

**REDACTED**

**Hopping Green & Sams**

Attorneys and Counselors

Writer's Direct Dial No.  
(850) 425-2359

February 8, 2012

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12 FEB - 8 PM 3:55  
COMMISSION  
CLERK

**BY HAND DELIVERY**

Ms. Ann Cole  
Director Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

claim of confidentiality  
 notice of intent  
 request for confidentiality  
 filed by OPC

For DN 00770-12, which  
is in locked storage. You must be  
authorized to view this DN.-CLK

Re: Docket No. **120007-EI**  
Request for Confidential Classification  
**CONFIDENTIAL MATERIALS ENCLOSED**

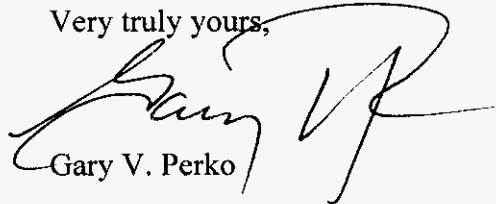
Dear Ms. Cole:

Enclosed for filing on behalf of Progress Energy Florida, Inc., (PEF) are the following:

- (1) The original and seven copies of PEF's Request for Confidential Classification;
- (2) A package containing Exhibit A, which includes two redacted copies of the confidential documents; and
- (3) A CONFIDENTIAL package containing Exhibit B which includes one copy of the documents on which the confidential material has been highlighted.

Please stamp and return the enclosed extra copy of this filing. If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,

  
Gary V. Perko

COM	_____
APA	_____
<b>ECR</b>	_____
GCL	_____ GVP/dg
RAD	_____ Enclosures
SRC	_____ ee: certificate of service
ADM	_____
OPC	_____
CLK	_____

DOCUMENT NUMBER 12000000  
**00769 FEB -8 2**  
FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record and interested parties as listed below via hand-delivery (\*) or regular U.S. mail this 8<sup>th</sup> day of February, 2012.

Martha Carter Brown, Esquire (\*)  
Office of General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

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James D. Beasley, Esquire  
Ausley Law Firm  
Post Office Box 391  
Tallahassee, Florida 32302

J.R. Kelly, Esquire  
Patricia Christensen, Esquire  
Charles J. Rehwinkel, Esquire  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, Florida 32399

Jeffrey A. Stone, Esquire  
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Beggs & Lane Law Firm  
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Karen S. White, Staff Attorney  
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139 Barnes Drive, Suite 1  
Tyndall AFB, Florida 32403-5319

Keef Law Firm  
Vicki Gordon Kaufman/John C. Moyle, Jr.  
118 North Gadsden Street  
Tallahassee, Florida 32301

John T. Butler, Esquire  
Florida Power & Light Co.  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420

Florida Power & Light Co.  
215 S. Monroe Street, Suite 810  
Tallahassee, Florida 32301

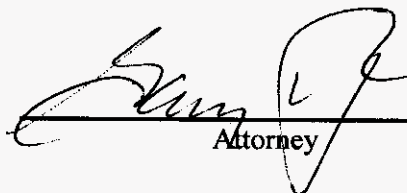
Paul Lewis, Jr.  
Progress Energy Florida, Inc.  
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Susan Ritenour, Esquire  
Gulf Power Company  
One Energy Place  
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St. Petersburg, Florida 33733

John T. Burnett, Esquire  
Associate General Counsel - Florida  
Progress Energy Service Company, LLC  
Post Office Box 14042  
St. Petersburg, Florida 33733

  
\_\_\_\_\_  
Attorney

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Environmental Cost Recovery Clause.

