UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:	)	
	)	**Notice of Violation**
Tampa Electric Company	)	
	)	EPA-CAA-2000-04-0007
Big Bend and Gannon Stations	)	
	)	
Proceedings Pursuant to Section 113(a)(1) of the Clean Air Act, 42 U.S.C. §7413(a)(1)	)	

NOTICE OF VIOLATION

This Notice of Violation ("NOV") is issued to the Tampa Electric Company ("TECO") for violations of the Clean Air Act ("Act") at the coal-fired power plants identified below. TECO has embarked on a program of modifications intended to extend the useful life, regain lost generating capacity, and/or increase capacity at their coal-fired power plants.

Commencing at various times since 1977 and continuing to today, TECO has modified and operated the coal-fired power plants identified below without obtaining New Source Review ("NSR") permits authorizing the construction and operation of physical modifications of its boiler units as required by the Act. In addition, for each physical modification at these power plants, TECO has operated these modifications without installing pollution control equipment required by the Act. These violations of the Act and the State Implementation Plan ("SIP") of Florida have resulted in the release of massive amounts of Sulfur Dioxides ("SO_2"), Nitrogen Oxides ("NO_x"), and particulate matter ("PM") into the environment. Until these violations are corrected, TECO will continue to release massive amounts of illegal SO_2, NOx, and PM into the environment.

This NOV is issued pursuant to Section 113(a)(1) of the Act, as amended, 42 U.S.C.A. Sections 7401-7671q. Section 113(a) of the Act requires the Administrator of the United States Environmental Protection Agency ("EPA") to notify any person in violation of a state implementation plan or permit of the violations. The authority to issue this NOV has been delegated to the Regional Administrator for EPA Region 4 and further redelegated to the Director of the Air, Pesticides and Toxics Management Division for EPA, Region 4.

STATUTORY AND REGULATORY BACKGROUND

1. When the Clean Air Act was passed in 1970, Congress exempted existing facilities from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained in Alabama Power v. Costle, 636 F.2d 323 (D.C. Cir. 1979), "the statutory scheme intends to 'grandfather' existing industries; but...this is not to constitute a perpetual immunity from all standards under the PSD program." Rather, the Act requires grandfathered facilities to install modern pollution control devices whenever the unit is proposed to be modified in such a way that its emissions may increase.

2. The NSR provisions of Parts C and D of Title I of the Act require preconstruction review and permitting for modifications of stationary sources. Pursuant to applicable regulations, if a major stationary source is planning upon making a major modification, then that source must obtain either a PSD permit or a nonattainment NSR permit, depending on whether the source is located in an attainment or a nonattainment area for the pollutant being increased above the significance level. If a major stationary source is planning on making a modification that is not major, it must obtain a general or "minor" NSR permit regardless of its location. To obtain the required permit, the source must agree to put on the best available control technology ("BACT") for an attainment pollutant or achieve the lowest achievable emission rate ("LAER") in a nonattainment area, or, in the case of a modification that is not major, must meet the emission limit called for under the applicable minor NSR program.

3. Pursuant to Part C of the Act, the Florida SIP requires that no construction or operation of a major modification of a major stationary source occur in an area designated as attainment without first obtaining a permit under 40 CFR Section 52.21 and the current Florida SIP Rule 62-212.400, Florida Administrative Code (F.A.C.). The PSD portion of the Florida SIP was originally approved by EPA on November 22, 1983 at 48 Fed. Reg. 52716, and amendments were later approved by EPA on October 20, 1994 at 59 Fed. Reg. 52916, and on January 11, 1995 at 60 Fed. Reg. 2688. No SIP-approval for PSD has been given to the State of Florida for power plants which are also subject to the Florida Power Plant Siting Act (PPSA). Rather, Florida has a fully delegated PSD program with respect to power plants subject

to the PPSA. Florida implements this delegation under 40 C.F.R. Section 52.21, whose provisions are incorporated by reference into the Florida SIP pursuant to 40 C.F.R. Section 52.530.

4. Pursuant to Part D of the Act, the Florida SIP requires that no construction or operation of a major modification of a major stationary source occur in an area designated as nonattainment without first obtaining a permit under 40 CFR Section 52.24 and the current Florida SIP Rule 62-212.500, F.A.C., as approved on November 22, 1983 at 48 Fed. Reg. 52716, and amended on October 20, 1994 at 59 Fed. Reg. 52916.

5. The Florida SIP Rule 62-212.300, F.A.C., provides that no emission unit or source subject to that rule shall be constructed without obtaining an air construction permit that meets the requirement of that rule. This rule was approved as part of the Florida SIP on October 20, 1994, at 59 Fed. Reg. 52916.

