

ORAL ARGUMENT NOT YET SCHEDULED

No. 11-1131 (Lead) and Consolidated Cases

**IN THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES,
et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
and LISA P. JACKSON, ADMINISTRATOR,

Respondents.

MAXWEST ENVIRONMENTAL SYSTEMS, INC., et al.,

Intervenors.

**ON PETITIONS FOR REVIEW OF 76 FED. REG. 15,372 (MAR. 21, 2011) &
77 FED. REG. 25,087 (APR. 27, 2012) (CONSOLIDATED)**

**INTERVENOR MAXWEST ENVIRONMENTAL SYSTEMS, INC.'S
PAGE PROOF REPLY BRIEF
IN SUPPORT OF MUNICIPAL PETITIONERS**

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December 6, 2012

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SUMMARY OF ARGUMENT

EPA's central position as to MaxWest is that the Sewage Sludge Incinerator Rule ("SSI Rule") does not regulate emissions from all units that EPA considers SSIs. *See* EPA Br. at 18 ("[A] gasifier ... does not fall under either of the SSI Rule's regulated subcategories (fluidized bed and multiple hearth units) and therefore is not subject to emission standards under the Rule"). EPA accordingly contends that MaxWest cannot be experiencing hardship from the Rule, and therefore must lack standing, "because there are no emissions standards for gasifiers in this Rule." *Id.* at 81.

These arguments surprise MaxWest for three reasons. First and most importantly, MaxWest is being regulated, currently, as a SSI subject to the SSI Rule, and EPA has had notice of this since at least April 2012.

Second, during the rulemaking, more than one commenter asked EPA to make clear whether it would consider gasifiers within the scope of the SSI Rule, and EPA's response not only failed to state that gasifiers were not subject to the Rule's emission requirements, but also indicated that gasifiers would be covered by the Rule. EPA's position here that the nation's few existing gasifiers should have requested a separate subcategory during the notice-and-comment period for a rule related to emission regulations for *incinerators* also presupposes, wrongly, that gasifiers are properly considered SSIs in the first place.

Third, even if the Court accepted the agency's counterfactual position that the Rule's *emission standards* do not apply to MaxWest as an EPA-classified SSI, the Rule's other components would still apply and entitle MaxWest to immediate judicial review.

Lastly, EPA's attack on MaxWest's brief as insufficiently similar to the brief submitted by Municipal Petitioners fails to appreciate this Court's rules and opinions regarding intervenors. MaxWest's brief properly expands upon issues raised, but not elaborated on, by Petitioners.

ARGUMENT

I. MAXWEST IS BEING REGULATED AS AN SSI SUBJECT TO THE SSI RULE AND MEETS ALL REQUIREMENTS TO ESTABLISH STANDING TO CHALLENGE THE RULE.

EPA's argument that MaxWest has suffered no injury and lacks standing is without factual basis. As this Court recently stated:

To establish Article III standing, a party must establish three constitutional minima: (1) that the party has suffered an "injury in fact," (2) that the injury is "fairly traceable" to the challenged action of the defendant, and (3) that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision."

Grocery Mfrs. Ass'n v. EPA, 693 F.3d 169, 174 (D.C. Cir. 2012), quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992) (internal quotation marks, alterations, and citations omitted). "If the petitioner's standing is self-evident (as when the petitioner is the object of an

administrative action), ‘no evidence outside the administrative record is necessary.’” *Id.*, quoting *Sierra Club v. EPA*, 292 F.3d 895, 900 (D.C. Cir. 2002). MaxWest’s facility in Sanford, Florida, is regulated as an SSI under the SSI Rule as implemented by the Florida Department of Environmental Protection (“Florida DEP”), and MaxWest referred to the impact of the SSI Rule on its operations in its Opening Brief. MaxWest Br. at 5-6. As a facility regulated by the SSI Rule, MaxWest’s standing to challenge the SSI Rule was “beyond serious question.” *See Sierra Club*, 292 F.3d at 901.

Nevertheless, because EPA argues here that “gasifier SSIs” including MaxWest would lack standing to challenge the SSI Rule because they are currently beyond the Rule’s scope, MaxWest will provide evidence to defend its standing.

A. MaxWest Is Suffering Injury From the SSI Rule.

Everyone agrees that EPA categorized MaxWest’s gasifier facility in Sanford, Florida as an SSI in December 2010, albeit for the purpose of determining the applicability of regulations under CAA § 112, which were, at that time, the only emission regulations applicable to SSIs. *See* MaxWest Br. at 5; *see also* EPA Br. at 78-79; Dec. 7, 2010 letter from EPA to MaxWest (EPA Br. Ex. 1).

Once the SSI Rule became effective, however, all states with air quality programs and one or more SSI units were required to submit plans to EPA regarding the state’s implementation of the SSI Rule’s emission guidelines. *See* 42

U.S.C. § 7411(c); 40 CFR 60.5005. Florida submitted its plan on April 16, 2012. *See* State of Florida Department of Environmental Protection Proposed Section 111(d) State Plan (“Proposed Plan”) (Addendum).

Florida’s Proposed Plan informed EPA that the state was applying the SSI Rule to MaxWest as the state’s only SSI. *Id.* at 1-2. It further cited to EPA’s December 7, 2010 letter as EPA’s “designation” of MaxWest as an SSI subject to regulation under CAA § 129. *Id.* at 17-18. EPA’s Region 4 office was given the opportunity to comment on the application of the SSI Rule’s emission standards to MaxWest, and declined to comment. *Id.* at 33.

In light of this notice, EPA must be aware that MaxWest is being subject to the emission requirements of the SSI Rule: the agency received this notice at least six months before it submitted its response brief here. EPA also had an opportunity to alert the Florida DEP that its application of the Rule’s emission standards to MaxWest as a gasifier was in error, but it provided no such guidance. Rather, EPA offers for the first time in this proceeding that it “has not made any actual decision about whether gasifiers should be included as a separate subcategory and, if so, what the appropriate emissions standards should be.” EPA Br. at 81.

