UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

January 21, 1998

Mr. Howard L. Rhodes
Director, Division of Air Resources Management
Florida Department of Environmental Protection
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Dear Mr. Rhodes:

This is in response to your December 12, 1997 letter requesting that the Environmental Protection Agency (EPA) repeal the alternative fuels exemption in the prevention of significant deterioration (PSD) regulations at 40 CFR 52.21(b)(2)(iii)(e)(1). The corresponding State rule under Florida's State implementation plan (SIP) closely tracks the Federal rule. You request the repeal because you believe the exemption is no longer relevant, has outlived its usefulness, and is now being used, contrary to its original intent, to justify the burning of waste fuels by certain sources. You are also concerned that as a result of deregulation, electric utilities will have a big incentive to burn waste and dirty fuels that are cheaper than normal fuels. Although we understand your concerns and support the denial of the PSD exemption in the Florida Power Company (FPC) case described below, EPA currently has no plans to propose any changes to the regulatory exemption. However, as discussed below, EPA intends to review implementation of the exemption and issue guidance as needed to clarify the intent of the exemption.

In support of your request, you refer to a recent request by the FPC to the Florida Department of Environmental Protection (FDEP) for permission to blend petroleum coke with the coal burned at Crystal River units 1 and 2. Your letter also states that as a result of the fuel blending the sulfur dioxide emissions from the units would increase by approximately 9400 tons per year without undergoing a PSD review. The FPC asserts that the PSD regulations exempt the burning of petroleum coke in the units since the State and EPA rules both exempt the "Use of an alternative fuel or raw material which the facility was capable of accommodating before January 6, 1975 ...." In June 1996 the FDEP denied the FPC's request to blend petroleum coke. The EPA Region IV office supported the denial agreeing that the project should not be exempt from PSD. However, the FPC appealed the denial using the State's administrative appeals process and received a reversal of the denial from an Administrative Law Judge. Despite the Administrative Law Judge's initial finding, we understand that the denial has been remanded by the FDEP back to the Administrative Law Judge for further review.

We share your concerns about the use of the PSD exemption in the FPC case. Although EPA believes the PSD exemption was not intended to be used in the FPC situation, the exemption is still appropriate to allow sources to switch between fuels that would have otherwise been available to the source prior to January 6, 1975 and were otherwise considered in the design of the source. The EPA believes that since petroleum coke was not a recognized fuel prior to January 6, 1975, it should not otherwise come under the exemption. The EPA does not believe that regulatory changes to the exemption are needed at this time based solely on the FPC case. Because we share many of your concerns, the EPA's Office of Enforcement and Compliance Assurance (OECA) has agreed to review implementation of the exemption by EPA and the States. After reviewing the situation, EPA may issue guidance that further clarifies the intent of the exemption.

You may contact Carol Holmes of OECA at (202) 564-8709 for questions about the EPA's review of the exemption. If you have any general questions about the response, you may contact Mike Sewell of the Integrated Implementation Group at (919) 541-0873.

I appreciate this opportunity to be of service and trust that this information will be helpful to you.

Sincerely,

/s/ Henry Thomas for

John S. Seitz
Director
Office of Air Quality Planning
and Standards

Department of
Environmental Protection
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Lawton Chiles
Governor

Virginia B. Wetherell
Secretary

Mr. John Seitz, Director,
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
Research Triangle Park, North Carolina 27711

Re: Request to Repeal Alternative Fuel PSD Exemption

Dear Mr. Seitz:

The Florida Department of Environmental Protection (FDEP) requests that EPA repeal an exemption to its rules for the Prevention of Significant Deterioration of Air Quality (PSD) found at 40 CFR 52.21(b)(2)(iii)(e)(I). The rule exempts from PSD review "Use of an alternative fuel or raw material which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166;..." The corresponding State rule under our approved State Implementation Plan (SIP) closely tracks the federal rule. We recommend repeal of the alternative fuel part of the exemption, but not necessarily the raw material portion.