6. The SIP provisions identified in paragraphs 3, 4, and 5 above are all federally enforceable pursuant to Sections 110 and 113 of the Act.

FACTUAL BACKGROUND

7. TECO operates the Gannon Station, a fossil fuel-fired electric utility steam generating plant located at Port Sutton Road in Hillsborough County, Tampa, Florida. The plant consists of 6 boiler units with a total generating capacity of 1215 megawatts in 1998 and began operations in 1957.

8. TECO operates the Big Bend Station, a fossil fuel-fired electric utility steam generating plant located at Big Bend Station, Hillsborough County, Tampa, Florida 33619. The plant consists of 4 boiler units with a total generating capacity of 1795 megawatts in 1998 and began operations in 1971.

9. The Gannon and Big Bend Stations are both located in an area that has the following attainment/nonattainment classifications from 1980 to the present:

> For NO_2, the area has been classified as attainment from 1980 to the present.

For SO_2, the area has been classified as attainment from 1980 to the present.

For PM, the area was classified as nonattainment from 1980 to April 2, 1990, for total suspended particulate matter. The area has been designated as attainment since April 2, 1990.

For ozone, the area has been classified as nonattainment until February 5, 1996 and attainment since that date.

10. Each of the plants identified in paragraphs 7 and 8 above emits or has the potential to emit at least 100 tons per year of NOx, SO_2 and/or PM and is a stationary source under the Act.

VIOLATIONS

A. Gannon Station

11. On numerous occasions between 1979 and the date of this Notice, TECO has made "modifications" of the Gannon Station as defined by both 40 CFR Section 52.21 and Florida SIP Rules 62-210.200 and 62-212.400, F.A.C. These modifications included, but are not limited to, the following individual modifications or projects: replacement of the furnace floor of Unit 3 in 1996; replacement of the cyclone burners of Unit 4 in 1994; and replacement of the 2nd radiant superheater of Unit 6 in 1992.

12. For each of the modifications that occurred at the Gannon Station, TECO did not obtain a PSD permit pursuant to 40 CFR Section 52.21 and Florida SIP Rule 62-212.400, F.A.C.; a nonattainment NSR permit pursuant to 40 CFR Section 52.24 and Rule 62-212.400, F.A.C.; nor a minor source permit pursuant to Rule 62-212.300, F.A.C. In addition, for modifications after 1992, no information was provided to the permitting agency of actual emissions after the modification in accordance with 40 CFR Section 52.21(b)(21)(v) and Rule 62-210.200(12)(d), F.A.C.

13. None of the modifications fall within the "routine maintenance, repair and replacement" exemption found at 40 CFR Section 52.21(b)(2)(iii)(a) and Florida SIP Rule 62-210.200(183)(a)1.a., F.A.C. Each of these changes was an expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a

boiler component with a long useful life. In each instance, the change was performed to increase capacity, regain lost capacity, and/or extend the life of the unit. In many instances, the original component was replaced with a component that was substantially redesigned in a manner that increased emissions. That the "routine maintenance, repair and replacement" exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld by the court of appeals in 1990. Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

14. None of these modifications fall within the "increase in hours of operation or in the production rate" exemption found at 40 CFR § 52.21(b)(2)(iii)(f), or Florida regulation 62-210.200(183)(a)2., F.A.C. This exemption is limited to stand-alone increases in operating hours or production rates, not where such increases follow or are otherwise linked to construction activity. That the hours of operation/rates of production exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld twice by the court of appeals, in 1989 and in 1990. Puerto Rican Cement Co. v. EPA, 889 F.2D 292 (1st Cir. 1989); Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

15. None of these modifications fall within the "demand growth" exemption found at 40 CFR Section 52.21(b)(33)(ii) and Florida SIP Rule 62-210.200(12)(d), F.A.C., because for each modification a physical change was performed which resulted in the emissions increase.

16. Each of these modifications resulted in a net significant increase in emissions from Gannon Station for NO_X, SO_2 and/or PM as defined by 40 CFR Sections 52.21(b)(3) and (23) and Florida SIP Rule 62-212.400(2)(e)2., F.A.C.

17. Therefore, TECO violated and continues to violate 40 CFR Section 52.21 and Florida SIP Rule 62-212.400, F.A.C., for the prevention of significant deterioration; 40 CFR Section 52.24 and Rule 62-212.500, F.A.C., for preconstruction

review for nonattainment areas; and/or Rule 62-212.300, F.A.C., by constructing and operating modifications at the Gannon Station without the necessary permit required by the Florida SIP.

