect the interests of the public, and the benefits of the Project will outweigh the negative impacts. New Hope has accepted, and demonstrated that it will be able to comply with, the Conditions of Certification.

44. In the PPSA review process and the Conditions of Certification for the Project, the State of Florida has ensured through available and reasonable methods that the location, construction and operation of the Expansion Project will produce minimal adverse effects on human health, the environment, the ecology of the land and its wildlife, and the ecology of State waters and their aquatic life. If the Project is built and operated in accordance with the Conditions of Certification, the Project will not unduly conflict with the goals in any applicable local, regional or state comprehensive plan. The Conditions of Certification establish safeguards that are technically sufficient for the protection and welfare of Florida's citizens, and the Conditions of Certification ensure that the potential adverse effects of the Project will be minimized.

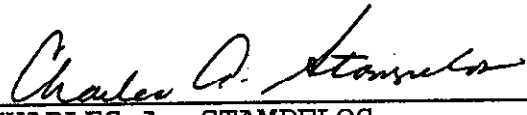
45. Certification of the Expansion Project is consistent with the legislative intent to balance the increasing demands for electrical power plant location and operation with the interests of the public. Certification of the Project reasonably balances the need for the Project, as determined by the PSC, with the environmental and other impacts resulting from the construction and operation of the Project.

RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law, it is RECOMMENDED that the Governor and Cabinet, sitting as the Siting Board, enter a Final Order granting certification for the expansion of the Okeelanta Cogeneration Facility to a total

capacity of 140 MW (net), in accordance with the Conditions of Certification, DEP Exhibit 3.

DONE AND ENTERED this 31st day of March, 2005, in Tallahassee, Leon County, Florida.


CHARLES A. STAMPELOS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of March, 2005.

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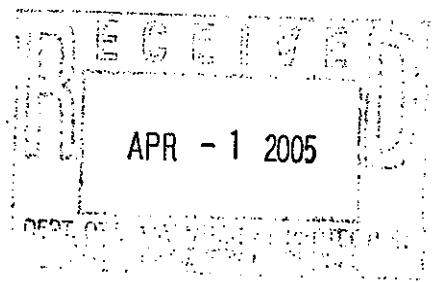
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.



CONDITIONS OF CERTIFICATION

I. GENERAL

The following general and specific Conditions shall apply to the construction and operation of the New Hope Power Partnership Okeelanta Cogeneration Facility and Expansion Project. Prior to the completion of the Okeelanta Expansion Project, the Okeelanta Cogeneration Facility shall operate in accordance with its existing permits. Within 90 days of the commencement of commercial operation of the Expansion Project, the Licensee shall surrender any existing non-federal state operating permits for the Okeelanta Cogeneration Facility and Expansion Project.

A. Definitions

The meaning of the terms used herein shall be governed by the definitions contained in Chapters 403, 378, 373, 372, and 253, Florida Statutes (F.S.), and any regulation adopted pursuant thereto and the applicable statutes and regulations of any agency with jurisdiction over the Facility. In the event of any dispute over the meaning of a term used in these conditions which is not defined in such statutes or regulations, such dispute shall be resolved by reference to the most relevant definitions contained in any other state or federal statute or regulation or, in the alternative, by the use of the commonly accepted meaning as determined by the Department. As used herein:

1. "Application" shall mean the Site Certification Application (SCA) as filed, supplemented or amended by the Licensee, New Hope Power Partnership (NHPP) for the site and Expansion Project.
2. "Conditions" shall mean these Conditions of Certification.
3. "DEP" or "Department" shall mean the Florida Department of Environmental Protection.
4. "Emergency conditions" shall mean urgent circumstances involving potential adverse consequences to human life or property as a result of weather conditions or other calamity, including but not limited to conditions necessitating new or replacement gas pipeline, transmission lines, or access facilities.
5. "Expansion Project" or "Project" or "power plant" shall mean the Licensee's Expansion Project at the Okeelanta Cogeneration Facility, as described in the Application, including but not limited to the new steam turbine electrical generator, cooling tower, condenser and related equipment and facilities.
6. "Facility" or "power plant" shall mean the Licensee's Okeelanta Cogeneration Facility, which is located on an approximately 82.1 acre site in Palm Beach County, Florida. The Facility includes three boilers, a steam turbine electrical generator, a cooling tower, stacks, air pollution control equipment, a fuel storage area, and related equipment and facilities, as described in the Application. The Facility will include the Expansion Project upon its completion.

7. "Feasible" or "practicable" shall mean reasonably achievable considering a balance of land use impacts, environmental impacts, engineering constraints, and costs.

8. "FWCC" shall mean the Florida Fish and Wildlife Conservation Commission.

9. "Licensee" or "Permittee" shall mean an applicant that has obtained a certification order for the subject electrical power plant. In this instance, the New Hope Power Partnership is the Licensee.

10. "SFWMD" shall mean the South Florida Water Management District.

B. Applicable Rules

The construction and operation of the Licensee's Facility shall be in accordance with all of the applicable provisions of at least the following regulations of DEP: Chapters 62-4, 62-17, 62-256, 62-296, 62-297, 62-301, 62-302, 62-531, 62-532, 62-550, 62-555, 62-560, 62-600, 62-601, 62-604, 62-610, 62-620, 62-621, 62-650, 62-699, 62-660, 62-701, 62-762, 62-769, 62-770 and 62-814, Florida Administrative Code (F.A.C.), or their successors if they are renumbered

II. CHANGE IN DISCHARGE

All discharges or emissions authorized herein shall be consistent with the terms and conditions of this certification. The discharge of any regulated pollutant not identified in the Application at regulated levels, or more frequent than, or at a level in excess of that authorized herein, shall constitute a violation of the certification. Any anticipated Facility expansions beyond the certified initial generating capacities of the units described in the Application, production increases, or process modifications which may result in new, different, or increased discharges of pollutants, or expansion in steam generation capacity shall be reported by submission of an amendment or application for modification pursuant to Chapter 403, F.S.

III. GENERAL CONDITIONS

A. Facilities Operation

1. The Licensee shall properly operate and maintain the Facility and systems of treatment and control (and related appurtenances) that are installed and used by the Licensee to achieve compliance with the Conditions of this certification, and are required by Department rules. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the Conditions and when required by Department rules.

2. In the event of a prolonged [thirty (30) days or more] equipment malfunction or shutdown of pollution control equipment, operation may be allowed to resume and continue to take place under an appropriate Department order, provided that the Licensee demonstrates that such operation will be in compliance with all applicable ambient air quality

standards and PSD increments, solid waste rules, domestic wastewater rules and industrial wastewater rules. During such malfunction or shutdown, the operation of the Okeelanta Cogeneration Facility shall comply with all other requirements of this certification and all applicable state and federal emission and effluent standards not affected by the malfunction or shutdown which is the subject of the Department's order.

3. Licensee shall comply with the terms and conditions contained in Permit No. PSD-FL-196(P), which is attached hereto as Attachment 1, and any revisions, modifications or reissuances thereof.

B. Non-Compliance Notification

If, for any reason, the Licensee (defined as the applicant or its successors and/or assigns) does not comply with or will be unable to comply with any limitation specified in this certification, the Licensee shall notify the South District office of the DEP by telephone at (239) 332-6975. After normal business hours, reports of any condition that poses a public health threat shall be made to the State Warning Point at telephone number (850) 413-9911 or (850) 413-9912. The Licensee shall confirm this non-compliance in writing at the DEP South District Office, 2295 Victoria Avenue, Fort Myers, Florida 33901 within seventy-two (72) hours of becoming aware of such conditions, and shall supply the following information

1. A description of the discharge and cause of noncompliance; and,
2. The period of non compliance, including exact dates and times; or if not corrected, the anticipated time the non-compliance is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the noncomplying event.

C. Spill Notification

1. The Licensee shall report all critical (having potential to significantly pollute surface or ground waters) spills of liquid or liquid-solid materials, not confined to a building or similar containment structure, to the Department by telephone immediately after discovery and submit a written report within forty eight hours, excluding weekends, from the original notification. The telephonic report shall be submitted by calling the South District Industrial Wastewater Compliance/Enforcement Section under telephone number (239) 332-6975. After normal business hours, contact the State Warning Point by calling (850) 413-9911 or (850) 413-9912. The written report shall include, but not be limited to, a detailed description of how the spill occurred, the name and chemical make-up (include any MSDS sheets) of the substance, the amount spilled, the time and date of the spill, the name and title of the person who first reported the spill, the areal size of the spill and surface types (impervious, ground, water bodies, etc.) it impacted, the cleanup procedures used and status of completion, and include a map or aerial photograph showing the extent and paths of the material flow. Any deviation from this requirement must receive prior approval from the Department.

2. For unauthorized releases or spills of untreated or treated wastewater that are in excess of 1,000 gallons per incident, or where information indicates that public health or the environment will be endangered, oral reports shall be provided to the Department by calling

the STATE WARNING POINT TOLL FREE NUMBER (800) 320-0519, as soon as practical, but no later than 24 hours from the time the Licensee becomes aware of the discharge. The Licensee, to the extent known, shall provide the following information to the State Warning Point:

- a. Name, address, and telephone number of person reporting;
- b. Name, address, and telephone number of licensee or responsible person for the discharge;
- c. Date and time of the discharge and status of discharge (ongoing or ceased);
- d. Characteristics of the wastewater spilled or released (untreated or treated, industrial or domestic wastewater);
- e. Estimated amount of the discharge;
- f. Location or address of the discharge;
- g. Source and cause of the discharge;
- h. Whether the discharge was contained on-site, and cleanup actions taken to date;
- i. Description of area affected by the discharge, including name of water body affected, if any; and
- j. Other persons or agencies contacted.

D. Safety

1. The overall design, layout, and operation of the Facility shall be such as to minimize hazards to humans and the environment. Security control measures shall be utilized to prevent exposure of the public to hazardous conditions. The Federal Occupational Safety and Health Standards and any applicable Florida occupational safety standards will be complied with during construction.
2. The Licensee shall not discharge to surface waters wastes which are acutely toxic, or present in concentrations which are carcinogenic, mutagenic, or teratogenic to human beings or to significant locally occurring wildlife or aquatic species. The Licensee shall not discharge to ground waters wastes in concentrations which, alone or in combination with other substances, or components of discharges (whether thermal or non-thermal) are carcinogenic, mutagenic, teratogenic, or toxic to human beings (unless specific criteria are established for such components in Section 62-520.420, F.A.C.) or are acutely toxic to

indigenous species of significance to the aquatic community within surface waters affected by the ground water at the point of contact with surface waters.

E. Enforcement

The Department may take any and all lawful actions as it deems appropriate to enforce any condition of this certification.