DOCKET NO. 120007-EI

FILED: FEBRUARY 8, 2012

COMMISSION  
CLERK

12 FEB - 8 PM 3: 54

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**PROGRESS ENERGY FLORIDA INC.'S  
REQUEST FOR CONFIDENTIAL CLASSIFICATION**

Progress Energy Florida, Inc., (“PEF” or “Company”), pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code, submits this Request for Confidential Classification of information included in a letter submitted in this Docket contemporaneously with this Request. In support of this Request, PEF states:

1. Contemporaneously with this request, PEF is filing a letter to advise the Commission that the Company expects to incur additional costs to comply with new environmental requirements in an Administrative Order associated with the renewed National Pollutant Discharge Elimination System (“NPDES”) permit and for PEF’s Suwannee Plant. As explained in the letter, PEF will be contracting for services necessary to conduct a study of copper discharges required in the Administrative Order. The letter provides PEF’s projected costs for such services for which PEF is currently negotiating a contract. Disclosure of this information would provide the potential contractor with knowledge of amount that PEF expects to pay for the required services and thereby give the potential contractor significant competitive advantage in ongoing negotiations. Accordingly, such information qualifies for confidential classification pursuant to Section 366.093(d), Florida Statutes, which defines “proprietary confidential business information to include “contractual data, the disclosure of which would

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FPSC-COMMISSION CLERK

impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.”

2. The following exhibits are included with this request:

(a) Exhibit A is a package containing two copies of a redacted version of the document for which the Company requests confidential classification. In the redacted version, the confidential information has been blackened out by opaque marker or other means.

(c) Exhibit B is a package containing an unredacted copy of the document for which PEF seeks confidential treatment. Exhibit B is being submitted separately in a sealed envelope labeled “CONFIDENTIAL.” In the unredacted version of the document, the confidential information has been highlighted in yellow.

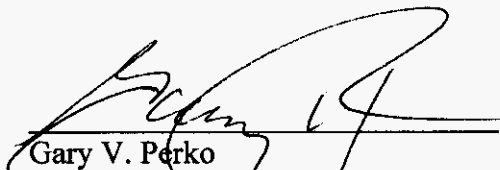
3. The information for which PEF requests confidential classification is intended to be and is treated as confidential by PEF. The information has not been disclosed to the public.

4. Progress Energy requests that the information in Exhibit B to this Request be classified as “proprietary confidential business information” within the meaning of section 366.093(3), F.S., that the information remain confidential for a period of at least 18 months as provided in section 366.093(4), F.S., and that the information be returned as soon as it is no longer necessary for the Commission to conduct its business.

WHEREFORE, for the foregoing reasons, Progress Energy Florida, Inc., respectfully requests that this Request for Confidential Classification be granted.

RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of February, 2012.

HOPPING GREEN & SAMS, P.A.



Gary V. Perko  
Florida Bar No. 855898  
119 S. Monroe Street, Suite 300  
Post Office Box 6526  
Tallahassee, FL 32314  
Telephone: 805-425-2359  
Facsimile: 805-224-8551

Attorneys for PROGRESS ENERGY FLORIDA

# Hopping Green & Sams

Attorneys and Counselors  
Writer's Direct Dial No.  
(850) 425-2359

February 8, 2012

**BY HAND-DELIVERY**

**REDACTED**

Martha Carter Brown, Esquire  
Office of General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Re: *In re Environmental Cost Recovery Clause*, Docket No. 120007-EI  
Progress Energy Florida's NPDES Renewal Program

Dear Martha:

On behalf of Progress Energy Florida, Inc. (PEF or "Company"), I am writing to advise the Commission and the parties of a recent development related to PEF's previously approved NPDES Renewal Program.