Additionally, EPA argues that the administrative record supported only two subcategories: fluidized bed and multiple hearth units. EPA Br. at 18, 79-80.

However, nowhere in the SSI Rule does it state that non-multiple hearth and non-fluidized bed SSIs located at wastewater treatment facilities for domestic sewage sludge that “combust” any amount of sewage sludge, are *excluded from and not subject to all* the components of the final SSI performance standards. In fact the SSI Rule says the opposite: that an SSI located at a wastewater treatment facility that combusts any amount of sludge “is subject to the final SSI standards.” The agency’s argument against MaxWest’s standing therefore only highlights the arbitrary and capricious nature of the Rule in that it fails to adequately clarify how gasification units should be treated or excluded from SSI Rule coverage.

Compliance with the SSI Rule has caused MaxWest injury as demonstrated in the attached affidavit. *See* Affidavit of Paul Cairney (Exhibit 1). The Rule has compelled the company to expend its limited resources in furtherance of the Rule’s requirements, and will continue to exert a toll on those resources. Thus, MaxWest has suffered injury in fact.

B. MaxWest’s Injury Is “Fairly Traceable” To EPA’s Promulgation of the SSI Rule.

MaxWest’s regulation as a gasifier subject to the SSI Rule is “fairly traceable” to the agency’s actions in creating the Rule because: (1) the agency indicated that any combustion process would be regulated by the Rule; (2) the agency never stated that gasification technologies would not be addressed by the Rule; and (3) Florida’s Proposed Plan “references all components of the Subpart

MMMM model rule necessary to enforce the emission guidelines.” Proposed Plan at 2.

During the rulemaking, the agency used broad language to describe the scope of the SSI Rule, stating: “A SSI unit is an incinerator located at a wastewater treatment facility designed to treat domestic sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter” 76 Fed. Reg. at 15, 374 [JAXX-XX]. The Rule goes on to clarify that: “[I]f any amount of sewage sludge is burned in an incinerator at a wastewater treatment facility designed to treat domestic sewage sludge, the incinerator is subject to the SSI standards in subparts LLLL and MMMM of [the Rule] while burning sewage sludge.” *Id.* at 15, 380 [JAXX-XX]. Moreover, in response to comments, EPA stated, “Section 129 defines solid waste incineration unit to include any unit combusting any solid waste. An incinerator located at a wastewater treatment facility designed to treat domestic sewage sludge that combusts any amount of sewage sludge is subject to the final SSI standards.” RTC at 3-4 to 3-5 [JAXX-XX].

In response to comments that EPA identify gasifiers as beyond the scope of the Rule, the agency stated:

We have revised the definition of sewage sludge to clarify that methods of sewage sludge disposal other than combustion are not subject to the SSI standards...EPA has clarified in the final rule that sewage sludge that is not burned in an SSI unit located

at a wastewater treatment facility designed to treat domestic sewage sludge is subject to other section 129 standards Facilities that are unsure if their process is a combustion process, are welcome to submit a formal applicability determination to the Agency.

RTC at 3-4 to 3-5 [JAXX-XX]. EPA therefore extended the scope of SSI Rule to any facility employing a “combustion process,” which would technically include gasifiers even though their use of combustion is fundamentally different from incineration.

Additionally, by the time EPA published its RTC, the agency had already issued its determination that MaxWest’s process is a “combustion process” to which the SSI, 40 CFR Part 60 Subpart E, Standards of Performance for Incinerators apply. EPA Ex. 1. There is no dispute that the definition of SSI units EPA used for regulation under CAA § 112 also applies to certain incinerators meeting the applicability of § 60.50 for regulation under CAA § 129. *See* EPA Br. at 79. Because the applicability-determination threshold is identical, the Florida DEP’s treatment of MaxWest as an SSI subject to all aspects of the SSI Rule is “fairly traceable” to EPA’s action in promulgating the SSI Rule itself.

C. It Is Likely That MaxWest’s Injuries Will Be Redressed by a Favorable Decision From this Court.

In arguing that MaxWest lacks standing to bring this challenge and that “emissions standards for gasifiers were not at issue” in the SSI Rule, EPA tacitly concedes that gasifiers such as MaxWest are not the facilities the agency intended

to target in the SSI Rule. Thus, if the Court grants Municipal Petitioners the relief they seek and vacates and remands the SSI Rule, it is likely that MaxWest's ongoing injuries resulting from the SSI Rule's application to it will be redressed.

II. MAXWEST'S CLAIMS ARE RIPE FOR DECISION.

Contrary to EPA's assertions, MaxWest is experiencing hardship because it is being regulated as an SSI under the SSI Rule, and that injury should be resolved by this Court in this challenge. *See Cairney Aff.*, Ex. 1. Additionally, even if EPA somehow corrects the Florida DEP's application of SSI Rule's emission standards to MaxWest without this Court's intervention, MaxWest will still experience hardship from the SSI Rule with respect to the Rule's many non-emission standard components. *See id*; *see also* SSI Rule § 60.4790 [JAXX-XX].

Thus, without this Court's order that the agency withdraw the SSI Rule for its unlawfulness now as Municipal Petitioners request, MaxWest will continue to be regulated as an SSI under the SSI Rule with respect to every other performance-standard component. Accordingly, MaxWest's challenge is ripe for this Court's review. *See Cohen v. United States*, 650 F.3d 717, 742 (D.C. Cir. 2011).

III. THE COURT CAN CONSIDER MAXWEST'S ISSUES BECAUSE THEY EXPAND ON POINTS RAISED BY PETITIONERS.

MaxWest's opening brief expands upon issues raised, but not elaborated on, by Municipal Petitioners. As such, it fully conforms to this Court's rules and prudential considerations. *See See Synovus Fin. Corp. v. Bd. of Governors of the*

Fed. Reserve Sys., 952 F.2d 426, 434 (D.C. Cir. 1991) (scope of argument raised by intervenors a prudential consideration). EPA's position, by contrast, would have MaxWest violating the local rules, wasting the Court's time, and submitting a duplicative version of Petitioners' opening brief.