F. Design and Performance Criteria

The power plant may be operated at up to the maximum electrical output projected from design information without the need for modifying these Conditions. Treatment or control facilities or systems installed or used to achieve compliance with the terms and conditions of this certification are not to be bypassed without prior DEP approval. Moreover, the Licensee shall take all reasonable steps to minimize any adverse impacts resulting from noncompliance with any limitation specified in this certification, including, but not limited to, such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying event.

G. Certification - General Conditions

1. The terms, conditions, requirements, limitations and restrictions set forth in these Conditions of certification are the same as "Permit Conditions" and are binding and enforceable pursuant to Sections 403.141, 403.161, 403.514, 403.727, and 403.859 through 403.861, F.S. Any noncompliance with a condition of certification or condition of a federally delegated or approved permit constitutes a violation of chapter 403, F.S., and is grounds for enforcement action, permit termination, permit revocation and reissuance, or permit revision. The Licensee is placed on notice that the Department will review this approval periodically and may initiate enforcement action for any violation of these Conditions.

2. This approval is valid only for the specific processes and operations applied for and indicated in the approved drawings or exhibits. Any unauthorized deviation from the approved drawings, exhibits, specifications, or Conditions of Certification may constitute grounds for revocation and enforcement action by the Department.

3. As provided in Subsections 403.087(7), 403.511, and 403.722(5), F.S., the issuance of this approval does not convey any vested rights or any exclusive privileges. Neither does it authorize any injury to public or private property or any invasion of personal rights, nor authorize any infringements of federal, state, or local laws or regulations. Neither does it authorize any injury to public or private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations. This approval is not a waiver of or approval of any other Department approval that may be required for other aspects of the Facility under federally delegated programs which are not addressed in this certification.

4. This certification does not relieve the Licensee from liability for harm or injury to human health or welfare, animal, or plant life, or property caused by the construction

or operation of this Facility, or from penalties therefore; nor does it allow the Licensee to cause pollution in contravention of Florida Statutes and Department rules, unless specifically authorized by an order from the Department. The Licensee shall take all reasonable steps to minimize or prevent any discharge, reuse of reclaimed water, or residuals use or disposal in violation of these Conditions which has a reasonable likelihood of adversely affecting human health or the environment. It shall not be a defense for a Licensee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with these Conditions.

5. In accepting this certification, the Licensee understands and agrees that all records, notes, monitoring data and other information relating to the construction or operation of this Facility which are submitted to the Department may be used by the Department as evidence in any enforcement case involving the Facility arising under the Florida Statutes or Department rules, except where such use is prescribed by Sections 403.111 and 403.73, F.S., or Rule 62-620.302, F.A.C. Such evidence shall only be used to the extent it is consistent with the Florida Rules of Civil Procedure and appropriate evidentiary rules.

6. This certification is transferable only upon Department approval in accordance with Section 403.516, F.S., Rules 62-4.120 and 62-730.300, F.A.C., as applicable. The Licensee shall be liable for any noncompliance of the approved activity until the transfer is approved by the Department.

7. These Conditions of certification or a copy thereof shall be kept at the work site of the approved activity.

8. The Licensee shall comply with the following:

a. Upon request, the Licensee shall furnish all records and plans required under Department rules. During enforcement actions, the retention period for all records will be extended automatically unless otherwise stipulated by the Department.

b. The Licensee shall hold at the Facility or other location designated by these Conditions records of all monitoring information (including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation) required by these Conditions, copies of all reports required by these Conditions, and records of all data used to complete the Application. These materials shall be retained at least three (3) years from the date of the sample, measurement, report, or application unless otherwise specified by Department rule. Data utilized to prepare the Application may be maintained at the following locations:

New Hope Power Partnership:
8001 U.S. Highway 27 South
South Bay, FL 33493

*or the Licensee's principal office location.

- c. Records of monitoring information shall include:
 - i. the date, exact place, and time of sampling or measurements;
 - ii. the person responsible for performing the sampling or measurements;
 - iii. the dates analyses were performed;
 - iv. the person responsible for performing the analyses;
 - v. the analytical techniques or methods used;
 - vi. the results of such analyses.

9. These Conditions may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Licensee for a permit revision, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

10. The Licensee, by accepting these Conditions, specifically agrees to allow authorized Department personnel, including an authorized representative of the Department and authorized EPA personnel, when applicable, upon presentation of credentials or other documents as may be required by law, and at reasonable times, depending upon the nature of the concern being investigated, to:

- a. Enter upon the Licensee's premises where a regulated facility, system, or activity is located or conducted, or where records shall be kept under these Conditions;
- b. Have access to and copy any records that shall be kept under the these Conditions;
- c. Inspect the facilities, equipment, practices, or operations regulated or required under these Conditions; and
- d. Sample or monitor any substances or parameters at any location necessary to assure compliance with these Conditions or Department rules.

11. When requested by the Department, the Licensee shall within a reasonable time provide any information required by law which is needed to determine whether there is cause for revising, revoking and reissuing, or terminating these Conditions, or to determine compliance with the Conditions. The Licensee shall also provide to the Department upon request copies of records required by these Conditions to be kept. If the Licensee becomes aware of relevant facts that were not submitted or were incorrect in the Application or in any report to the Department, such facts or information shall be promptly submitted or corrections promptly reported to the Department.

12. Unless specifically stated otherwise in Department rules, the Licensee, in accepting these Conditions, agrees to comply with changes in Department rules and Florida Statutes after a reasonable time for compliance; provided, however, the Licensee does not waive any other rights granted by Florida Statutes or Department rules. A reasonable time for compliance with a new or amended surface water quality standard, other than those standards addressed in Rule 62-302.500, F.A.C., shall include a reasonable time to obtain or be denied a mixing zone for the new or amended standard.

13. The Licensee, in accepting these Conditions, agrees to pay the applicable regulatory program and surveillance fee in accordance with Rule 62-4.052, F.A.C.

14. The Licensee shall give the Department written notice at least 60 days before inactivation or abandonment of a wastewater facility and shall specify what steps will be taken to safeguard public health and safety during and following inactivation or abandonment.

15. The Licensee shall apply for a revision to any Department issued PSD, Title V, or NPDES permit in accordance with Department Rules in Chapter 62, Florida Administrative Code, and receive approval before construction of any planned substantial modifications to the certified Facility is to commence or in accordance with applicable rules for minor modifications to the certified Facility. A revised permit shall be obtained before construction begins except as provided in the applicable portions of Chapter 62, F.A.C.

16. The Licensee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with these Conditions. The Licensee shall be responsible for any and all damages which may result from the changes and may be subject to enforcement action by the Department for penalties or revocation of these Conditions. The notice shall include the following information:

- a. A description of the anticipated noncompliance;
- b. The period of the anticipated noncompliance, including dates and times; and
- c. Steps being taken to prevent future occurrence of the noncompliance.

17. Water quality sampling and monitoring data shall be collected and analyzed in accordance with Rule 62-4.246, Chapters 62-160 and 62-601, F.A.C., and 40 CFR 136, as appropriate.

- a. Monitoring results shall be reported at the intervals specified elsewhere in these Conditions and shall be reported on a Discharge Monitoring Report (DMR), DEP Form 62-620.910(10).

b. If the Licensee monitors any contaminant more frequently than required by these Conditions, using Department approved test procedures, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

c. Calculations for all limitations which require averaging of measurements shall use an arithmetic mean unless otherwise specified in these Conditions.

d. Under Chapter 62-160, F.A.C., sample collection shall be performed by following the protocols approved by the Department. Alternatively, sample collection may be performed by an organization that has an approved Comprehensive Quality Assurance Plan (CompQAP) on file with the Department. This CompQAP shall be approved for collection of samples from the required matrices and for the required tests.

18. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule detailed elsewhere in these Conditions shall be submitted no later than 14 days following each schedule date. When requested by the Department, the Licensee shall within a reasonable time furnish any information required by applicable law, which is needed to determine compliance with the certification. If the Licensee becomes aware that relevant facts were not submitted or were incorrect in the Application or in any report to the Department, such facts or information shall be corrected promptly.

H. Laboratories and Quality Assurance

1. The Licensee shall ensure that all laboratory analytical data submitted to the Department, as required by this certification, must be from a laboratory which has a currently valid and Department approved Comprehensive Quality Assurance Plan (CompQAP) [or a CompQAP pending approval] for all parameters being reported, as required by Chapter 62-160, F.A.C.

2. When a contract laboratory is used to analyze samples required pursuant to this certification, the Licensee is required to have the samples taken by qualified personnel following EPA and Department approved sampling procedures and chain-of-custody requirements in accordance with Rule 62-160, F.A.C.

3. When an in-house laboratory is used to analyze samples required pursuant to these Conditions, the Licensee is required to have the samples taken by a qualified technician following EPA and Department approved sampling procedures and chain-of-custody requirements. All chain-of-custody records must be retained on-site for at least three (3) years and made available to the Department immediately upon request.

I. Procedures for Post-Certification Submittals

1. Purpose of Submittals

Conditions of certification which provide for the post-certification submittal of information to DEP by the Licensee are for the purpose of facilitating DEP's monitoring of the effects from the construction and maintenance of the Facility. This monitoring is for DEP to assure, in consultation with other agencies with applicable regulatory jurisdiction, continued compliance with these Conditions, without any further agency action.

2. Filings

All post-certification submittals of information by the Licensee are to be filed with DEP. Copies of each submittal shall be simultaneously submitted to any other agency indicated in the specific Conditions requiring the post-certification submittals.

3. Completeness

The DEP shall promptly review each post-certification submittal for completeness. This review shall include consultation with the other agencies receiving the post-certification submittal. For the purposes of this condition, completeness shall mean that the information submitted is both complete and sufficient. If found to be incomplete, the Licensee shall be so notified. Failure to issue such a notice within forty-five (45) days after filing of the submittal shall constitute a finding of completeness.

4. Interagency Meetings

Within sixty (60) days of the filing of a complete post-certification submittal, DEP may conduct an interagency meeting with other agencies which received copies of the submittal. The purpose of such an interagency meeting shall be for the agencies with regulatory jurisdiction over the matters addressed in the post-certification submittal to discuss whether reasonable assurance of compliance with these Conditions has been provided. Failure of any agency to attend an interagency meeting shall not be grounds for DEP to withhold a determination of compliance with these Conditions nor to delay the time frames for review established by these Conditions.

5. Reasonable Assurance of Compliance

Within ninety (90) days of the filing of a complete post-certification submittal, or 45 days after a submittal is made by the Licensee, or unless another date is specified herein, DEP shall give written notification to the Licensee and the agencies to which the post-certification information was submitted of its determination whether there is reasonable assurance of compliance with these Conditions. If it is determined that reasonable assurance has not been provided, the Licensee shall be notified with particularity and possible corrective measures suggested. Failure to notify the Licensee in writing within ninety (90) days of receipt of a complete post-certification submittal shall constitute a compliance determination.