In Order No. PSC-11-0553-FOF-EI issued in Docket No. 110007-EI on December 7, 2011, the Commission approved ECRC recovery of PEF's costs associated with new environmental requirements included in various NPDES renewal permits issued or to be issued for various PEF facilities. At the time, a final NPDES renewal permit had not been issued for PEF's Suwannee River Power Plant. Shortly thereafter, however, on December 14, 2011, the Florida Department of Environmental Protection issued a final NPDES renewal permit and associated Administrative Order for the Suwannee Plant. The Administrative Order includes a new requirement that PEF did not anticipate when it filed its petition requesting approval of the new NPDES Renewal Program in March 2011 or when the Company filed its 2012 cost projections in August 2011. Specifically, the Administrative Order requires PEF to perform a study of copper discharges from the Suwannee Plant and, depending upon the results, may require PEF to perform additional feasibility studies to evaluate options to comply with the copper discharge limit. A copy of the Administrative Order is attached. At this time, PEF expects to incur approximately [REDACTED] on the initial copper discharge study, beginning in February, 2012. (Because the projected costs constitute confidential business information, PEF is submitting this letter along with a Request for Confidential Classification).

Because the new copper study requirement is within the scope of the previously approved NPDES Renewal Program, PEF will include the costs associated with the new copper discharge study within the Company's estimated/actual projection filings for that program. We also will keep the Commission apprised of any further developments related to the NPDES Renewal Program during the course of this year's ECRC proceedings.

DOCUMENT NUMBER-DATE

00769 FEB-8 2012

Post Office Box 6526

Tallahassee, Florida 32314

119 S. Monroe Street, Suite 300 (32301)

850.222.7500

850.224.8551 fax www.hgslaw.com


FPSC-COMMISSION CLERK

Martha Carter Brown, Esq.  
February 8, 2012  
Page 2

In the meantime, please do not hesitate to contact me should you have any questions or comments.

Very truly yours,

HOPPING GREEN & SAMS, P.A.

By:   
Gary V. Perko

Attorneys for PROGRESS ENERGY FLORIDA, INC.

Enclosure

cc: All counsel of record

Hopping Green & Sams

Attorneys and Counselors

**BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF:

Florida Power Corp.  
Progress Energy Florida, Inc.  
4037 River Road  
Live Oak, Florida 32060

Administrative Order No. AO-026-TL

Suwannee River Power Plant  
DEP Permit No: FL0000183

**ADMINISTRATIVE ORDER**

**I. STATUTORY AUTHORITY**

The Department of Environmental Protection (Department) issues this Administrative Order under the authority of Section 403.088(2)(f), Florida Statutes (F.S.). The Secretary of the Department has delegated this authority to the Director of the Division of Water Resources Management, who issues this order and makes the following findings of fact.

**II. FINDINGS OF FACT**

1. Florida Power Corp. Progress Energy Florida, Inc. (Permittee) is a "person" as defined under Section 403.031(5), F.S.
2. The Permittee owns and operates a steam electric power generating facility known as Suwannee River Power Plant ("Facility"). The Facility, located at 4037 River Road Live Oak, Suwannee County, Florida 32060, discharges industrial wastewater into waters of the state as defined in Section 403.031(13), F.S.
3. The Permittee has filed a timely application for renewal of NPDES Permit No. FL0000183 (Permit), under Section 403.088(2), F.S.
4. Once-through cooling water discharges to Suwannee River, which is designated a Class III freshwater pursuant to Rule 62-302.400(14), Florida Administrative Code (F.A.C.), and as an Outstanding Florida Water pursuant to Rule 62-302.700(9)(c)(71), F.A.C.
5. Previous sampling has shown that on occasion the once through cooling water concentrations for total recoverable copper exceed the Class III fresh water quality criterion in Rule 62-302.530(23), F.A.C. The Permittee does not add chemical products that contain copper to the wastewater. It is believed that the source of copper is from material used in construction of the once through cooling water system.
6. At issuance of the previous Permit, the Department considered the Facility eligible for a total recoverable copper mixing zone pursuant to Rules 62-4.244 and 62-302.300(10)(b), F.A.C. Hence, the previous Permit included a mixing zone for total recoverable copper. Compliance with the total recoverable copper water quality standard was demonstrated at the edge of the mixing zone.
7. As part of the permit renewal process, the mixing zone size was re-evaluated with a mathematical model using the most recent data available to the Department. The model results predicted that the required size needed to meet the Class III fresh water quality standard at the edge of the mixing zone within the Suwannee River exceeds the maximum size allowed under Rule 62-4.244, F.A.C. Hence, the Department is unable to approve the continuance of the total recoverable copper mixing zone.
8. The Department finds that:



- a. There is no present, reasonable, alternative means of disposing of the waste other than by discharging it into the waters of the state;
  - b. The granting of an operation permit will be in the public interest; and,
  - c. The discharge will not be unreasonably destructive to the quality of the receiving water.
9. This order and associated wastewater Permit FL0000183 constitute the Department's authorization to discharge pollutants to waters of the state under the NPDES program, and its determination that the Facility is in compliance with Section 403.088, F.S. This order includes an implementation schedule.

### III. ORDER

Based on the foregoing findings of fact,

#### IT IS ORDERED,

10. No later than 180 days after the effective date of this Order, the Permittee shall prepare and submit for the Department's review a plan of study (POS) and schedule for the identification and evaluation of potential copper sources within the Facility and collection of paired intake and discharge data sets that pairs total recoverable and dissolved copper in the Suwannee. The POS shall be designed and implemented to demonstrate that the discharge from the Facility meets the discharge limitations in Part I.A.1. of the Permit. The results of the evaluation shall be submitted in a report (Report) to the Department for review and approval no later than 60 days after the approved POS completion date.
11. If the Report fails to demonstrate that the effluent discharge from the Facility meets the total recoverable copper discharge limitation in Part I.A.1. of the Permit, the Permittee shall prepare a feasibility study (Study) for the evaluation of on-site recycling and treatment options to achieve the discharge limitation(s). The Study shall be submitted to the Department for review and approval no later than 60 days after the approved POS completion date.
12. The Permittee may petition the Department for an appropriate moderating provision or other available relief provided for under Chapters 120 or 403, F.S., and the rules promulgated thereunder. Any petition for a moderating provision shall include an evaluation of all potential on-site reuse and treatment options and the feasibility of each, and sampling of the sediment, using appropriate analytical methods, in and around the outfall for the effluent discharge designated as Outfall D-001 in the Permit. Any such petition shall be submitted no later than 60 days after receipt of Department approval of a Report and shall demonstrate the need for a less stringent discharge limitation than contained in Part I.A.1. of the Permit in accordance with Rule 62-620.620(3), F.A.C.
13. No later than 48 months after the effective date of this Order, the Permittee shall either comply with the total recoverable copper discharge limitations in Part I.A.1. of the Permit, or with an alternative discharge limitation based on the Reports and Study as approved by the Department.
14. Until compliance with the copper limitations in Part I.A.1. of the Permit is achieved as required in III.13. of this Order, the Permittee shall comply with an interim total recoverable copper limitation of 34.0 ug/L at the discharge from Outfalls D-001.
15. The Permittee shall maintain and operate its facilities in compliance with all other conditions of the Permit.
16. This order may be modified through revisions as set forth in Chapter 62-620, F.A.C.
17. Unless otherwise specified herein, reports or other information required by this order shall be sent to: Industrial Wastewater Section, ATTN: Mail Station 3545, Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, with a copy sent to: Industrial Wastewater Section, Department of Environmental Protection, Northeast District, 7825 Baymeadows Way, Suite B-200, Jacksonville, Florida 32256-7590.