This Court's local rules require that an intervenor's brief "must . . . focus on points not made or adequately elaborated upon in the [parties'] brief, although relevant to the issues before th[e] court," and "must avoid repetition of facts or legal arguments made in the [parties'] . . . brief." D.C. Cir. R. 28(d)(2). This Court has also previously held that a legal question is before it even when a party fails to brief an issue raised in that party's "Statement of Issues supporting its petition for review," or in the parties' opening appellate briefs. *Human Dev. Ass'n v. NLRB*, 937 F.2d 657, 661 (D. C. Cir. 1991); *Core Commc'ns, Inc. v. FCC*, 592 F.3d 139, 145 (D.C. Cir. 2010).

Municipal Petitioners' statement of issues included: "Whether EPA's failure to respond, or to respond adequately, to critical factual and legal issues raised during the rulemaking period contravenes the CAA, the Administrative Procedure Act, is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law." NACWA Statement of Issues, Sept. 9, 2011 at 4. This is first issue raised in MaxWest's brief.

NACWA's Statement of Issues also included, "[w]hether EPA's failure to consider the full regulatory, air quality and energy impacts of the SSI Rule ... contravenes the CAA, ... is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law." *Id.* This is the second issue raised by MaxWest in its Opening Brief.

MaxWest's last issue in its Opening Brief was included in Municipal Petitioners' brief and statement of issues, and is that, "EPA's failure to establish subcategories recognizing fundamental class and use differences among SSIs contravenes the CAA, is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law." *Id.* at 3.

In sum, the issues MaxWest raised in its opening brief have been raised by Municipal Petitioners, and have sufficient factual similarity to those petitioners' points without repeating the exact same facts. The Court should therefore reject EPA's arguments that MaxWest is impermissibly expanding the issues in the case.

IV. CONCLUSION

For the reasons stated above, EPA acted arbitrarily, capriciously and otherwise unlawfully in the SSI Rule, which therefore and should be vacated and remanded.

Dated: December 6, 2012

Respectfully submitted,

MAXWEST ENVIRONMENTAL
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/s/ Lisa Sharp

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATIONS**

I HEREBY CERTIFY THAT the foregoing brief complies with the type-volume limitations, and typeface and type-style requirements of Fed. R. App. P. 32(a). As determined by the Microsoft Word 2010 software, the proportionally spaced typeface Times New Roman, 14 point, was used to produce this brief, which contains 2,399 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii) and Circuit Rule 32(a)(1).

/s/ Lisa Sharp

Lisa Sharp

December 6, 2012

CERTIFICATE OF SERVICE

I certify that on December 6, 2012, I electronically filed the foregoing with the clerk of court of the U.S. Court of Appeals for the District of Columbia Circuit using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented to accept this Notice as service of this document by electronic means.

/s/ Lisa Sharp

Lisa Sharp

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ADDENDUM

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State of Florida Department of Environmental Protection Proposed Section 111(d)
State Plan1

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
PROPOSED SECTION 111(d) STATE PLAN**



SEWAGE SLUDGE INCINERATION UNITS

April 16, 2012

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**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**PROPOSED SECTION 111(d) STATE PLAN
SEWAGE SLUDGE INCINERATION UNITS**

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Letter of Submittal



Florida Department of Environmental Protection

Division of Air Resource Management
2600 Blair Stone Road, MS 5500
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Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

April 16, 2012

Ms. Gwendolyn Keyes Fleming
Regional Administrator
U.S. Environmental Protection Agency (EPA) - Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8909

Re: Air Program: Proposed 111(d) State Plan for Sewage Sludge Incineration Units

Dear Ms. Keyes Fleming:

In accordance with the requirements of 40 C.F.R. Part 60, Subpart B, and on behalf of the Secretary of the Department of Environmental Protection, I am pleased to submit a proposed 111(d) State Plan under the Clean Air Act. The proposed Plan includes an air construction permit for Florida's only identified existing sewage sludge incineration unit. The air construction permit enables the state to implement the Emission Guidelines for Existing Sewage Sludge Incinerators, 40 C.F.R. Part 60, Subpart M, as promulgated on March 21, 2011, at 76 FR 15372. One hard copy and one electronic copy (on compact disc) of the complete submittal have been sent directly to the Air Toxics and Monitoring Branch. The electronic copy is an exact duplicate of the hard copy.

I certify that the public notice and hearing requirements of all applicable state and federal regulations have been satisfied. A copy of the certification of publication is included with the submittal.

We respectfully request your approval of Florida's proposed 111(d) State Plan for sewage sludge incineration units. If you have any questions, please contact Mrs. Tiffany Lanh of my staff by phone at (850) 717-9015 or by e-mail at tiffany.lanh@dep.state.fl.us.

Sincerely,

A handwritten signature in blue ink that reads "Brian Accardo".

Brian J. Accardo
Deputy Director, Division of Air Resource Management

cc (with enclosures): Todd Rinck, Acting Chief, Air Toxics & Monitoring Branch, EPA Region 4

www.dep.state.fl.us

Executive Summary
Proposed Section 111(d) State Plan
Emission Guidelines for Sewage Sludge Incineration Units

On March 21, 2011, the U.S. Environmental Protection Agency (EPA) adopted into the Code of Federal Regulations (CFR), Title 40, Part 60, Subparts LLLL and MMMM, Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration (SSI) units. Developed under Sections 111 and 129 of the Clean Air Act, the emission guidelines of subpart MMMM apply to existing SSI units for which construction was commenced on or before October 14, 2010. Under Section 111(d) of the Clean Air Act, any state with one or more affected SSI units must develop and submit to the EPA a "State Plan" to implement the emission guidelines. Subparts B and MMMM specify the content and the conditions for developing and adopting a Section 111(d) State Plan.

