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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO: 150075-EI

FILED: JUNE 23, 2015

IN RE: PETITION FOR APPROVAL OF ARRANGEMENT TO  
MITIGATE IMPACT OF UNFAVORABLE CEDAR BAY  
POWER PURCHASE OBLIGATION, BY FLORIDA POWER  
& LIGHT COMPANY,

Florida Power & Light Company  
700 Universe Blvd  
Juno Beach, FL 33408

DATE: Tuesday, June 30, 2015

TIME: 3:00 p.m. to 4:41 p.m.

DEPOSITION OF RAYBURN L. BUTTS

Taken on behalf of the Office of Public  
Counsel, before Jennifer L. Bush, RPR, Notary Public in  
and for the State of Florida at Large, pursuant to Notice  
of Taking Deposition in the above cause.

A P P E A R A N C E S

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Jacob A. Pollack, Esquire  
COGENTRIX

## I N D E X

## THE WITNESS:

RAYBURN L. BUTTS

	DIRECT	CROSS	RE-DIRECT	RE-CROSS
BY MR. TRUITT	4			
BY MR. VILLAFRATE	55			

## EXHIBITS

Exhibit	Description	Page
Exhibit 1	Memo dated 4/23/15	22
Exhibit 2	Conditions of Site Certification	27



1 WHEREUPON,

2 RAYBURN L. BUTTS,

3 called as a witness on behalf of the Office of Public  
4 Counsel, after having been first duly sworn, was examined  
5 and testified as follows:

6 MR. TRUITT: John Truitt with the Office of  
7 Public Counsel. For the record, we want to state  
8 the deposition is being taken for the reasons  
9 listed in the notice. Should any party or staff  
10 choose to move any portion of the depositions,  
11 including any attached exhibits into evidence, OPC  
12 intends to exercise any and all related provisions  
13 found in the rules of civil procedure that are  
14 applicable including objections on any available  
15 grounds as well as the right to rebut the  
16 evidence.

17 We've discussed prior to going on the  
18 record that we're going to deal with the  
19 confidential matters, if there are any, at the  
20 end. So we'll let everyone know what the  
21 resolution is when we finish. We'll go ahead and  
22 start.

23 DIRECT EXAMINATION

24 BY MR. TRUITT:

25 Q. Could you please state your name and spell

1 your last name for the record, sir?

2 A. It's Ray Butts, B-U-T-T-S.

3 Q. And the company you work for and business  
4 address?

5 A. Florida Power & Light Company, 700 Universe  
6 Boulevard, Juno Beach, Florida.

7 Q. And you prepared and caused rebuttal  
8 testimony to be filed in Docket 150075; is that correct?

9 A. Yes.

10 Q. Do you at this time have any changes to the  
11 rebuttal testimony that was filed?

12 A. No.

13 Q. Okay. And do you understand that I intend  
14 to rely on the answers you provide here today during the  
15 upcoming hearing in this docket?

16 A. Yes.

17 Q. Okay. Now, how long have you worked for  
18 your current employer?

19 A. Going on 28 years.

20 Q. And I'm correct that your current job title  
21 is Director of Environmental Services?

22 A. Yes.

23 Q. In the rebuttal testimony, you say "A  
24 Director of Environmental Services." Are there other  
25 directors?

1           A.     There are.

2           Q.     How many others?

3           A.     Let's see, there is four.   Four.

4           Q.     Okay.  And you also state in your rebuttal  
5 testimony that you're responsible for analysis, advocacy,  
6 and communication of emerging environmental issues.  Do  
7 the other directors of Environmental Services have  
8 similar responsibilities?

9           A.     No, they each have a discipline that they  
10 track.

11          Q.     Okay.  So are you the only one that covers  
12 the analysis, advocacy, and communication of emerging  
13 environmental issues?

14          A.     I'm the director that coordinates that  
15 effort.  I might use staff from those other directors,  
16 but typically I would coordinate that effort from our  
17 group along with our vice president.

18          Q.     And who is that vice president?

19          A.     Randy LaBauve.

20          Q.     Okay.  And you also state in your testimony  
21 that you manage the air and hazardous substances section  
22 of the Environmental Services Department.  What other  
23 sections are there, if any?

24          A.     Well, we also have water, water section,  
25 wildlife management section; and if you go to the other

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1 directors, we have also sustainability. There is a  
2 development group for Florida and a development group for  
3 NextEra Energy Resources under separate directors.

4 Q. Okay. So you only have air and hazardous  
5 substances; is that correct?

6 A. I do.

7 Q. Now, you state in your testimony as well in  
8 the hazardous substance section "Coordinates for  
9 mediation of hazardous substance discharges." So I want  
10 to just be clear for the record. Discharges in what  
11 form? Is that liquid discharges, discharges in the air,  
12 solids, or do you cover all hazardous discharges?

13 A. It could be hazardous discharges from that  
14 group. Typically, at least the substances group,  
15 typically from either solid waste or from liquid waste  
16 and then the air section would address the air emissions,  
17 discharges that might occur.

18 Q. Okay. Now, how many direct reports do you  
19 have?

20 A. About 13.

21 Q. Okay. And who do you direct report to?

22 A. I direct report to the vice president of  
23 Environmental Services.

24 Q. Okay. Now, have you ever been responsible  
25 for assisting and developing any regulations in the

1 environmental field?

2 A. Sir, what do you mean by assisting and  
3 developing?

4 Let me explain. I know where you're going.

5 Q. I was going off your testimony, analysis,  
6 advocacy, communication, emerging environmental issues  
7 and regulations. If you had any input in that field?

8 A. As far as comments or meeting with  
9 regulators, absolutely, yes.

10 Q. Correct. Specifically in Florida?

11 A. In Florida and throughout the US; typically  
12 federal regulations in my case.

13 Q. Okay. Any Florida specific regulations  
14 that you can recall like specific regulations you worked  
15 on or commented on?

16 A. None recently because I have others that  
17 are working on that, and I worked on the underground  
18 storage tank rule, the solid waste landfill rule, 701,  
19 petroleum cleanup standards. I worked on those several  
20 years ago. I have folks working on that now.

21 I certainly review their comments as they  
22 come through. I haven't actually been to meet with  
23 regulators on those in recent days.

24 Q. Okay. At the federal level?

25 A. At the federal level?

1 Q. Yes.

2 A. We have been working recently the Waters of  
3 the US Rule 316-B, Cooling Water Intake Rule, the clean  
4 power pool -- Clean Power Plant Rule for 111 (d) to  
5 regulate CO2 emissions from existing facilities. Those  
6 would be the top ones right now.

7 Q. Okay. Now, you said sometimes in comments  
8 you review comments that some of the people under you  
9 have written before they are forwarded on?

10 A. Yes.

11 Q. So I'm just trying to look at -- I guess  
12 I'll phrase it this way.

13 Would everything that would go out as  
14 comments on behalf of FPL go through you? I mean, it may  
15 go through other people as well, but would you get a  
16 chance to see it all as it goes?

17 A. Most of the comments do, not necessarily  
18 all of them, but most do.

19 Q. Okay. You also mentioned in your rebuttal  
20 that you've been involved in power plant citing projects.  
21 Rough count of how many you worked on?

22 MS. MONCADA: To be specific, are you  
23 talking about his time at FPL?

24 MR. TRUITT: No, because he said -- I'm  
25 specifically going off the rebuttal. He just



1           talked about 35 years of experience in the  
2           electric utility industry and had mentioned power  
3           plant siting. So I was going to ask generally,  
4           and then I was going to ask in Florida.

5       BY MR. TRUITT:

6           Q.     So this is a general question.

7           A.     Okay. Six.

8           Q.     Okay. And were any of those in Florida?

9           A.     Yes, I would say four.

10          Q.     Okay. And which ones in Florida?

11          A.     I've worked on the coal project that we've  
12       previously had. It was St. Lucie County coal project  
13       that we did not build.

14                 We worked on -- well, identification of the  
15       site for orimulsion conversion which ultimately went to  
16       our Manatee project. I have also looked at issues  
17       related to our previous west county combined cycle gas  
18       unit and have coordinated some of the efforts for  
19       property purchases and site valuation for some of our  
20       solar facilities.

21          Q.     Okay. And you mentioned a Bachelor's  
22       Degree and Master's Degree in your rebuttal testimony.  
23       Do you have any other degrees that you didn't list?

24          A.     No. Double minor in zoology but no others.

25          Q.     Okay. Do you have any professional

1 licenses other than those you mentioned in your rebuttal?

2 A. None that are active. I have the PG, but I  
3 don't keep them anymore.

4 Q. Did you ever have any disciplinary action  
5 taken against any of your professional licenses while you  
6 were working in the industry?

7 A. No.

8 Q. Now, going back to the -- your statement  
9 about analysis and advocacy of emergent issues and  
10 regulations, what qualifies you to perform those duties;  
11 but by that, I mean, did you learn it from on-the-job  
12 training, working in the industry? Are there special  
13 certifications or courses you go to for that? I'm trying  
14 to get a general idea of how you move into that.

15 A. Sure. Initially, training and activities  
16 in those fields. I started out working with solid waste  
17 and management issues for Florida Power & Light Company  
18 which led me to working with regulatory matters at the  
19 state level and some local levels. That experience.

20 My background and degree in geology with  
21 respect to groundwater management remediation of  
22 petroleum contaminated sites particularly; and then more  
23 recently, the assistance in power plants siting or power  
24 plant development gave me knowledge in air, water,  
25 wildlife issues which you have to address all of those as

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1     you're looking at this.

2                     So it's helped me to move forward and do  
3     more activities with rulemaking or legislation both at  
4     the federal level and the state level as it pertains to  
5     those.

6             Q.     Okay. So then it would be fair to  
7     characterize it as you've learned a lot of it in the  
8     industry. There is not like special classes you go to  
9     for that kind of a thing?

10            A.     You go to conferences. You give papers;  
11     but no, I have not got a certification in an issues  
12     managers. I don't think they have one.

13            Q.     I didn't think so either. I'm just trying  
14     to pin down and make sure I'm not missing something.

15                     So are you familiar with comprehensive  
16     environmental response compensation and liability  
17     commonly known as CERCLA, C-E-R-C-L-A?

18            A.     Yes.

19            Q.     How are you so familiar with it?

20            A.     Well, we're certainly aware of it within my  
21     business because you're out remediating sites as you're  
22     out purchasing sites, building sites. You obviously are  
23     on the lookout for potential liabilities that might  
24     occur.

25                     CERCLA is the Superfund program set up in

1 1980. It is designed in a way for EPA to come back to  
2 previous property owners and find someone to help pay for  
3 those cleanups that were particularly active in the 80's.  
4 You don't see too many Superfund CERCLA sites now.  
5 People are a little smarter about buying those.

6 In the past, EPA has determined who the  
7 potentially responsible parties are for those. So  
8 because that's happened in the past, FPL has had some of  
9 those. I'm familiar with them.

10 Q. Okay. Now, again, this is kind of going  
11 back to the previous question where we talked about how  
12 you learned how to do this. So I'm going to ask you,  
13 what level of understanding of CERCLA would you say you  
14 have? Working knowledge, an expert in CERCLA? How would  
15 you classify your -- I'm just asking for your opinion.

16 A. I would not be an expert in CERCLA because  
17 typically I do not clean up CERCLA sites. I have a  
18 working knowledge of what could get you to CERCLA, what  
19 CERCLA requires. We have some CERCLA sites.

20 Typically, when you find yourself in a  
21 CERCLA site, you're obviously notified. You get into the  
22 analysis determination of who the potentially responsible  
23 parties are; and in our case, those are typically  
24 handled; and in most cases, when folks are working a  
25 CERCLA site, they are handled by a committee that's made

1 up of all potentially responsible parties, and we  
2 generally have our Law Department coordinating that  
3 effort, and those committees will hire necessary  
4 consultants to assist with that cleanup.

5 Q. Okay. And then just to be clear, because I  
6 may lapse in abbreviation, PRP stands for potentially  
7 responsible party, right?

8 A. Right.

9 Q. So if I say that, that's what I meant.

10 A. Yes.

11 Q. All right. You said the Legal Department  
12 normally handles the coordination, is that what you said?

13 A. Uh-huh, yeah, and what they will do --  
14 they'll get reports. They'll get information and data,  
15 and they'll ask our group to review that; and if they  
16 come through -- I have not been working any recently. I  
17 have only had the hazardous group for a couple years.  
18 Prior to that, they were with another director, and we  
19 haven't been working any directly. Most of our sites are  
20 now in a monitoring phase or are closing out.

21 Q. Okay. Do you personally stay current on  
22 any caselaw that interprets or affects CERCLA presently?

23 A. Typically they come across. If they are  
24 EPA related, they'll come across a federal register, and  
25 I'll review that. Certainly get the summary. If I think



1 it affects us, I would review it. But deep involvement,  
2 not necessarily.

3 Q. Okay. So I just want to make sure I'm  
4 correct. Is it correct in saying that you personally  
5 will see those summaries that come across and then decide  
6 if you need to go farther?

7 A. Sure.

8 Q. Okay. I just want to make sure it was you  
9 that looks at it.

10 A. Several people will be looking at it.  
11 We'll all get the federal register every single day. So  
12 several people may be looking at that.

13 Q. Okay. And then are you familiar with  
14 Resource Conservation Recovery Act commonly known as  
15 RCRA?

16 A. Yes.

17 Q. How are you so familiar with that?

18 A. Well, RCRA covers cleanup of hazardous  
19 substances, and I started my career at FPL remediating  
20 underground storage tank leaks. That's a RCRA discharge.  
21 I'm quite familiar with those cleanups.

22 Q. Would you say you're more familiar with  
23 RCRA regulations than CERCLA regulations?

24 A. Probably so.

25 Q. Again, same type of question. What level



1 of understanding would you say you have of RCRA; expert,  
2 working knowledge?

3 A. More than working knowledge because I've  
4 done it in the past. I'm not going to go expert now  
5 because I don't do it now. I'm in management now. I  
6 have people that are experts in it that are looking at  
7 it.

8 Q. Okay. Do you stay current on caselaw that  
9 interprets RCRA?

10 A. Same thing, we review those. We have folks  
11 in -- I have a hazardous materials manager. I have a  
12 manager of that whole hazardous substances group,  
13 professional geologists. They review those particular  
14 regulation changes, potential legislation and detail.  
15 They'll attend conferences. Those are the types of  
16 regulations that we would comment on.

17 So I stay abreast on what they are working  
18 on and what we're finding are potential concerns for us.  
19 So that's how I stay up on the speed on it.

20 Q. Okay.

21 A. I'm not out cleaning up RCRA sites these  
22 days.

23 Q. Okay. And I assume you're familiar with  
24 Clean Air Act?

25 A. Yes.

1 Q. And how are you so familiar with that?

2 A. Well, along with water, waste, Clean Air  
3 Act, it all comes with working power plant siting or  
4 power plant construction, and I've become familiar with  
5 those requirements through that.

6 I also have the air section of our group,  
7 and those guys coordinate the Clean Air Act regulations  
8 that we must meet. They'll design and identify,  
9 communicate to the Power Generation Department their  
10 requirements under the Clean Air Act, and then we'll also  
11 assist in developing comments on the rules that may come  
12 forward.

13 Q. Again, same question, how would you  
14 classify your level of understanding of the Clean Air  
15 Act?

16 A. More than working knowledge, not expert.

17 Q. Okay. Last one, of course, are you  
18 familiar with Clean Water Act?

19 A. Yes.

20 Q. How so?

21 A. Same. We have water experts that are  
22 coordinating our responses to regulations. I work with  
23 them on a day-to-day basis. We'll go and provide  
24 comments and meet with regulators from Washington or  
25 Tallahassee or even in other states to NextEra Energy

1 Resource on a routine basis.

2 Q. Again, your opinion and your level of  
3 understanding of Clean Water Act?

4 A. From day-to-day workings, not the expert,  
5 but more than a working knowledge.

6 Q. Okay. Now, previously you mentioned  
7 comments on 111 (d) Clean Power Plant. And so I'm going  
8 to ask you your general level of understanding of the  
9 Clean Power Plant. What is your opinion to your level of  
10 understanding of that itself?

11 A. Quite well. I understand it very well.

12 Q. Okay. Do you stay current on developments  
13 regarding the Clean Power Plant such as the ongoing court  
14 cases and memorandum?

15 A. I do.

16 Q. Do you personally or do people report to  
17 you --

18 A. I'm working that particular issue.

19 Q. Okay.

20 A. Which is the way it works out on several of  
21 these issues whether I'm doing day-to-day work for the  
22 plants on water or waste. When it comes to managing the  
23 issue, if it's one of those that we -- we're working  
24 that's emerging an environmental issue that's important  
25 for our company, I'll be involved in a significant way,

1 and the Clean Power Plant is one of those.

2 Q. Okay. Do you have any specific duties in  
3 your position related to the Clean Power Plant?

4 A. Mine is to evaluate and assist in  
5 developing what our policy should be for the Clean Power  
6 Plant, what we think it should look like, and working to  
7 effect that as we work with regulators and industry  
8 groups, determining what is appropriate, what should be  
9 in the plan that is technically sound, that it is  
10 reasonable, that it is cost appropriate, and I consider  
11 it my responsibility to try and advocate those measures  
12 that are important to FPL to the regulators as well as  
13 industries.

14 Q. All right. Looking at your rebuttal, right  
15 -- ending of page 3 going to the top of page 4, you talk  
16 about Section 10.2 of the ground lease. I'm just going  
17 to read this.

18 "Section 10.2 of the ground lease, which  
19 addresses indemnification, states that Rocktenn will be  
20 contractually obligated to indemnify FPL for preexisting  
21 noncompliance caused by Rocktenn regardless of whether  
22 the condition was disclosed in Appendix 20.1."

23 Now, I'll say that's an accurate  
24 representation of the ground lease. I didn't want to  
25 attach the ground lease as an exhibit if we didn't need

1 to. That's why I was going to try to avoid that. I want  
2 to ask the first question. What is your definition of  
3 indemnification?

4 A. The indemnification?

5 Q. Yes.

6 A. In this particular case, it would be  
7 Rocktenn indemnifying us; thereby, stating we are not  
8 responsible for the activities and the historical  
9 contamination that exists at this facility.

10 Q. Okay. With that knowledge, Rocktenn saying  
11 you're not responsible, how --

12 A. Cedar Bay/Cogen would not be responsible.

13 Q. Okay. And then that indemnification would  
14 transfer to FPL should the petition be approved, so then  
15 FPL subsidiary would not be responsible?

16 A. Yes.

17 Q. Okay. So under that definition where you  
18 stated that Rocktenn acknowledges that Cedar Bay/Cogen or  
19 FPL petition goes through would not be responsible, how  
20 would that work if the site got listed as a Superfund  
21 site?

22 So here's the hypothetical. If the EPA or  
23 DEP came in and grabbed all the PRP's, potentially  
24 responsible parties, and then you have this ground lease,  
25 and they say this is -- there is liability here sorted



1 out amongst yourselves. How does it work from there?

2 A. First I think the premise that it's going  
3 to be a Superfund site is not a realistic probability in  
4 this case. We wouldn't even look at that. This was part  
5 of Mr. Wittliff's testimony to say that there was this  
6 risk of Superfund liability. This project has been under  
7 scrutiny by the Department of Environmental Protection  
8 for decades, prior to the 80's, long before the  
9 Cogeneration facility.

10 It has a monitoring plan that was put in  
11 place by Rocktenn. It has a monitoring plan that's  
12 required by the site certification application that  
13 addresses the existing historical contamination and  
14 monitors for any additional contamination. The state is  
15 aware of this. They know what its parameters are.  
16 They've made no indication that it would be a Superfund  
17 site. I think that's a reach to say that it would be.

18 What is the -- what is the idea that would  
19 take it to be a Superfund site at this point?

20 Q. Well, we can get to that, but we'll go  
21 to -- first we'll go to a memo.

22 Now, this is part of Florida Power & Light  
23 Company 's response for request for production request  
24 number four. Take look at that. I'll give you a copy.

25 MR. TRUITT: We'll mark this as Exhibit 1.



1 (Exhibit 1 is marked for Identification.)