18. This order does not operate as a permit under Section 403.088, F.S. This order shall be incorporated by reference into NPDES Permit No. FL0000183, which shall require compliance by the Permittee with the requirements of this order.
19. Failure to comply with the requirements of this order shall constitute a violation of this order and Permit No. FL0000183, and may subject the Permittee to penalties as provided in Section 403.161, F.S.
20. This order is final when filed with the clerk of the Department, and the Permittee then shall implement this order unless a petition for an administrative proceeding (hearing) is filed in accordance with the notice set forth in the following Section.
21. If any event occurs that causes delay or the reasonable likelihood of delay, in complying with the requirements of this order, the Permittee shall have the burden of demonstrating that the delay was or will be caused by circumstances beyond the reasonable control of the Permittee and could not have been or cannot be overcome by the Permittee's due diligence. Economic circumstances shall not be considered circumstances beyond the reasonable control of the Permittee, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of the Permittee, unless the cause of the contractor's late performance was also beyond the contractor's control. Delays in final agency action on an application for a relief mechanism are eligible for consideration under this paragraph, provided that none of those delays were a result of late submission by the Permittee. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, the Permittee shall notify the Department orally at the Department's Northeast District office, (904)-807-3371, within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing at Northeast District office, 7825 Baymeadows Way, Suite B-200, Jacksonville, Florida 32256-7590 of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which Facility intends to implement these measures. If the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of the Permittee, the time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances.

#### IV. NOTICE OF RIGHTS

A person whose substantial interests are affected by the Department's decision may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57 of the F.S. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Petitions by the applicant or any of the parties listed below must be filed within fourteen days of receipt of this written notice. Petitions filed by any persons other than those entitled to written notices under Section 120.60(3), F.S., must be filed within fourteen days of publication of the notice or within fourteen days of receipt of the written notice, whichever occurs first.

Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within fourteen days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name, address, and telephone number of each petitioner; the Department permit identification number and the county in which the subject matter or activity is located;
- (b) A statement of how and when each petitioner received notice of the Department action;

- (c) A statement of how each petitioner's substantial interests are affected by the Department action;
- (d) A statement of the material facts disputed by the petitioner, if any;
- (e) A statement of facts that the petitioner contends warrant reversal or modification of the Department action;
- (f) A statement of which rules or statutes the petitioner contends require reversal or modification of the Department action; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any such final decision of the Department have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation under Section 120.573, F.S., is not available for this proceeding.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

Any party to the order has the right to seek judicial review of the order under Section 120.68, F.S., by the filing of a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department.

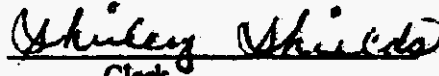
DONE AND ORDERED on this 14<sup>th</sup> day of December, 2011 in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

  
Mark F. Thomason, P.E.  
Director  
Division of Water Resource Management

CLERK STAMP

FILED AND ACKNOWLEDGED on this date, under Section 120.52(7) of the Florida Statutes, with the designated Department Clerk, receipt of which is acknowledged.

  
Clerk

12-14-2011  
Date

Copies furnished to Permit Distribution List

# Hopping Green & Sams

Attorneys and Counselors  
Writer's Direct Dial No.  
(850) 425-2359

February 8, 2012

## **BY HAND-DELIVERY**

Martha Carter Brown, Esquire  
Office of General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Re: *In re Environmental Cost Recovery Clause*, Docket No. 120007-EI  
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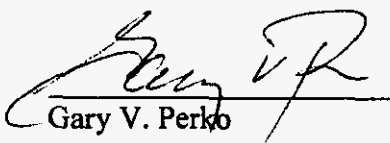
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Martha Carter Brown, Esq.  
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Page 2

In the meantime, please do not hesitate to contact me should you have any questions or comments.

Very truly yours,

HOPPING GREEN & SAMS, P.A.

By:   
Gary V. Perko

Attorneys for PROGRESS ENERGY FLORIDA, INC.

Enclosure

cc: All counsel of record

Hopping Green & Sams

Attorneys and Counselors

**BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF:

Florida Power Corp.  
Progress Energy Florida, Inc.  
4037 River Road  
Live Oak, Florida 32060

Administrative Order No. AO-026-TL

Suwannee River Power Plant  
DEP Permit No: FL0000183

**ADMINISTRATIVE ORDER**

**I. STATUTORY AUTHORITY**

The Department of Environmental Protection (Department) issues this Administrative Order under the authority of Section 403.088(2)(f), Florida Statutes (F.S.). The Secretary of the Department has delegated this authority to the Director of the Division of Water Resources Management, who issues this order and makes the following findings of fact.