Florida's Section 111(d) State Plan has been developed by the Department of Environmental Protection (DEP) pursuant to Sections 111 and 129 of the Clean Air Act and in compliance with all of the standards and conditions of 40 CFR Part 60, Subparts B and MMMM. The plan, as set forth in this submittal document, incorporates a federally-enforceable air construction permit issued to the only existing SSI facility identified in Florida. The permit references all components of the Subpart MMMM model rule necessary to enforce the emission guidelines. This submittal document also includes a demonstration of legal authority, identification of enforceable mechanism, and a copy of the notice of opportunity to submit comments or request a public hearing on Florida's proposed Section 111(d) State Plan.

Response to 40 CFR Part 60, Subpart B, Criteria

§ 60.23 Adoption and Submittal of State Plans; Public Hearings

(d) Any hearing required by paragraph (c) of this section shall be held only after reasonable notice. Notice shall be given at least 30 days prior to the date of such hearing and shall include:

(1) Notification to the public by prominently advertising the date, time, and place of such hearing in each region affected.

- On March 2, 2012, DEP published in the Florida Administrative Weekly a notice of opportunity to submit comments or request a public hearing pursuant to 40 CFR 60.23 on Florida's proposed Section 111(d) State Plan for SSI units. A public hearing was neither requested nor held, and no written comments were received on the proposed plan revision. The "Public Participation" section of this submittal document contains a copy of the notice which appeared in the F.A.W.

(2) Availability, at the time of public announcement, of each proposed plan or revision thereof for public inspection in at least one location in each region to which it will apply.

- A copy of the March 2 public notice and the draft state plan were posted on the DEP website and made available for public inspection at least 30 days prior to the scheduled hearing date. Notification of the availability of this information was also transmitted to each of DEP's district offices and the offices of each DEP-approved local air pollution control program at least 30 days in advance of the scheduled hearing date. The "Public Participation" section of this submittal contains the memoranda of transmittal.

(3) Notification to the Administrator.

- The Region 4 office of the EPA was notified at least 30 days in advance of the scheduled hearing date and was provided with copies of the material to be considered. The "Public Participation" section of this submittal contains the pre-hearing submittal letter.

(4) Notification to each local air pollution control agency in each region to which the plan or revision will apply.

- Notification to affected local programs occurred with the notification of availability of information for public inspection (see response for (d)(2)).

(5) In the case of an interstate region, notification to any other State included in the region.

- The states of Georgia, Alabama, and Mississippi were notified of the proposed plan and of the opportunity to submit comments or request a public hearing at least 30 days in advance of the scheduled hearing date. The "Public Participation" section of this submittal contains the notification letters.

§ 60.24 Emission Standards and Compliance Schedules

(a) Each plan shall include emission standards and compliance schedules.

- The DEP has identified one sewage sludge incinerator unit in Florida subject to the emission limits of 40 CFR Part 60, Subpart M, and has issued a federally-

enforceable air construction permit for installation of a new gasification system intended to help the facility meet those limits. The permit incorporates the model rule contained in 40 CFR Part 60, Subpart Mmmm, thereby making it an enforceable requirement on the unit (see permit condition A.14.). The facility has agreed, in its permit, to perform its initial compliance tests within 90 days of reaching the maximum production rate but no later than 180 days after initial startup of the new gasification system in order to show compliance with the emission limits set forth in Subpart Mmmm for fluidized bed units. The facility will perform these compliance tests well within the required Subpart Mmmm compliance date because the gasification system is currently under construction and is expected to start up prior to the expiration date of its construction permit, which is March 30, 2013. Thus, the latest date by which the facility would perform compliance testing would be September 26, 2013 – i.e., the expiration date of the permit plus 180 days. This day will come before both March 21, 2016 (i.e., 5 years after EPA initially promulgated the rules) and 3 years after the state plan is approved, as required in §60.5035. By September 30, 2012, the facility must submit an application for a Title V air operation permit according to Administrative Requirement 8. of the construction permit. If, by this date, the facility shows that it will not be able to meet the emission limits contained in Subpart Mmmm, increments of progress will be required from the facility and added to its Title V operating permit as a part of the compliance plan.

§ 60.25 Emission Inventories, Source Surveillance, Reports

(a) Each plan shall include an inventory of all designated facilities, including emission data for the designated pollutants and information related to emissions as specified in appendix D to this part. Such data shall be summarized in the plan, and emission rates of designated pollutants from designated facilities shall be correlated with applicable emission standards. As used in this subpart, “correlated” means presented in such a manner as to show the relationship between measured or estimated amounts of emissions and the amounts of such emissions allowable under applicable emission standards.

- The DEP has identified one SSI unit subject to the provisions of 40 CFR Part 60, Subpart Mmmm, and is listed in the table at the end of this section. The facility is currently in the process of changing the type of gasifier used to a fluidized bed gasifier in order to comply with the standards in Subpart Mmmm, and does not have any test results to estimate emissions at this time. The DEP will make available the emissions data when the test results are submitted. In this facility’s air construction permit, the DEP has incorporated all monitoring, performance testing, reporting, and recordkeeping requirements of Subpart Mmmm.

§ 60.26 Legal Authority

(a) Each plan shall show that the State has legal authority to carry out the plan, including authority to:
(1) Adopt emission standards and compliance schedules applicable to designated facilities.