6. Commencement of Construction

If DEP does not object within the time period specified in Condition III.I.5. above, the Licensee may begin construction pursuant to the terms of the Conditions of certification and the subsequently submitted construction details.

IV. ADVERSE IMPACT

The Licensee shall take all reasonable steps to minimize any adverse impact resulting from noncompliance with any limitation specified in this certification, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge. The Licensee shall not adversely impact any jurisdictional wetland without prior approval.

V. RIGHT OF ENTRY

The Licensee shall allow during normal business hours the Secretary of the Florida Department of Environmental Protection and/or authorized representatives, including representatives of the SFWMD upon the presentation of credentials:

A. To enter upon the Licensee's Facility where an emission or effluent source is located or in which records are required to be kept under the terms and Conditions of this certification;

B. To have access during normal business hours (Monday - Friday, 9:00 a.m. to 4:00 p.m.) to any records required to be kept under these Conditions for examination and copying;

C. To inspect and test any monitoring equipment or monitoring method required in this certification and to sample any discharge or pollutants, or monitor any substances or parameters at any location reasonably necessary to assure compliance with these Conditions or Department rules; and,

D. To assess any damage to the environment or violation of ambient standards.

VI. REVOCATION OR SUSPENSION

This certification may be suspended or revoked for violations of any of these Conditions pursuant to Section 403.512, F.S.

VII. CIVIL AND CRIMINAL LIABILITY

This certification does not relieve the Licensee from civil or criminal penalties for noncompliance with any Conditions of this certification, applicable rules or regulations of the Department or Chapter 403, F.S., or regulations there-under. Subject to Section 403.511, F.S.,

this certification shall not preclude the institution of any legal action or relieve the Licensee from any responsibilities or penalties established pursuant to any other applicable state statutes or regulations.

VIII. PROPERTY RIGHTS

The issuance of this certification does not convey any property rights in either real or personal property, nor any exclusive privileges, nor does it authorize any injury to public or private property or any invasion of personal rights nor any infringement of federal, state or local laws or regulations. This certification conveys no title to land or water, does not constitute state recognition or acknowledgment of title, and does not constitute authority for the use of submerged lands unless herein provided and the necessary title or leasehold interests have been obtained from the state. Only the Trustees of the Internal Improvement Trust Fund may express state opinion as to title.

IX. SEVERABILITY

The provisions of this certification are severable, and if any provision of this certification or the application of any provision of this certification to any circumstances is held invalid, the application of such provisions to other circumstances and the remainder of the certification shall not be affected thereby.

X. REVIEW OF SITE CERTIFICATION

The certification shall be final unless revised, revoked, or suspended pursuant to law. At least every five (5) years from the date of issuance of certification the Department may review these Conditions and propose any needed changes.

XI. MODIFICATION OF CONDITIONS

A. Pursuant to Subsection 403.516(1), F.S., the Siting Board hereby delegates the authority to the Department to modify any condition of this certification, except that any proposed modification to burn a fuel other than biomass fuel, natural gas or distillate oil shall be reviewed by the Board.

B. Subject to the notice requirements of 403.516(1), F.S., the certification shall be automatically modified to conform to subsequent DEP-issued amendments, modifications or renewals of any separately-issued Prevention of Significant Deterioration (PSD) permit, Title V Air Operation permit, or National Pollutant Discharge Elimination System (NPDES) permit for the Facility and the conditions of such permits shall be controlling over these Conditions.

XII. CONSTRUCTION

A. Standards and Review of Plans

1. The Project shall be constructed pursuant to the design standards presented in the Application and the standards or plans and drawings submitted and signed by an engineer registered in the state of Florida. Specific South District office acceptance of plans will be required based upon a determination of consistency with approved design concepts, regulations and these Conditions, prior to initiation of construction if the Licensee proposes to construct any new: industrial waste treatment facilities; domestic waste treatment facilities; potable water treatment and supply systems; ground water monitoring systems and storm water runoff systems; solid waste disposal areas; facilities impacting jurisdictional wetlands, and hazardous or toxic handling facilities or areas. The Licensee shall present specific facility plans for these types of facilities for review by the South District office at least ninety (90) days prior to construction of those portions of the Facility for which the plans are then being submitted, unless other time limits are specified in the Conditions herein. Review and approval or disapproval shall be accomplished in accordance with Chapter 120, F.S., or these Conditions as applicable.

2. The Department must be notified in writing and prior written approval obtained for any changes, modification, or revision to be made to the project during construction which is in conflict with these Conditions. If there are any changes, modification, or revision made to the Project as certified without this prior written approval, the project will be considered to have been constructed without departmental approval, the construction will not be cleared for service, and the construction will be considered a violation of these Conditions.

3. Ninety (90) days prior to the anticipated date of first operation, the Licensee shall provide the Department with an itemized list of any changes made to the facility design and operation plans that would affect a change in discharge as referenced in Condition II herein, after issuance of these Conditions. This post certification review of the final design and operation shall demonstrate continued compliance with Department rules and standards.

B. Control Measures

1. Storm Water Runoff

To control runoff during construction which may reach and thereby pollute waters of the state, necessary measures shall be utilized to settle, filter, treat or absorb silt-containing or pollutant-laden storm water to ensure against spillage or discharge of excavated material that may cause turbidity in excess of 29 Nephelometric Turbidity Units above background in waters of the state. Control measures may consist of sediment traps, barriers, berms, and vegetation plantings. Exposed or disturbed soil shall be protected and stabilized as soon as possible to minimize silt and sediment-laden runoff. The pH of the runoff shall be kept within the range of 6.0 to 8.5.

2. Open Burning

Any open burning in connection with initial land clearing shall be in accordance with Chapter 62-256, F.A.C., Chapter 5I-2, F.A.C., and any applicable county regulation. Any burning of construction-generated material, after initial land clearing, that is allowed to be burned in accordance with Chapter 62-256, F.A.C., shall be approved by the South District office in conjunction with the Division of Forestry and other county regulations that may apply. Burning shall not occur unless approved by the appropriate agency. Burning shall also not occur if the Department or the Division of Forestry has issued a ban on burning due to fire safety conditions or due to air pollution conditions.

3. Sanitary Wastes

Disposal of sanitary wastes from construction toilet facilities shall be in accordance with applicable regulations of the appropriate local health agency.

4. Solid Wastes

Solid wastes resulting from construction shall be disposed of in accordance with the applicable regulations of Chapter 62-701, F.A.C. Solid wastes generated during operation shall be disposed of off-site in DEP licensed facilities by licensed contractors.

5. Noise

Construction noise shall not exceed noise requirements of the Palm Beach County Noise Ordinance.

6. Dust and Odors

The Licensee shall employ proper odor and dust control techniques to minimize odor and fugitive dust emissions. The Licensee shall employ control techniques sufficient to prevent nuisance conditions on adjoining property.

7. Transmission Lines

Any directly associated transmission lines from the New Hope Power Partnership electric switchyard to the existing Florida Power and Light company substation shall be maintained in accordance with the Application and the appropriate state and federal regulations concerning use of herbicides. The Licensee shall notify the South District office of the Department of the type of herbicide to be used at least 60 days prior to its first use.

8. Dewatering Operations

Any dewatering operations during construction shall be carried out in accordance with the applicable provisions of Rule 62-621.300(2), F.A.C.

9. Historical or Archaeological Finds

If historical or archaeological artifacts, such as Indian canoes, are discovered at any time within the project site, the Licensee shall notify the DEP South District office and the Bureau of Historic Preservation, Division of Historical Resources, R. A. Gray Building, Tallahassee, Florida 32399-0250, telephone number (850) 487-2073.

C. Environmental Control Program

The Licensee shall appoint a representative to conduct an environmental control program. Such representative shall be under the supervision of a Florida registered professional engineer or other qualified person and shall assure that all construction activities conform to applicable environmental regulations and these Conditions. If a violation of standards, harmful effects or irreversible environmental damage not anticipated by the Application or the evidence presented at the certification hearing are detected during construction, the Licensee shall notify the South District office as required by Condition III.B.

D. Reporting

Notice of commencement of construction on the Project shall be submitted to the Siting Coordination Office and the South District office within fifteen (15) days of initiation. Starting three (3) months after construction commences, a quarterly construction status report shall be submitted to the South District office. The report shall be a short narrative describing the progress of construction.

XIII. AIR

A. General and Administrative Requirements

1. **Regulating Agencies:** All documents related to applications for permits to construct, operate or modify an emissions unit should be submitted to the Bureau of Air Regulation (BAR), Florida Department of Environmental Protection (FDEP), at 2600 Blair Stone Road, Mail Station 5505, Tallahassee, Florida 32399-2400 and telephone number (850)488-0114. All documents related to reports, tests, and notifications should be submitted to the DEP South District Office, 2295 Victoria Avenue, Fort Myers, Florida 33901.

2. The terms, conditions, requirements, limitations, and restrictions set forth in draft Permit PSD-FL-196(P), which is attached as Attachment A to these Conditions, and any final issuance, modification, or amendment to such PSD permit, are incorporated by reference herein, and are binding and enforceable Conditions of this Certification. The Licensee is subject to and shall comply with the terms, conditions, requirements, limitations, and restrictions set forth in Attachment A. A violation of the terms conditions, requirements, limitations, and restrictions in Attachment A is a violation of these Conditions of Certification.

3. The Department is delegated the authority to modify these Conditions of Certification to conform them to any subsequently issued amendment or modification to Permit No. PSD-FL-196(P), pursuant to Conditions XI.A and B, above.

4. The provisions set forth below in Conditions XIII.B, C, and D are excerpted from draft PSD Permit No. PSD-FL-196(P).

B. Emission Units

This section of the Conditions addresses the following emissions units.

1. Emissions Units 001, 002, and 003: Cogeneration Boilers A, B, and C.

a. *Description*: Each unit is a biomass-fired spreader stoker steam boiler manufactured by Zurn and designed to produce approximately 506,100 pounds per hour of steam at 1500 psig and 975° F.

b. *Fuels and Capacity*: The primary fuel is biomass (760 MMBtu per hour), which includes bagasse from the adjacent sugar mill and clean wood material delivered to the plant by area subcontractors. Auxiliary fuels include natural gas (605 MMBtu per hour) and very low sulfur distillate oil (490 MMBtu per hour).

c. *Controls*: Pollution control equipment includes low-NOx burners for gas firing, a selective non-catalytic reduction system to reduce nitrogen oxides emissions, mechanical dust collectors and an electrostatic precipitator to reduce particulate matter emissions, and an activated carbon injection system to reduce potential mercury emissions. Good operating practices and the efficient combustion of clean, low-sulfur fuels minimizes emissions of carbon monoxide, sulfuric acid mist, sulfur dioxide, and volatile organic compounds.

d. *Stack Parameters*: Exhaust gases exit a 10 feet diameter stack that is at least 199 feet tall and with a volumetric flow rate of approximately 319,000 acfm at 352° F.