In a recent case, FDEP initially denied a permit to Florida Power Corporation (FPC) to add 5 percent petroleum coke with a sulfur dioxide emission potential of 6.57 pounds per million Btu heat input (lb S02/mmBtu) to the coal burned at two units at its Crystal River facility. The S02 limit for these units is 2.1 lb/mmBtu. In recent years, the units have emitted an average of 1.6 lb/mmBtu while burning coal. The Department determined that PSD applied to this change in method of operation because S02 emissions would increase, per FPC's estimate, by approximately 9400 tons per year (TPY) due to the potent sulfur characteristics of the petroleum coke to be blended with the contract coal.

FPC claimed the subject exemption from PSD contending that it could have fired a 95 percent coal/ 5 percent petroleum coke blend prior to 1975. However the FDEP determined that it did not apply because the facility was not burning coal (let alone a coal/petroleum coke blend) on January 6, 1975 and were not able to do so until several years after being ordered in mid- 1975 to switch (back) to coal by the Federal Energy Administration. Major expenditures were involved to return the units to their coal firing capability in the late 1970's. Additionally the FDEP determined that the action of adding 5 percent petroleum coke was not actually a switch to an alternative fuel such that the exemption could be considered. Furthermore the FDEP determined that such a fuel use did not fit the purpose of the original exemption as described in the modification definition given in the original New Source Performance Standards (NSPS) issued in 1971 and with which the PSD rules must ultimately comport per the 1977 Clean Air Act.

The subject exemption first appeared in a 1971 NSPS rule (Federal Register, Vol. 36, No. 247 at page 24877). The EPA stated that the definition of modification was clarified to exclude "fuel switches if the equipment was originally designed to accommodate such fuels." The justification given for the exemption was to "eliminate inequities where equipment had been put into partial operation prior to the proposal of the standards." In the litigation with FPC, the Department claimed that FPC failed to demonstrate the use

of petroleum coke as a fuel was designed into the source (i.e., the construction plans and specifications did not contemplate the use of petroleum coke as a fuel). It necessarily follows that there is no equity consideration in FPC's proposed project because FPC is already able to make full use of its equipment by firing coal as originally intended. The FPC proposal to add 5 percent petroleum coke is not eligible for exemption as a "fuel switch" as discussed in the NSPS. The action is not a switch from one fuel to another, but rather the addition of small amounts of a waste fuel with potent sulfur concentrations to an approved fuel. This change in operation clearly fits within the definition of a modification.

The FDEP's position was fully supported by EPA Region IV's letters dated February 14 and June 2, 1997. EPA also commented on the absurdity that coal and minor amounts of any waste fuel, additive, or modifier might be considered an alternative fuel for the purposes of the subject exemption. A hearing was held this past June. The Administrative Law Judge ruled that the plain reading of the rule seems to support FPC's interpretation. FDEP's interpretation and analyses are consistent with memoranda, original preambles, and other EPA interpretations of the exemption. The judge agreed with FPC's claim that Region IV had misapprehended the facts in formulating its opinion.

The implications of the judge's decision are that PSD and NSPS-exempt facilities (grandfathered facilities) can blend wastes and dirty fuels they never intended to use into their regular fuel through a provision which was intended only to allow them to realize design capacity. These FPC units already operated at design capacity in terms of the fuels they were previously permitted to bum (coal, oil, and gas). The result is that substantial emissions increases from such grandfathered units can occur with relative ease. FDEP believes this is clearly an unintended consequence of a well-meaning rule.

At this time of electrical deregulation, utilities have a big incentive to add cheaper and dirtier fuels and wastes to their normal fuels. In this state the grandfathered units are now starting to compete in the waste fuel market with facilities that were specifically designed to bum such dirty fuels in a responsible manner. These grandfathered units have an advantage over cleaner, scrubber-equipped, electric units which have been required by FDEP to abate emission increases resulting from burning petroleum coke or be (re)subjected to PSD review.