2 MR. TRUITT: I will state for the record  
3 this is originally listed as confidential. Okay.

4 MR. WRIGHT: Do you have a copy?

5 MR. TRUITT: Yes.

6 MR. WRIGHT: Thank you.

7 BY MR. TRUITT:

8 Q. This is Bates stamped number as CB-15-00581  
9 through CB-15-00593. Okay.

10 Looking at the top, it's addressed to Ray  
11 Butts. Am I correct in assuming that's you, sir?

12 A. Yes.

13 Q. It's cc'd to Mark Jones. Who is Mark  
14 Jones?

15 A. Mark Jones is the manager of Hazardous  
16 Substances Section. He works for me.

17 Q. So I want to flip to page -- let's see,  
18 it's listed as page 13 of 404 which is also CB-15-00584.  
19 It's got a section number five that says, "Groundwater."  
20 Do you see where I'm at?

21 A. I'm with you.

22 Q. Okay. That section starts out talking  
23 about the Golder Phase I ESA, and it lists the  
24 pre-existing groundwater contamination for several  
25 contaminants there. And it references a March 3rd final

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1 order.

2 And then it says, I'm going to quote here,  
3 "Overall concentrations have been decreasing since the  
4 baseline sampling in 1992. The only exception is for  
5 MW-6A and MW-6B. Well numbers for MW-6A and 6B may have  
6 been transposed during the baseline sampling in December  
7 1992. If the well numbers were not transposed, then  
8 there would be increase in concentration MW-6B located  
9 adjacent to the unlined pond."

10 Okay. So going through the due diligence  
11 for this case, did you ever discover if those were  
12 transposed or not?

13 A. We have discussed that with the folks at  
14 Cedar Bay with their environmental manager, and they have  
15 not been able to determine if it is clearly a situation  
16 where it was transposed; but if you look at the samples  
17 themselves, they must have been transposed, so the idea  
18 is that you need to look at the trend over time, and what  
19 we're not seeing is a continued uptick in that trend.

20 Q. Have there been --

21 A. It is likely that they were transposed.

22 Q. Have there been any conversations with DEP  
23 to get the record corrected for the baseline sampling  
24 that you're aware of?

25 A. Not to my knowledge. I have not. We

1 certainly have not done that.

2 Q. Okay. If the petition, as proposed or  
3 approved, and FPL's subsidiary takes possession of this,  
4 would FPL go to DEP to correct that to make sure they  
5 didn't have liability going forward?

6 A. We would certainly investigate it further.

7 Q. Okay. So we can say that's not going to be  
8 resolved by the time the commission would vote on this,  
9 would that be an accurate statement?

10 A. I don't know.

11 Q. Okay. I guess I'll put it this way. Is --  
12 whether that's corrected or not does not change FPL's  
13 position on the current petition as it stands before the  
14 commission?

15 A. No, the issues with those wells, you're  
16 looking at aluminium and iron. The tendency there - this  
17 is the same situation we had with monitoring wells 2A and  
18 2B. You have aluminium and iron that have changes that  
19 -- from sampling event to sampling event which is pretty  
20 typical for the area. You have some variation not  
21 uncommon in the case of aluminium iron because they are  
22 so reactive. They are the third aluminium and the fourth  
23 iron most common metals found in the ground and the  
24 groundwater throughout the country.

25 So it's not unusual to find them. It is

1 not unusual to see these variations in trend.

2 Q. So I am going to circle back to the  
3 question before this, and let's again assume the  
4 hypothetical.

5 Say it is not even a Superfund. Say there  
6 is some issue of liability. It's a lawsuit filed by a  
7 neighboring party under whichever law, and there could be  
8 different ones.

9 The indemnification provision, so I'm  
10 saying FPL gets pulled into court and Cedar Bay was  
11 there, and Rocktenn gets pulled into court. What is your  
12 understanding of how the indemnification provision will  
13 work to remove FPL's liability?

14 Again, I'm talking about a hypothetical. I  
15 just need to know your understanding how this would  
16 happen?

17 A. The historical contamination would be the  
18 responsibility of Rocktenn to clean up and manage.

19 Q. And is -- I guess is it FPL's position that  
20 you rely on this term in the lease to excuse you from any  
21 liability?

22 MS. MONCADA: I'm going to object to the  
23 extent it calls for a legal conclusion.

24 BY MR. TRUITT:

25 Q. Okay. I can rephrase slightly.

1                   Is it your understanding that the provision  
2                   in this would automatically operate to release FPL?

3                   A.     It is my understanding that if it is  
4                   historical contamination, that Rocktenn has the  
5                   requirement to clean up that contamination if, in fact,  
6                   it is required.

7                   Q.     Okay. Has FPL ever received any assurances  
8                   from any environmental regulators that there will not be  
9                   any CERCLA issues with this site?

10                  A.     I certainly don't have --

11                  Q.     I mean, liabilities. I won't say issues.  
12                  I'll say CERCLA liabilities with this site.

13                  A.     Any liabilities? We have statements from  
14                  DEP that are part of the site certification that identify  
15                  the fact that the historical contamination belongs to  
16                  Rocktenn, and they also have established this monitoring  
17                  program for Cedar Bay that identifies the fact that they  
18                  have a baseline that they're measuring against. They  
19                  specifically go into this in the site certification, and  
20                  that Cedar Bay's background levels are not tied to the  
21                  background levels that are listed as the cleanup levels  
22                  for DEP's constituents that are here, but they are  
23                  actually tied to what that baseline level is that is set  
24                  by the historical contamination. To us, that's pretty  
25                  much basically saying you're not responsible for this

1       contamination that is going -- that is as a result of  
2       Rocktenn or its predecessors.

3               Q.     Okay. We'll go to that certification. So  
4       I'm assuming you've seen this, but I'll hand it out.

5               MR. TRUITT: This is the conditions of site  
6       certification. I'll mark this as Exhibit 2.

7               (Exhibit 2 is marked for Identification.)

8       BY MR. TRUITT:

9               Q.     The modification final order is attached at  
10      the end. Now, you discussed this on page 8 of your  
11      rebuttal. You state starting on line 7, "In fact, as  
12      part of this certification, the State of Florida  
13      explicitly recognized that the lessee was not liable for  
14      preexisting historic groundwater impacts."

15              So I'd like to ask you, what is your  
16      definition of liable?

17              A.     Read it again.

18              MS. MONCADA: Let him get to the page. Do  
19      you mind if I flip it to the page for him?

20              MR. TRUITT: That's fine. I was talking  
21      about his rebuttal testimony first.

22              THE WITNESS: I just want to make sure I'm  
23      on this page. Give me a moment here. Okay.

24      BY MR. TRUITT:

25              Q.     Now, in your rebuttal, you had stated on



1 line 7 of page 8 in your rebuttal, right before you  
2 quoted from the site certification you stated, "In fact,  
3 as part of this certification, the State of Florida  
4 explicitly recognized the lessee was not liable for  
5 preexisting historic groundwater impact." So my question  
6 is, what is your definition of liable?

7 A. We do not have the liability for that  
8 contamination; and thus, would not have the liability for  
9 any cleanup associated with that contamination.

10 Q. Okay. Now, since you're looking at what  
11 we've marked here as Exhibit 2 today which is the  
12 certification and then the final order including the  
13 modifications, you quote a section in your rebuttal  
14 testimony, and that appears to be what they have in the  
15 top-left corner of the page PA88-24I final order  
16 March 3rd, 2010, page 2.

17 A. Okay.

18 Q. It appears to be the section you quoted on  
19 this page; is that correct?

20 A. Where?

21 MS. MONCADA: Here. (Indicating.)

22 THE WITNESS: Yes.

23 BY MR. TRUITT:

24 Q. Okay. Now, looking at this, they mention a  
25 Rule 62-520 F.A.C. which is a rule in the Florida

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1 Administrative Code, correct?

2 A. That's correct.

3 Q. And it appears to be that this is stating  
4 that they're exempting the lessee on this site from a  
5 certain Florida rule regarding water concentration  
6 standards; is that correct?

7 A. That is correct.

8 Q. Okay. So in your knowledge of CERCLA, is  
9 CERCLA a strict liability statute?

10 A. Yes.

11 Q. What's your understanding of strict  
12 liability?

13 A. Those who are potentially responsible  
14 parties are liable.

15 Q. Okay.

16 A. For contamination or may be liable in the  
17 sense that EPA may look at what their percentage of  
18 liability may be.

19 Q. Okay. Does the exemption that you've cited  
20 in your rebuttal that's listed in this certification  
21 reference CERCLA in any way?

22 A. It does not.

23 Q. Okay. So is it your belief that this  
24 certification also makes you un-lia-ble under CERCLA's  
25 strict liability scheme?

**DECLASSIFIED**

1           A.    Well, DEP's requirements for groundwater  
2 limits are going to be equivalent to those of EPA's.  
3 They can't be less stringent. They can be more  
4 stringent; and in some cases, they are, but they are not  
5 going to be less stringent.

6                   So in the case of CERCLA, EPA is going to  
7 be looking at what are the limits. What are the exceeded  
8 limits. What are the health risks.

9                   So I don't see that this is any different  
10 because this is referencing limits that are in state rule  
11 that have to be equivalent to that of EPA's.

12           Q.    So by limits, you mean the actual  
13 concentration of the contaminate in the substance is what  
14 we're talking about?

15           A.    Yes.

16           Q.    Okay. Does the Florida rule alter or  
17 create a different scheme of liability than CERCLA does  
18 at the federal level?

19           A.    It would -- it would not if EPA came in to  
20 over file on DEP and determine that this were a Superfund  
21 site. But clearly they have no indication in the couple  
22 of decades that this project has been there that they  
23 intend to do that, you know, quite a bit of time even  
24 before this project.

25                   It's been determined by DEP that they know

1 the contamination is there. They have not sought  
2 assistance from EPA. EPA has not come after this site.  
3 DEP gets monitoring data on it on a regular basis, and  
4 they've had no indication that it would be an addition to  
5 the Florida Superfund site.

6 Q. Okay. Now, have you -- I'll ask this  
7 question first. This might logically flow.

8 Historically, in your experience, can you  
9 name the last three CERCLA-related projects on which you  
10 worked?

11 A. Superfund projects that I've worked on?

12 Q. Yes.

13 A. That I've personally dealt with data? It  
14 would be -- it's been a long time. It would be the  
15 Pepper Steel project and probably a Wingate landfill, and  
16 I'm not even sure that I worked on the third in Florida.  
17 We have had others doing it.

18 Q. Okay. So Pepper Steel is located where?

19 A. Miami.

20 Q. And Wingate landfill is...

21 A. Broward County.

22 Q. Okay. Now, in either one of those  
23 Superfund projects, did any company attempt to use some  
24 kind of indemnification provision to project itself from  
25 environmental liability?

**DECLASSIFIED**

1           A.     I wasn't around when that was determined,  
2     no. I was doing technical work at that time. I was the  
3     expert on it at that time on the technical pieces.

4           Q.     Okay. You said you stayed current on  
5     CERCLA and things like that. Are you aware of any CERCLA  
6     Superfund site cases that you haven't worked on where  
7     indemnification provisions have come up or been an issue  
8     where a company attempted to use them?

9           A.     I'm not. The indemnification option is not  
10    necessarily a way out of CERCLA. I'm aware of that. The  
11    question then becomes, in the case of EPA, when they are  
12    determining potentially responsible parties, who was  
13    there, who is responsible for contamination, and what  
14    level of contamination were they responsible for.

15                EPA has shown, particularly in recent  
16    years, that they are willing to -- and in particular, for  
17    lessees. They have looked at lessees and realized that  
18    if they don't, I'll say, cut some slack to them as far as  
19    pulling everyone into the fray when they are looking for  
20    potentially responsible parties, no one is going to go  
21    out and lease and use a Brownfield site. This is a big  
22    deal with EPA. They want Brownfield sites to be  
23    utilized.

24                As a result of that, they have decided that  
25    they have established guidance from 2012. They have new



1 guidance out that allows lessees to have greater  
2 opportunity to use those sites without taking on  
3 additional liability, as well as those who might purchase  
4 those Brownfield sites.

5 As long as they've done their due diligence  
6 and made sure that they are not adding to the  
7 contamination in the case where there is cleanup going on  
8 at these facilities, they do not prevent any of those  
9 cleanup activities from occurring.

10 Q. Okay. So in the guidance, you mentioned  
11 they said that due diligence is one of the requirements.  
12 What's your understanding of what that due diligence has  
13 to be?

14 A. Due diligence is to look at the site and  
15 determine if there are liabilities that could apply to  
16 your facility, determine what your risks are, look at  
17 government records, talk to the people that are at the  
18 site now, make sure that there have not been discharges.  
19 If there were discharges, have those been cleaned up.

20 I think it's that baseline of monitoring  
21 data similar to what we've done in our due diligence at  
22 this facility.

23 Q. Now, in this one you mentioned in your  
24 rebuttal testimony that - I'm looking on page 5 - you  
25 say, "The site visit was conducted by a Florida



1 registered professional geologist, a registered  
2 professional engineer, and a certified environmental  
3 auditor hazardous manager."

4 A. Correct.

5 Q. So my first question is, is that three  
6 different people or is it one guy that had several  
7 titles?

8 A. That's three different people.

9 Q. Okay.

10 A. But that's a good question.

11 Q. Well, who were these people?

12 A. Names, you want their names?

13 Q. Well, first, are they FPL employees?

14 A. They are.

15 Q. All three are?

16 A. All three are. We typically have a staff  
17 of professionals that's capable of performing this type  
18 of assessment. We purchase and sell many sites. As  
19 NextEra Energy, we're out in 26 different states and  
20 parts of Canada, so we look at many sites and  
21 particularly here in Florida. We have these folks that  
22 can drive to most of them. So we send them ourselves.

23 Q. So you mentioned NextEra. I just want to  
24 be clear. They are specifically FPL employees?

25 A. These are FPL employees.

1 Q. Okay. Do you know all three of their  
2 names?

3 A. They work for me. Oh, yes, sir.

4 Q. Who are they?

5 A. Yes. Geologist is Pat Maher, M-A-H-E-R,  
6 and then the engineer is Ed Priest; and hazardous  
7 materials manager is Tommy Tuttle.

8 Q. Okay. What is a certified environmental  
9 hazardous materials manager; and by that question, I  
10 mean, how do you obtain that certification? What does  
11 that involve?

12 A. You go to training, and there is an  
13 organization. I don't even know the name of it right  
14 now, but they do certify hazardous materials managers  
15 just as they certify auditors. He has both of those  
16 certifications.

17 Q. Is there a certain degree you need to have  
18 to do that or is that a separate course --

19 A. It's a separate course from the degree.

20 Q. Okay. And you also mentioned your rebuttal  
21 of 20 million dollar insurance policy for environmental  
22 liabilities?

23 A. Uh-huh.

24 Q. Do you know how much that policy costs per  
25 year?

**DECLASSIFIED**

1 A. I do not.

2 Q. Do you know what environmental liabilities  
3 are excluded from that policy?

4 A. I do not.

5 Q. Okay. Did you personally review that  
6 policy?

7 A. No. My understanding of the policy is it  
8 covers our environmental liabilities at the site present,  
9 future, and past.

10 Q. Did anybody under you and your team review  
11 that policy?

12 A. No.

13 Q. So you just stated your understanding was  
14 that it covers liabilities from present, future, and  
15 past?

16 A. Uh-huh.

17 Q. Another department informed you of that?

18 A. Uh-huh.

19 Q. How were you informed of that?

20 A. I was told that.

21 Q. Okay. Do you know if either -- I'll just  
22 ask you this. Was it either Mr. Barrett, Mr. Hartman, or  
23 Ms. Ousdahl that told you that?

24 A. It would have probably been -- I'm sure  
25 Adam Shenkin and Tom Hartman.

1 Q. Okay. Now -- so there is a 20 million  
2 dollar insurance policy; and to your understanding, it is  
3 going to cover all present, past, and future liabilities,  
4 and you stated in your rebuttal it's FPL's position that  
5 the indemnification and not liable based on site  
6 certification?

7 A. That's what the ground lease shows.

8 Q. Okay. Now, suppose there is any liability  
9 that somehow is not covered by any of that. Suppose some  
10 liability somehow attaches to FPL. Is it FPL's position  
11 that it intends to cover any of those additional  
12 liabilities?

13 MS. MONCADA: Objection, vague. I'm not --  
14 if he understands it, fine, but I'm not really  
15 clear on it.

16 MR. TRUITT: I can rephrase it. I don't  
17 know if it will help.

18 THE WITNESS: Rephrase it. Let's see if it  
19 sounds better.

20 BY MR. TRUITT:

21 Q. Okay. You have a 20 million dollar  
22 insurance policy; and then based on the language in the  
23 ground lease and the conditions of certification, assume  
24 that liability attaches to FPL beyond all of that, so  
25 let's assume liability attaches for a certain amount and

1 gets past the indemnification of certification.  
2 \$20 million is not enough to cover it. I'm saying there  
3 is something above and beyond that attaches to FPL.

4 Is it FPL's intent to cover those  
5 liabilities at FPL's own money, or would FPL come seek  
6 recovery of that from customers?

7 A. I don't even understand why you'd ask that  
8 question. I mean, our point here is we are indemnified.

9 Secondly, we have liability insurance that  
10 we feel is very likely going to cover that. I don't  
11 see -- I don't see where it is a prudent question in that  
12 if the indemnification covers us for historical  
13 contamination. Why would we expect to have some kind of  
14 liability there.

15 Q. Because the scope of my questions have to  
16 be anything that leads to the -- could possibly lead to  
17 the reasonable discovery of admissible evidence.  
18 Assuming a hypothetical, that's not impossible. That's  
19 why I'm asking the question.

20 If you don't know the position, you can  
21 state you don't know what FPL's position is and that's  
22 fine. But I do have to ask the question.

23 MS. MONCADA: Let's do this. Can the court  
24 reporter read it back; and if Mr. Butts can answer  
25 the question --

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1 MR. TRUITT: That's fine.

2 MS. MONCADA: -- we will; and if he  
3 doesn't, you know, he won't, but can we have the  
4 question read back.

5 (The last question is read back.)

6 THE WITNESS: So if that were possible and  
7 -- just make sure I restate it here.

8 If it were possible that there was  
9 contamination that the indemnification didn't  
10 cover and a 20 million dollar insurance policy  
11 would not cover it and -- as the lessee, first it  
12 would have to be determined that somehow we're  
13 responsible for it. We would -- I would treat it  
14 as I would any other property.

15 We would look at it as who is responsible  
16 for it. If, in fact, it was caused by another  
17 consultant, contractor, are they responsible. I  
18 would seek costs from them.

19 If the department or EPA comes to us and  
20 says it has to be cleaned up; and for whatever  
21 reason, it has to be us, we would clean it up.

22 Where that money would come from, I'm not  
23 sure. What fashion the company would seek --  
24 would pay for it, I don't know. That decision  
25 would be made through finance, tax. I'm not sure.



1 BY MR. TRUITT:

2 Q. Okay. In related to the Pepper Steel site  
3 that you worked on and the Wingate site that you worked  
4 on, do you know the final costs for those?

5 A. I do not. I know -- I don't know from  
6 Wingate, but there are a couple hundred thousand dollars  
7 that have been spent at Pepper Steel, but I'm not sure  
8 how far back that goes.

9 Q. Okay. Now, you stated in 2012, the EPA  
10 came out with some different guidance due to the EPA's  
11 policy of wanting to encourage remediation and use of  
12 Brownfield sites. Just kind of -- you briefly stated it.

13 What is your understanding of what they  
14 issued in that guidance in 2012?

15 A. That guidance was a guidance to the  
16 regional offices that was intended to have them  
17 understand that just because you have a lessee and -- it  
18 was related -- primarily it was initially guidance for  
19 bona fide purchasers of the property, and then the  
20 guidance was intended to work also for lessees, and the  
21 intent was to advise regional offices that lessees were  
22 not necessarily going to be liable for any cleanup, and  
23 that they should consider what their actual contribution  
24 was as long as they've done the necessary due diligence  
25 to determine that they weren't there. They weren't a

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1 party to that.

2 Q. Now, you mentioned bona fide purchaser. Am  
3 I correct in saying that bona fide perspective purchaser  
4 is a specific term that appears in CERCLA?