2. Emissions Unit 004: Material handling and storage including unloading operations, stockpiles, transfer operations, conveyors, screens, crushers, hoppers, silos, and storage tanks.

3. Emissions Unit 005: Miscellaneous Support Equipment including a nominal 75 MW steam turbine electrical generator, a nominal 65 MW steam turbine electrical generator, condensers, two cooling towers, a switchyard, etc.

4. New Construction: The existing cogeneration plant includes a new, nominal 75 MW steam turbine electrical generator and a mechanical draft cooling tower. These Conditions authorize the addition of a nominal 65 MW steam turbine electrical generator and the addition of a 2-cell mechanical draft cooling tower. Within 10 days of establishing

commercial operation of the new steam turbine electrical generator, the Licensee shall notify the Bureau of Air Regulation and Compliance Authorities. The notification shall include the date of commercial startup and identify any substantial changes in the final equipment that differ from the application. [Design; Rule 62-4.070(3), F.A.C.]

5. Boiler Design: The cogeneration boilers shall consist of spreader stoker units designed to fire biomass as the primary fuel with pipeline natural gas and distillate oil as auxiliary fuels. Natural gas and distillate oil are fired at startup and shutdown, when necessary to ensure good combustion, to supplement biomass fuel, and for periods when the biomass fuel supply is interrupted. No other fuels are authorized.

6. Stack: Each boiler shall have an individual stack that is at least 199 feet tall. The permanent stack sampling facilities for each stack must comply with Rule 62-297.345, F.A.C.

7. Process Monitors: Each boiler shall be equipped with instruments to measure the fuel feed rate, heat input, steam production, steam pressure, and steam temperature.

8. Control Equipment: Each boiler shall be equipped with:

a. Low-NOx natural gas burners rated for no more than 0.15 pounds of NOx per MMBtu of heat input. Four burners are installed with one in each corner of the boiler. The maximum heat input rate from all four burners is 605 MMBtu per hour.

b. Mechanical dust collectors consisting of four, large diameter, multi-tube modules with airfoil vanes or equivalent equipment. The mechanical dust collectors shall be installed and maintained as pre-control devices prior to each electrostatic precipitator and designed for a removal efficiency of at least 85% of the particulate matter greater than 10 microns in size (assuming a specific gravity of 2.00).

c. An electrostatic precipitator (ESP) designed for at least 98 percent removal of particulate matter.

d. A selective non-catalytic reduction (SNCR) system designed for at least 40 percent removal of NOx.

e. A carbon injection system (or equivalent) for potential control of mercury emissions.

9. Continuous Monitors: For each cogeneration boiler, the Licensee shall install, calibrate, maintain, and operate continuous emissions monitoring systems (CEMS) and continuous opacity monitoring systems (COMS) to measure and record emissions of carbon monoxide (CO), nitrogen oxides (NOx), opacity, oxygen (O2), and sulfur dioxide (SO2) in a manner sufficient to demonstrate compliance with these Conditions. The opacity monitor shall be placed in the ductwork between the electrostatic precipitator and the stack or in the stack.

C. Operational Restrictions

1. Permitted Capacity: The cogeneration boilers shall be constructed and operated in accordance with the capabilities and specifications described in the Application. The maximum heat input rate to each cogeneration boiler shall not exceed 760 MMBtu/hr when burning 100 percent biomass, 605 MMBtu/hr when burning 100 percent natural gas, and 490 MMBtu/hr when burning 100 percent very low sulfur distillate oil. The steam production of each boiler shall not exceed an average of 506,100 pounds per hour at 1,500 psig and 975°F. The operating hours of the cogeneration boilers are not restricted (8760 hours per year).

2. Primary Fuel: The primary fuel for the Facility shall be biomass, which shall consist of bagasse and authorized wood material. Bagasse is the fibrous vegetative residue remaining after the sugarcane milling process. Authorized wood material is clean construction and demolition wood debris, yard trash, land clearing debris, and other clean cellulose and vegetative matter. Each cogeneration boiler shall combust no more than 30% by weight yard waste (yard trash) on a calendar quarter basis that is defined as a municipal solid waste (MSW) in 40 CFR 60.51a. The biomass fuel used at the cogeneration plant shall not contain hazardous substances, hazardous wastes, biomedical wastes, or garbage. The fuel used at the cogeneration plant shall not contain special wastes, except wood, lumber, trees, tree remains, bagasse, cane tops and leaves, and other clean vegetative and cellulose matter. The Licensee shall perform a daily visual inspection of any wood material or similar vegetative matter that has been delivered to the Facility for use as fuel. Any shipment observed to contain prohibited materials shall not be used as fuel, unless such materials can be readily segregated and removed from the wood material and vegetative matter

a. The Licensee shall design and implement a management and testing program for the wood material and other materials delivered to the plant for fuel. The program shall be designed to keep painted and chemically treated wood, household garbage, toxic or hazardous non-biomass and non-combustible waste material, from being burned at this Facility. The program shall provide for the routine inspection and/or testing of the fuel at the originating wood yard sites as well as at the Facility site, to ensure that the quantities of painted or chemically treated wood in the fuel are minimized. Based on the analysis of a composite sample, wood material containing more than 70.7 ppm arsenic or 83.3 ppm chromium or 62.8 ppm copper shall not be burned. Fuel scheduled for burning shall be inspected daily. At a minimum, the fuel management program shall include the following sampling and analyses:

b. At least twice each month, the Licensee shall have separate analyses conducted on an as-fired wood sample and an as-fired bagasse sample for the following: heating value (modified ASTM D3286, Btu/lb, dry), carbon content (modified ASTM D5373, percent by weight, dry), sulfur content (modified ASTM D4239 Method C, percent by weight, dry), and moisture content (modified ASTM D3173, percent by weight). In addition the wood sample shall be analyzed for copper, chromium, and arsenic in accordance with Methods 3050/6010 (EPA Method SW-846) and reported in ppm by weight, dry. Samples shall be taken at least two weeks apart.

c. At least once each month, the Licensee shall have an analysis conducted on a composite sample of fly ash and bottom ash for arsenic, copper, and chromium in accordance with the procedures described in EPA Method SW-846, *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods* (40 CFR 261, Appendix III). The analytical results from ash testing shall be used in conjunction with those from the as-fired wood samples to evaluate the effectiveness of the fuel management program in removing chemically treated wood from the biomass fuel. The Licensee shall dispose of all ash generated on site in accordance with the applicable state and federal regulations.

d. Analytical results of the as-fired biomass fuels and ash sampling shall be summarized and provided in the quarterly report to the Compliance Authority.

3. Auxiliary Fuel: The cogeneration boilers shall fire only distillate oil and pipeline natural gas as auxiliary fuels. Distillate oil shall be new No. 2 oil with a maximum sulfur content of 0.05 percent sulfur by weight as determined by the appropriate test method listed in 40 CFR 60.17. "New" oil is oil that has been refined from crude oil and that has not been used in any manner that may contaminate it. Each boiler may startup solely on pipeline natural gas or distillate oil.

a. Fossil Fuel Limitation: The firing of fossil fuels (distillate oil and natural gas) shall be less than 25 percent of the total heat input to each cogeneration boiler during any calendar quarter.

b. Fuel Records: The Licensee shall maintain a daily log of the amounts and types of fuels used. The amount, heating value, and sulfur content of each fuel oil delivery shall be kept in a log for at least five years. For each calendar month, the actual monthly SO₂ emissions and the 12-month rolling total SO₂ emissions shall be determined and kept in a log.

D. Emissions Limiting Standards

1. Emissions Standards: Based on the maximum permitted heat input to each cogeneration boiler, stack emissions shall not exceed the standards specified in the following table:

Pollutant	Averaging Period	Emissions Standards per Boiler ¹	
		lb/MMBtu	lb/hr
Carbon Monoxide (CO) ^a	30-day rolling CEMS avg.	0.50	380.0
	12-month rolling CEMS avg.	0.35	
Nitrogen Oxides (NO _x) ^b	30-day rolling CEMS avg.	0.15	114.0
Sulfur Dioxide (SO ₂) ^c	24-hour rolling CEMS avg.	0.20	152.0
	30-day rolling CEMS avg.	0.10	

Pollutant	Averaging Period	Emissions Standards per Boiler ¹	
		lb/MMBtu	lb/hr
	12-month rolling CEMS avg.	0.06	
Stack Opacity ^d	6-minute block COMS avg. (Alternative: EPA Method 9)	≤ 20% opacity, except for one 6-minute block per hour that is ≤ 27% opacity	
Particulate Matter (PM/PM ₁₀) ^e	3-run test avg.	0.026	19.8
Volatile Organic Compounds (VOC) ^f	3-run test avg.	0.05	38.0
Mercury ^g	3-run test avg.	5.4 x 10 ⁻⁶	NA
Lead and Fluorides ^h	The BACT determination for lead and fluoride emissions is the use of fuels containing low levels of these compounds (bagasse, wood, distillate oil, and natural gas) and prospective removal with the fly ash by the mechanical dust collectors and electrostatic precipitators.		

Footnotes to Emission Standards Table

a. Compliance shall be determined by data collected from the required CO CEMS in terms of "lb/MMBtu of heat input". The 30-day rolling average shall be determined by calculating the arithmetic average of all hourly emission rates for 30 successive boiler operating days and be consistent with the NO_x monitoring requirements below. Compliance with the 12-month standard shall be based on the rolling average for each consecutive 12-month period.

b. Compliance shall be determined by data collected from the required NO_x CEMS in terms of "lb/MMBtu of heat input". The 30-day rolling average shall be determined by calculating the arithmetic average of all hourly emission rates for 30 successive boiler operating days and the requirements of 40 CFR 60.13, 60.44a, 60.46a, 60.47a, 60.48a, and 60.49a. A boiler-operating day is any day in which any authorized fuel is fired.

c. Compliance with the SO₂ standards shall be determined by data collected from the required SO₂ CEMS in terms of "lb/MMBtu of heat input". The 24-hour average shall be determined by calculating the arithmetic average of all valid hourly emission rates for 24 successive boiler-operating hours. The 30-day rolling average shall be determined by calculating the arithmetic average of all hourly emission rates for 30 successive boiler-operating days and the requirements of 40 CFR 60.13, 60.43a, 60.46a, 60.47a, 60.48a, and 60.49a. Compliance with the 12-month standard shall be based on the rolling average for each consecutive 12-month period. Valid SO₂ hourly averages shall not be excluded from any compliance average. *{Permitting Note: Potential emissions of sulfuric acid mist are minimized by the effective control of SO₂ emissions with the firing of low sulfur fuels. For reporting purposes, sulfuric acid mist emissions shall be estimated as 6% of the total measured SO₂ emissions.}*

d. Continuous compliance with the opacity standard shall be determined by data collected from the required COMS in terms of "percent opacity" based on 6-minute block averages. Alternatively, compliance may also be determined by conducting EPA Method 9 observations.