- (2) Enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief.**
- (3) Obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require recordkeeping and to make inspections and conduct tests of designated facilities.**
- (4) Require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such facilities; also authority for the State to make such data available to the public as reported and as correlated with applicable emission standards.**
 - The DEP has the authority to carry out the conditions set forth in this plan as required by 40 CFR 60.26(a). The laws which give the DEP this authority are located in the Florida Statutes (F.S.) at Sections 403.031 (definitions), 403.061 (DEP powers and duties), and 403.0872 (Title V air operating permits). Subsections 403.061(6), (7), (8), and (13), F.S., give the DEP the authority for obtaining information and for requiring recordkeeping, use of monitors, etc. Most importantly, Subsection 403.061(35), F.S., gives the DEP authority to exercise the duties, powers, and responsibilities required of the state under the federal Clean Air Act. The sections of the Florida Statutes that give authority for compliance and enforcement are 403.121 (judicial and administrative remedies), 403.131 (injunctive relief), 403.141 (civil remedies), and 403.161 (civil and criminal penalties). Finally, Section 119.07, F.S., is the authority for making the information available to the public.
 - An enforceable mechanism is a legal instrument by which the DEP can enforce a set of standards and conditions. The DEP's mechanism for enforcing the standards and conditions of 40 CFR Part 60, Subpart M is a federally-enforceable air construction permit issued to the only SSI source identified in Florida that incorporates the said standards and conditions.

Legal Authority

Chapter 403 of the Florida Statutes (F.S.), entitled “Environmental Control,” provides the legal framework for most of the activities of the air resource management program within the Florida Department of Environmental Protection (DEP). Except as provided at sections 403.8055 and 403.201, F.S., for fast-track rulemaking and the granting of variances under Chapter 403, F.S., respectively, Chapter 120, F.S., Florida’s “Administrative Procedure Act,” sets forth the procedures DEP must follow for rulemaking, variances, and public meetings. The most recent version of the Florida Statutes can be found online at <http://www.leg.state.fl.us/Statutes>.

The principal sections of Chapter 403, F.S., that grant DEP authority to operate its air program are listed below. Authority to develop and update Florida’s State Implementation Plan (SIP) and 111(d) Designated Facilities Plan is expressly provided by subsection 403.061(35), F.S., which provides that “the department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to ... exercise the duties, powers, and responsibilities required of the state under the federal Clean Air Act, 42 U.S.C. ss. 7401 et seq.”

- 403.031 Definitions, including the definition of “regulated air pollutant” (403.031(19)).
- 403.061 Authority to promulgate plans to provide for air quality control and pollution abatement (403.061(1)); adopt rules for the control of air pollution in the state (403.061(7)); take enforcement action against violators of air pollution laws, rules and permits (403.061(8)); establish and administer an air pollution control program (403.061(9)); set ambient air quality standards (403.061(11)); monitor air quality (403.061(12)); require reports from air pollutant emission sources (403.061(13)); require permits for construction, operation, and modification of air pollutant emission sources (403.061(14)); and exercise the duties, powers, and responsibilities required of the state under the federal Clean Air Act (403.061(35)).
- 403.087 Authority to issue, deny, modify and revoke permits.
- 403.0872 Authority to establish an air operating permit program as required by Title V of the Clean Air Amendments of 1990.
- 403.0877 Authority to require engineering certification of permit applications.
- 403.121 Authority to seek judicial and administrative remedies for violations.
- 403.131 Authority to seek injunctive relief for violations.
- 403.141 Authority to find civil liability for violations.
- 403.161 Authority to assess civil and criminal penalties for violations.
- 403.182 Authority for local pollution control programs.
- 403.201 Authority to grant variances.
- 403.716 Authority to require training of medical waste incinerator operators.
- 403.8052 Authority to establish a Small Business Assistance Program for small-business sources of air pollutant emissions.

403.8055 Authority to adopt U.S. Environmental Protection Agency (EPA) standards by reference through a fast-track process.

403.814 Authority to allow use of general permits (permits-by-rule) for minor sources.

Other statutory authorities (outside of Chapter 403, F.S.) for Florida's air resource management program are as follows:

120.569 Authority of agency head to issue an emergency order in response to an immediate threat to public health, safety, or welfare.

316.2935 Authority to prohibit the sale and operation of motor vehicles whose emission control systems have been tampered with and to prohibit the operation of motor vehicles that emit excessive smoke.

320.03 Authority to establish an Air Pollution Control Trust Fund and use \$1 fee on every motor vehicle license registration sold in the state for air pollution control purposes, including support of approved local air pollution control programs.

376.60 Authority to establish a fee for asbestos removal projects.

Rules adopted by DEP under its statutory authority are codified in the Florida Administrative Code (F.A.C.). The most recent versions of the F.A.C. rules can be found online at <https://www.flrules.org>. Rule chapters containing SIP or 111(d) State Plan provisions are as follows:

62-204 Air Pollution Control – General Provisions

62-210 Stationary Sources – General Requirements

62-212 Stationary Sources – Preconstruction Review

62-243 Tampering with Motor Vehicle Air Pollution Control Equipment

62-252 Gasoline Vapor Control

62-256 Open Burning

62-296 Stationary Sources – Emission Standards

62-297 Stationary Sources – Emissions Monitoring

Other air-related DEP rule chapters—not part of the SIP or 111(d) State Plan—include:

62-213 Operation Permits for Major Sources of Air Pollution (Title V)

62-214 Requirements for Sources Subject to the Federal Acid Rain Program

62-257 Asbestos Program

Materials Proposed to be Incorporated into State Plan

SSI Unit(s) Subject to 40 CFR Part 60, Subpart M

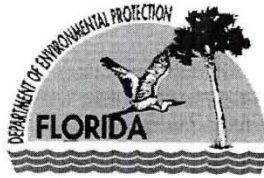
Facility Name	Pollutant	Emission Standard ^a	
MaxWest Environmental Systems, Inc. SEMINOLE COUNTY	Particulate Matter	18	mg/dscm
	Hydrogen Chloride	0.51	ppmdv
	Carbon Monoxide	64	ppmdv
	Dioxin/Furan (total mass basis) or Dioxin/Furan (toxic equivalency basis)	1.2 or 0.10	ng/dscm
	Mercury	0.037	mg/dscm
	Nitrogen Oxides	150	ppmdv
	Sulfur Dioxide	15	ppmdv
	Cadmium	0.0016	mg/dscm
	Lead	0.0074	mg/dscm
	Visible Emissions	5	percent

^a Emission standards from Table 2 for Existing Fluidized Bed Sewage Sludge Incineration Units