**II. FINDINGS OF FACT**

1. Florida Power Corp. Progress Energy Florida, Inc. (Permittee) is a "person" as defined under Section 403.031(5), F.S.
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3. The Permittee has filed a timely application for renewal of NPDES Permit No. FL0000183 (Permit), under Section 403.088(2), F.S.
4. Once-through cooling water discharges to Suwannee River, which is designated a Class III freshwater pursuant to Rule 62-302.400(14), Florida Administrative Code (F.A.C.), and as an Outstanding Florida Water pursuant to Rule 62-302.700(9)(c)(71), F.A.C.
5. Previous sampling has shown that on occasion the once through cooling water concentrations for total recoverable copper exceed the Class III fresh water quality criterion in Rule 62-302.530(23), F.A.C. The Permittee does not add chemical products that contain copper to the wastewater. It is believed that the source of copper is from material used in construction of the once through cooling water system.
6. At issuance of the previous Permit, the Department considered the Facility eligible for a total recoverable copper mixing zone pursuant to Rules 62-4.244 and 62-302.300(10)(b), F.A.C. Hence, the previous Permit included a mixing zone for total recoverable copper. Compliance with the total recoverable copper water quality standard was demonstrated at the edge of the mixing zone.
7. As part of the permit renewal process, the mixing zone size was re-evaluated with a mathematical model using the most recent data available to the Department. The model results predicted that the required size needed to meet the Class III fresh water quality standard at the edge of the mixing zone within the Suwannee River exceeds the maximum size allowed under Rule 62-4.244, F.A.C. Hence, the Department is unable to approve the continuance of the total recoverable copper mixing zone.
8. The Department finds that:

- a. There is no present, reasonable, alternative means of disposing of the waste other than by discharging it into the waters of the state;
  - b. The granting of an operation permit will be in the public interest; and,
  - c. The discharge will not be unreasonably destructive to the quality of the receiving water.
9. This order and associated wastewater Permit FL0000183 constitute the Department's authorization to discharge pollutants to waters of the state under the NPDES program, and its determination that the Facility is in compliance with Section 403.088, F.S. This order includes an implementation schedule.

### III. ORDER

Based on the foregoing findings of fact,

#### IT IS ORDERED,

10. No later than 180 days after the effective date of this Order, the Permittee shall prepare and submit for the Department's review a plan of study (POS) and schedule for the identification and evaluation of potential copper sources within the Facility and collection of paired intake and discharge data sets that pairs total recoverable and dissolved copper in the Suwannee. The POS shall be designed and implemented to demonstrate that the discharge from the Facility meets the discharge limitations in Part I.A.1. of the Permit. The results of the evaluation shall be submitted in a report (Report) to the Department for review and approval no later than 60 days after the approved POS completion date.
11. If the Report fails to demonstrate that the effluent discharge from the Facility meets the total recoverable copper discharge limitation in Part I.A.1. of the Permit, the Permittee shall prepare a feasibility study (Study) for the evaluation of on-site recycling and treatment options to achieve the discharge limitation(s). The Study shall be submitted to the Department for review and approval no later than 60 days after the approved POS completion date.
12. The Permittee may petition the Department for an appropriate moderating provision or other available relief provided for under Chapters 120 or 403, F.S., and the rules promulgated thereunder. Any petition for a moderating provision shall include an evaluation of all potential on-site reuse and treatment options and the feasibility of each, and sampling of the sediment, using appropriate analytical methods, in and around the outfall for the effluent discharge designated as Outfall D-001 in the Permit. Any such petition shall be submitted no later than 60 days after receipt of Department approval of a Report and shall demonstrate the need for a less stringent discharge limitation than contained in Part I.A.1. of the Permit in accordance with Rule 62-620.620(3), F.A.C.
13. No later than 48 months after the effective date of this Order, the Permittee shall either comply with the total recoverable copper discharge limitations in Part I.A.1. of the Permit, or with an alternative discharge limitation based on the Reports and Study as approved by the Department.
14. Until compliance with the copper limitations in Part I.A.1. of the Permit is achieved as required in III.13. of this Order, the Permittee shall comply with an interim total recoverable copper limitation of 34.0 ug/L at the discharge from Outfalls D-001.
15. The Permittee shall maintain and operate its facilities in compliance with all other conditions of the Permit.
16. This order may be modified through revisions as set forth in Chapter 62-620, F.A.C.
17. Unless otherwise specified herein, reports or other information required by this order shall be sent to: Industrial Wastewater Section, ATTN: Mail Station 3545, Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, with a copy sent to: Industrial Wastewater Section, Department of Environmental Protection, Northeast District, 7825 Baymeadows Way, Suite B-200, Jacksonville, Florida 32256-7590.