e. Compliance with the particulate matter standards shall be determined by the average of three test runs conducted in accordance with EPA Method 5. For purposes of reporting PM10 emissions, it shall be assumed that all particulate matter emitted is PM10.

f. Compliance with the VOC standards shall be determined by the average of three test runs conducted in accordance with EPA Method 25A based on propane. In addition, the Licensee may choose to conduct EPA Method 18 concurrently with EPA Method 25A to deduct emissions of methane and ethane from the measured VOC emissions. Otherwise, all emissions measured by EPA Method 25A shall be considered "volatile organic compounds".

g. Compliance with the mercury standards shall be determined by the average of three test runs conducted in accordance with EPA Method 101A or 29. Emissions in excess of this standard shall be a violation of these Conditions. In addition, if two or more cogeneration boilers exceed the annual mercury emission limit, the Licensee shall reactivate the carbon injection system for all three units within 30 days of the stack test report due date. The minimum carbon injection rate shall be at least 7 pounds per hour. Within 60 days of the stack test report due date, the Licensee shall submit to the permitting and compliance authorities a mercury testing protocol designed to establish an effective carbon injection rate to control mercury emissions. Within 60 days of receiving approval for the mercury testing protocol by the permitting authority, the Licensee shall begin the approved testing program. At a minimum, the Licensee shall submit a full engineering report summarizing the uncontrolled emissions, controlled emissions, fuels, operating capacities, and recommending a minimum activated carbon injection rate to control mercury emissions.

h. The particulate matter standard is also a surrogate standard for lead emissions. {Permitting Note: For reporting purposes, average lead emissions are expected to be 2.6×10^{-5} lb/MMBtu and average fluoride emissions are expected to be 1.9×10^{-4} lb/MMBtu when firing bagasse/wood.}

i. Each boiler shall comply with the standards when firing any combination of authorized fuels. The "lb/hour" rates are based on the highest emission standard shown for that pollutant. Required compliance tests shall be performed in accordance with the requirements of PSD Permit No 196(P). The cogeneration boilers are also subject to the new source performance standards (NSPS Subpart Da) for new electric utility steam generating units. These requirements include the general provisions of Subpart A in 40 CFR 60, as well as the following source-specific applicable requirements: 60.40a (Applicability and Designation of Affected Facility); 60.41a (Definitions); 60.42a (Standards for Particulate Matter); 60.43a (Standard for Sulfur Dioxide); 60.44a (Standard for Nitrogen Oxides); 60.46a (Compliance Provisions); 60.47a (Emissions Monitoring); 60.48a (Compliance Determination

Procedures and Methods); and 60.49a (Reporting Requirements). The cogeneration boilers are also subject to Rule 62-296.405(2), F.A.C. (Fossil Fuel Steam Generators with more than 250 MMBtu per Hour of Heat Input), Rule 62-296.410, F.A.C. (Carbonaceous Fuel Burning Equipment), and Rule 62-296.570, F.A.C. (Reasonably Available Control Technology Requirements for Major VOC and NO_x Facilities).

2. Material Handling: The following conditions apply to the biomass, ash, and activated carbon handling facilities.

a. All conveyors and conveyor transfer points shall be enclosed to preclude PM emissions (except those directly associated with the stacker/reclaimer, for which enclosure is operationally infeasible).

b. Water sprays, chemical wetting agents, and/or stabilizers shall be applied to storage piles, handling equipment, unenclosed transfer points, etc. during dry periods and as necessary to prevent visible emissions. When adding, moving or removing material from the storage pile, visible emissions of no more than 20% opacity are allowed.

c. The mercury control system reactant storage silos shall be maintained at a negative pressure while operating with the exhaust vented to a filter control system. Visible emissions from any storage silo shall not exceed 5 percent opacity based on a 6-minute block average. A visible emissions test (EPA Method 9) shall be performed at least annually for each silo that is loaded with carbon during the federal fiscal year.

XIV. Effluent Limitations and Monitoring Requirements

A. Surface Water Discharges

This facility does not discharge to surface waters of the State.

B. Underground Injection Control Systems

This section is not applicable to this facility.

C. Land Application Systems

1. The Licensee is authorized to discharge process wastewater, non-process wastewater, contact and non-contact stormwater, cooling tower blow down, and reverse osmosis reject water to Land Application System R-001, R-002, R-003, R-004, a percolation pond network. Discharge to the percolation pond network shall be monitored by the Licensee. Flow shall be monitored and recorded daily and total dissolved solids shall be sampled monthly.

2. The annual average flow into the percolation pond system shall not exceed 1.10 MGD.

3. The annual average total dissolved solids concentration in the effluent to the percolation pond system shall not exceed 6,000 mg/l.

4. Records of the monitoring data shall be kept on site and made available for inspection by Department personnel during normal business hours.

5. The Licensee will perform an inspection prior to placing a new cell into service each year to ensure that the berm is properly constructed. Documentation of this inspection will be kept on site and made available for inspection by Department personnel during normal business hours. The rotational schedule for the said cell rotation is provided below.

Rotational schedule for the four percolation cells	Dates
Cell 2a active	2004 to 2005
Cell 1a active	2005 to 2006
Cell 3 active	2006 to 2007
Cell 4 active	2007 to 2008
Cell 2a active	2008 to 2009

D. Other Methods of Disposal or Recycling

There shall be no discharge of industrial wastewater from this facility to ground or surface waters, except as authorized by these Conditions.

E. Other Limitations and Monitoring and Reporting Requirements

1. During the period of operation authorized by these Conditions, the Licensee shall complete and submit to the South District Office Discharge Monitoring Reports (DMRs) in accordance with the frequencies specified by the REPORT type (i.e., monthly, toxicity, quarterly, semiannual, annual, etc.) indicated on the DEP's DMR forms (available at the South District Office). Monitoring results for each monitoring period shall be submitted in accordance with the associated DMR due dates below.

REPORT Type On DMR	Monitoring Period	DMR Due Date
Monthly or Toxicity	First day of month – last day of month	28 th day of following month
Quarterly	January 1 - March 31 April 1 – June 30 July 1 – September 30 October 1 – December 31	April 28 July 28 October 28 January 28
Semiannual	January 1 – June 30 July 1 – December 31	July 28 January 28
Annual	January 1 – December 31	January 28

DMRs shall be submitted for each required monitoring period including months of no discharge.

The Licensee shall make copies of the attached DMR form(s) and shall submit the completed DMR form(s) to the Department's South District Office at the address specified in Permit Condition XIV.E.2. below.

2. Unless specified otherwise in these Conditions, all reports and notifications required by these Conditions, including twenty-four hour notifications, concerning the Facility's percolation pond system shall be submitted to or reported to the South District Office at the address specified below:

South District Office
Post Office Box 2549
Fort Myers, FL 33902-2549
Phone Number - (239) 332-6975
FAX Number - (239) 332-6969
(All FAX copies shall be followed by original copies.)

3. All reports and other information concerning the Facility's percolation pond system shall be signed in accordance with requirements of Rule 62-620.305, F.A.C. [62-620.305, 10-23-00].

4. The Licensee shall provide safe access points for obtaining representative effluent and stormwater samples, which are required by these Conditions.

5. If there is no discharge from the Facility on a day scheduled for sampling, the sample shall be collected on the day of the next discharge.

6. Any bypass of the treatment facility which is not included in the monitoring specified in sections XIV.A., B., C., or D., is to be monitored for flow and all other required parameters. For parameters other than flow, at least one grab sample per day shall be monitored. Daily flow shall be monitored or estimated, as appropriate, to obtain reportable data. All monitoring results shall be reported on the appropriate DMR.

F. Industrial Sludge Management Requirements

This section not applicable to this facility.

G. Ground Water Monitoring Requirements

1. Construction Requirements

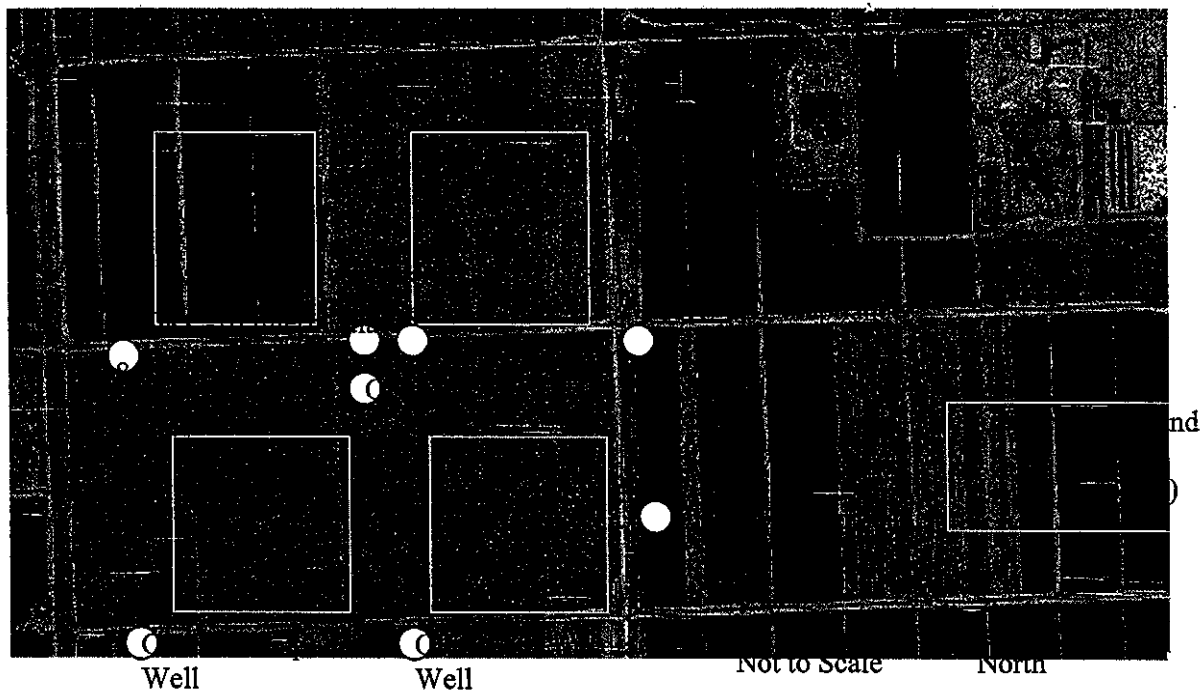
a. Prior to construction of any new ground water monitoring well, a soil boring shall be made at the new monitoring well location in order to properly determine the well depth and screen interval.

b. The licensee shall give at least 72-hours notice to the Department, prior to the installation of any new monitoring well required by these Conditions.

c. Within 30 days after installation of a new monitoring well, the Licensee shall submit to the Department's South District Office detailed information on the well's location and construction on DEP Form 62-522.900(3), Monitor Well Completion Report.

d. Upon completion of construction of any new background monitoring well, sampling for initial characterization of the monitoring well shall be performed for Total Dissolved Solids, Total Phosphorous, Nitrate, Nitrite, TKN, Chloride, Sodium, pH (field), Specific Conductance (field), Gross Alpha, Water Level, and EPA methods 601, 602, and 608 or equivalent approved method for 40 CFR 136 with detection limits equal to or lower for the parameters listed.

e. The ground water monitoring wells for the Facility shall be located as depicted in the site map below:



* The location of the new background monitoring well (OKC-14; MWB 53199 is not depicted on this site map.