“mg/dscm” means milligrams per dry standard cubic meter

“ppmdv” means parts per million, by dry volume

“ng/dscm” means nanograms per dry standard cubic meter

Air Construction Permit for Max West SSI Unit, Seminole County**Florida Department of
Environmental Protection**

Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

FINAL PERMIT

Electronically sent - Received Receipt requested

PERMITTEE

MaxWest Environmental Systems, Inc.
114 W 1st Street, Suite 220
Sanford, FL 32771

Authorized Representative: **Jeff Snyder, Vice President of
Operations**

Air Project No. 1170409-002-AC
Permit Expires: March 30, 2013
MaxWest - Sanford, LLC
Major Source Air Construction
Permit Modification
Project: Modification

This is the final air construction permit modification, which authorizes replacement of an existing gasifier and modification to the existing thermal oxidizer. This construction permit modification allows the permittee, MaxWest, to replace the existing gasifier with one of two possible options; option "A" is a fluidized bed gasifier and option "B" is a rotary style gasifier. Each option for the replacement gasifier can be installed and tested during the construction permit modification period, which lasts until March 30, 2013. This construction permit modification supersedes all previous air permits. The proposed work will be conducted at MaxWest Environmental Systems/City of Sanford Biosolids Gasification Facility, which is waste-to-energy gasification system (Standard Industrial Classification Code 4952, Sewerage Systems). The facility is located in Seminole County at 3540 Cameron Avenue (at the wastewater treatment plant) in Sanford, Florida. The UTM coordinates are Zone 17, 479.08 km East and 3181.11 km North.

This final permit is organized by the following sections.

- Section 1. General Information
- Section 2. Administrative Requirements
- Section 3. Emissions Unit Specific Conditions
- Section 4. Appendices

Because of the technical nature of the project, the permit contains numerous acronyms and abbreviations, which are defined in Appendix A of Section 4 of this permit.

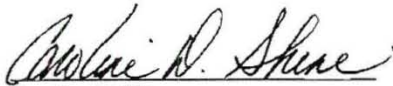
This air pollution construction permit is issued under the provisions of Chapter 403 of the Florida Statutes (F.S.) and Chapters 62-4, 62-204, 62-210, 62-212, 62-296 and 62-297 of the Florida Administrative Code (F.A.C.). The permittee is authorized to conduct the proposed work in accordance with the conditions of this permit. This project is subject to the general preconstruction review requirements in Rule 62-212.300, F.A.C. and is not subject to the preconstruction review requirements for major stationary sources in Rule 62-212.400, F.A.C. for the Prevention of Significant Deterioration (PSD) of Air Quality.

Upon issuance of this final permit, any party to this order has the right to seek judicial review of it under Section 120.68 of the Florida Statutes by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department of Environmental Protection in the

www.dep.state.fl.us

Office of General Counsel (Mail Station #35, 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399-3000) and by filing a copy of the notice appeal, accompanied by the applicable filing fees, with the appropriate District Court of Appeal. The notice must be filed within 30 days after this order is filed with the clerk of the Department.

Executed in Orlando, Florida



Caroline D. Shine
District Air Program Administrator
Central District

9/19/11
Date

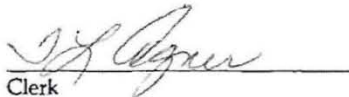
CERTIFICATE OF SERVICE

The undersigned duly designated deputy agency clerk hereby certifies that this Final Air Permit package (including the Final Determination, the Final Permit and the Appendices) was sent by electronic mail (or a link to these documents made available electronically on a publicly accessible server) with received receipt requested before the close of business on Sept 20, 2011 to the persons listed below.

Jeff Snyder, Vice President of Operations, (jsnyder@maxwestenergy.com)
James T. Show, P.E., (j_sshow@bellsouth.net)
Bruno Ferraro, CEP, QEP, President, Grove Scientific & Engineering Company,
(bruno@grovescientific.com)
Sara Greivell, Environmental Scientist, Grove Scientific & Engineering Company
(sara@grovescientific.com)

Clerk Stamp

FILING AND ACKNOWLEDGMENT FILED, on
this date, pursuant to Section 120.52(7), Florida
Statutes, with the designated agency clerk, receipt
of which is hereby acknowledged.


Clerk

9/20/11
Date

MaxWest Environmental Systems, Inc. Expiration Date: March 30, 2013
MaxWest-Sanford, LLC

Project No. 1170409-002-AC
Project: Modification

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SECTION 2. GENERAL INFORMATION (FINAL)

FACILITY AND PROJECT DESCRIPTION**Existing Facility**

The facility is a waste-to-energy gasification system using class A/AA biosolids as a feed stock (fuel). The MaxWest Gassification System is a "one-cell" modular unit that is scalable and expandable to meet future growth. The system consists of the materials handling system, the continuous dryer heated indirectly by a thermal fluid, the baghouse (BCE Model SW-256-120-IX), the primary gasifier, the thermal oxidizer, the thermal energy transfer system (economizer), and a scrubber/secondary heat exchanger. The system converts biosolids to "thermal" energy and residual mineralized, inert ash.

Proposed Project

This project is a minor modification to replace the existing gasifier and modify the existing thermal oxidizer (increase diameter 1 ft. and length 16 ft.). This project also identifies that the facility is subject to NSPS regulation, 40 CFR Part 60 Subpart M- Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units.

This project will modify the following emissions unit:

Facility ID No. 1170409	
ID No.	Emission Unit Description
001	Waste-to-Energy Gasification System with Thermal Oxidizer, Scrubber/Secondary Heat Exchanger, and Baghouse

FACILITY REGULATORY CLASSIFICATION

- The facility is not a major source of hazardous air pollutants (HAP).
- The facility has no units subject to the acid rain provisions of the Clean Air Act (CAA).
- The emission levels are below threshold levels for Title V; however, the facility is a Title V facility by EPA designation. The facility is considered by EPA to be a SSI (Sewage Sludge Incinerator). § 60.5065 and § 60.5245 of 40 CFR 60 Subpart M are listed below.