18. This order does not operate as a permit under Section 403.088, F.S. This order shall be incorporated by reference into NPDES Permit No. FL0000183, which shall require compliance by the Permittee with the requirements of this order.
19. Failure to comply with the requirements of this order shall constitute a violation of this order and Permit No. FL0000183, and may subject the Permittee to penalties as provided in Section 403.161, F.S.
20. This order is final when filed with the clerk of the Department, and the Permittee then shall implement this order unless a petition for an administrative proceeding (hearing) is filed in accordance with the notice set forth in the following Section.
21. If any event occurs that causes delay or the reasonable likelihood of delay, in complying with the requirements of this order, the Permittee shall have the burden of demonstrating that the delay was or will be caused by circumstances beyond the reasonable control of the Permittee and could not have been or cannot be overcome by the Permittee's due diligence. Economic circumstances shall not be considered circumstances beyond the reasonable control of the Permittee, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of the Permittee, unless the cause of the contractor's late performance was also beyond the contractor's control. Delays in final agency action on an application for a relief mechanism are eligible for consideration under this paragraph, provided that none of those delays were a result of late submission by the Permittee. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, the Permittee shall notify the Department orally at the Department's Northeast District office, (904)-807-3371, within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing at Northeast District office, 7825 Baymeadows Way, Suite B-200, Jacksonville, Florida 32256-7590 of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which Facility intends to implement these measures. If the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of the Permittee, the time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances.

#### **IV. NOTICE OF RIGHTS**

A person whose substantial interests are affected by the Department's decision may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57 of the F.S. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Petitions by the applicant or any of the parties listed below must be filed within fourteen days of receipt of this written notice. Petitions filed by any persons other than those entitled to written notice under Section 120.60(3), F.S., must be filed within fourteen days of publication of the notice or within fourteen days of receipt of the written notice, whichever occurs first.

Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within fourteen days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name, address, and telephone number of each petitioner; the Department permit identification number and the county in which the subject matter or activity is located;
- (b) A statement of how and when each petitioner received notice of the Department action;



- (c) A statement of how each petitioner's substantial interests are affected by the Department action;
- (d) A statement of the material facts disputed by the petitioner, if any;
- (e) A statement of facts that the petitioner contends warrant reversal or modification of the Department action;
- (f) A statement of which rules or statutes the petitioner contends require reversal or modification of the Department action; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any such final decision of the Department have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation under Section 120.573, F.S., is not available for this proceeding.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

Any party to the order has the right to seek judicial review of the order under Section 120.68, F.S., by the filing of a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department.


DONE AND ORDERED on this 14<sup>th</sup> day of DECEMBER, 2011 in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

  
Mark F. Thomasson, P.E.  
Director  
Division of Water Resource Management

CLERK STAMP

FILED AND ACKNOWLEDGED on this date, under Section 120.52(7) of the Florida Statutes, with the designated Department Clerk, receipt of which is acknowledged.

  
Clerk

12-14-2011

Date

Copies furnished to Permit Distribution List