2. Operational Requirements

a. During the period of operation authorized by these Conditions, the Licensee shall continue to sample ground water at the existing monitoring wells identified in Condition XIV.G.2.b. below, in accordance with these Conditions and the approved ground water monitoring plan prepared in accordance with Rule 62-522.600, F.A.C. Within 90 days of installation of any new background-monitoring well, the licensee shall begin sampling ground water at the new monitoring well in accordance with these Conditions and the approved ground water monitoring plan.

b. The following monitoring wells shall be sampled for the rotating four cell (1A, 2A, 3 & 4) percolation pond land application systems R-001, R-002, R-003 and R-004.

Monitoring Well ID	Alternate Well Name and/or Description of Monitoring Location	Depth (Feet)	Aquifer Monitored	Monitoring Frequency
MWB-53199	OKC-14 Background Well. (Existing)		Surficial	All Quarters
MWC-25335	OKC-1 Compliance Well. Located in the southeast corner of Cell #2A. (Existing)	17.54	Surficial	1 st & 3 rd Quarters
MWC-46123	OKC-12 Compliance Well. Located in the northeast corner of Cell #3. (Existing)	17.0	Surficial	2 nd & 4 th Quarters
MWI-25336	OKC-2 Intermediate Well. Located in the southeast corner of Cell #4. (Existing)	16.0	Surficial	1 st & 3 rd Quarters
MWI-25340	OKC-6 Intermediate Well. Located in the northwest corner of Cell #2A. (Existing)	15.5	Surficial	2 nd & 4 th Quarters
MWI-32794	OKC-8 Intermediate Well. Located in the southeast corner of Cell #1A. (Existing)	17.5	Surficial	2 nd & 4 th Quarters
MWI-32796	OKC-10 Intermediate Well. Located in the northeast corner of Cell #1A. (Existing)	17.0	Surficial	2 nd & 4 th Quarters
MWI-44599	OKC-11 Intermediate Well. Located in the southeast corner of Cell #3. (Existing)	17.0	Surficial	1 st & 3 rd Quarters
MWI-44600	OKC-13 Intermediate Well. Located along the center north side of Cell #4. (Existing)	17.0	Surficial	1 st & 3 rd Quarters

MWB = Background; MWI = Intermediate; MWC = Compliance, MWP = Piezometer

c. The monitor wells specified in Condition XIV.G.2.b. shall be sampled for the parameters listed below:

Parameter Name	*Compliance Well Limit	Units	Sample Type
Specific Conductance (field)	Report	UMHO/CM	Grab
PH	6.5-8.5	SU	Grab
Chloride (as Cl)	250.0	MG/L	Grab
Solids, Total Dissolved (TDS)	500.0 **	MG/L	Grab
Water Level Relative to NGVD	Report	FEET	Measured
Sodium, Total Recoverable	160.0	MG/L	Grab

** This column summarizes Class G-II maximum contaminant level criteria applicable at the Compliance Well. Refer to Rule 62-520.420, F.A.C. These are not effluent limits.

** May be greater if no other maximum contaminant level is exceeded. See Rule 62-550.320(1), Table 6, F.A.C.

d. A Zone of Discharge is hereby established for the time duration of these Conditions and shall not aerially extend further than one hundred (100) feet beyond the

perimeters of the areas of wetted surface of the wastewater holding ponds, nor shall it extend beyond the limits of the property boundaries should such distance be less than one hundred (100) feet. The vertical zone of discharge shall not extend below the semi-confining zones at the base of the water table aquifer. The Licensee's discharge to ground water shall not cause a violation of water quality standards for ground waters at the boundary of the zone of discharge in accordance with Rules 62-520.400 and 62-520.420, F.A.C.

e. The Licensee's discharge to ground water shall not cause a violation of the minimum criteria for ground water specified in Rule 62-520.400, F.A.C., within the zone of discharge.

f. If the concentration for any constituent listed in Condition XIV.G.2.c. in the natural background quality of the ground water is greater than the stated maximum, or in the case of pH is also less than the minimum, the representative natural background quality shall be the prevailing standard.

g. Water levels shall be recorded prior to evacuating the well for sample collection. Elevation references shall include the top of the well casing and land surface at each well site (NGVD allowable) at a precision of plus or minus 0.01 feet.

h. Ground water monitoring wells shall be purged prior to sampling to obtain a representative sample.

i. If a monitoring well becomes damaged or cannot be sampled for some reason, the Licensee shall notify the Department immediately and a written report shall follow within seven days detailing the circumstances and remedial measures taken or proposed. Repair or replacement of monitoring wells shall be approved in advance by the Department.

j. Ground water monitoring test results shall be submitted on Part D of DEP Form 62-620.910(10) and shall be submitted to the address specified in XIV.E.2. Results shall be submitted with the DMR for each month listed in the following DMR Due Date schedule.

SAMPLE QUARTER	SAMPLE PERIOD	DMR Due Date
1 st Quarter	January 1 – March 31	April 28
2 nd Quarter	April 1 – June 30	July 28
3 rd Quarter	July 1 – September 30	October 28
4 th Quarter	October 1 – December 31	January 28

H. Other Land Application Requirements

This section is not applicable to this facility.

I. Operation and Maintenance Requirements

1. Operation of Treatment and Disposal Facilities

- a. The Licensee shall ensure that the operation of this facility is as described in the application and supporting documents.
- b. The operation of the water pollution control facilities described in these Conditions shall be under the supervision of a person who is qualified by formal training and/or practical experience in the field of water pollution control.

J. Record keeping Requirements:

1. The Licensee shall maintain the following records on the site of the permitted Facility and make them available for inspection:
 - a. Records of all compliance monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, including, if applicable, a copy of the laboratory certification showing the certification number of the laboratory, for at least three years from the date the sample or measurement was taken;
 - b. Copies of all reports, other than those required in items a. and f. of this Condition, required by the certification for at least three years from the date the report was prepared, unless otherwise specified by Department rule;
 - c. Records of all data, including reports and documents used to complete the Application for the certification for at least three years from the date the application was filed, unless otherwise specified by Department rule;
 - d. A copy of the current certification;
 - e. A copy of any required record drawings;
 - f. Copies of the logs and schedules showing plant operations and equipment maintenance for three years from the date on the logs or schedule.

K. Other Specific Conditions

1. Specific Conditions Applicable to All Permits
 - a. Drawings, plans, documents or specifications for the Facility that have been previously submitted by the Licensee and retained on file at the South District Office or the Siting Coordination Office, are made a part hereof.

b. Where required by Chapter 471 (P.E.) or Chapter 492 (P.G.) Florida Statutes, applicable portions of reports to be submitted under these Conditions, shall be signed and sealed by the professional(s) who prepared them.

c. Section XIV. of these Conditions addresses Industrial Wastewater program permitting requirements only and does not authorize operation of this Facility prior to obtaining any other permits required by federal agencies.

2. Specific Conditions Related to Construction

a. Within thirty days of completion of construction of any new industrial wastewater facilities, the Licensee shall submit to the Department a completed "Certification of Completion of Construction" (DEP Form 62-620.910(12)) signed and sealed by the engineer of record or other engineer registered in the state of Florida.

b... Record drawings of any new industrial wastewater facilities shall be prepared and made available in accordance with Rule 62-620.410(6), F.A.C., and the Department of Environmental Protection Guide to Wastewater Permitting within six months of placing such facilities into operation.

3. Reopener Clause

a. The applicable Conditions in Section XIV. of this certification shall be revised, or alternatively, revoked and reissued in accordance with the provisions contained in Rules 62-620.325 and 62-620.345 F.A.C., if applicable, or to comply with any applicable effluent standard or limitation issued or approved under Sections 301(b)(2)(C) and (D), 304(b)(2) and 307(a)(2) of the Clean Water Act (the Act), as amended, if the effluent standards, limitations, or water quality standards so issued or approved:

i. Contains different conditions or is otherwise more stringent than the Conditions in this certification/or;

ii. Controls any pollutant not addressed in these Conditions of Certification.

iii. The Conditions of Certification as revised or reissued under this subsection shall contain any other requirements then applicable.

b. These Conditions may be reopened to adjust effluent limitations or monitoring requirements should future Water Quality Based Effluent Limitation determinations, water quality studies, DEP approved changes in water quality standards, or other information show a need for a different limitation or monitoring requirement.

c. The Department may develop an applicable Total Maximum Daily Load (TMDL) during the life of this certification. Once a TMDL has been established

and adopted by rule, the Department shall revise these Conditions to incorporate the final findings of the TMDL.

4. Notice of Modification or Revision

The Licensee shall file an amendment or apply for a modification to this Certification in accordance with Rules 62-620.300 and the Department of Environmental Protection Guide to Wastewater Permitting at least 90 days before construction of any planned substantial modifications to the Facility's wastewater system or with Rule 62-620.325(2) for minor modifications to the Facility's wastewater system. A revised Condition or the Department's concurrence shall be obtained before construction begins on such modifications to the wastewater systems, except as provided in Rule 62-620.300, F.A.C. [62-620.610(16), F.A.C.]

5. Any laboratory test required by these Conditions shall be performed by a laboratory that has been certified by the Department of Health (DOH) under Chapter 64E-1, F.A.C., where such certification is required by Rule 62-160.300, F.A.C. The laboratory must be certified for any specific method and analyte combination that is used to comply with these Conditions. For domestic wastewater facilities, the on-site test procedures specified in Rule 62-160.300(4), F.A.C., shall be performed by a laboratory certified test for those parameters or under the direction of an operator certified under Chapter 62-602, F.A.C.

6. Field activities including on-site tests and sample collection, whether performed by a laboratory or a certified operator, must follow the applicable procedures described in DEP-SOP-001/01 (January 2002). Alternate field procedures and laboratory methods may be used where they have been approved according to the requirements of Rules 62-160.220, 62-160.330, and 62-160.600, F.A.C.