5 A. It is.

6 Q. And what is your understanding of that  
7 phrase?

8 A. It's intended to look at bona fide  
9 perspective purchasers, and they can evaluate their  
10 potential risk as they're purchasing a property; and if  
11 by looking at that risk, they would do their due  
12 diligence as we have done here; and once they have shown  
13 that they are not an innocent landowner in those cases,  
14 they understood the risk.

15 They don't contribute to the contamination  
16 that's there and they don't impede remediation that's  
17 occurring at that site, then they could escape liability.

18 Q. Well, two things. You said could escape  
19 liability, and the second thing you mentioned was not  
20 impede ongoing remediation. Is it different if  
21 remediation has not started when the bona fide  
22 perspective purchaser takes possession?

23 A. I don't know that it is. I don't think so.

24 Q. Then you say, "Could escape liability,"  
25 which is a qualification. How would that not escape

1 liability?

2 A. Well, at that point, certainly EPA has to  
3 come in and make sure that the bona fide perspective  
4 purchaser has not contributed and has not impeded the  
5 remediation. If they do that, then they could be  
6 penalized.

7 Q. Okay. Then you mentioned innocent  
8 landowner. Am I correct in my understanding that I  
9 believe innocent landowner is another specific defense  
10 under CERCLA that's slightly different than bona fide  
11 perspective purchaser?

12 A. It is.

13 Q. What is your understanding of innocent  
14 landowner?

15 A. Innocent landowner, which a large company  
16 like ours would not be an innocent landowner. We  
17 certainly have the skills and the capability to evaluate  
18 these sites.

19 They are for persons who purchase a  
20 property who might not have those capabilities or skills  
21 to have looked at it and found themselves now with a  
22 piece of property that was contaminated, and it was  
23 really the fault of someone else.

24 EPA would look at them and say, well,  
25 you're not really the problem. You're the landowner, and

1 they could assign some liability to them; but more than  
2 likely, they are going after who actually did the  
3 contamination.

4 Q. Now, in your understanding, like you just  
5 stated, more than likely the innocent landowner. They  
6 will go after the person who actually acted and caused  
7 the contamination, if there is no person, say that was a  
8 company, and they've dissolved, and there is no more  
9 assets. Do they ever attach liability to the current  
10 landowner?

11 A. Well, they certainly could.

12 Q. If they didn't cause anything under the  
13 statutory scheme?

14 A. There is strict liability. They can come  
15 after others. In this case, though, you're looking at  
16 Rocktehn which is a major company. It's -- the  
17 likelihood that it is going to dissolve any time soon is  
18 unlikely. They are looking at merging with MeadWestvaco.  
19 That's going to make them a 16 billion dollar company,  
20 the largest company in the world to do that business.  
21 Not likely they are going anywhere anytime soon.

22 Q. And now the bona fide perspective  
23 purchaser, is it your understanding that's actually  
24 codified in federal regulations or do you know I guess?

25 A. Don't know for sure.

1 Q. Okay. The 2012 guidance, which correct me  
2 if I'm wrong, I believe you said it took the bona fide  
3 perspective purchaser and kind of moved it and expanded  
4 it to lessees --

5 A. They wanted to encourage the use of  
6 Brownfield's.

7 Q. Did the 2012 guidance, do you know if that  
8 got codified in federal regulation, or was it simply a  
9 guidance memo from the EPA?

10 A. I do not know for sure.

11 Q. Okay.

12 MS. MONCADA: If you are going to start  
13 down a different line, is it a good time to take a  
14 stretch break?

15 MR. TRUITT: Sure.

16 MS. MONCADA: John, are you okay with that  
17 and Jacob?

18 MR. VILLAFRATE: Yeah, we're fine with a  
19 break.

20 (A brief recess is taken.)

21 BY MR. TRUITT:

22 Q. Back to the CERCLA, in general, we were  
23 just talking about bona fide perspective purchaser in the  
24 lease.

25 Is FPL considering itself to be in that

1 bona fide perspective purchaser category as a lessee?

2 A. We think we could qualify for that based on  
3 our due diligence. We certainly have the right people  
4 going and looking at it. We looked at all of the things  
5 necessary; so yes, we could.

6 Q. You say, "Could." What I'm asking is, was  
7 that your position going into this; or you're saying in  
8 the future, if need be, that's an avenue you could take?

9 A. If need be, we could take that. I  
10 haven't -- we've prepared and -- the documents. We've  
11 looked at the regulatory information that's required,  
12 done the interviews at the facility. We have  
13 professional folks looking at it. Those are some of the  
14 requirements.

15 Q. You had mentioned earlier that in a  
16 situation where say DEP didn't do something or handle  
17 something, then the EPA might over file is the term you  
18 used.

19 So first I'd like you to explain your  
20 understanding of the word "over file." What does that  
21 mean?

22 A. Well, it could happen on various rules; and  
23 if DEP makes a decision, whether it is on a permit or a  
24 project, it may be a remediation project, and EPA is  
25 involved in the remediation - that's seldom the case here



**DECLASSIFIED**

1 in Florida - but EPA could say, no, we don't agree. They  
2 could over file. It seldom happens.

3 Q. What does over file mean? Does that mean  
4 EPA takes over or -- that's what I mean.

5 A. EPA would basically say, you're not  
6 implementing the rule as we see it, and then would step  
7 in. Not very common that you see that.

8 Q. Okay. Can DEP take any action or give  
9 assurances to FPL or Cogentrix that EPA will not over  
10 file?

11 A. They don't have that authority.

12 Q. Now, you mentioned Clean Power Plant a  
13 couple times in your rebuttal starting on page 12; and  
14 you understand that in the direct testimony originally  
15 filed with the petition, FPL had mentioned the decreased  
16 of CO2 emissions. You're aware that was one of the  
17 grounds listed in the original filing?

18 A. Right.

19 Q. Okay. Now, since you've been working on  
20 the Clean Power Plant - I understand it's a proposed rule  
21 and it is not out yet and everybody -- there is lots of  
22 people prognosticating on what this could look like, but  
23 what is FPL's working assumption of what it thinks the  
24 Clean Power Plant is going to look like?

25 A. The assumption? It's difficult to come up

1 with one assumption. You'd have to look at various  
2 possibilities.

3           You obviously look at the proposed rule,  
4 and this is what the world could look like. Then having  
5 various conversations with the agencies, you can look at  
6 what are they telling me? What are they -- what are they  
7 seeming to trend, and many comments have been out there  
8 to the EPA that their interim target is unworkable  
9 because it includes the requirement for building block 2  
10 to have 70 percent of the existing natural gas facilities  
11 operating at or having -- existing natural gas facilities  
12 operating at 70 percent capacity factor. Generally folks  
13 have told EPA that's not practical.

14           EPA has gotten that message, and they have  
15 been signaling that they are going to revise that interim  
16 target. Basically, what that will do is it will take  
17 that 70 percent out to later years. It will be some  
18 increment. It might be five years. It might be out the  
19 whole ten years to the end of the target period. That's  
20 one possibility that could occur that is certainly  
21 important.

22           And others are, will there -- will there be  
23 incremental, not incremental, but will there be existing  
24 nuclear or existing renewable counted in the rule. There  
25 is debate as to whether that will happen and how much.

1 There is some considerations of what are the  
2 possibilities there.

3 One thing that we feel pretty confident  
4 that EPA is going to do that would be different than the  
5 proposed rule is that they will expand that interim  
6 target. So instead of having to -- having states have to  
7 come up and get facilities operating their existing  
8 natural gas plants at 70 percent capacity factor, there  
9 will be some time that that will have to happen.

10 Effectively what this does, it will allow  
11 other units that might have had reduced generation or  
12 might have shut down to have more time to operate as  
13 natural gas lines are built and new plants are built and  
14 transmission is built to accommodate the existing  
15 facilities.

16 That would be our -- what we think will  
17 happen.

18 Q. Okay. So under the proposed rule, the  
19 Goliath path, which goes from 2020 to 2029, and then we  
20 see everybody at their limits at 2030.

21 So when you say the timeline would be  
22 adjusted, are you saying the final goals -- FPL's working  
23 assumption is that the final goal would be pushed farther  
24 into the future or the Goliath path would be shallower?

25 A. We don't think the goal is going to change.



1 I don't know whether the interim target will change. We  
2 haven't seen that. Again, it is still a proposed rule.

3 But indications are EPA is set on the  
4 reductions they want in 2030. They are going for that.

5 So you would basically see just more time  
6 to get to that interim target possibility.

7 Q. Okay. Now, you were discussing the  
8 building blocks, and I know the EPA had lots of  
9 discussions around the rule. Our office has filed  
10 comments and things like that as well.

11 The EPA has staunchly stated over and over  
12 again "The building blocks were just the methods they  
13 used to get the goal, but they are not dictating how a  
14 state may do it." Have you heard that comment from the  
15 EPA?

16 A. Sure.

17 Q. Okay. Based on your description of your  
18 working assumptions, are you assuming that the state will  
19 go along the lines that the EPA did because you discussed  
20 the natural gas dispatch, et cetera. Are you assuming  
21 that's generally how Florida is going to get there?

22 A. Well, what you have to assume is that  
23 Florida will have to do something to get that final rate.  
24 They do not have to meet each of the building blocks or  
25 any one of the building blocks, but they will have to get

1 to that final rate. They've got to find a way to  
2 generate electricity because we're still going to need  
3 that much electricity if not more. They've got to find a  
4 way to generate that at a lower emissions rate; and to do  
5 that, existing natural gas units will have to run at a  
6 higher capacity factor. They will need more nuclear,  
7 more zero emitting renewables, and quite possibly, fewer  
8 coal plants or reduced operation from coal plants.

9 Q. Okay. So not the number -- am I correct in  
10 saying that FPL's working assumption is not the numbers  
11 in the building blocks will come out that way, but the  
12 ideas presented in the building blocks is what the state  
13 will have to use to get there? Is that -- do you  
14 understand my question?

15 A. Yes. I understand. The ideas in the  
16 building block are basically options that EPA has offered  
17 the state. That doesn't preclude them from using other  
18 options. They certainly would accept those in a state of  
19 limitation plant because this is what Florida has to put  
20 forward in a state of limitation plant that would  
21 incorporate methods to achieve that rate.

22 The easy approval will be to accept those  
23 building blocks. If there are other alternatives,  
24 certainly the state could put those forward.

25 Q. Now, you stated in your rebuttal here that

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1 FPL's 2012 baseline was 908 pounds per megawatt hour.  
2 You stated, "Based on FPL's current generation plan, the  
3 company will be below EPA 740 pounds megawatt hour target  
4 rate for Florida by 2030."

5 That statement I'm going to ask -- you say,  
6 "The current generation plan." So roughly how does FPL  
7 plan -- we know what your fleet is like now. How does  
8 FPL, based on this statement, how do you plan to be below  
9 740 by 2030?

10 A. Right. If you look at our ten-year site  
11 plan, it has a significant piece of that. You also look  
12 at our plans for new renewables, Turkey .6 and 7 in the  
13 future.

14 Q. So it's -- is there anything included in  
15 this statement that we haven't seen in FPL's current  
16 ten-year site plan?

17 A. No.

18 Q. To your knowledge?

19 A. To my knowledge, no.

20 Q. Now, when you state that FPL's current  
21 generation plan will be below EPA 740 pounds, is FPL  
22 assuming that DEP and SIP, State Implementation Plan, is  
23 going to be company-specific-type plan or regional-type  
24 plan? How is FPL -- assuming that this SIP is going to  
25 effect?



1           A.     We don't know. This is a proposed rule.  
2     We're not sure how EPA will implement it. Don't know if  
3     they are going to go for a rate-based proposal or  
4     mass-based proposal. You don't know if it's going to be  
5     company specific rate or company specific allocation of  
6     allowances.

7                     What we do know, under the proposed rule,  
8     they've got to get to that rate. So our assumption would  
9     be we want to see what we have to do to get to that rate.

10                    What we would be doing as a company is the  
11     kinds of activities that would lend us the opportunity to  
12     get to that rate and also helps the state to get to that  
13     740 pounds per megawatt hour.

14           Q.     Okay. So then would it be accurate to say  
15     that FPL's working plan is that if FPL is below  
16     740 pounds per megawatt hour, that's what FPL is going to  
17     shoot for? Like you, as a company, are going to shoot  
18     for 740 pounds per megawatt hour or there's some other  
19     plan?

20           A.     Well, currently that's the number we have.  
21     That's the target. That's what we have to look at right  
22     now.

23                    If it comes out that EPA has an allocation  
24     method which, of course, should simply be taking 740  
25     pounds per megawatt hour and turning that into a mass and

1 determining what that is for the state, we would  
2 anticipate that we would get our share of that; but the  
3 goal would be to, in the end, we would have sufficient  
4 allowances or sufficient reduction to get us to that  
5 rate.

6 Q. Okay. Now, since its emission of CO2, coal  
7 fire generating units are the highest emitters of CO2; is  
8 that correct?

9 A. Correct.

10 Q. So it's my understanding, as building block  
11 1, they want efficiencies to increase at coal plants, and  
12 then building block 2 is talking about increasing the  
13 dispatch rate of natural gas plants.

14 So am I correct in assuming that most  
15 people in the industry are assuming coal plants are going  
16 to be used less? Is that a safe assumption?

17 A. It is a safe assumption.

18 Q. Okay. Is that also the assumption that FPL  
19 would assume in the State of Florida that you would  
20 predict to see coal plants used less?

21 A. In a typical market, you would expect that  
22 coal plants would be used less. If they are competing or  
23 if they are dispatching based on cost, it doesn't work in  
24 every case. You have market situations, or you have  
25 contractual situations which will change that.

1 Cedar Bay is a good example where they get  
2 a capacity payment for being available, and they --  
3 though they may dispatch less, they would still have the  
4 opportunity to be available where other coal plants may  
5 simply retire because they are unable to compete. But  
6 with a capacity payment, Cedar Bay will be available.

7 As we've seen in Rick Neff's testimony,  
8 they've evaluated the potential for them to continue to  
9 operate even with a cost of CO2 that would take them as  
10 high as \$23 million a year. So they see that they would  
11 be able to survive even -- through the purchase power  
12 agreement under this rule.

13 Q. Okay. So it's -- FPL is assuming, should  
14 the PPA exist as it exists now, however the Clean Power  
15 Plant comes out, Cedar Bay will be able to meet the terms  
16 of the PPA through 2024 which is when it ends? Is that  
17 FPL's current working assumption?

18 A. As it is now, and if you assume there is a  
19 cost for CO2, yes. I mean, based on Rick's testimony, I  
20 would say he's looked at that for his plant. They  
21 believe that he will be able to survive.

22 Q. I understand you're saying they have. I'm  
23 saying FPL.

24 A. They would be able to survive through the  
25 terms of the purchase power agreement.

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1 Q. Okay.

2 MR. TRUITT: We don't have anything else.

3 MS. MONCADA: Staff?

4 MR. VILLAFRATE: One second. Okay.

5 DIRECT EXAMINATION

6 BY MR. VILLAFRATE:

7 Q. I actually have a few questions about the  
8 ground lease between Cedar Bay and Rocktenn. Would you  
9 be the witness for that or would FPL have a different  
10 witness that would be better to answer those questions?

11 MS. MONCADA: I think it depends on the  
12 question. This is Maria.

13 BY MR. VILLAFRATE:

14 Q. Okay. Well, I only have a handful. Let me  
15 ask them. If someone else would be better to answer the  
16 question, if we could just get the name of that witness,  
17 I would appreciate it.

18 So, Mr. Butts, regarding the ground lease  
19 discussed in your rebuttal testimony, am I correct in  
20 understanding that the ground lease expires in 2041?

21 A. I am not certain of the date that it  
22 expires.

23 MS. MONCADA: This is Maria. I would give  
24 Tom Hartman as a better person to ask that  
25 question.

1 MR. VILLAFRATE: Thank you, Maria. We're  
2 just going to skip the ground lease questions.

3 BY MR. VILLAFRATE:

4 Q. Mr. Butts, if you could please direct your  
5 attention to your rebuttal testimony on page 10, and I'm  
6 paraphrasing now.

7 You state that FPL has considered possible  
8 unknown or future environmental costs associated with the  
9 Cedar Bay facility and that FPL is confident that its  
10 proposed environmental liability insurance is sufficient  
11 to address any known or unknown environmental  
12 liabilities. Is that a fair summation of your testimony?

13 A. Yes, it is. We've looked at that pretty  
14 closely and done some cost estimates as to what we might  
15 be able to see as far as potential cost liabilities, and  
16 we don't anticipate that it would be any higher than that  
17 insurance.

18 Q. Would it be fair to say that in an economic  
19 valuation, FPL included no other costs for these unknown  
20 environmental liabilities beyond the liability insurance?

21 A. That's correct. We've looked at that.  
22 We've evaluated it with our history, and we've  
23 decommissioned several power plants, and I'm -- from the  
24 perspective of environmental liabilities, we've never had  
25 one approach that amount, and some of them have been

1 much, much older and had a lot of oil storage over the  
2 years which would tend to have more staining and affected  
3 areas than this facility would.

4 Q. What would be the annual cost of the  
5 environmental liability insurance FPL currently intends  
6 to purchase?

7 A. I'm sorry. I don't have that number.

8 MR. VILLAFRATE: Maria, do you know which  
9 witness would be best to ask that question to?

10 MS. MONCADA: I think Tom Hartman would be  
11 the best person to answer that question.

12 MR. VILLAFRATE: Thank you.

13 BY MR. VILLAFRATE:

14 Q. Under the current power purchase agreement,  
15 would FPL's rate payors be responsible for any  
16 environmental liabilities that occur at Cedar Bay  
17 facility?

18 A. I can't answer that. That would have to  
19 come from one of the business managers or...

20 Q. Okay. I believe OPC asked you this  
21 question, but I'm going to ask it again. If you can't  
22 answer it, please, if you or Maria could let me know  
23 which witness would be best to answer that, I would  
24 appreciate it.

25 In the event of environment liabilities



1 occurring in excess of the environmental liability  
2 insurance, would FPL seek to recover those costs from  
3 rate payors?

4 MS. MONCADA: That question was asked  
5 previously by Mr. Truitt. Mr. Butts does not know  
6 the answer to that question, and I think  
7 Mr. Barrett, Bob Barrett.

8 MR. VILLAFRATE: Okay. Thank you, again,  
9 Maria. I appreciate it.

10 MS. MONCADA: Sure, you're welcome.

11 MR. VILLAFRATE: We have no further  
12 questions.

13 MS. MONCADA: No questions from FPL.

14 MR. TRUITT: All right.

15 MS. MONCADA: As we spoke about earlier, or  
16 at the start of the deposition, we'll quickly  
17 review the transcript and the exhibits to  
18 determine whether anything in there is  
19 confidential. And we'll address it appropriately  
20 pursuant to the commission's confidentiality  
21 procedures.

22 (The proceedings is concluded at 4:41 p.m.)  
23  
24  
25

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## C E R T I F I C A T E

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

I, RAYBURN BUTTS, certify that I have read the foregoing transcript of my deposition and that the statements contained therein, together with any additions or corrections made on the attached Errata Sheet are true and correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
RAYBURN BUTTS

The foregoing certificate was subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by the witness who has produced a \_\_\_\_\_ as identification and who did not take an additional oath.

\_\_\_\_\_  
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E R R A T A S H E E T

IN RE: FPL - CEDAR BAY

Deposition of: Ray Butts Job# 2094337

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I have read my deposition in this matter and entered any changes in form or substance as reflected above.

DATE

RAYBURN BUTTS

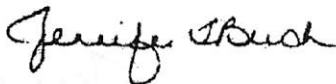
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2

3 STATE OF FLORIDA )

4 COUNTY OF ST. LUCIE )  
5

6 I, the undersigned Notary Public, in and  
7 for the State of Florida, hereby certify that RAYBURN  
8 BUTTS personally appeared before me and was duly sworn.  
9

10  
11 WITNESS MY HAND and official seal in the  
12 City of Fort Pierce, County of St. Lucie, State of  
13 Florida this 7th day of July, 2015.  
14

15  
16  
17 

18 \_\_\_\_\_  
19 Jennifer L. Bush, Notary Public  
State of Florida at Large.