§ 60.5065 What SSI units are exempt from my state plan?

This subpart exempts combustion units that incinerate sewage sludge and are not located at a wastewater treatment facility designed to treat domestic sewage sludge. These units may be subject to another subpart of this part (e.g., subpart CCCC of this part). The owner or operator of such a combustion unit must notify the Administrator of an exemption claim under this section.

§ 60.5245 When must I submit a title V permit application for my existing SSI unit?

(a) If your existing SSI unit is not subject to an earlier permit application deadline, a complete Title V Permit Application must be submitted on or before the earlier of the dates specified in paragraphs (a)(1) through (a)(3) of this section. (See sections 129 (e), 503(c), 503(d), and 502(a) of the Clean Air Act and 40 CFR 70.5(a)(1)(i) and 40 CFR 71.5(a)(1)(i)).

SECTION 2. GENERAL INFORMATION (FINAL)

(1) 12 months after the effective date of any applicable EPA-approved Clean Air Act section 111(d)/129 state or tribal plan.

(2) 12 months after the effective date of any applicable Federal plan.

(3) March 21, 2014.

(b) For any existing unit not subject to an earlier permit application deadline, the application deadline of 36 months after the promulgation (March 21, 2011) of this subpart applies regardless of whether or when any applicable Federal plan is effective, or whether or when any applicable Clean Air Act section 111(d)/129 state or tribal plan is approved by EPA and becomes effective.

(c) If your existing unit is subject to title V as a result of some triggering requirement(s) other than those specified in paragraphs (a) and (b) of this section (for example, a unit may be a major source or part of a major source), then your unit may be required to apply for a title V permit prior to the deadlines specified in paragraphs (a) and (b). If more than one requirement triggers a source's obligation to apply for a title V permit, the 12-month timeframe for filing a title V permit application is triggered by the requirement which first causes the source to be subject to title V. (See section 503(c) of the Clean Air Act and 40 CFR 70.3(a) and (b), 40 CFR 70.5(a)(1)(i), 40 CFR 71.3(a) and (b), and 40 CFR 71.5(a)(1)(i).)

(d) A "complete" title V permit application is one that has been determined or deemed complete by the relevant permitting authority under section 503(d) of the Clean Air Act and 40 CFR 70.5(a)(2) or 40 CFR 71.5(a)(2). You must submit a complete permit application by the relevant application deadline in order to operate after this date in compliance with Federal law. (See sections 503(d) and 502(a) of the Clean Air Act and 40 CFR 70.7(b) and 40 CFR 71.7(b).)

- The facility is subject to NSPS regulation, 40 CFR Part 60 Subpart M- Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units.
- The facility is subject to NESHAP regulations, 40 CFR Part 61 Subpart A-General Provisions and 40 CFR Part 61 Subpart E-National Emission Standard for Mercury.

PERMIT HISTORY/AFFECTED PERMITS

Modifies Permit No. 1170409-001-AC

MaxWest Environmental Systems, Inc. Expiration Date: March 30, 2013
MaxWest-Sanford, LLC

Project No. 1170409-002-AC
Project: Modification

Page 4 of 13

SECTION 2. ADMINISTRATIVE REQUIREMENTS (FINAL)

1. Permitting Authority: The permitting authority for this project is the Florida Department of Environmental Protection, Central District Office. The Central District Office's mailing address is 3319 Maguire Blvd., Suite 232, Orlando, Florida 32803-3767. The phone numbers for Permitting Section are 407-897-2931. All documents related to applications for permits to operate an emissions unit shall be submitted to the Central District Office.
2. Compliance Authority: All documents related to compliance activities such as reports, tests, and notifications shall be submitted to the Central District Office. The mailing address of the Central District Office is: 3319 Maguire Blvd., Suite 232, Orlando, Florida 32803-3767. The phone number for Compliance Section is 407-897-2928.
3. Appendices: The following Appendices are attached as part of this permit:
 - a. Appendix A. Citation Formats and Glossary of Common Terms;
 - b. Appendix B. General Conditions;
 - c. Appendix C. Common Conditions;
 - d. Appendix D. Common Testing Requirements;
 - e. Appendix E. 40 CFR Part 61 Subpart A – General Provisions;
 - f. Appendix F. 40 CFR Part 61 Subpart E – National Emission Standard for Mercury;
 - g. Appendix G. 40 CFR Part 60 Subpart A-General Provisions; and
 - h. Appendix H. 40 CFR Part 60 Subpart MMMM- Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units.
4. Applicable Regulations, Forms and Application Procedures: Unless otherwise specified in this permit, the construction and operation of the subject emissions units shall be in accordance with the capacities and specifications stated in the application. The facility is subject to all applicable provisions of: Chapter 403, F.S.; and Chapters 62-4, 62-204, 62-210, 62-212, 62-213, 62-296 and 62-297, F.A.C. Issuance of this permit does not relieve the permittee from compliance with any applicable federal, state, or local permitting or regulations.
5. New or Additional Conditions: For good cause shown and after notice and an administrative hearing, if requested, the Department may require the permittee to conform to new or additional conditions. The Department shall allow the permittee a reasonable time to conform to the new or additional conditions, and on application of the permittee, the Department may grant additional time. [Rule 62-4.080, F.A.C.]
6. Modifications: The permittee shall notify the Compliance Authority upon commencement of construction. No new emissions unit shall be constructed and no existing emissions unit shall be modified without obtaining an air construction permit from the Department. Such permit shall be obtained prior to beginning construction or modification. [Rules 62-210.300(1) and 62-212.300(1)(a), F.A.C.]
7. Source Obligation:
 - (a) At such time that a particular source or modification becomes a major stationary source or major modification (as these terms were defined at the time the source obtained the enforceable limitation) solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of

SECTION 2. ADMINISTRATIVE REQUIREMENTS (FINAL)

subsections 62-212.400(4) through (12), F.A.C., shall apply to the source or modification as though construction had not yet commenced on the source or modification.