FDEP recommends repeal of the alternative fuel exemption portion of the rule. It has outlived its expected useful lifetime just as many of the sources seeking to use it have outlived their intended useful lifetimes. Twenty-six (26) years have passed since the NSPS fuel exemption was promulgated while 23 years have passed since the PSD version of the exemption was promulgated. It is reasonable to assume that any facility built prior to the passage of the rule and needing it to make use of its full design capacity has already done so. Until the rule is repealed, we recommend that E!,!, clarify the intent of both versions of the rule to insure that they are applied only to fuel switches clearly contemplated and specified during original design. The exemptions should be very narrow in view of their absence from the CAA.

Our contacts at Region IV were Brian Beals and Gregg Worley at 404/562-9098 and 562-9141 respectively. They were extremely helpful during our evaluation of this case and can provide you with some of the details and implications from their perspective. If you have any questions, please call me at 850/488-0114

Sincerely

Howard L. Rhodes, Director
Division of Air Resources Management

cc: Mr. Winston Smith, EPA Region IV

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

January 21, 1998

Ms. Sandra V. Silva
Chief, Air Quality Branch
Fish and Wildlife Service
United States Department of the Interior
Washington, D.C. 20240

Dear Ms. Silva:

This is in response to your November 26, 1997 letter requesting that the Environmental Protection Agency (EPA) repeal the alternative fuels exemption in the prevention of significant deterioration (PSD) regulations at 40 CFR 52.21(b)(2)(iii)(e)(1). You request the repeal because you believe the exemption is no longer relevant, has outlived its usefulness, and is now being used, contrary to its original intent, to justify the burning of waste fuels by certain sources. You suggest that a repeal be part of the upcoming rulemaking on new source review (NSR) regulations for transitional areas under the new 8-hour ozone standard. Although we understand your concerns and support the denial of the PSD exemption in the Florida Power Company (FPC) case described below, EPA does not plan to propose any changes to the exemption in the upcoming NSR rulemaking for transitional areas. However, as discussed below, EPA intends to review implementation of the exemption and issue guidance as needed to clarify the intent of the exemption.

In support of your request, you referred to a recent request by the FPC to the Florida Department of Environmental Protection (FDEP) for permission to blend petroleum coke with the coal burned at Crystal River units 1 and 2. Your letter states that as a result of the fuel blending the sulfur dioxide emissions from the units would increase by approximately 9400 tons per year without undergoing a PSD review. The FPC asserts that the PSD regulations exempt the burning of petroleum coke in the units since the State and EPA rules both exempt the "Use of an alternative fuel or raw material which the facility was capable of accommodating before January 6, 1975 ...." In June 1996 the FDEP denied the FPC's request to blend petroleum coke. The EPA Region IV office supported the denial agreeing that the project should not be exempt from PSD. However, the FPC appealed the denial using the State's administrative appeals process and received a reversal of the denial from an Administrative Law Judge. Despite the Administrative Law Judge's initial finding, we understand that the denial has been remanded by the FDEP back to the Administrative Law Judge for further review.

We share your concerns about the use of the PSD exemption in the FPC case. Although EPA believes the PSD exemption was not intended to be used in the FPC situation, the exemption is still appropriate to allow sources to switch between fuels that would have otherwise been available prior to January 6, 1975 to the source and were otherwise considered in the design of the source. The EPA believes that since petroleum coke was not a recognized fuel prior to January 6, 1975, it would not otherwise come under the exemption. The EPA does not believe that regulatory changes to the exemption are needed at this time based solely on the FPC case. Because we share many of your concerns, EPA's Office of Enforcement and Compliance Assurance (OECA) has agreed to review implementation of the exemption by EPA and the States. After reviewing the situation, EPA may issue guidance that further clarifies the intent of the exemption.