18. Each of these violations exists from the date of start of construction of the modification until the time that TECO obtains the appropriate NSR permit and operates the necessary pollution control equipment to satisfy the Florida SIP .

B. Big Bend Station

19. On numerous occasions between 1979 and the date of this Notice, TECO has made “modifications” at its Big Bend Station as defined by both 40 CFR Section 52.21 and Florida SIP Rule 62-212.400, F.A.C. These modifications included, but are not limited to, the following individual modifications or projects: replacement of steam drum internals on Units 1 and 2 in 1994 and 1991 respectively; and high temperature reheater replacement and waterwall addition for Unit 2 in 1994.

20. For each of the modifications that occurred at the Big Bend Station, TECO did not obtain a PSD permit pursuant to 40 CFR Section 52.21 and Florida SIP Rule 62-212.400, F.A.C.; a nonattainment NSR permit pursuant to 40 CFR Section 52.24 and Rule 62-212.400, F.A.C.; or a minor NSR permit pursuant to Rule 62-212.300, F.A.C. In addition, for modifications after 1992, no information was provided to the permitting agency of actual emissions after the modification as required by 40 CFR Section 52.21(b)(21)(v) and Rule 62-210.200(12)(d), F.A.C.

21. None of these modifications fall within the “routine maintenance, repair and replacement” exemption found at 40 CFR Section 52.21(b)(2)(iii)(a) and Florida SIP Rule 62-210.200(183)(a)1.a., F.A.C. Each of these changes was an expensive capital expenditure performed infrequently at the plant that constituted the replacement and/or redesign of a boiler component with a long useful life. In each instance, the change was performed to increase capacity, regain lost capacity, and/or extend the life of the unit. In many instances, the original component was replaced with a component that was substantially redesigned in a manner that increased emissions. That the “routine maintenance, repair and replacement” exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized

applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld by the court of appeals in 1990. Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

22. None of these modifications fall within the "increase in hours of operation or in the production rate" exemption found at 40 CFR § 52.21(b)(2)(iii)(f), or Florida regulation 62-210.200(183)(a)2., F.A.C. This exemption is limited to stand-alone increases in operating hours or production rates, not where such increases follow or are otherwise linked to construction activity. That the hours of operation/rates of production exemption does not apply where construction activity is at issue was known to the utility industry since at least 1988 when EPA issued a widely publicized applicability determination regarding utility modifications at a Wisconsin Electric Power Co. ("WEPCO") facility. EPA's interpretation of this exemption was upheld twice by the court of appeals, in 1989 and in 1990. Puerto Rican Cement Co. v. EPA, 889 F.2D 292 (1st Cir. 1989); Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

23. None of these modifications fall within the "demand growth" exemption found at 40 CFR Section 52.21(b)(33)(ii) and Florida SIP Rule 62-210.200(12)(d), F.A.C., because for each modification a physical change was performed which resulted in the emissions increase.

24. Each of these modifications resulted in a net significant increase in emissions from Big Bend Station for NO_X, SO_2 and/or PM as defined by 40 CFR Sections 52.21(b)(3) and (23) and Florida SIP Rule 62-212.400(2)(e)2., F.A.C.

25. Therefore, TECO violated and continues to violate 40 CFR Section 52.21 and Florida SIP Rule 62-212.400, F.A.C., for the prevention of significant deterioration; 40 CFR Section 52.24 and Rule 62-212.500, F.A.C., for preconstruction review for nonattainment areas; and/or Rule 62-212.300, F.A.C., by constructing and operating modifications at the Big Bend Station without the necessary permit required by the Florida SIP.

26. Each of these violations exists from the date of start of construction of the modification until the time that TECO obtains the appropriate NSR permit and operates the necessary pollution control equipment to satisfy the Florida

SIP.

ENFORCEMENT

Section 113(a)(1) of the Act provides that at any time after the expiration of 30 days following the date of the issuance of this NOV, the Regional Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, and/or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than $25,000 per day for each violation on or before January 30, 1997, and no more than $27,500 per day for each violation after January 30, 1997.

OPPORTUNITY FOR CONFERENCE

Respondent may, upon request, confer with EPA. The conference will enable Respondent to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. Respondent has a right to be represented by counsel. A request for a conference must be made within 10 days of receipt of this NOV, and the request for a conference or other inquiries concerning the NOV should be make in writing to:

Charles V. Mikalian
Associate Regional Counsel
Environmental Accountability Division
U.S. EPA
61 Forsyth Street, SW
Atlanta, GA 30303
404-562-9575

_____ _____

Date John H. Hankinson, Jr.
Regional Administrator
EPA, Region 4

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