7. Bypass Provisions

a. Bypass is prohibited, and the Department may take enforcement action against a Licensee for bypass, unless the Licensee affirmatively demonstrates that:

i. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

iii. The Licensee submitted notices as required under Condition

III.B.

b. If the Licensee knows in advance of the need for a bypass, it shall submit prior notice to the Department, if possible at least 10 days before the date of the bypass. The Licensee shall submit notice of an unanticipated bypass within 24 hours of learning about the bypass as required in Condition XIV.K.7.a. of these Conditions. A notice shall include a description of the bypass and its cause; the period of the bypass, including exact dates and times; if the bypass has not been corrected, the anticipated time it is expected to continue; and the steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass.

c. The Department shall approve an anticipated bypass, after considering its adverse effect, if the Licensee demonstrates that it will meet the three conditions listed in Condition XIV.K.7.a. of these Conditions.

i. A Licensee may allow any bypass to occur which does not cause reclaimed water or effluent limitations to be exceeded if it is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of Condition XIV.K.7.a. of these Conditions. [62-620.610(22), F.A.C.]

8. Upset Provisions:

a. A Licensee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed contemporaneous operating logs, or other relevant evidence that:

i. An upset occurred and that the Licensee can identify the cause(s) of the upset;

ii. The permitted facility was at the time being properly operated;

iii. The Licensee submitted notice of the upset as required in Condition III. of these Conditions; and

iv. The Licensee complied with any remedial measures required under Condition III.G.4.

b. In any enforcement proceeding, the Licensee seeking to establish the occurrence of an upset has the burden of proof.

c. Before an enforcement proceeding is instituted, no representation made during the Department review of a claim that noncompliance was caused by an upset is final agency action subject to judicial review. [62-620.610(23), F.A.C.]

XV. South Florida Water Management District

A. LEGAL/ADMINISTRATIVE CONDITIONS

1. GENERAL

a. Responsible Entity

The Licensee shall be responsible for compliance with the Certification Conditions. If contractual rights, duties, or obligations are transferred under this Certification, notice of such transfer or assignment, including the identification of the entity responsible for compliance with the Certification, shall immediately be submitted to the Florida Department of Environmental Protection and the SFWMD by the previous certification holder (Licensee) and the Assignee. Any assignment or transfer shall carry with it the full responsibility for the limitations and Conditions of this Certification. The previous Licensee shall be responsible for informing the Assignee of all authorized facilities and uses and the Conditions under which they were authorized. The previous Licensee shall remain liable for corrective actions that may be required as a result of any violations prior to transfer or assignment of any contractual rights, duties, or obligations under this Certification. Reference: Sections 373.223, 373.342, and 373.413, F.S.; Rules 40E-2.091, 40E-2.301, 40E-2.381, and 40E-3.101(1), F.A.C.

b. Minimum Standards

This Certification is based on the Licensee's submitted information to the SFWMD that reasonably demonstrates that harm to the site water resources will not be caused by the authorized activities. The plans, drawings and design specifications submitted by the Licensee shall be considered the minimum standards for compliance. Reference: Sections 373.219, 373.223, 373.229, 373.308, and 373.316, F.S.; Rules 40E-2.091, 40E-2.301, 40E-2.381, and 40E-3.500-.531, F.A.C.

c. Compliance Requirements

This Project must be constructed, operated and maintained in compliance with and meet all non-procedural requirements set forth in Chapter 373, F.S., and Chapters 40E-2 (Consumptive Use) and 40E-3 (Water Wells), F.A.C.

d. Off-site Impacts

It is the responsibility of the Licensee to ensure that harm to the water resources does not occur during the construction, operation, and maintenance of the Facility and Project. Reference: Sections 373.223 and 373.309, F.S.; Rules 40E-2.091, 40E-2.381, 40E-3.301(3), and 40E-3.301(4), F.A.C.

e. Liability

The Licensee shall hold and save the SFWMD harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment and/or use of any system authorized by this Certification, to the extent allowed under Florida law. Reference: Section 373.223, F.S.; Rules 40E-2.091, and 40E-2.381, F.A.C.

f. Construction, Operation, and Maintenance Responsibilities

The Licensee shall be responsible for the construction, operation, and maintenance of all facilities installed for the proposed Project and Facility. Reference: Section 373.309, F.S.; Rule 40E-3.301, F.A.C.

g. Access

SFWMD representatives shall be allowed reasonable escorted access to the power plant site, the water withdrawal facilities and any associated facilities to inspect and observe any activities associated with the construction of the proposed Project and/or the operation and/or maintenance of the on-site wells in order to determine compliance with the Conditions of this Certification. The Licensee shall not refuse entry or access to any SFWMD representative who, upon reasonable notice, requests entry for the purpose of the above noted inspection and presents appropriate credentials. Reference: Sections 373.223 and 373.319, F.S.; Rules 40E-2.091, 40E-2.301, 40E-2.381, and 40E-3.461, F.A.C.

h. Post Certification Information Submittals

Information submitted to the SFWMD subsequent to Certification, in compliance with the Conditions of this Certification, shall be for the purpose of the SFWMD determining the Licensee's compliance with the Certification Conditions and the non-procedural criteria contained in Chapters 40E-2 and 40E-3, F.A.C., as applicable, prior to the commencement of the subject construction, operation and/or maintenance activity covered there under. Reference: Rule 62-17.191, F.A.C.

i. Enforcement

The SFWMD may take any and all lawful actions that are authorized under the statutes and rules of the SFWMD, if necessary, to enforce any condition of this Certification recommended by the SFWMD. Prior to initiating such action, the SFWMD shall notify the Secretary of DEP of the proposed action. Reference: Sections 373.223 and 373.319, F.S.; Rules 40E-2.091(1), 40E-2.301, 40E-2.381, and 40E-3.461, F.A.C.

j. Modification/Termination of Agreement

The November 16, 2004 Agreement between the Okeelanta Corporation and the Licensee, as amended on December 14, 2004, that requires the Okeelanta Corporation (Water

Use Permit No. 50-01035-W) to provide the Licensee with 2 MGD of makeup water for the new cooling tower and 0.130 MGM of potable water is hereby incorporated within. Any modification or termination of the Agreement shall be subject to review by the SFWMD before it becomes effective, and any such modification or termination may require a post-certification amendment or a modification of this Certification, as determined collectively by the SFWMD and DEP. Any request to modify Water Use Permit No. 50-01035-W that would have the effect of modifying or terminating the Agreement, or the non-renewal of Water Use Permit No. 50-01035-W, upon expiration, shall also be subject to review and may require a post-certification amendment or a modification of this Certification. Authorization to commence construction of the proposed expansion project is contingent upon the SFWMD's approval of the application for renewal (No. 040811-4) of Water Use Permit No. 50-01035-W with the allocations assigned to the Licensee under the November 16, 2004, Agreement, as amended on December 14, 2004.

B. WATER USE CONDITIONS

1. GENERAL

a. Water Shortage Compliance

In the event of a declared water shortage, the Licensee must comply with any water withdrawal reductions ordered by the SFWMD in accordance with the Water Shortage Plan, Chapter 40E-21, F.A.C. Reference: Section 373.246, F.S.; Rule 40E-2.381, F.A.C.

b. Interference with Existing Legal Uses

The Licensee shall mitigate interference with existing legal uses that was caused in whole or in part by the Licensee's withdrawals, consistent with the approved mitigation plan. As necessary to offset the interference, mitigation may include pumpage reduction, replacement of the impacted individual's equipment, relocation of wells, change in withdrawal source, or other means. Interference to an existing legal use is defined as an impact that occurs under hydrologic conditions equal to or less severe than a 1 in 10 year drought event that results in the:

i. Inability to draw water consistent with the provisions of the Certification, such as when remedial structural or operational actions not materially authorized by previously existing permits or these Conditions must be taken to address the interference; or

ii. Change in the quality of water pursuant to primary State Drinking Water Standards to the extent that the water can no longer be used for its authorized purpose, or such change is imminent.

Reference: Section 373.223, F.S.; Rules 40E-2.091, 40E-2.301, and 40E-2.381, F.A.C.

c. Harm to Existing Off-Site Land Uses

The Licensee shall mitigate harm to existing off-site land uses caused by the Licensee's withdrawals, as determined through reference to the Conditions for permit issuance. When harm occurs, or is imminent, the SFWMD will require the Licensee to modify withdrawal rates or mitigate the harm. Harm, as determined through reference to the Conditions for permit issuance includes:

i. Significant reduction in water levels on the property to the extent that the designed function of the water body and related surface water management improvements are damaged, not including aesthetic values. The designed function of a water body is identified in the original permit or other government authorization issued for the construction of the water body. In cases where a permit was not required, the designed function shall be determined based on the purpose for the original construction of the water body (e.g., fill for construction, mining, drainage canal, etc.);

ii. Damage to agriculture, including damage resulting from reduction in soil moisture resulting from consumptive use;

iii. Land collapse or subsidence caused by reduction in water levels associated with consumptive use.

Reference: Sections 373.223, F.S.; Rules 40E-2.091, 40E-2.301, and 40E-2.381, F.A.C.

d. Harm to Natural Resources

The Licensee shall mitigate harm to natural resources caused by the Licensee's withdrawals, as determined through reference to the Conditions for permit issuance. When harm occurs, or is imminent, the SFWMD will require the Licensee to modify withdrawal rates or mitigate the harm. Harm, as determined through reference to the Conditions for permit issuance includes:

i. Reduction in ground or surface water levels that results in harmful lateral movement of the fresh water/salt water interface;

ii. Reduction in water levels that harm the hydroperiod of wetlands;

iii. Significant reduction in water levels or hydroperiod in a naturally occurring water body such as a lake or pond;

iv. Harmful movement of contaminants in violation of state water quality standards; or

v. Harm to the natural system including damage to habitat for rare or endangered species.

Reference: Sections 373.223, F.S.; Rules 40E-2.091, 40E-2.301, and 40E-2.381, F.A.C.

e. Well System Operation

At any time, if there is an indication that the well casing, valves, or controls associated with the on-site well system leak or have become inoperative, the Licensee shall be responsible for making the necessary repairs or replacement to restore the well system to an operating condition acceptable to the SFWMD. Failure to make such repairs shall be the cause for requiring that the well(s) be filled and abandoned in accordance with the procedures outlined in Chapter 40E-3, F.A.C. Reference: Sections 373.308 and 373.316, F.S.; Rules 40E-3.041, 40E-3.101, 40E-3.411, and 40E-3.500-.531, F.A.C.