You may contact Carol Holmes of OECA at (202) 564-8709 for questions about the EPA's review of the exemption. If you have any general questions about this response, you may contact Mike Sewell of the Integrated Implementation Group at (919) 541-0873.

I appreciate this opportunity to be of service and trust that this information will be helpful to you.

Sincerely,

/s/ Henry Thomas for

John S. Seitz
Director
Office of Air Quality Planning
and Standards

United States Department of the Interior

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240

**ADDRESS ONLY THE DIRECTOR,
MM AND WILDLIFE SERVICE**

November 26, 1997

Dear. John Seitz
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency
Mail Drop 10
Research Triangle Park, North Carolina 27711

Dear Mr. Seitz:

The U. S. Fish and Wildlife Service (FWS) requests that EPA repeal the alternative fuel exemption of the Prevention of Significant Deterioration (PSD) regulations at 40 CFR 52.21(b)(2)(iii)(e)(1). We suggest that this be accomplished through the transitional New Source Review reform regulations, which we understand will be out for review shortly. FWS believes that the alternative fuel exemption rule, promulgated in the 1970's, is no longer relevant and has outlived its usefulness. In fact, the rule is now being used, contrary to its original intent, to justify the burning of waste fuels by certain sources. For example, the Florida Power Company (FPC) has recently requested the alternative fuels exemption for FPC's permit application to blend 5 percent petroleum coke with the coal burned in its Crystal River Units I and 2. In usual circumstances, this fuel change would trigger PSD review because sulfur dioxide emissions would increase by approximately 9400 tons per year. However, FPC. asserts that a rule in Florida's State Implementation Plan exempts from PSD review the "Use of an alternative fuel or raw material which the facility was capable of accommodating before January 6, 1975,..." Florida's rule tracks the EPA rule (referenced above).

The Florida Department of Environmental Protection denied FPC's request in June 1996. EPA Region IV supported FDEP's decision in letters of February 1996 and June 1996, agreeing that the project should not be exempt from PSD review. EPA Region IV noted that petroleum coke is considered a waste product, not a fossil fuel, and adding it to coal does not make the blend an "alternative fuel." However, FPC subsequently petitioned for a Formal Administrative Hearing and, as a result of that hearing, an Administrative Law Judge ruled in favor of FPC. Apparently, the judge believed that a plain reading of the exemption rule allowed FPC's interpretation, whereas FDEP's interpretation depended on analyses of memoranda, original preambles, and interpretations of intent.

We are very concerned that the judge's decision set a precedent for "grandfathered" facilities to blend waste fuels with their present fuels through the use of this exemption rule. As a result, substantial emissions increases will occur without PSD review, clearly an unintended consequence of the rule.

FWS believes that the alternative fuels exemption rule should be repealed to prevent similar misapplications. As you know, the rule is not mentioned in the Clean Air Act (or subsequent amendments), but first appeared in a 1971 NSPS rule. The rule was incorporated in the PSD regulations in 1974. Over 20 years have passed since the rule was promulgated, and it is reasonable to assume that any facility built prior to the passage of the PSD rule and needing the exemption to make use of their full design has already done so. Until the rule is repealed, we recommend that EPA clarify the intent of the rule to insure that it is only applied to fuel switches clearly contemplated and specified during original design. The exemptions should be very narrow in view of their absence from the Clean Air Act.

Please inform us of your decision in this matter. If you have questions, please call me (303-969-2814) or Ellen Porter (303-969-2617) at our Air Quality Branch.

Sincerely,

Sandra V. Silva
Chief Air Quality Branch

cc: Mr. John Harkinson, Jr.
Regional Director
U.S. EPA, Region 4
100 Alabama St., SW
Atlanta, Georgia 30303

Mr. Doug Neeley, Chief
Air and Radiation Branch
U.S. EPA, Region 4
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Ms. Virginia Wetherell, Secretary
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Mr. Howard Rhodes
Chief, Division of Air Resources Management
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Mr. Clair Fancy
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