20 My Commission: #EE221022

21 My commission expires: 9/20/16  
22  
23  
24  
25

REPORTER'S DEPOSITION CERTIFICATE

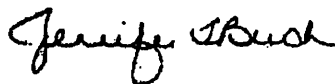
STATE OF FLORIDA )

COUNTY OF ST. LUCIE )

I, Jennifer L. Bush, Registered Registered  
Registered Professional Reporter, do hereby certify that  
I was authorized to and did stenographically report the  
deposition of RAYBURN BUTTS; and that a review of the  
transcript was requested; and that pages 1 through 63,  
inclusive, are a true record of my stenographic notes.

I further certify that I am not a relative,  
employee, attorney or counsel of any of the parties, nor  
am I a relative or employee of any of the parties,  
attorneys or counsel connected with the action, nor am I  
financially interested in the action.

Dated this 7th day of July, 2015.



Jennifer Bush

Registered Professional Reporter

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July 7, 2015

RAYBURN BUTTS  
C/O Maria J. Moncada ,Esquire  
FPL  
700 Universe Blvd.  
Juno Beach, FL 33408

RE: FPL - CEDAR BAY  
Deposition of RAYBURN BUTTS  
Dear Mr. Butts:

This letter is to advise you that the transcript of the deposition listed above is completed and is awaiting reading and signing.

Please arrange to stop by our office at the above referenced address to read the transcript. Our office hours are 9:00 a.m. to 4:00 p.m. Monday through Friday. Depending on the length of the transcript, you should allow yourself sufficient time.

If the reading and signing has not been completed prior to the referenced date, we shall conclude that you have waived the reading and signing of the deposition transcript.

Your prompt attention to this matter is appreciated.  
Sincerely,

Jennifer L. Bush  
Registered Professional Reporter

CC: All counsel on appearance page



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Memorandum

To: Ray Butts  
CC: Mark A Jones  
From: Pat Maher  
Date: 4/23/2015  
Re: Cedar Bay – Review of Environmental Data Available in the Data Room

Summary of Environmental Dataroom document review

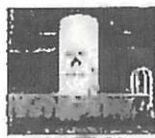
1. Tanks (Oil) – Per the Golder Phase I ESA and the SPCC Plan (December 3, 2012) for the site, there were nine tanks referenced to be onsite. The Aegis Insurance Services, Inc. Property Risk Assessment report both for 2012 and 2014 indicate that the 60,000 gallon tank and the 6,430 gallon tank contain No. 2 fuel oil. The FDEP storage tank registration shows the 60,000 gallon tank as containing fuel oil and the 1,000 gallon tank containing vehicular diesel fuel. The 6,430 gallon tank is not a registered tank (process tank). The SPCC Plan makes reference that in addition to the monthly inspections; the 60,000 gallon tank, the 6,430 gallon tank and the 1,000 gallon tank have in-service internal and external ultrasonic tests conducted periodically in accordance with API 653 standards.

Container ID	Content	Volume (gal)	type
T-1/IFOA-TNK-1	Fuel Oil	60,000	Steel
T-2/IFOA-TNK-4	Fuel Oil	6,430	Steel
T-3	Fuel Oil	1,000	Conc. vaulted steel
T-4	Diesel Fuel	250	Concrete vaulted steel
T-5	Diesel fuel	275	Steel
T-6	Used Oil	100	Steel
T-7	Locomotive Oil	400	Steel
T-8	Used Oil	400	Steel
T-9	Diesel Fuel	500	Steel



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Issue – The contents of the 1,000 gallon tank is incorrectly referenced in some of the documents. The 6,430 gallon tank is not registered but API 653 in-service internal and external ultrasonic thickness tests are conducted periodically. This 6,430 gallon tank is located within a poured concrete (uncoated) secondary containment area.

Risk – Minimal to moderate. The 1,000 gallon diesel is a double wall tank with no associated piping and any associated risk would be minimal. The 6,430 gallon #2 oil tank is in uncoated secondary containment, there is moderate risk.

2. Tanks (non-oil) – The following is a summary of non-oil tanks referenced in the SWPPP Plan which was compared against the storage tank registration form. Two of the tanks (sodium hypochlorite and calcium chloride) referenced in the SWPPP are not required to be registered.

Container ID	Content	Volume (gal)	Note
Tank 1*	Sulfuric Acid	12,700	Removed from site
Tank T008* (Steel tank)	Sulfuric Acid	5,000	Tank, as well as loading/unloading area, is located within secondary containment.
Tank 3* (Steel tank)	Sulfuric Acid	11,040	Tank located within secondary containment but loading/unloading is outside of containment
Tank 4* (Steel tank)	Ammonia Hydroxide (aqueous)	25,000	Tank located within secondary containment but loading/unloading is outside of containment
Tank ZD002* (Steel tank)	Sodium Hydroxide	23,800	Tank located within secondary containment but loading/unloading is outside of containment
Tank ZD011* (Steel tank)	Sodium hydroxide	5,000	Tank, as well as loading/unloading area, is located within secondary containment.
Tank ZD006* (HDPE tank)	Cationic polymer	5,600	Tank, as well as loading/unloading area, is located within secondary containment.
Not registered (HDPE tank)	Sodium Hypochlorite	8,500	Tank, as well as loading/unloading area, is located within secondary containment.
Not registered (fiberglass tank)	Calcium chloride	6,000	Tank, as well as loading/unloading area, is located within secondary containment.

\*FDEP Tank Registration



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**Risk-** No known discharges and the risk is assumed to be minimal.

Historically there was underground piping that connected the 60,000 gallon fuel oil AST with the 6,430 gallon AST. The piping was subsequently brought aboveground. The summary information contained in the April 29, 2010 multimedia inspection documented that new bulk aboveground single walled coated steel piping had been installed to replace most of the (now closed in place) underground double-walled, steel within fiberglass, piping that was associated with the 60,000 gallon AST. The new aboveground piping runs from the loading ramp over the railroad tracks to within secondary containment area, connects to existing underground piping that runs under the railroad tracks, re-emerges to connect to new aboveground piping that runs to the 6,430 gallon shop manufactured single walled steel process tank AST within poured concrete (uncoated) secondary containment area.



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Issue: No closure documentation on closure of the historical UST piping

Risk: Minimal. The underground piping was double walled, steel within fiberglass piping and likelihood of discharges considered minimal.

4. Oil Spill Discharges - Two discharges of fuel oil occurred on the subject Property as a result of Improper equipment handling. The first discharge occurred in April 2003 when 50 gallons of fuel oil was released. Cogentrix documented the response action and submitted a letter to FDEP. No follow up action by FDEP and the incident is considered closed. The second discharge occurred on February 2009 when 150 gallons of fuel oil was released as a result of overfilling heavy equipment onsite. The FDEP Bureau of Emergency Response reviewed the cleanup documentation and on October 26, 2009, concluded that no further assessment was required.

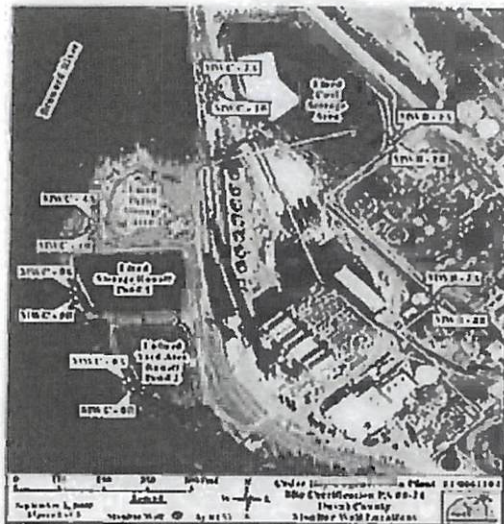
Issue - Contamination from historical discharges.

Risk - Minimal to None. Spills have been cleaned up. Even though no closeout documentation is available for the April 2003 discharge, it is assumed to be closed. No documentation on that spill was available on Oculus. FDEP BER issues a No Further Assessment for the February 2009 discharge and it is also closed out in Oculus.

5. Groundwater - The Golder Phase I ESA reported that prior to construction of the Cedar Bay plant, metal exceedences for beryllium, cadmium, chromium, copper, lead, mercury, nickel, zinc and sulfides were observed in the groundwater. The PPSA Final Order PA88-241 identified preexisting groundwater contamination for antimony, arsenic, beryllium, chromium, copper, lead, mercury, nickel and zinc. On March 3, 2010 the Final Order Modifying Conditions of Certification required sampling for field pH and conductivity, aluminum, arsenic, barium, beryllium, cadmium, chromium, copper, iron, lead, mercury, nickel, selenium, zinc, gross alpha, chloride, turbidity, sulfate and total Dissolved Solids. Table 1 summarizes the baseline concentrations and compares it to the groundwater data from the first quarters of 2011 through 2014. Overall concentrations have been decreasing since the baseline sampling in 1992. The only exception is for MW-6A and MW-6B. Well numbers for MW-6A and 6B may have been transposed during the baseline sampling in December 1992. If the well numbers were not transposed, then there would be increasing concentrations in MW-6B, located adjacent to the unlined pond.

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Issue: Groundwater fluctuations and groundwater exceedences observed for aluminum, arsenic, chromium, iron, lead, chloride, turbidity, sulfate and TDS.

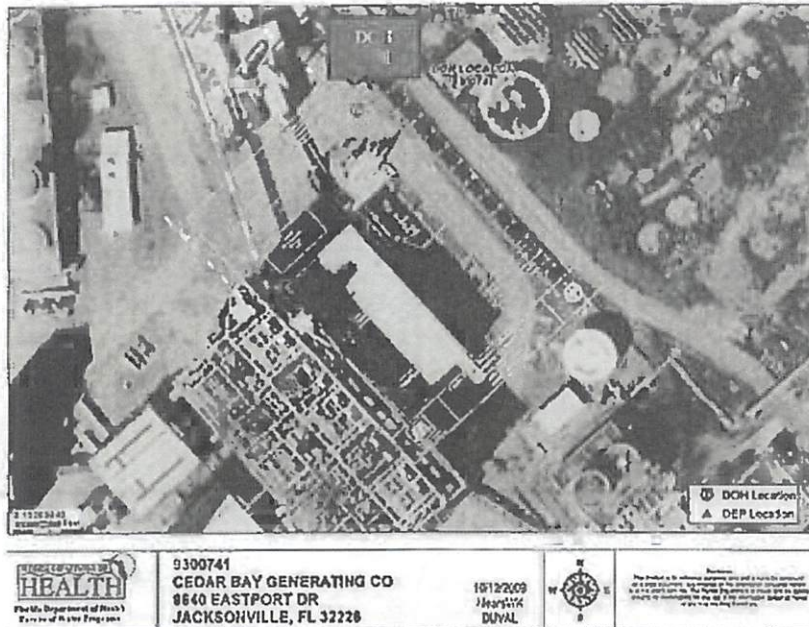
Risk: Minimal to moderate. All constituents of concern were identified in the PPSA as existing contamination. Higher groundwater concentrations were observed in the first quarter of 2014 in several of the wells (but below the baseline). Baseline concentrations in MW-6B were much lower (possible that MW-6A and 6B were transposed during baseline sampling) and currently concentrations are increasing. If wells MW-6A and MW-6B were not transposed during sampling, then there is a moderate risk that the unfilled pond may be contributing to the increasing concentrations.

6. Potable Well – There is one potable well onsite. Data room has reference to annual sampling of the potable water supply to the guard shack that is submitted to the Health Department. Based on data in the data room, the most recent sampling reference was February 2013. The location of this well is in proximity to the 2009 fuel oil discharge.



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**Issue:** This potable well is sampled annually. Assumed to supply water to the facility guard shack. No information is available on the depth and size of the well.

**Risk:** Currently low. Due to the high background levels of contamination, will have to monitor and determine if contamination in the vicinity can impact this potable well.

7. Impoundments – There are two ponds and associated impoundments. The site is required to submit monthly and annual impoundment inspections.

Annual impoundment reports were reviewed for 2011, 2012 and 2013. In 2011, there were no deficiencies noted during the impoundment inspections and no remedial measures needed. Accumulated deposits of coal and limestone were removed from the lined pond in May 2011 and disposed at Waste Management's Class 1 landfill located in Folkston, Georgia. In 2012 there were no deficiencies noted during the impoundment inspections and no remedial measures needed. Accumulated silt was removed from the unlined pond in May-2012 and disposed at Waste Management's Class 1 landfill in Folkston, Georgia. During the October 2013 inspection there were several gaps noted along the seam of a heat weld where segments of the liner were attached to each other. Erosion and Control Systems replaced the section of the liner along the entire perimeter of the concrete buttress. Cedar Bay maintenance personnel took advantage of the liner replacement/repair to also replace a section of the lined pond's pump discharge line as a metal spool piece had become corroded. No deficiencies were observed on the unlined pond storm water system.

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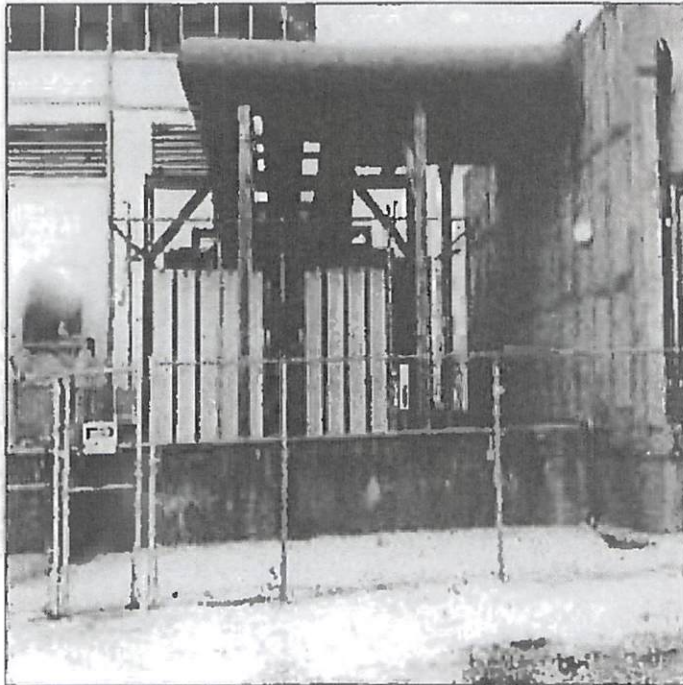
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**Issue:** Integrity of the impoundments as failure of impoundments could have the potential of releasing contents (and contaminants) of the ponds into the adjacent Broward River.

**Risk:** Medium. Even though impoundments are inspected monthly, the proximity of the impoundments to the Broward River constitutes a risk.

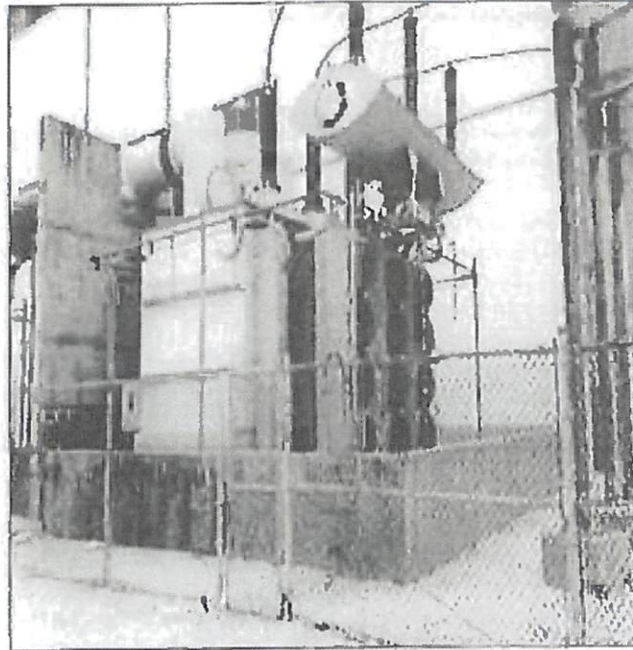
8. Transformers – The SPCC Plan references the 13 transformers as containing PCB-free mineral oil. The transformers are provided with secondary containment in the form of impervious concrete dikes, engineered containment associated with each transformer unit, or both.



**Auxiliary Transformer**

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**GSU Transformer**

**Issue:** Potential of discharge from transformers

**Risk:** Minimal as the transformers are provided with secondary containment in the form of impervious concrete dikes, engineered containment associated with each transformer unit, or both.

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**Table 1 – Summary Comparison of Baseline (Dec. 1992) and first quarters of 2011 through 2014**



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		Water Level	Aluminum	Arsenic	Barium	Beryllium	Chromium	Iron	Lead	Nickel	Chloride	Turbidity	Sulfate	TDS
	GCTL		200	10	200	4	100	300	15	100	250		250	500
Well	Quarter	ft	ug/L	ug/L	ug/L	ug/L	ug/L	ug/L	ug/L	ug/L	mg/L	NTU	mg/L	mg/L
MW-1A														
Background	1Q-2011	6.81	29	2.5	23	0.46	1.4	55	3.1	2.4	8.5	0.5	87	490
	1Q-2012	4.82	230	2.5	5.1	0.46	1.1	450	3.1	2.4	11	2.5	64	540
	1Q-2013	6.57	50	4	23	0.5	2	50	2	2	5	0.5	170	510
	1Q-2014	5.88	<50	<4	16	<0.5	<2.0	<50	2.3	<2	4.4	1.12	280	
MW-1B														
	1Q-2011	6.15	370	9.5	18	0.78	2.3	990	3.1	2.4	17	1.7	100	600
	1Q-2012	3.62	29	4.2	36	0.46	1.1	17	3.1	2.4	14	0.5	72	400
	1Q-2013	4.97	100	4	49	0.5	2	240	2	2	13	1.8	85	440
	1Q-2014	3.94	<50	4.6	35	<0.5	<2	<50	4.5	<2	13	0.71	120	570
MW-2A														
	1Q-2011	4.23	29	2.5	120	0.46	1.1	13	3.1	4.9	270	100	1400	2,500
	1Q-2012	3.04	32	2.5	100	0.46	1.1	21	3.1	3.8	260	80	1100	2200
	1Q-2013	3.78	64	4	100	0.5	2	50	2	6.2	210	49	1100	2200
	1Q-2014	2.1	<50	<4	85	0.58	3.8	140	<2	2.7	150	4.1	1100	1800
MW-2B														
	1Q-2011	3.21	880	40	6.8	0.46	4.3	440	4.7	7.2	180	2.1	760	2,500
	1Q-2012	2.26	1000	68	6.5	0.46	3.3	190	3.9	12	590	1.5	990	3300
	1Q-2013	4.02	100	58	13	0.5	3.2	310	2	7.1	550	1.4	880	3100
	1Q-2014	5.24	1300	25	21	1	4.8	910	2.5	4.6	310	5.9	660	2500
MW-3A														
	1Q-2011	10.47	87	2.5	8.1	0.46	1.3	360	3.1	2.4	40	110	180	880
	1Q-2012	7.53	68	2.5	6.5	0.46	1.1	160	3.1	2.4	190	59	290	1000
	1Q-2013	10.64	62	4	14	0.5	2	740	2	2	64	140	400	1200