2. SITE SPECIFIC DESIGN AUTHORIZATIONS

a. Authorized Monthly Withdrawals

This Certification authorizes a maximum monthly withdrawal of 49.6 MGM from the Miami/North New River Canals for cooling tower #1 makeup water and fire protection water, a maximum monthly withdrawal of 18.24 MGM from the Surficial aquifer for boiler feedwater, and a maximum monthly withdrawal of 26.14 MGM from the Floridan aquifer for boiler feedwater.

b. Authorized Annual Withdrawals

This Certification authorizes a maximum annual withdrawal of 396 MGY from the Miami/North New River Canals for cooling tower #1 makeup water and fire protection water, a maximum annual withdrawal of 137 MGY from the Surficial aquifer for boiler feedwater, and a maximum annual withdrawal of 313.9 MGY from the Floridan aquifer for boiler feedwater.

c. Authorized Withdrawal Facilities

GROUNDWATER – EXISTING

1 – 9" x 1300' x 600 GPM well cased to 870 feet withdrawing from the Floridan aquifer

3 – 10" x 80' x 250 GPM wells cased to 50 feet withdrawing from the Surficial aquifer

SURFACE WATER – EXISTING

3 – 30 HP x 6" x 450 GPM pumps withdrawing from the Miami/North New River canals

d. Consistency Review of Authorized Withdrawals

Within five years of Certification and every five years thereafter, unless extended by mutual agreement between the Licensee and the SFWMD, the Licensee shall submit to the SFWMD a report on the Facility's consistency with the consumptive water use requirements contained within Chapter 40E-2, F.A.C. in effect at that time. Within 90 days after receipt of the completed report, the SFWMD shall evaluate the information contained therein and issue a written notification to the DEP and the Licensee as to whether the ground and surface water

withdrawals for consumptive use authorized by this Certification remain in compliance with the provisions of Chapter 373, F.S., and Chapter 40-2, F.A.C., in effect at that time. If the notification indicates that the withdrawals are not in compliance with these provisions, it shall recommend possible alternatives for bringing the withdrawals into compliance or otherwise meeting the minimum consumptive water use needs of the certified Facility. If mutual agreement cannot be reached within 90 days after issuance of the written notification on whether the withdrawals of ground and surface water for consumptive use remain in compliance, then the written notification shall be immediately referred to the Division of Administrative Hearings (DOAH) for resolution in accordance with the procedural provisions of Sections 403.516(1) (c) and 120.569, F.S.

e. Request for Modification of Withdrawals

The SFWMD may request a modification of the ground and surface water withdrawals for consumptive use authorized by this Certification, in accordance with the provisions of Section 403.516, F.S. and Section 62-17.211, F.A.C. Any request for an increase in water withdrawals shall be made pursuant to the provisions of Section 403.516, F.S., and Section 62-17.211, F.A.C.

f. Dewatering Activities

Should any dewatering activities become necessary for construction of the proposed expansion project, the Licensee shall submit a detailed plan for any such activities to the SFWMD, prior to commencement of dewatering, for a determination of compliance with the non-procedural requirements of Chapters 40E-2, 40E-3 and 40E-20, F.A.C., in effect at the time of submittal. The following information, referenced to NGVD where appropriate, shall be submitted:

- i. A detailed site plan which shows the location(s) for each proposed dewatering area;
- ii. The method(s) used for each dewatering operation;
- iii. The maximum depth for each dewatering operation;
- iv. The location and specifications for all proposed wells and/or pumps associated with each dewatering operation;
- v. The duration of each dewatering operation;
- vi. The discharge method, route, and location of receiving waters generated by each dewatering operation, including the measures (Best Management Practices) that will be taken to prevent water quality problems in the receiving water(s);

vii. An analysis of the impacts of the proposed dewatering operations on any existing on and/or off-site legal users, wetlands, or existing groundwater contamination plumes;

viii. The location of any infiltration trench(es) and/or recharge barriers; and

ix. All plans must be signed and sealed by a Professional Engineer or a Professional Geologist registered in the State of Florida.

Reference: Sections 373.229 and 373.308, F.S.; Rules 40E-2.091, 40E-2.301, and 40E-3.500-531, F.A.C.

g. Reporting Requirements

Prior to operation of the proposed Expansion Project, the Licensee shall submit the results of the calibration testing of the identified water accounting method(s) and equip all existing and proposed withdrawal facilities with approved water use accounting method(s). Every five years from the date of issuance of the Certification Order, the Licensee shall submit re-calibration data on each withdrawal facility. The Licensee shall report monthly withdrawals for each withdrawal facility to the SFWMD quarterly, including the volumes associated with the November 16, 2004 Agreement, as amended on December 14, 2004, between the Okeelanta Corporation and the Licensee. The Licensee shall specify the water accounting method and means of calibration on each report. Reference: Section 373.223, F.S.; Rules 40E-2.091, 40E-2.301, and 40E-2.381, F.A.C.

h. Existing Well Repair, Replacement, Abandonment

If any of the existing on-site wells require repair, replacement, and/or abandonment, the Licensee shall submit the information described in Chapter 40E-3, F.A.C. for review by the SFWMD prior to initiating such activities. Reference: Sections 373.308 and 373.316, F.S.; Rules 40E-3.041, 40E-3.101, 40E-3.411, and 40E-3.500-531, F.A.C.

i. New Well Construction

Prior to construction of any new or replacement wells, the Licensee shall submit the drilling plans and other pertinent information required by Chapter 40E-3, F.A.C. to the SFWMD for review and approval. If the well locations are different from those previously permitted and approved in this Certification, the Licensee shall also submit to the SFWMD for review and approval an evaluation of the impacts of the proposed pumpage from the proposed well location(s) on adjacent existing legal users, pollution sources, environmental features, and water bodies. Reference: Section 373.223, F.S.; Rules 40E-2.091, 40E-2.301, and 40E-2.381, F.A.C.

j. Water Conservation Plan

i. Prior to the commencement of construction of the proposed Expansion Project, the Licensee shall submit an updated Water Conservation Plan, pursuant to

the requirements of Chapter 40E-2 in effect at that time, for review and approval by SFWMD staff. The plan shall, at a minimum, incorporate the following components:

An audit of the amount of water needed in the Licensee's operational processes. The following measures shall be implemented within one year of audit completion if found to be cost effective in the audit:

- (a) Implementation of a leak detection and repair program;
 - (b) Implementation of a recovery/recycling or other program providing for technological, procedural or programmatic improvements to the Licensee's facilities; and
 - (c) Use of processes to decrease water consumption.
- ii. Development and implementation of an employee awareness program concerning water conservation.

Reference: Sections 373.223, F.S.; Rules 40E-2.091, 40E-2.301, and 40E-2.381, F.A.C.

XVI. Department of Community Affairs

The Permittee shall develop a comprehensive hurricane preparation and recovery plan for the New Hope Expansion Project. The plan shall be submitted to the Department of Community Affairs and the Palm Beach County Office of Emergency Management no later than commencement of construction of the New Hope Expansion Project. The Licensee shall formally update the plan every 5 years following commercial operation of the Expansion Project or whenever an additional generating unit is brought into service at the New Hope Facility and shall submit these updated versions of the plan to the Department of Community Affairs and the Palm Beach County Office of Emergency Management. If the Department deems the plan or any of its periodic updates not to be in compliance with the requirements of this condition, it may petition for enforcement of this condition pursuant to the Florida Electrical Power Plant Siting Act.

XVII. Florida Department of Transportation

A. Access Management to the State Highway System

No new access to the State Highway System is proposed in the site certification application. If new access is later proposed, access permitting as defined in Rule Chapters 14-96, State Highway System Connection Permits, Administrative Process, and 14-97, Access Management Classification System and Standards, Florida Administrative Code, will be required.

B. Overweight or Overdimensional Loads

Operation of overweight or overdimensional loads by the applicant on State transportation facilities during construction and operation of the Facility will be subject to safety and permitting requirements as defined in Chapter 316, Florida Statutes, and Rule Chapter 14-26, Safety Regulations and Permit Fees for Overweight and Overdimensional Vehicles, Florida Administrative Code.

C. Use of State of Florida Right of Way or Transportation Facilities

Any use of State of Florida right of way and certain activities on State transportation facilities will be subject to the requirements of the Department of Transportation's Utility Accommodation Manual (Document 710-020-001) and Rule Chapter 14-46, Utilities Installation or Adjustment, Florida Administrative Code.

D. Drainage

Any drainage onto State of Florida right of way and transportation facilities will be subject to the requirements of Rule Chapter 14-86, Drainage Connections, Florida Administrative Code, including the attainment of any permit required thereby.

E. Best Management Practices

1. Traffic control will be maintained during plant construction and maintenance in compliance with the standards contained in the Manual of Uniform Traffic Control Devices, Chapter 14-94, Florida Administrative Code; Florida Department of Transportation's Design Standards; and Florida Department of Transportation's Specifications for Roads and Bridges, whichever is more stringent.

2. If the Licensee uses contractors for the delivery of any overweight or overdimensional loads to the site during construction, the Licensee should ensure that its contractors adhere to the necessary standards and receive the necessary permits required under Chapter 316, Florida Statutes, and Rule Chapter 14-26, Safety Regulations and Permitting Fees for Overweight and Overdimensional Vehicles, Florida Administrative Code.

XVIII. TOXIC, DELETERIOUS OR HAZARDOUS MATERIALS

A. Spills

The spill of any toxic, deleterious, or hazardous materials shall be reported in the manner specified by Condition III.B., Noncompliance Notification.

B. Handling and Testing of Potentially Hazardous Material

The Licensee shall continue to implement its current plan for handling and disposing of any hazardous wastes.

XIX. BY-PRODUCT AND SOLID WASTE STORAGE

A. Solid Waste General

Any solid waste produced by the operation of the Facility shall be disposed of in an approved disposal facility. Industrial by-products and ash residue that are to be sold for reuse or beneficially reused are not considered solid waste.

B. By-Product & Solid Waste Site Specific Standards

1. Any future ash or by-product storage areas on the certified site shall be designed, constructed, operated, maintained, closed and monitored in accordance with any applicable waste disposal requirements described in F.A.C. Chapter 62-701, or Chapter 62-673, as appropriate, and these Conditions of Certification. The prohibitions of F.A.C. Chapter 62-701 shall not be violated.

2. All engineering plans, reports, and related information for ash or by-product storage areas on the certified site shall be provided by the engineer of record with professional certification and shall be approved by the South District of the DEP prior to construction. A construction certification report signed and sealed by a professional engineer, and record drawings showing all modifications to construction plans, shall be submitted to the South District office of the DEP prior to operation of each by-product or solid waste storage and disposal area on the certified site.

XXI. FEDERAL OPERATING PERMITS AND FEES

A. DEP Responsibilities

The Department of Environmental Protection shall implement the provisions of Title V of the 1990 Clean Air Act and the NPDES program for the New Hope Power Partnership Okeelanta Cogeneration Facility, developing Conditions of certification requiring submission of annual operating permit information and annual pollutant emission fees in accordance with any applicable provisions in federal law and federal regulations and sections 403.0885, 403.0872, 403.5055, 403.509, and 403.511, F.S.

B. Licensee Responsibilities

The Licensee shall submit the appropriate annual operating information as well as the appropriate annual pollutant emission and NPDES fees, as required by federal law, to the Department.