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		Water Level	Aluminum	Arsenic	Barium	Beryllium	Chromium	Iron	Lead	Nickel	Chloride	Turbidity	Sulfate	TDS
	GCTL		200	10	200	4	100	300	15	100	250		250	500
Well	Quarter	ft	ug/L	ug/L	ug/L	ug/L	ug/L	ug/L	ug/L	ug/L	mg/L	NTU	mg/L	mg/L
	1Q-2014	9.34	<50	<4	8.9	<0.5	<2	740	<2	<2	140	2.8	210	840
<b>MW-3B</b>														
Upgradient	1Q-2011	5.69	8300	66	93	1.9	160	25,000	26	68	67	5.8	630	3100
Background	1Q-2012	3.83	8,700	64	92	1.6	120	21,000	25	44	70	13	560	2500
	1Q-2013	5.06	13000	52	120	1	62	23,000	23	17	32	19	290	1600
	1Q-2014	6.51	14,000	75	120	2.9	93	26,000	30	29	30	14.1	180	1500
<b>MW-4A</b>														
Downgradient	1Q-2011	4.56	47	2.5	48	0.46	1.1	230	3.1	6.2	590	62	910	2900
	1Q-2012	3.38	37	2.5	50	0.46	1.1	130	3.1	3	470	31	880	2700
	1Q-2013	3.94	110	4	43	0.5	2	720	2	3.7	520	56	900	2700
	1Q-2014	5.09	110	<4	33	0.55	<2	150	<2	2.3	400	7.4	710	1700
<b>MW-4B</b>														
Downgradient	1Q-2011	3.28	10,000	31	77	1.3	11	5200	11	4.9	170	10	740	2,400
	1Q-2012	2.28	8300	27	60	0.97	9.6	4,400	11	6.9	250	5.8	850	2600
	1Q-2013	3.92	6400	25	51	0.5	7.1	3400	5.3	4.3	250	5.9	910	2300
	1Q-2014	2.19	6900	26	56	0.86	15	29,000	4.9	6.2	280	58.1	980	2100
<b>MW-5A</b>														
Downgradient	1Q-2011	3.02	29	2.5	42	0.46	1.1	220	3.1	20	1300	51	3000	7100
	1Q-2012	2.68	32	2.5	23	0.46	1.1	45	3.1	3.8	570	1.9	1200	3000
	1Q-2013	3.6	50	4	7.7	0.5	2	50	2	Missing data				
	1Q-2014	3.68	<50	<4	7.3	<0.5	2.5	<50	<2	<2	280	1.4	680	1600
<b>MW-SB</b>														
	1Q-2011	2.52	32,000	120	33	2.8	63	2900	7.5	77	170	1.6	870	4400
	1Q-2012	1.76	39,000	180	57	4.6	70	7,600	8.2	90	190	1.9	890	4100



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		Water Level	Aluminum	Arsenic	Barium	Beryllium	Chromium	Iron	Lead	Nickel	Chloride	Turbidity	Sulfate	TDS
	GCTL		200	10	200	4	100	300	15	100	250		250	500
Well	Quarter	ft	ug/L	ug/L	ug/L	ug/L	ug/L	ug/L	ug/L	ug/L	mg/L	NTU	mg/L	mg/L
	1Q-2013	Missing data in data room												
	1Q-2014	2.28	45,000	150	59	4.6	69	5,200	5.8	69	180	3.7	750	3,700
MW-5A														
	1Q-2011	3.9	29	2.5	5.1	0.46	1.1	6.3	3.1	2.4	74	7.6	190	600
	1Q-2012	3.01	94	2.8	3.4	0.46	1.1	14	3.1	2.4	130	15	110	500
	1Q-2013	Missing data in data room												
	1Q-2014	4.5	<50	<4	7.5	<0.5	<2	<50	<2	<2	91	0.88	240	540
MW-6B														
	1Q-2011	2.71	8700	88	110	2.2	56	5200	23	60	220	1.8	1000	5200
	1Q-2012	1.13	12,000	95	160	3.4	70	7,400	28	75	280	1.7	990	5100
	1Q-2013	Missing data in data room												
	1Q-2014	2.04	10,000	120	150	4.5	71	8,700	15	57	210	2.6	690	5,000
CBLM-1														
Downgradient	1Q-2011	3.93	43	2.5	46	0.46	1.1	8.7	3.1	2.4	12	0.5	19	54
	1Q-2012	1.97	47	2.5	53	0.46	1.1	13	3.1	2.4	15	0.5	18	61
	1Q-2013	3.67	58	4	60	0.55	2.2	50	2	2	14	0.5	20	44
	1Q-2014	4.93	<50	<4	54	<0.5	<2	<50	<2	<2	14	1.1	22	44
CBLM-2														
Downgradient	1Q-2011	3.63	29	2.5	3.5	0.46	1.1	2,300	3.1	2.4	17	5.2	18	200
	1Q-2012	1.82	29	3.3	4.7	0.46	1.1	9,000	3.1	2.4	19	37	39	210
	1Q-2013	3.36	50	4.8	7.1	1.5	2	12,000	2.9	2	17	14	25	220
	1Q-2014	4.54	<50	4.2	4.5	<0.5	<2	5000	<2.9	<2	21	3.2	31	220
CBLM-3														
Upgradient	1Q-2011	6.06	350	2.5	110	0.46	1.1	370	3.1	2.4	38	0.5	50	130

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		Water Level	Aluminum	Arsenic	Barium	Beryllium	Chromium	Iron	Lead	Nickel	Chloride	Turbidity	Sulfate	TDS
	GCTL		200	10	200	4	100	300	15	100	250		250	500
Well	Quarter	ft	ug/L	ug/L	ug/L	ug/L	ug/L	ug/L	ug/L	ug/L	mg/L	NTU	mg/L	mg/L
	1Q-2012	3.34	92	2.5	53	0.46	1.1	7.1	3.1	2.4	58	0.5	40	150
	1Q-2013	6.66	1100	4	270	1.8	2	320	3.7	2	130	0.5	34	260
	1Q-2014	8.63	390	<4	110	0.86	<2	150	<2	<2	46	2.6	78	170
CBLM-4														
Upgradient	1Q-2011	6.37	29	2.5	59	0.46	1.1	9.6	3.2	2.4	3.5	0.5	10	50
	1Q-2012	3.49	29	2.5	6.4	0.46	1.1	50	3.1	2.4	7.1	0.5	17	50
	1Q-2013	6.47	66	4	52	1	2	50	2.9	2	6.3	0.5	17	28
	1Q-2014	8.19	<50	<4	46	<0.5	<2	<50	<2	<2	5.8	2.2	18	42
CBLM-5														
Downgradient	1Q-2011	4.44	29	2.5	9.6	0.5	1.1	47	3.3	2.4	8.2	0.6	77	850
	1Q-2012	2.31	72	2.5	73	0.46	1.1	14	3.1	2.4	13	38	55	1000
	1Q-2013	4.15	50	4	6.3	0.5	2	76	2	2	4.2	1.5	49	530
	1Q-2014	3.14	<50	<4	13	0.53	3	180	<2	<2	28	2.9	120	1,000

NAI - Not analyzed due to matrix interference

NT = Not Taken

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**STATE OF FLORIDA  
DEPARTMENT  
OF  
ENVIRONMENTAL PROTECTION**



**Conditions of Certification**

**CBCP/Smurfit-Stone Container Corp.  
Cedar Bay Cogeneration Project**

**PA 88-241**

**Modified 3/3/10**





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Appendix II – PSD-FL-137

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*PSD-FL-137F*

*Air Permit 0310337-008-AC*

*Air Permit 0310337-011-AC*

*Air Permit 0310337-012-AC*

Appendix III – Industrial Wastewater Facility Permit FL0061204

Attachment A – Ground Water Monitoring Forms



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## **I. GENERAL**

### **A. Applicability**

When a condition is intended to refer to Cedar Bay Generating Company, L.P. (CBGC) and Smurfit-Stone Container Corp. (SSCC), the term "CBGC/SSCC" or "licensees" will be used. When a condition is intended to refer to the "Cedar Bay Cogeneration Project" the terms "Cedar Bay Cogeneration Project", "CBCP", or "Project" will be used.

Where a condition applies only to Cedar Bay Generating Company, L.P. the term Cedar Bay Generating Company, L.P. (CBGC) or the term "licensee", where it is clear that "(CBGC)" is the intended responsible party, will be used. Similarly, where a condition applies only to Smurfit-Stone Container Corp., the term "Smurfit-Stone Container Corp." or the abbreviation "SSCC" or the term "licensee", where it is clear that SSCC is the intended responsible party, will be used. The Department of Environmental Protection may be referred to as DEP or the Department. The City of Jacksonville, Environmental Resource Management-Environmental Quality Division will be referred to as "the City", SJRWMD represents the St. Johns River Water Management District.

### **B. Applicable Rules**

The construction and operation of CBCP shall be in accordance with all applicable provisions of at least the following regulations of the Department: Chapters 62-210 through 62-297, 62-302, 62-4, 62-601, 62-702, 62-312, 62-532, 62-550, 62-555, 62-25, 62-610, 62-660 and 62-772, Florida Administrative Code (F.A.C.) or their successors as they are renumbered.

## **II. AIR**

### **A. Requirements**

The construction and operation of CBCP shall be in accordance with all applicable provisions of Chapters 62-210 through 62-297, F.A.C. Title V Air Operation Permit 0310337-016-AV and PSD-FL-137 are incorporated by reference herein as part of this Certification attached as Appendix I and Appendix -II respectively. The provisions of the aforementioned permits shall be conditions of this certification. The licensee shall comply with the substantive provisions and limitations set forth in Title V Air Operation Permit Number 0310337-016-AV and PSD-FL-137, as part of these Conditions of Certification, and as those provisions may be modified, amended, or renewed in the future by the Department. Such provisions shall be fully enforceable as conditions of this certification. Any violation of such provisions shall be a violation of these Conditions of Certification.

### **B. SSCC Steam Boiler Emissions**

1. This certification and any individual air permits issued by the Department subsequent to the Final Order of the Board certifying the power plant site under Section 403.509, F.S., shall incorporate the following limitations on the total tonnage of the specified criteria pollutants allowed to be emitted annually by any natural gas-fired boiler or combination of boilers constructed and operated by SSCC to provide up to 450,000 lbs/hr of



steam for use in its recycled paper process:

Tons Per Year	
CO	553
NOx	310
SO <sub>2</sub>	25, except as provided in (2) below

2. In the event that the ceiling for SO<sub>2</sub> is expected to be exceeded due to unavailability of natural gas caused by factors beyond the control of SSCC, SSCC may notify the Department that it must exceed the ceiling as provided herein; and emissions of SO<sub>2</sub> during the period of such curtailment shall not be counted against the yearly emissions ceiling of 25 tons unless administrative proceedings result in a finding that the exceedance was within SSCC's control. In no event shall the annual emissions of SO<sub>2</sub> from the steam boilers referenced above exceed a ceiling of 41 tons per year.

3. The notice shall include a statement or reasons for the request and supporting documentation, and shall be published by SSCC, without supporting documents, in a newspaper of general circulation in Jacksonville, as defined in Section 403.5115(2), F.S. The filing and publication of the notice no later than 7 days following the date of exceedance, shall preclude any finding of violation by DEP until final disposition of any administrative proceedings.

### III. WATER DISCHARGES

Any discharges into any waters of the State during construction and operation of CBGC shall be in accordance with all applicable provisions of Chapters 62-301, 62-302 and 62-660, F.A.C., and 40 CFR, Part 423, Effluent Guidelines and Standards for Steam Electric Power Generating Point Source Category, except as provided herein and with NPDES Permit FL 0061204 (attached as Appendix III) and any subsequent modifications, amendments or revisions to this permit. Also, CBGC shall comply with the following conditions of certification:

#### A. *Plant Effluents and Receiving Body of Water*

For discharges made from the CBCP power plant the following conditions shall apply:

1. CBCP shall not discharge any cooling system, demineralizer regeneration, floor drainage or other process wastewaters from the operation of the CBCP facility into any waters of the State. CBCP shall install a closed-loop cooling water system in accordance with technical specifications set forth in the Zero Discharge Plan submitted by CBCP to the Department.

2. Pursuant to the Zero Discharge Plan, CBCP shall make available to SSCC up to 500 gpm of reclaimed water that has been treated to a quality satisfactory for use in SSCC's cooling tower.

3. Receiving Body of Water - The receiving bodies of water for storm water discharge have been determined by the Department to be those waters of the St. John's River (during construction only) or Broward River and any other waters affected which are considered to be waters of the State within the definition of Chapter 403, Florida Statutes.

4. Point of Discharge (POD) - The point of discharge has been determined by the Department to be where the effluent physically enters the waters of the State in the St. John's River (during construction) via outfall OSN 001 and Broward River (during construction and operation) via outfall D-001 and D-002.



5. Chemical Wastes from CBCP - All low volume wastes (demineralizer regeneration, floor drainage, labs drains, and similar wastes) and chemical metal cleaning wastes shall be collected and treated in the zero discharge treatment system or disposed of off-site.

6. SSCC Corporation (SSCC) shall shut down the mill's once through cooling system within 10 days after written notification by DEP of the successful completion of the initial compliance tests on the CBCP boilers conducted pursuant to Condition II.A.7. SSCC shall inform the DEP Northeast District Office of the shutdown and surrender all applicable operating permits for that facility within 21 days of such notification.

7. Storm Water Runoff

a. Construction - During construction there shall be no discharges from the storm water basins for storms less than the ten-year, twenty-four hour storm event. Any discharge from the storm water runoff collection system from a storm event less than the once in ten year, twenty-four hour storm shall meet the following limits and shall be monitored at D-001 and D-002 by a grab sample once per discharge, but not more often than once per week:

Effluent Characteristic Flow (MGD)	Discharge Limits Instantaneous Maximum Report
TSS (mg/l)	50
pH	6.0-9.0

All applicable discharge limitations described in part I of the NPDES permit (FL0061204) for stormwater discharges during the period of construction from this facility shall apply under this permit and be reported to the Department as part of the Monthly Operation Report.

b. Operation

(1) Yard Area Runoff - During normal plant operation, necessary measures shall be used to settle, filter, treat or absorb silt-containing or pollutant-laden storm water runoff to limit the suspended solids to 50 mg/l or less at D-001 during rainfall periods less than the 22-year, 24-hour rainfall. During periods of operation when the CBCP is off-line, these necessary measures, as specified above, shall be used during rainfall periods greater than a 12-year, 24 -hour storm.

(2) Storage Area Runoff - During operation there shall be no discharges from the stormwater basins for storms less than the fifty-five year, twenty four-hour storm event. Any discharge from the storm water runoff collection system from a storm event less than the once in 50 year, twenty four-hour storm shall meet the limits in 7.a. above and shall be monitored at D-002 by a grab sample once per discharge, but not more than once per week.

c. Control measures shall consist at the minimum of filters, sediment traps, barriers, berms or vegetative planting. Exposed or disturbed soil shall be protected as soon as possible to minimize silt, and sediment-laden runoff. The pH shall be kept within the range of 6.0 to 9.0 in the discharge to the St Johns River and 6.5 to 8.5 in the Broward River.

d. Special consideration must be given to the control of sediment laden runoff resulting from storm events during the construction phase. Best management practices erosion controls should be installed early during the construction period so as to prevent the transport of sediment into surface waters which could result in water quality violations and Departmental enforcement action. Revegetation and stabilization of disturbed areas should be accomplished as soon as possible to reduce the potential for further soil erosion.



Should construction phase runoff pose a threat to the water quality of state waters, additional measures such as treatment of impounded runoff or the use of turbidity curtains (screens) in on-site impoundments shall be immediately implemented with any releases to state waters to be controlled.

e. It is necessary that there be an entity responsible for maintenance of the system pursuant to Section 62-25.027 and Chapter 40C-4.381(k), FAC.

f. Correctional action or modification of the system will be necessary should mosquito problems occur.

g. CBGC shall submit to DEP with copy to the City, erosion control plans for the entire construction project (or discrete phases of the project) detailing measures to be taken to prevent the offsite discharge of turbid waters during construction. These plans must also be provided to the construction contractor prior to the initiation of construction.

h. All swale and retention basin side slopes shall be seeded and mulched or sodded within thirty days following their completion and a substantial vegetative cover must be established within ninety days of seeding.

8. Sanitary wastes from CBCP shall be collected and routed for treatment to the SSCC domestic wastewater treatment plant.

#### **B. Water Monitoring Programs**

1. Necessity and extent of continuation, and may be modified in accordance with Condition No. XXI, Modification of Conditions.

2. Chemical Stormwater Monitoring - The parameters described in Condition III.A. shall be monitored during discharge as described in Condition III A. commencing with the start of construction or operation of the CFBs and reported quarterly to the Northeast District Office:

3. The ground water levels shall be monitored continuously at selected wells as approved by the SJRWMD. Chemical analyses shall be made on samples from all monitored wells identified in Condition IV.F. and IV.G. below. The location, frequency and selected chemical analyses shall be as given in Condition IV.F and IV.G. The ground water monitoring program shall be implemented at least one year prior to operation of the CFBs. The chemical analyses shall be in accord with the latest edition of *Standard Methods for the Analysis of Water and Wastewater*. The data shall be submitted within 30 days of collection/analysis to the SJRWMD.

4. The reclaimed water transferred to SSCC for cooling tower make-up water shall be monitored for the following parameters:

Flow (gallons per minute)	Continuous/Flow Meter
pH (standard units)	Weekly/Meter or Grab
Iron (mg/L)	Monthly/Grab
Total Copper (µg/L)	Monthly/Grab
Zinc (mg/L)	Monthly/Grab
Mercury (µg/L)	Monthly/Grab
Silver (µg/L)	Monthly/Grab
Aluminum (mg/L)	Monthly/Grab
Cadmium (mg/L)	Monthly/Grab
Arsenic (µg/L)	Monthly/Grab



Antimony (mg/L)	Monthly/Grab
-----------------	--------------

#### IV. GROUND WATER

##### A. *Water Well Construction Permit*

Prior to the construction, modification, or abandonment of a production well for the SSCC paper mill, the SSCC must obtain a Water Well Construction Permit from the SJRWMD pursuant to Chapter 40C-3, F.A.C. Construction, modification, or abandonment of a production well will require modification of the SSCC consumptive use permit when such construction, modification or abandonment is other than that specified and described on SSCC's consumptive use permit application form. The construction, modification, or abandonment of a monitor well specified in condition IV.H. will require the prior approval of the Department. All monitor wells intended for use over thirty days must be noticed to the City prior to construction or change of status from temporary to permanent.

##### B. *Well Criteria, Tagging and Wellfield Operating Plan*

Leaking or inoperative well casings, valves, or controls must be repaired or replaced by SSCC as required to eliminate the leak or make the system fully operational. Failure to make such repairs will be cause for deeming the well abandoned in accordance with Chapter 62-532.200(1), F.A.C., Chapter 373.309, Florida Statutes, and Chapter 366.301 (b), and .307 (a), Jacksonville Ordinance Code--Wells deemed abandoned will require plugging according to state and local regulations.

A SJRWMD-issued identification tag must be prominently displayed by SSCC at each SSCC withdrawal site by permanently affixing such tag to the pump, headgate, valve or other withdrawal facility as provided by Section 40C-2.401, Florida Administrative Code. The SSCC must notify the SJRWMD in the event that a replacement tag is needed.

SSCC must develop and implement a Well Field Operating Program within six (6) months after construction of wells or start-up of the CBCP. This program must describe which wells are primary, secondary, and standby (reserve); the order of preference for using the wells; criteria for shutting down and restarting wells; describe CBCP and SSCC-responsibilities in the operation of the well field, and any other aspects of well field management operation, such as who the well field operator is and any other aspects of Well Field management operation. This program must be submitted to the SJRWMD and a copy to the City within six (6) months of certification and receive SJRWMD approval before the wells may be used to supply water for the CBCP Cedar Bay Cogeneration plant.

##### C. *Maximum Annual Withdrawals*

CBCP's maximum annual use from the Floridan aquifer must not exceed 530.7 million gallons. Maximum daily use from the Floridan aquifer for the CBCP may not exceed 1.45 million gallons. The use of Floridan aquifer potable water for the sole purpose of waste stream dilution is prohibited. The use of potable water from the Floridan aquifer for control of fugitive dust emissions is prohibited when alternative water sources are available, such as treated wastewater, shallow water aquifer wells or stormwater. The use of Floridan aquifer potable water for the sole purpose of waste stream dilution is prohibited.



**D. Water Use Transfer**

The SJRWMD must be notified, in writing, within 90 days of the transfer of this certification. All transfers are subject to the provisions of Section 40C-2.351, F.A.C., which state that all terms and conditions of the permit shall be binding of the transferee.

**E. Emergency Shortages**

Nothing in this certification is to be construed to limit the authority of the SJRWMD to declare a water shortage and issue orders pursuant to Section 373.175, Florida Statutes, or to formulate a plan for implementation during periods of water shortage, pursuant to Section 373.246, Florida Statutes. In the event of a water shortage is declared by the District Governing Board, the CBCP shall adhere to reductions in water withdrawals as specified by the SJRWMD to the extent the restrictions apply to all other similar users.

**F. Monitoring and Reporting**

1. a. The licensee shall maintain records of total daily use by the CBCP on a monthly basis for each year ending on December 31st. These records shall be submitted to the SJRWMD on Form EN-3 by January 31st of each year.
- b. Prior to beginning water usage, all points where water is delivered from the SSCC water supply or wastewater system for use at CBCP must be equipped with totalizing flow meters. Such meters must maintain a 95% accuracy, be verifiable and be installed according to the manufacturer's specifications.
- c. CBCP must maintain the required flow meter(s). In case of failure or breakdown of any meter or other flow-measuring device, the SJRWMD must be notified in writing within 5 days of its discovery. A defective meter must be repaired or replaced within 30 days of its discovery.
- d. Total withdrawals from each monitored source must be recorded continuously, totaled monthly, and reported to the SJRWMD at least every six months from the initiation of the monitoring using SJRWMD Form No. EN-50.
- e. CBCP must have all flow meters checked for accuracy once every 3 years within 30 days of the anniversary date of commencement of operation of the CBCP, and recalibrated if the difference between the actual flow and the meter reading is greater than 5%. SJRWMD Form No. EN-51 must be submitted to the SJRWMD within 10 days of meter inspection and calibration.
2. Water quality samples shall be taken by SSCC in May and October of each year from each SSCC production well. The samples shall be analyzed by a DEP certified laboratory for the following parameters:

Magnesium	Sulfate
Sodium	Carbonate
Potassium	Bicarbonate (or alkalinity if pH is 6.9 or lower)
Chloride	Calcium

All major ion analyses shall be checked for anion/cation balance and must balance within 5 percent prior to submission. It is recommended that duplicates be taken to allow for laboratory problems or loss. The sample analyses shall be submitted to the SJRWMD by May 30 and October 30 of each year.
3. Legal uses of water existing at the time of certification application may not be significantly adversely impacted by the consumptive use for the CBCP. If unanticipated



significant adverse impacts occur, the consumptive use shall be subject to modification in whole or in part to curtail or abate the adverse impacts, unless the impacts can be mitigated by CBCP.

4. Off-site land uses existing at the time of certification application may not be significantly adversely impacted as a result of the consumptive use for the CBCP. If unanticipated significant adverse impacts occur, the consumptive use shall be subject to revocation or modification in whole or in part to curtail or abate the adverse impacts, unless the impacts can be mitigated by CBCP.

5. During the seventh year following issuance of this certification order, CBCP shall submit a report to SJRWMD, DEP, and the City demonstrating compliance with these conditions of certification, Chapter 373, Florida Statutes, and the Rules of SJRWMD and DEP, applicable to the consumptive use of water. Compliance shall be demonstrated with rules and statutory provisions in effect at that time.

SJRWMD shall evaluate the report and notify DEP in a report of any issues regarding compliance with this certification and applicable rules and statutory provisions, including whether the consumptive use of water for the CBCP complies with those provisions of Chapter 373, Florida statutes, and DEP's and SJRWMD's rules applicable to consumptive use and whether any conditions of certification must be amended, added, or deleted in order to insure that the referenced rules and statutory provisions are complied with. SJRWMD shall respond within 30 days of receipt of CBCP's report as to whether or not it contains information sufficient to make a determination as to compliance with the referenced rules and statutory provisions. Thereafter, DEP shall notify CBCP and the City within ninety (90) days after DEP's determination that CBCP's report is sufficient. Section 40C-1.610, F.A.C., shall apply. An opportunity for hearing pursuant to Section 120.57, Florida Statutes, shall be afforded any party. In any hearing requested pursuant to this condition of certification, the burden of demonstrating compliance shall be on CBCP. The continued consumptive use of water for the CBCP shall be dependent upon CBCP demonstrating and presenting sufficient data to establish that its consumptive use meets the referenced rules or statutory provisions. The Board hereby delegates to the Secretary the authority to enter final orders regarding this condition in the event an administrative hearing is requested.

#### ***G. Ground Water Monitoring Requirements***

The Licensee shall install a ground water monitoring well network to monitor the water quality of the surficial aquifer both horizontally and vertically above the Hawthorn Formation.

1. The Licensee shall conduct ground water monitoring at the pelletized ash storage area, coal storage area, storage area runoff pond(s), sedimentation ponds, unlined disposal ponds, and the re-located lime mud storage area within Smurfit-Stone Container Corporation's landfill site.

2. The Licensee shall give at least 72-hours notice to the DEP's Northeast District Office, prior to the installation of any monitoring well(s).

3. Prior to construction of any monitoring well(s), a soil boring shall be made at each monitoring well location in order to properly determine the well depth and screen interval.

4. All monitoring wells shall be constructed and developed in accordance with the DEP's guidelines and installed by a licensed water well contractor.



5. Within 30 days after installation of a monitoring well, the Licensee shall submit to the DEP's Northeast District Office detailed information on the well's location and construction on DEP Form 62-520.900(3), Monitor Well Completion Report.

6. All piezometers and monitoring wells not part of the approved ground water monitoring plan are to be plugged and abandoned in accordance with Chapter 62-532.500(4), F.A.C., unless future use is intended.

7. For land application sites, all ground water quality criteria specified in Chapter 62-520, F.A.C., shall be met at the edge of the zone of discharge. The zone of discharge for this project shall extend horizontally 200 feet from the application site, or to the Licensee's property lines, whichever comes first, and vertically to the base of the Surficial Aquifer.

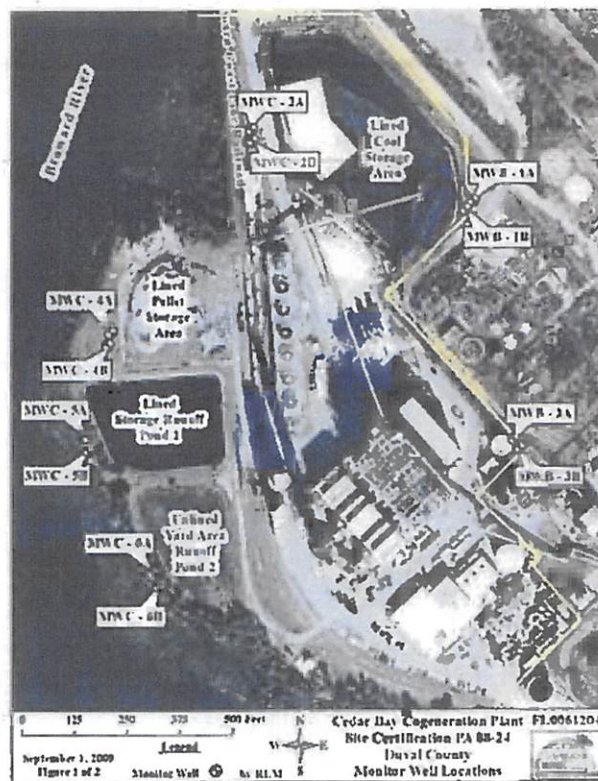
8. During the period of operation, the Licensee shall sample ground water at the monitoring wells identified in Condition IV.G.10. below in accordance with this site certification and the approved ground water monitoring plan prepared in accordance with Chapter 62-520.600, F.A.C.

9. The following monitoring wells shall be sampled at the pelletized ash storage area, coal storage area, storage area runoff pond(s), sedimentation ponds, unlined discharge ponds, and the re-located lime mud storage area within Smurfit-Stone Container Corporation's landfill site.

Monitor Well ID	Alternate Well Name and/or Description of Monitoring Location	Depth (Feet)	Aquifer Monitored	New or Existing
MWC-1	CBLM-1 / 30 feet east of railroad tracks, northwest of unlined Lime Mud Storage Area.	25	Surficial	Existing
MWC-2	CBLM-2 / 30 feet east of railroad tracks, southwest of unlined Lime Mud Storage Area.	25	Surficial	Existing
MWB-3	CBLM-3 / 120 feet north of unlined Lime Mud Storage Area.	25	Surficial	Existing
MWB-4	CBLM-4 / 78 feet west of fence along Eastport Rd., and east of unlined Lime Mud Storage Area.	25	Surficial	Existing
MWC-5	CBLM-5 / 50 feet south of unlined Lime Mud Storage Area.	20	Surficial	Existing
MWB-1A	MW-1A / 25 feet southeast of lined Coal Storage Area.	20	Surficial	Existing
MWB-1B	MW-1B / 25 feet southeast of lined Coal Storage Area.	50	Surficial	Existing
MWC-2A	MW-2A / 25 feet west of lined Coal Storage Area.	20	Surficial	Existing
MWC-2B	MW-2B / 25 feet west of lined Coal Storage Area.	50	Surficial	Existing
MWB-3A	MW-3A / 5 feet east of the Fire Water Tank.	20	Surficial	Existing
MWB-3B	MW-3B / 5 feet east of the Fire Water Tank.	50	Surficial	Existing

Monitor Well ID	Alternate Well Name and/or Description of Monitoring Location	Depth (Feet)	Aquifer Monitored	New or Existing
MWC-4A	MW-4A / 5 feet west of lined Pellet Storage Area.	20	Surficial	Existing
MWC-4B	MW-4B / 5 feet west of lined Pellet Storage Area.	50	Surficial	Existing
MWC-5A	MW-5A / 20 feet west of lined Storage Area Runoff Pond 1.	20	Surficial	Existing
MWC-5B	MW-5B / 20 feet west of lined Storage Area Runoff Pond 1.	50	Surficial	Existing
MWC-6A	MW-6A / 20 feet west of unlined Yard Area Runoff Pond 2.	20	Surficial	Existing
MWC-6B	Mw-6B / 20 feet west of unlined Yard Area Runoff Pond 2.	50	Surficial	Existing

MWB = Background; MWC = Compliance





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10. The following parameters shall be analyzed for each monitoring well identified in Condition IV.G.10.

Parameter	Units	Sample Type	Monitoring Frequency
Water Level (NGVD)	Feet	In-situ	Quarterly
pH (field)	SU	In-situ	Quarterly
Specific Conductance (field)	umhos/cm	In-situ	Quarterly
Aluminum, Total Recoverable	ug/L	Grab	Quarterly
Arsenic, Total Recoverable	ug/L	Grab	Quarterly
Barium, Total Recoverable	ug/L	Grab	Quarterly
Beryllium, Total Recoverable	ug/L	Grab	Quarterly
Cadmium, Total Recoverable	ug/L	Grab	Quarterly
Chromium, Total Recoverable	ug/L	Grab	Quarterly
Copper, Total Recoverable	ug/L	Grab	Quarterly
Iron, Total Recoverable	ug/L	Grab	Quarterly
Lead, Total Recoverable	ug/L	Grab	Quarterly
Mercury, Total Recoverable	ug/L	Grab	Quarterly
Nickel, Total Recoverable	ug/L	Grab	Quarterly
Selenium, Total Recoverable	ug/L	Grab	Quarterly
Zinc, Total Recoverable	ug/L	Grab	Quarterly
Gross Alpha	pCi/L	Grab	Quarterly

Parameter	Units	Sample Type	Monitoring Frequency
Chloride	mg/L	Grab	Quarterly
Turbidity	NTU	In-situ	Quarterly
Sulfate	mg/L	Grab	Quarterly
Total Dissolved Solids	mg/L	Grab	Quarterly

12. Water levels shall be recorded before evacuating each well for sample collection. Elevation references shall include the top of the well casing and land surface at each well site (NAVD allowable) at a precision of plus or minus 0.01 foot.

13. Ground water monitoring wells shall be purged before sampling to obtain representative samples.

14. The ground water minimum criteria specified in Chapter 62-520.400 F.A.C., shall be met within the zone of discharge.

15. If the concentration for any constituent listed in Condition IV.G.11. 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 background quality shall be the prevailing standard.

16. Analyses shall be conducted on unfiltered samples, unless filtered samples have been approved by the DEP's Northeast District Office as being more representative of ground water conditions.

17. If any monitoring well becomes damaged or inoperable, the Licensee shall notify the DEP's Northeast District Office immediately and a detailed written report shall follow within seven days. The written report shall detail what problem has occurred and remedial measures that have been taken to prevent recurrence. All monitoring well design and replacement shall be approved by the DEP's Northeast District Office prior to installation.

18. The Licensee shall ensure that all monitor well sampling is performed in accordance with the DEP's Standard Operating Procedures Manual for Field Sampling, and shall conform to the applicable Quality Assurance/Quality Control requirements of Chapter 62-160, F.A.C.

19. The Licensee shall ensure that all monitor well samples are analyzed by a certified laboratory that meets the requirements of Chapter 62-160, F.A.C. Minimum detection limits shall be at or below the ground water standards and/or criteria.

20. Ground water sampling and reporting shall conform to the schedule set forth below with monitoring results submitted on DEP Form 62-620.910(10) (attached as Attachment A), or such other format as approved by the DEP. If the Licensee elects to enter the monitoring results into the DEP's electronic system, a hard copy of the report is not required to be submitted to the DEP for that monitoring period, but shall be printed out for the Licensee's records.

Sample Period	Quarterly	Report Deadline
(January-March)	X	April 28 <sup>th</sup>
(April-June)	X	July 28 <sup>th</sup>
(July-September)	X	October 28 <sup>th</sup>
(October-December)	X	January 28 <sup>th</sup>



21. All correspondence, reports, plans and summaries pertaining to ground water monitoring shall be submitted to the Ground Water Section of the DEP's Northeast District Office with copies to the DEP's Siting Office in Tallahassee, the DEP's Wastewater Compliance Evaluation Section in Tallahassee, and the local City of Jacksonville's Environmental Division.

22. When the ground water monitoring system shows a potential for this facility to cause or contribute to a violation of the ground water quality standards of Chapter 62-520, F.A.C., at the boundary of the zone of discharge, the appropriate ponds or coal pile shall be bottom sealed, relocated, or the operation of the affected facility shall be altered in such a manner as to assure the Department that no violation of the ground water standards will occur beyond the boundary of the zone of discharge.

#### **H. Water Use Audit**

At the end of the second year of production withdrawals, CBCP must have conducted an audit of the amount of water used in the various operational processes, landscaping practices and domestic facilities. If the audit results indicate losses of water due to leakage, a leak detection analysis must be conducted and submitted to the SJRWMD and a leak repair program must be implemented.

#### **I. Water Conservation Awareness Program**

Prior to beginning water usage, CBCP must implement and submit to the SJRWMD an employee awareness program (including such measures as posting signs regarding water conservation and reporting leaks) concerning water conservation.

### **V. CONTROL MEASURES DURING CONSTRUCTION**

#### **A. Storm Water Runoff**

During construction, appropriate measures shall be used to settle, filter, treat or absorb silt-containing or pollutant-laden storm water runoff to limit the total suspended solids to 50 mg/l or less and pH to 6.0 to 9.0 at OSN 003 during rainfall events that are lesser in intensity than the 10-year, 24-hour rainfall, and to prevent an increase in turbidity of more than 29 NTU above background in waters of the State.

Control measures shall consist at the minimum of sediment traps, barriers, berms or vegetative planting. Exposed or disturbed soil shall be protected as soon as possible to minimize silt and sediment-laden runoff. The pH shall be kept within the range of 6.0 to 9.0 at OSN.003. Stormwater drainage to the Broward River shall be monitored as indicated below:

Monitoring Point	Parameters	Frequency	Sample Type
*Storm water drainage to the Broward River from the runoff treatment pond	BOD5, TOC, suspended solids, turbidity, dissolved oxygen, pH, TKN, Total phosphorus, Fecal Coliform, Total Coliform, Oil and grease	**	**

\*Monitoring shall be conducted at suitable points for allowing a comparison of the characteristics of preconstruction and construction phase drainage and receiving waters.

\*\*The frequency and sample type shall be as outlined in a sampling program prepared by the

applicant and submitted at least ninety days prior to start of construction for review and approval by the DEP Northeast District Office. The District Office will furnish copies of the sampling program to the City and SJRWMD and shall indicate approval or disapproval within 60 days of submittal.

**B. Sanitary Wastes**

Disposal of sanitary wastes from construction toilet facilities shall be in accordance with applicable regulations of the Department and the City.

**C. Environmental Control Program**

CBCP shall establish an environmental control program under the supervision of a qualified person to assure that all construction activities conform to good environmental practices and the applicable conditions of certification. A written plan for controlling pollution during construction shall be submitted to DEP and the City within sixty days of issuance of the Certification. The plan shall identify and describe all pollutants and waste generated during construction and the methods for control, treatment and disposal. CBCP shall notify the Department's Northeast District Office and the City by telephone within 24 hours if possible if unexpected harmful effects or evidence of irreversible environmental damage are detected by it during construction, shall immediately report in writing to the Department, and shall within two weeks provide an analysis of the problem and a plan to eliminate or significantly reduce the harmful effects or damage and a plan to prevent reoccurrence.

**D. Construction Dewatering Effluent**

There shall be no discharge of construction dewatering effluent.

**VI. SAFETY**

The overall design, layout, and operation of the facilities 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 will be complied with during construction and operation. The Safety Standards specified under Section 440.56, F.S., by the Industrial Safety Section of the Florida Department of Commerce will also be complied with.

**VII. SCREENING**

The CBCP shall provide screening of the site to the extent feasible through the use of aesthetically acceptable structures, vegetated earthen walls and/or existing or planted vegetation.

**VIII. TOXIC, DELETERIOUS, OR HAZARDOUS MATERIALS**

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

**IX. SOLID WASTE STORAGE AND DISPOSAL**

CBCP shall be responsible for arranging for the proper storage, handling, disposal, or reuse of any solid waste generated by the CBCP facility. Solid waste produced by the operation



of the CBCP facility shall be removed from site and disposed of in a permitted disposal facility, with the exception of bottom ash and fly ash. Bottom ash and fly ash may be shipped by rail or truck to a permitted disposal area outside Duval County. Ash may be shipped offsite to companies specializing in the marketing and utilization of combustion by-products. Fugitive emissions from storage and handling of ash materials will be controlled in accordance with these conditions and Department rules. Open rail cars used to ship dry ash will be sealed to prevent leaks of ash during transport. The bottom ash and fly ash shall not be disposed of in a landfill within Duval County. If the CBCP decides to dispose of the bottom ash or fly ash by other than returning it to the mine site or a permitted disposal site outside Duval County, they shall notify the City and DEP. Prior to removal and disposal of spent lime mud and pond tailings, the CBCP shall determine whether those wastes are hazardous under 40 CFR 26 and 62-730, F.A.C. If wastes are determined to be hazardous, they shall be disposed of in accordance with Chapter 62-730, F.A.C., after consultation with the DEP and the City. If not hazardous, disposal shall be to a landfill designed to ensure compliance with groundwater quality criteria as contained in Chapters 62-520, and 62-730 F.A.C. All solid wastes disposed of on site shall comply with the provisions of Chapter 62-701, F.A.C. Ground water monitoring in accordance with 62-522, F.A.C., shall be implemented at the lime mud disposal site.

At least ninety (90) days prior to disposal or use of any sludge generated by pretreatment of reclaimed SSCC wastewater or zero wastewater discharge system, CBCP shall report to DEP and the City concerning the chemical characterization of any such sludge. DEP reserves the right to require additional sampling and analysis as necessary to ensure that the above-cited regulations are complied with. Prior to any such sludge disposal, CBCP shall obtain a letter of acceptance from a permitted disposal site. On or before the last day of the first year of commercial operation, and each year of commercial operation thereafter, CBCP shall report to DEP and the City concerning the composition and quantity of sludge generated by the zero water discharge system and the method of disposal, including name and location of facilities handling, treating, storing, and/or disposing of said sludge waste.

#### **X. CHANGE IN DISCHARGE**

All discharges or emissions authorized herein to CBCP shall be consistent with the terms and conditions of this certification. The discharge of any pollutant not identified in the application or any discharge more frequent than, or at a level in excess of, that authorized herein shall constitute a violation of this certification. Any anticipated facility expansions, production increases, or process modification which will result in new, different or increased discharges or expansion in steam generating capacity will require a submission of new or supplemental application to DEP's Siting Coordination Office pursuant to Chapter 403, F.S.

#### **XI. NONCOMPLIANCE NOTIFICATION**

If, for any reason, either licensee does not comply with or will be unable to comply with any limitation specified in this certification, the licensee shall notify the Deputy Assistant Secretary of DEP's Northeast District and the City office by telephone as soon as possible but not later than the first DEP working day after the licensee becomes aware of said noncompliance, and shall confirm the reported situation in writing within seventy-two (72) hours supplying the following information:

- A. A description and cause of noncompliance; and
- B. The period of noncompliance, including exact dates and times; or, if not



corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying event.

## **XII. FACILITIES OPERATION**

Each licensee shall at all times maintain good working order and operate as efficiently as possible all of its treatment or control facilities or systems installed or used by the licensee to achieve compliance with the terms and conditions of this certification. Such systems are not to be bypassed without prior Department (Northeast District) after approval and after notice to the City except where otherwise authorized by applicable regulations.

## **XIII. ADVERSE IMPACT**

Each licensee shall take all reasonable steps to minimize any adverse impact resulting from its 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.

## **XIV. RIGHT OF ENTRY**

The licensees shall allow the Secretary of the Florida Department of Environmental Protection and/or authorized DEP representatives, and representatives of the City and SJRWMD, upon the presentation of credentials:

- A. To enter upon the licensee's premises where an effluent source is located or in which records are required to be kept under the terms and conditions of this permit; and
- B. To have access to and copy all records required to be kept under the conditions of this certification; and
- C. To inspect and test any monitoring equipment or monitoring method required in this certification and to sample any discharge or emission of pollutants; and
- D. To assess any damage to the environment or violation of ambient standards.
- E. SJRWMD authorized staff, upon proper identification, will have permission to enter, inspect, and observe permitted and related CBCP facilities in order to determine compliance with the approved plans, specifications, and conditions of this certification.
- F. The City authorized staff, upon proper identification, will have permission to enter, inspect, sample any discharge, and observe permitted and related facilities in order to determine compliance with the approved plans, specifications, and conditions of this certification.

## **XV. REVOCATION OR SUSPENSION**

This certification may be suspended, or revoked pursuant to Section 403.512, Florida Statutes, or for violations of any Condition of Certification.

## **XVI. CIVIL AND CRIMINAL LIABILITY**

This certification does not relieve either licensee from civil or criminal responsibility or liability for noncompliance with any conditions of this certification, applicable rules or regulations of the Department, or Chapter 403, Florida Statutes, or regulations thereunder.

Subject to Section 403.511, Florida Statutes, this certification shall not preclude the institution of any legal action or relieve either licensee from any responsibilities or penalties



established pursuant to any other applicable State Statutes or regulations.

#### **XVII. PROPERTY RIGHTS**

The issuance of this certification does not convey any property rights in either real or personal property, tangible or intangible, or 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. The licensees shall obtain title, lease or right of use to any sovereign submerged lands occupied by the plant, transmission line structures, or appurtenant facilities from the State of Florida.

#### **XVIII. 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 provision to other circumstances and the remainder of the certification shall not be affected thereby.

#### **XIV. DEFINITIONS**

The meaning of terms used herein shall be governed by the definitions contained in Chapter 403, Florida Statutes, and any regulation adopted pursuant thereto. In the event of any dispute over the meaning of a term used in these general or special 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.

#### **XX. REVIEW OF SITE CERTIFICATION**

A. The certification shall be final unless revised, revoked, or suspended pursuant to law. At least every five years from the date of issuance of this certification or any National Pollutant Discharge Elimination Control Act Amendments of 1972 for the plant units, the Department shall review all monitoring data that has been submitted to it or its agent(s) during the preceding five-year period for the purpose of determining the extent of the licensee's compliance with the conditions of this certification of the environmental impact of this facility. The Department shall submit the results of its review and recommendations to the licensees. Such review will be repeated at least every five years thereafter.

#### **XXI. MODIFICATION OF CONDITIONS**

The conditions of this certification may be modified in the following manner:

A. The Board hereby delegates to the Secretary the authority to modify, after notice and opportunity for hearing, any conditions pertaining to consumptive use of water, reclaimed water, monitoring, sampling, ground water, surface water, mixing zones, or variances to water quality standards, zones of discharge, leachate control programs, effluent limitations, air emission limitations, fuel, or solid waste disposal, right of entry, railroad spur, transmission line, access road, pipelines, or designation of agents for the purpose of enforcing the conditions of this certification.

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 Pollution Discharge Elimination System (NPDES) permit for the project. In the event of a conflict, the conditions of those permits shall be controlling over these Conditions of Certification.

C. All other modifications shall be made in accordance with Section 403.516, Florida Statutes.

## **XXII. FLOOD CONTROL PROTECTION**

The plant and associated facilities shall be constructed in such a manner as to comply with the Duval County flood protection requirements.

## **XXIII. EFFECT OF CERTIFICATION**

Certification and conditions of certification are predicated upon design and performance criteria indicated in the application. Conformance to those criteria, unless specifically amended, modified, or as the Department and parties are otherwise notified, is binding upon the applicants in the preparation, construction, and maintenance of the certified project. In those instances where a conflict occurs between the application's design criteria and the conditions of certification, the conditions shall prevail.

## **XXIV. NOISE**

To mitigate the effects of noise produced by the steam blowout of steam boiler-tubes, each licensee shall conduct public awareness campaigns prior to such activities to forewarn the public of the estimated time and duration of the noise. The licensees shall comply with the applicable noise limitations specified in Environmental Protection Board Rules or The City of Jacksonville Noise Ordinance.

## **XXV. USE OF WATER FOR COOLING PURPOSES**

The CBCP shall use reclaimed water provided by the SSCC paper mill (in addition to any wastewater generated by the CBCP that is suitable for reuse for that purpose) for cooling water supply. In the event of disruption of SSCC reclaimed wastewater as the cooling water makeup sources for Cedar Bay, Inc., Cedar Bay, Inc. will utilize the water retained in SSCC's holding basins or other non-potable sources of water as cooling water makeup.

At least 90 days prior to beginning commercial operation, Cedar Bay Generating Company, L.P shall submit to the Department a report concerning the actual measured pollutant characteristics of reclaimed water to be obtained from the SSCC paper mill. Such report shall be based on approved analytical results from four monthly samples obtained directly from the SSCC waste stream to be tied in with the CBCP cooling system, and shall include the concentrations of BOD5, COD, total organic carbon, total suspended solids, ammonia, pH, oil and grease, calcium, magnesium, sodium, potassium, alkalinity as mg of CaCO<sub>3</sub>, sulfate, chloride, nitrate, fluoride, silica, chlorine, phosphate (total) as P, cyanide, iron, manganese, aluminum, nickel, zinc, copper, cadmium, chromium, beryllium, arsenic, selenium, antimony, mercury, barium, silver, lead, thallium, phosphorus, and TKN. Where applicable, wastewater sampling and analyses conducted by SSCC under the terms of operation permit number I016-200147 may be used to meet the terms of this condition. Any other sampling and analyses submitted under the terms of this permit shall be in accordance with a Department-approved Quality Assurance Plan. Results of all testing and sampling specified above shall be submitted



to the Department within 30 days of testing.

SSCC's generation, treatment, or discharge of its wastewater is not covered by this site certification, and the permitting of SSCC's generation, treatment, or discharge of its wastewater does not require Siting Board approval.

#### **XXVI. ENFORCEMENT**

A. The Secretary may take any and all lawful actions as he or she deems appropriate to enforce any condition of this certification.

B. Any participating agency (federal, state, local) may take any and all lawful actions to enforce any condition of this certification that is based on the rules of that agency. Prior to initiating such action the agency head shall notify the Secretary of that agency's proposed action.

C. The City may initiate any and all lawful actions to enforce the conditions of this certification that are based on the Department's rules, after obtaining the Secretary's written permission to so process on behalf of the Department.

#### **XXVII. ENDANGERED AND THREATENED SPECIES**

Prior to start of construction, CBCP shall survey the site for endangered and threatened species of animal and plant life. Plant species on the endangered or threatened list shall be transplanted to an appropriate area if practicable. Gopher Tortoises and any commensals on the rare or endangered species list shall be relocated after consultation with the Florida Game and Fresh Water Fish Commission. A relocation program, as approved by the FGFWFC, shall be followed.

#### **XXVIII. ENVIRONMENTALLY SENSITIVE LAND ACQUISITION**

##### **A. Periodic Payments**

1. As a condition of this certification, CBCP shall be required to make periodic monetary contributions for the purpose of funding a program for the acquisition and management of environmentally sensitive lands in Duval County, Florida. These payments shall be made to The Nature Conservancy, Inc., in trust for the State of Florida, to be used as provided in Section B below; and to the City of Jacksonville Environmental Land Acquisition Trust Fund, to be used as provided in Section C below.

2. The two million dollar payment made by or on behalf of the CBCP Corporation to The Nature Conservancy, Inc., (TNC) on or about June 16, 1992, shall be deemed to be the first of two periodic payments, totaling 4.5 million dollars, which the CBCP is obligated to make to TNC under this condition. The second periodic payment, 2.5 million dollars, shall be transmitted within 48 hours of the date on which CBCP commences commercial operation. TNC shall hold all funds received from CBCP or on behalf of CBCP in trust for the State of Florida.

3. Commencing on the anniversary of the second payment required by subsection (2) above, and continuing each year for 30 years thereafter, a payment of \$300,000 shall be submitted to the City of Jacksonville for each year that the CBCP remains in commercial operation. Each annual payment shall be transmitted within 48 hours of the anniversary of the date on which commercial commenced at CBCP, and shall be deposited in the Jacksonville Environmental Land Acquisition Trust Fund (JELSTF) established by section 110.362 of the



Jacksonville Ordinance Code.

4. Any failure to achieve timely transmission of a periodic payment required by this condition shall be grounds for revocation of the certification.

5. All funds attributable to the periodic payments required by this condition shall be received, held, disbursed, and expended in conformance with the applicable provisions of this Condition.

6. The express intent of this Condition is to assure that these periodic payments fund the acquisition of lands possessing substantial ecological value to the ecosystem of the St. Johns River watershed; and that lands acquired with funds provided under this condition be managed to retain or enhance the ecological values for which they were acquired. Funds made available under this Condition shall not be used for the development of urban recreational facilities which conflict with the natural resource values of a site. Prohibited facilities include ball fields or courts, playgrounds, and other developed amenities which are not dependent on ecological conditions for their existence and which are not ancillary to public access for recreational enjoyment of the available natural resources.

7. Properly managed natural resource-based recreation which does not degrade the ecological values of a site shall be encouraged through the development of appropriate management plans which shall be approved by the Department for any tract purchased under this condition. Management of any site shall be consistent with the acquisition criteria specified in this condition and shall be coordinated with other managers of natural lands in the region, such as the Department, the St. Johns River Water Management District, the National Park Service, the Division of Forestry, and the Florida Game and Fresh Water Fish Commission.

8. Funds made available under this condition may be used to participate in existing public and private environmental land acquisition programs such as the Conservation and Recreational Lands Program (CARL), Save Our Rivers (SOR), Florida Communities Trust (FCT), Land Acquisition Trust Fund (LATF), Preservation 2000, The Nature Conservancy, and other similar programs with the intent behind this condition.

***B. Land Acquisition Process: State of Florida***

1. All land acquisition and management activities funded by the certification for the use and benefit of the State of Florida or its designees shall be undertaken in accordance with the process established by this section.

2. The Nature Conservancy (TNC) shall serve as the agent for acquisition of any parcel of land purchased with funds made available under this condition. The Department and TNC shall enter into an agreement which incorporates the provisions of this condition and such other provisions not inconsistent with this condition that the Department finds necessary to assure that this section is properly implemented in the public interest. The agreement shall specify the duties and responsibilities of the parties with respect to the retention and disbursement of funds received to assure an accurate accounting and audit trail.

3. There shall be a six member Land Acquisition and Management Advisory Council (LAMAC) comprising two representatives appointed by each of the following governmental entities: the Department, the St. Johns River Water Management District, and the City of Jacksonville. TNC shall appoint a representative to serve as chair of the LAMAC. The LAMAC shall hold one or more public hearings for the purpose of receiving public input as to lands potentially suitable for acquisition under this section. Following appropriate public input,



the LAMAC shall report its findings to the Department.

4. After review of the LAMAC report, TNC shall identify and list as many land acquisition options as it deems practicable. A copy of the list shall be submitted to each of the entities represented on the LAMAC. In establishing this list, TNC shall consider:

- a. The regional environmental importance of each parcel of property, taking into account its proximity to water bodies and other publicly-held land;
- b. The extent of wildlife habitat and diversity on each parcel and the effect of its acquisition on regional efforts towards wildlife conservation; and
- c. The potential of each parcel for environmental enhancement, restoration, and natural resource-based recreational uses.

The LAMAC shall review and approve the land acquisition options list before any parcels are acquired under this condition.

5. Following approval of the list, TNC shall initiate selection of parcels to be acquired. In selecting parcels for acquisition, preference shall be given to parcels located near the CBCP site, including parcels within or adjacent to the Timucuan Ecological and Historical Preserve managed by the National Park Service. Preference shall also be given to the selection of larger parcels which can be purchased using contributions from other entities to supplement funds available under this condition. After approval by the Secretary of the Department of a proposed acquisition, the parcel shall be purchased by TNC in trust for the State of Florida.

6. Title to any parcel purchased under this condition shall ultimately vest in a governmental entity following a determination by the Secretary of the Department, after consultation with the LAMAC, as to how the property can be managed most appropriately in the public interest. It is understood that title to a newly-purchased parcel may initially vest in TNC pending this determination and transfer of the title to an appropriate government entity or entities for management. The Siting Board hereby delegates to the Secretary of the Department the authority to select the governmental entity or entities most suitable to hold title and manage any property purchased under this condition. Upon notification from the Department that the selection has occurred, TNC shall forthwith execute a transfer of title to the designated entity or entities.

7. TNC shall be entitled to receive reimbursement from funds held by it under this Condition for any costs related to the performance of an acquisition under this Section. TNC may expend on an annual basis up to two per cent of the purchase price of a parcel to which it holds interim title to defray expenses associated with management of that parcel until title can be transferred as specified in subsection (6).

8. TNC is hereby authorized to explore and enter into financing arrangements which will allow the expected proceeds of the periodic payments required under this condition to be capitalized for immediate utilization in land acquisition or for appropriate installment payments in the that it is possible to defer full payment for a parcel over a number of years. CBCP shall cooperate to the maximum extent in assisting TNC to achieve such alternate financing arrangements for the benefit of the public as may be practicable.

C. Land Acquisition Process: City of Jacksonville

1. All land acquisition and management activities funded by Section A.3 of this Condition for the use and benefit of the City of Jacksonville or its designee shall be undertaken in accordance with the process established by this Section.

2. The Real Estate Division of the City of Jacksonville Public Works Department or another appropriate governmental entity shall serve as the agent for acquisition of



any parcel of land purchased with funds made available under this Condition. The Department and the City of Jacksonville shall enter into an agreement which incorporates the provisions of this Condition and such other provisions not inconsistent with this Condition that the Department finds necessary to assure that this Section is properly implemented in the public interest. The agreement shall specify the duties and responsibilities of the parties with respect to the retention and disbursement of funds received to assure an accurate accounting and audit trail.

3. The City of Jacksonville, acting through the Jacksonville Environmental Land Selection Committee (JELSC) established by Mayoral Executive Order 85-81, as amended by Executive Order 91-147, pursuant to Section 110.362 of the Jacksonville Ordinance Code, shall identify and list as many land acquisition options as it deems practicable. In establishing its list, JELSC shall consider:

- a. The regional environmental importance of each parcel of property, taking into account its proximity to water bodies and other publicly-held land;
- b. The extent of wildlife habitat and diversity on each parcel and the effect of its acquisition on regional efforts toward wildlife conservation; and
- c. The potential of each parcel for environmental enhancement, restoration, and natural resource-based recreational uses.
- d. The goals, objectives, and policies of the Conservation/Coastal Management element of the City's Comprehensive Plan, as amended.

A copy of the JELSC list, as it may be amended from time to time, shall be supplied to the Department and to the St. Johns River Water Management District. JELSC shall furnish a copy of the list upon its initial preparation and after any subsequent amendment thereto.

4. Lands to be acquired under this Section with funds made available in whole or in part under this Condition may be acquired only with the concurrence of the Jacksonville City Council and the Department. In selecting parcels for acquisition, preference shall be given to parcels located near the CBCP site, including parcels within or adjacent to the Timucuan Ecological and Historical Preserve managed by the National Park Service. Preference shall also be given to the selection of larger parcels which can be purchased using contributions from other entities to supplement funds available under this condition. After approval by the Department and the City Council of a proposed acquisition, the parcel shall be purchased by the City.

5. With the approval of the Department and the city council, title to land acquired under this Section may be sold or transferred to a governmental entity to facilitate effective and beneficial management of the parcel. Any funds received by the City as a result of sale or transfer of property previously acquired under this Section shall be deposited in the JELATF and remain subject to the provisions of this Condition.

6. Any funds paid by CBCP to the JELATF in fulfillment of this Condition or in accordance with any other Condition of Certification may be used for the purpose of managing lands acquired under this Section.

7. The City of Jacksonville is hereby authorized to explore and enter into financing arrangements which will allow the expected proceeds of the periodic payments available under this Section to be capitalized for immediate utilization in land acquisition and management or for appropriate installment payments in the event that it is possible to defer full payment for a parcel over a number of years. CBCP shall cooperate to the maximum extent in assisting the City to achieve such alternate financing arrangements for the benefit of the public

as may be practicable.

8. Sale or transfer of any parcel acquired under this Section shall be subject to a reversionary interest retained by the Board of Trustees of the Internal Improvement Trust Fund. In the event that the property ever ceases to be used and managed for environmental purposes consistent with this Condition, ownership of the property shall immediately revert to the State of Florida.

#### **XXIX. TRANSFER OF CERTIFICATION**

If the Cedar Bay Cogeneration Project is sold or legally transferred to another owner, notice of such sale or transfer shall immediately be submitted to the Florida Department of Environmental Protection and the agency parties to this certification by the previous certification holder (licensee) and the assignee. Included in the notice shall be the identification of the entity responsible for compliance with the Certification. Any assignment or transfer shall carry with it the full responsibility for the limitations and conditions of this Certification.

#### **History.**

Certified 02/20/1991; signed by Governor Chiles  
Ordered modified 06/19/1992; signed by Governor Chiles  
Modified 05/14/1993; signed by Governor Chiles  
Modified 10/09/1995; signed by Secretary Wetherell  
Modified 07/25/1996; signed by Secretary Wetherell  
Modified 05/31/2001; signed by Deputy Secretary Green  
Modified 08/14/2006; signed by Siting Administrator Owen  
Modified 12/20/2006; signed by Siting Administrator Owen  
Modified 08/17/07, signed by Siting Administrator Halpin  
Modified 03/03/10; signed by Siting Administrator Halpin



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DEP FO # 10-0322



## Florida Department of Environmental Protection

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

Charlie Crist  
Governor

Jeff Kottkamp  
Lt. Governor

Michael W. Sole  
Secretary

March 3, 2010

Tracy Patterson II, General Manager  
Cedar Bay Generating Plant  
9640 Eastport Road  
Jacksonville, FL 32218  
(904) 751-4000

Re: Cedar Bay Cogeneration Project  
Modification to Conditions of Certification  
DEP Case Number PA 88-24I  
OGC Case Number 09-4160

### FINAL ORDER MODIFYING CONDITIONS OF CERTIFICATION

Dear Mr. Patterson:

The Governor and Cabinet (Siting Board) issued the Site Certification for the Cedar Bay Cogeneration, Inc. (CBC or CBCP) and Smurfit-Stone Container Corp (SSCC) Cedar Bay Cogeneration Plant on January 22, 1991. This certification authorized the construction and operation of three circulating fluidized bed steam generators (boilers) generating a total 250 MW (corrected scrivener's error of 225 megawatts shown on draft final order) electricity and associated facilities. Crushed coal is the primary fuel with approval for limited co-firing of petroleum coke and tire-derived fuel.

The Cedar Bay Generating Company, L.P. (CBGC) has requested that the name shown on the Site Certification be corrected. The facility owner asserts that it has always been Cedar Bay Generating Company L.P. with Cedar Bay Cogeneration, Inc. as a business entity partner. The Department of Environmental Protection (Department) has incorporated that request into the Conditions of Certification by this Final Order.

Pursuant to 403.516(1)(c)2., F.S., the Department has initiated a modification to the Conditions of Certification of Cedar Bay Cogeneration Project. The modification is to modify the Conditions of Certification of the Cedar Bay Cogeneration Plant-Condition IV.G (Ground Water Monitoring Requirements) to conform with revised rule language, including the facility's Ground Water Monitoring Report [DEP form 62-620.910(10)]. This form is required by Rule 62-620, F.A.C. Wastewater Permitting.

Cedar Bay is located and operates on a 28-acre parcel of property owned by Smurfit Stone via a long-term ground lease. The area is zoned heavy industrial and has been an active site for Smurfit Stone for



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many years. Prior to Smurfit, Rayonier/St. Regis conducted industrial paper operations on the site. The leased site where Cedar Bay is constructed and operates was a dedicated waste disposal area for Smurfit between 1972 and 1991. As a pre-requisite to site development for Cedar Bay, ENSR conducted a detailed site assessment that included groundwater analyses, soil borings and a compilation of the industrial history of the leased area. As a result of the particular land use, it was found that there was already an established level of contamination that existed in the groundwater. There are exceedances of the Department's drinking water standards for metals (antimony, arsenic, beryllium, chromium, copper, lead, mercury, nickel and zinc) and sulfate at many of the wells.

As a result of these findings, prior to operation, Cedar Bay conducted groundwater monitoring on a monthly basis in order to establish defined baselines of the parameters in the monitoring wells. As there was authenticated pre-established contamination, Cedar Bay uses pre-operational groundwater data for comparison purposes and as a baseline to substantiate that facility operations has not impacted the zones of discharge. In both the ground water rule 62-520, F.A.C. and Condition IV.G.15., it is stated, "If the concentration for any constituent listed in Condition IV.G.11. 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 background quality shall be the prevailing standard." This facility does have elevated levels of certain contaminants in the background wells, and they are protected from this background well rule requirement.

On or before January 15, 2010, all parties to the certification proceeding were provided with notice by certified mail of the Department's intent to modify the Conditions of Certification for this facility, along with a copy of the proposed Order Modifying Conditions of Certification. On January 22, 2010, notice of the Department's intent to modify the Conditions of Certification for this facility was published on the Florida Administrative Weekly (FAW). Pursuant to Section 403.516, Florida Statutes ("F.S."), and Rule 62-17.211, Florida Administrative Code ("F.A.C."), all parties to the certification proceeding have 45 days from the issuance of notice by mail to such party's last address of record in which to file a written objection to the modification; that any person who is not already a party to the certification proceeding and whose substantial interests will be affected by the requested modification has 30 days from the date of publication of the public notice in the Florida Administrative Weekly to object in writing; that failure to act within the time frame constitutes a waiver of the right to become a party; and that the Department will issue an Order Modifying the Conditions of Certification for this facility if no written objections are received by the Department.

No objections to the modification have been received by the Department. The Conditions of Certification for the Cedar Bay Cogeneration Plant are hereby modified as follows:

Throughout the Conditions Cedar Bay Cogeneration, Inc.(CBC) has been changed to Cedar Bay Generating Company, L.P. (CBGC) and the acronym "RESO" has been changed to "the City" to represent the City of Jacksonville Environmental Division.

## I. GENERAL

### A. Applicability

When a condition is intended to refer to both ~~Cedar Bay Cogeneration, Inc. (CBC)~~ Cedar Bay Generating Company, L.P. (CBGC) and Smurfit-Stone Container Corp., the term "~~CBC/CBGC/SSCC~~" or "licensees" will be used. When a condition is intended to refer to the "Cedar Bay Cogeneration Project" the terms "Cedar Bay Cogeneration Project", "CBCP", or "Project" will be used.

Where a condition applies only to ~~Cedar Bay Cogeneration, Inc.~~ Cedar Bay Generating Company, L.P. the term ~~Cedar Bay Cogeneration, Inc. (CBC)~~ Cedar Bay Generating Company, L.P. (CBGC) or the term "licensee", where it is clear that "~~CBC/CBGC~~" is the intended responsible party, will be used. Similarly, where a condition applies only to Smurfit-Stone Container Corp., the term "Smurfit-Stone Container Corp." or the abbreviation "SSCC" or the term "licensee", where it is clear that SSCC is the intended responsible party, will be used. The Department of Environmental Protection may be referred to as DEP or the Department. ~~ERM-EQD represents the City of Jacksonville,~~ Environmental Resource Management-Environmental Quality Division will be referred to as "the City", SJRWMD represents the St. Johns River Water Management District.

### B. No Change

## II. AIR

### A. Requirements

The construction and operation of CBCP shall be in accordance with all applicable provisions of Chapters 62-210 through 62-297, F.A.C. Title V Air Operation Permit 0310337-0136-AV and PSD-FL-137 and Air Construction Permit 0310337-012-AC are incorporated by reference herein as part of this Certification attached as Appendix I and Appendix 2-II respectively. The provisions of both Title V Air Operation Permit Number 0310337-0136-AV and Air Construction Permit 0310337-012-AC the aforementioned permits shall be conditions of this certification. The licensee shall comply with the substantive provisions and limitations set forth in Title V Air Operation Permit Number 0310337-0136-AV and PSD-FL-137, and Air Construction Permit 0310337-012-AC as part of these Conditions of Certification, and as those provisions may be modified, amended, or renewed in the future by the Department. Such provisions shall be fully enforceable as conditions of this certification. Any violation of such provisions shall be a violation of these Conditions of Certification.

### B. No Change

## III. WATER DISCHARGES

Any discharges into any waters of the State during construction and operation of CBCPGC shall be in accordance with all applicable provisions of Chapters 62-301, 62-302 and 62-660, F.A.C., and 40 CFR, Part 423, Effluent Guidelines and Standards for Steam Electric Power Generating Point Source Category, except as provided herein and with NPDES Permit FL 0061204 (attached as Appendix III) and any subsequent modifications, amendments or revisions to this permit. Also, CBCPGC shall comply with the following conditions of certification:

### A. - B. No Change

#### IV. GROUND WATER

##### A-F No Change

##### G. Ground Water Monitoring Requirements

After consultation with the DEP, RESD, and SJRWMD, CBCP shall install a monitoring well network to monitor ground water quality horizontally and vertically through the aquifer above the Hawthorn Formation. Ground water quantity and flow directions will be determined seasonally at the site through the preparation of seasonal water table contour maps, based upon water level data obtained during the applicant's preoperational monitoring program. From these maps and the results of the detailed subsurface investigation of site stratigraphy, the water quality monitoring well network will be located. A ground water monitoring plan that meets the requirements of Section 62-522.600(3), F.A.C., shall be submitted to the Department's Northeast District Office for review. Approval or disapproval of the ground water monitoring plan shall be given within 60 days of receipt. Ground water monitoring shall be required at CBCP's pelletized ash storage area, each sedimentation pond, and each coal pile storage area, and SSCC's new lime mud storage area. Insofar as possible, the monitoring wells may be selected from the existing wells and piezometers used in the licensee's preoperational monitoring program, provided that the wells construction will not preclude their use. Existing wells will be properly sealed in accordance with Chapter 62-532, F.A.C., whenever they are abandoned due to construction of facilities. The water samples collected from each of the monitor wells shall be collected immediately after removal by pumping of a quantity of water equal to at least three casing volumes. The water quality analyses shall be performed monthly during the year prior to commercial operation and quarterly thereafter. No sampling or analysis is to be initiated until receipt of written approval of a site specific quality assurance project plan (QAPP) by the Department. Results shall be submitted to the RESD by the fifteenth (15th) day of the month following the month during which such analyses were performed prior to commercial operation, or by the 30th day of the month following the calendar quarter such analyses were performed after start of commercial operation.

Testing for the following constituents is required around unlined ponds or storage areas:

TDS	Cadmium
Conductance	Zinc
pH	Copper
Redox	Nickel
Sulfate	Selenium
Sulfite	Chromium
Color	Arsenic
Chloride	Beryllium
Iron	Mercury
Aluminum	Lead
Gross Alpha	

Conductivity shall be monitored in wells around all lined solid waste disposal sites, coal piles, and wastewater treatment and sedimentation ponds.

1. The Licensee shall install a ground water monitoring well network to monitor the water quality of the surficial aquifer both horizontally and vertically above the Hawthorn Formation.



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2. The Licensee shall conduct ground water monitoring at the pelletized ash storage area, coal storage area, storage area runoff pond(s), sedimentation ponds, unlined disposal ponds, and the re-located lime mud storage area within Smurfit-Stone Container Corporation's landfill site.
3. The Licensee shall give at least 72-hours notice to the DEP's Northeast District Office, prior to the installation of any monitoring well(s).
4. Prior to construction of any monitoring well(s), a soil boring shall be made at each monitoring well location in order to properly determine the well depth and screen interval.
5. All monitoring wells shall be constructed and developed in accordance with the DEP's guidelines and installed by a licensed water well contractor.
6. Within 30 days after installation of a monitoring well, the Licensee shall submit to the DEP's Northeast District Office detailed information on the well's location and construction on DEP Form 62-520.900(3), Monitor Well Completion Report.
7. All piezometers and monitoring wells not part of the approved ground water monitoring plan are to be plugged and abandoned in accordance with Chapter 62-532.500(4), F.A.C., unless future use is intended.
8. For land application sites, all ground water quality criteria specified in Chapter 62-520, F.A.C., shall be met at the edge of the zone of discharge. The zone of discharge for this project shall extend horizontally 200 feet from the application site, or to the Licensee's property lines, whichever comes first, and vertically to the base of the Surficial Aquifer.
9. During the period of operation, the Licensee shall sample ground water at the monitoring wells identified in Condition IV.G.10. below in accordance with this site certification and the approved ground water monitoring plan prepared in accordance with Chapter 62-520.600, F.A.C.
10. The following monitoring wells shall be sampled at the pelletized ash storage area, coal storage area, storage area runoff pond(s), sedimentation ponds, unlined discharge ponds, and the re-located lime mud storage area within Smurfit-Stone Container Corporation's landfill site.

Monitor Well ID	Alternate Well Name and/or Description of Monitoring Location	Depth (Feet)	Aquifer Monitored	New or Existing
MWC-1	CBLM-1 / 30 feet east of railroad tracks, northwest of unlined Lime Mud Storage Area.	25	Surficial	Existing
MWC-2	CBLM-2 / 30 feet east of railroad tracks, southwest of unlined Lime Mud Storage Area.	25	Surficial	Existing
MWB-3	CBLM-3 / 120 feet north of unlined Lime Mud Storage Area.	25	Surficial	Existing
MWB-4	CBLM-4 / 78 feet west of fence along Eastport Rd., and east of unlined Lime Mud Storage Area.	25	Surficial	Existing
MWC-5	CBLM-5 / 50 feet south of unlined Lime Mud Storage Area.	20	Surficial	Existing



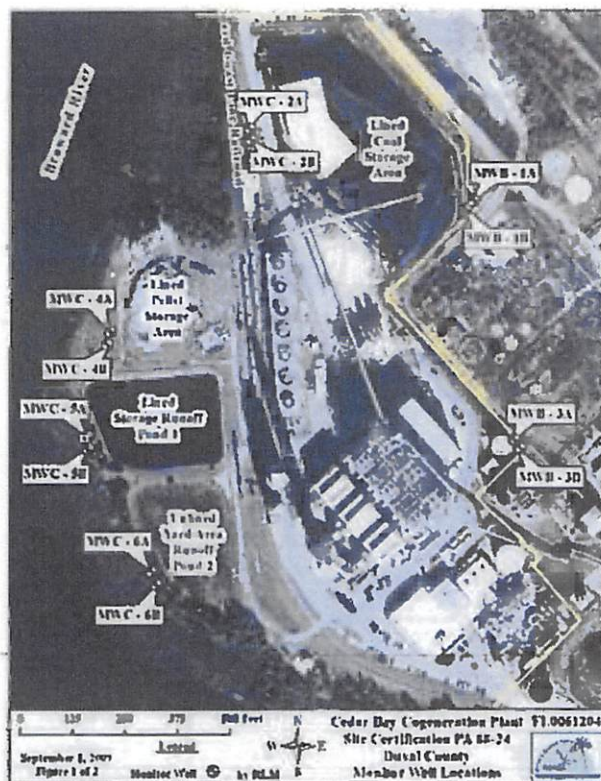
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Monitor	Alternate Well Name and/or Description of	Depth	Aquifer	New or
MWB-1A	MW-1A / 25 feet southeast of lined Coal Storage Area.	20	Surficial	Existing
MWB-1B	MW-1B / 25 feet southeast of lined Coal Storage Area.	50	Surficial	Existing
MWC-2A	MW-2A / 25 feet west of lined Coal Storage Area.	20	Surficial	Existing
MWC-2B	MW-2B / 25 feet west of lined Coal Storage Area.	50	Surficial	Existing
MWB-3A	MW-3A / 5 feet east of the Fire Water Tank.	20	Surficial	Existing
MWB-3B	MW-3B / 5 feet east of the Fire Water Tank.	50	Surficial	Existing
MWC-4A	MW-4A / 5 feet west of lined Pellet Storage Area.	20	Surficial	Existing
MWC-4B	MW-4B / 5 feet west of lined Pellet Storage Area.	50	Surficial	Existing
MWC-5A	MW-5A / 20 feet west of lined Storage Area Runoff Pond 1.	20	Surficial	Existing
MWC-5B	MW-5B / 20 feet west of lined Storage Area Runoff Pond 1.	50	Surficial	Existing
MWC-6A	MW-6A / 20 feet west of unlined Yard Area Runoff Pond 2.	20	Surficial	Existing
MWC-6B	Mw-6B / 20 feet west of unlined Yard Area Runoff Pond 2.	50	Surficial	Existing

MWB = Background; MWC = Compliance

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11. The following parameters shall be analyzed for each monitoring well identified in Condition IV.G.10.

Parameter	Units	Sample Type	Monitoring Frequency
Water Level (NGVD)	Feet	In-situ	Quarterly
pH (field)	SU	In-situ	Quarterly
Specific Conductance (field)	umhos/cm	In-situ	Quarterly
Aluminum, Total Recoverable	ug/L	Grab	Quarterly
Arsenic, Total Recoverable	ug/L	Grab	Quarterly
Barium, Total Recoverable	ug/L	Grab	Quarterly
Beryllium, Total Recoverable	ug/L	Grab	Quarterly
Cadmium, Total Recoverable	ug/L	Grab	Quarterly
Chromium, Total Recoverable	ug/L	Grab	Quarterly
Copper, Total Recoverable	ug/L	Grab	Quarterly
Iron, Total Recoverable	ug/L	Grab	Quarterly
Lead, Total Recoverable	ug/L	Grab	Quarterly
Mercury, Total Recoverable	ug/L	Grab	Quarterly
Nickel, Total Recoverable	ug/L	Grab	Quarterly
Selenium, Total Recoverable	ug/L	Grab	Quarterly
Zinc, Total Recoverable	ug/L	Grab	Quarterly
Gross Alpha	pCi/L	Grab	Quarterly
Chloride	mg/L	Grab	Quarterly
Turbidity	NTU	In-situ	Quarterly
Sulfate	mg/L	Grab	Quarterly
Total Dissolved Solids	mg/L	Grab	Quarterly

12. Water levels shall be recorded before evacuating each well for sample collection. Elevation references shall include the top of the well casing and land surface at each well site (NAVD allowable) at a precision of plus or minus 0.01 foot.

13. Ground water monitoring wells shall be purged before sampling to obtain representative samples.

14. The ground water minimum criteria specified in Chapter 62-520.400 F.A.C., shall be met within the zone of discharge.

15. If the concentration for any constituent listed in Condition IV.G.11. 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 background quality shall be the prevailing standard.

16. Analyses shall be conducted on unfiltered samples, unless filtered samples have been approved by the DEP's Northeast District Office as being more representative of ground water conditions.

17. If any monitoring well becomes damaged or inoperable, the Licensee shall notify the DEP's Northeast District Office immediately and a detailed written report shall follow within seven

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days. The written report shall detail what problem has occurred and remedial measures that have been taken to prevent recurrence. All monitoring well design and replacement shall be approved by the DEP's Northeast District Office prior to installation.

18. The Licensee shall ensure that all monitor well sampling is performed in accordance with the DEP's Standard Operating Procedures Manual for Field Sampling, and shall conform to the applicable Quality Assurance/Quality Control requirements of Chapter 62-160, F.A.C.

19. The Licensee shall ensure that all monitor well samples are analyzed by a certified laboratory that meets the requirements of Chapter 62-160, F.A.C. Minimum detection limits shall be at or below the ground water standards and/or criteria.

20. Ground water sampling and reporting shall conform to the schedule set forth below with monitoring results submitted on DEP Form 62-620.910(10) (attached as Attachment A), or such other format as approved by the DEP. If the Licensee elects to enter the monitoring results into the DEP's electronic system, a hard copy of the report is not required to be submitted to the DEP for that monitoring period, but shall be printed out for the Licensee's records.

Sample Period	Quarterly	Report Deadline
(January-March)	X	April 28 <sup>th</sup>
(April-June)	X	July 28 <sup>th</sup>
(July-September)	X	October 28 <sup>th</sup>
(October-December)	X	January 28 <sup>th</sup>

21. All correspondence, reports, plans and summaries pertaining to ground water monitoring shall be submitted to the Ground Water Section of the DEP's Northeast District Office with copies to the DEP's Siting Office in Tallahassee, the DEP's Wastewater Compliance Evaluation Section in Tallahassee, and the local City of Jacksonville's Environmental Division.

#### ~~H. Leachate~~

##### ~~1. Zone of Discharge~~

~~Leachate from CBCP's coal storage piles, SSCC's lime mud storage area or CBCP's sedimentation ponds shall not cause or contribute to contamination of waters of the State (including both surface and ground waters) in excess of the limitations of Chapter 62-302 and 62-520, F.A.C., beyond the boundary of a zone of discharge extending to the top of the Hawthorne Formation below the waste landfill cell or pond rising to a depth of 50 feet at a horizontal distance of 200 feet from the edge of the storage pile, landfill or ponds, or rising to the boundary of the site, as appropriate.~~

##### ~~2. Corrective Action~~

22. When the ground water monitoring system shows a potential for this facility to cause or contribute to a violation of the ground water quality standards of Chapter 62-520, F.A.C., at the boundary of the zone of discharge, the appropriate ponds or coal pile shall be bottom sealed, relocated, or the operation of the affected facility shall be altered in such a manner as to assure the Department that no violation of the ground water standards will occur beyond the boundary of the zone of discharge.

#### ~~I.-J. No Change~~



DECLASSIFIED

Condition V-XXIX      No Change

A complete set of the Conditions of Certification (including attachments) can be viewed and downloaded from the following website: <http://www.dep.state.fl.us/siting/certification.htm>

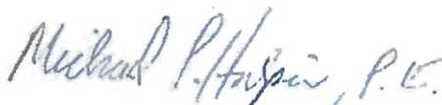
Copies of the Conditions of Certification and/or attachments may also be obtained by contacting Michael P. Halpin, P.E., Administrator, Siting Coordination Office, Department of Environmental Protection, 3900 Commonwealth Blvd., M.S. 48, Tallahassee, Florida 32399-3000, (850) 245-2007.

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

The Department also notes that in the near future it will be initiating a modification pursuant to Section 403.516(1)(c), F.S., to update Cedar Bay Cogeneration Plant's existing Conditions of Certification to incorporate a uniform set of General Conditions consistent with recent Site Certifications. If you have any questions regarding this upcoming modification, please contact Ann Seiler at (850) 245-2143.

Executed in Tallahassee, Florida.


Sincerely,



Michael P. Halpin, P.E.  
Administrator  
Siting Coordination Office

FILING AND ACKNOWLEDGMENT

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

 3-3-10  
Clerk                      Date

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