- (b) At such time that a particular source or modification becomes a major stationary source or major modification (as these terms were defined at the time the source obtained the enforceable limitation) solely by exceeding its projected actual emissions, then the requirements of subsections 62-212.400(4) through (12), F.A.C., shall apply to the source or modification as though construction had not yet commenced on the source or modification. [Rule 62-212.400(12), F.A.C.]

8. Permit Application: The construction/modification shall reasonably conform to the plans and schedule submitted in the application. If the permittee is unable to complete construction on schedule, he must notify the Department in writing at least 90 days prior to the expiration of the construction permit and submit an application for an extension of the construction permit.

An operating permit is required for this air source. To obtain an air operating permit, the permittee must demonstrate compliance with the conditions of the construction permit and submit the application fee, along with compliance test results, and an Application for Air Permit (4 copies) to the Department's Central Florida District office [Rule 62-4.220, F.A.C.]. The application shall be submitted no later than September 30, 2012.

SECTION 3. EMISSION UNIT SPECIFIC CONDITIONS (FINAL)

A. Waste-to-Energy Gasification System with Thermal Oxidizer, Scrubber/Secondary Heat Exchanger & Baghouse

This section of the permit addresses the following emissions unit.

ID No.	Emission Unit Description
001	Waste-to-Energy Gasification System with Thermal Oxidizer, Scrubber/Secondary Heat Exchanger, and Baghouse

EQUIPMENT

- A.1. Equipment Name: The facility is a waste-to-energy gasification system using class A/AA biosolids as a feed stock (fuel). The MaxWest Gasification System is a "one-cell" modular unit that is scalable and expandable to meet future growth. The system consists of the materials handling system, the continuous dryer heated indirectly by a thermal fluid, the baghouse (BCE Model SW-256-120-IX), the primary gasifier, the thermal oxidizer, and the thermal energy transfer system. There is a scrubber/secondary heat exchanger. The system converts biosolids to "thermal" energy and residual mineralized, inert ash. The current system uses a continuous dryer that is sized to match the continuous gasification system.

The permittee is allowed to replace the existing gasifier with one of two possible options. Option "A" is a fluidized bed gasifier and option "B" is a rotary style gasifier. Each option for the replacement gasifier can be installed and tested during the construction permit modification period (until March 30, 2013).

The first gasifier, "Option A-fluidized bed gasifier" will be installed and tested for a period of approximately four months. If this alternative does not provide the necessary results after approximately four months, MaxWest will replace it with "Option B-rotary style dryer".

[Application No. 1170409-001-AC, Modification Application No. 1170409-002-AC, and Email Correspondence dated 07/13/10]

PERFORMANCE RESTRICTIONS

- A.2. Restricted Operation: The hours of operation are not limited (8760 hours per year). [Rules 62-4.070(3) and 62-210.200(PTE), F.A.C.]
- A.3. Restricted Operation: The amount of biosolids processed is limited to dry 6,307 tons of biosolids per consecutive twelve months. [Rules 62-4.070(3) and 62-210.200(PTE), F.A.C.]
- A.4. Circumvention: The permittee shall not circumvent the air pollution control equipment, including the baghouse, or allow the emission of air pollutants without this equipment operating properly. [Rule 62-210.650, F.A.C.]

SECTION 3. EMISSION UNIT SPECIFIC CONDITIONS (FINAL)

A. Waste-to-Energy Gasification System with Thermal Oxidizer, Scrubber/Secondary Heat Exchanger & Baghouse**PRECAUTIONS AND PROCEDURES TO MINIMIZE EMISSIONS**

- A.5. Unconfined particulate matter: All reasonable precautions shall be taken to prevent emissions of unconfined particulate matter. Reasonable precautions shall include, but not be limited to, the following:
- a) Application of water, when necessary, to control emissions.
 - b) Removal of particulate matter from roads and other paved areas under control of the owner or operator to prevent re-entrainment, and from buildings or work areas to prevent particulate.[Rule 62-296.320(4)(c), F.A.C.]
- A.6. Volatile Organic Compound: No person shall store, pump, handle, process, load, unload or use in any process or installation, volatile organic compounds (VOCs) or organic solvents without applying known and existing vapor emission control devices or systems deemed necessary and ordered by the Department [Rule 62-296.320(1)(a), F.A.C.] To comply, procedures to minimize pollutant emissions should include, but not be limited to the following:
- a) tightly cover or close all VOC containers when they are not in use,
 - b) tightly cover, where possible, all open troughs, basins, baths, tanks, etc. when they are not in use,
 - c) maintain all piping, valves, fittings, etc. in good operating condition,
 - d) prevent excessive air turbulence across exposed VOCs,
 - e) immediately confine and clean up VOC spills and make certain wastes are placed in closed containers for reuse, recycling, or proper disposal
- [Rule 62-296.320(1)(a), F.A.C.]

EMISSIONS LIMITS AND STANDARDS

- A.7. Visible Emissions (VE) Limitation: Visible emissions from the baghouse are limited to less than 5 percent opacity except that visible emissions not exceeding 15 percent opacity are allowed for up to 6 minutes in any given one hour period..
[Rule 62-296.401(1)(a) and Rule 62-4.070(3), F.A.C.]
- A.8. Visible Emissions (VE) Limitation: Visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) limited to no more than 5 percent opacity.
[40 CFR 60 Subpart M]M]
- A.9. General VE Emissions Standards: Visible emissions are limited to less than 20 percent opacity, except for the baghouse (stack) and ash conveying system (listed in Conditions Nos. A.7. and A.8.). See Condition No. 8 of Appendix C.
[Application No. 0090227-001-AC and Rule 62-296.320(4)(b)1, F.A.C.]

SECTION 3. EMISSION UNIT SPECIFIC CONDITIONS (FINAL)

A. Waste-to-Energy Gasification System with Thermal Oxidizer, Scrubber/Secondary Heat Exchanger & Baghouse

- A.10. Mercury Emissions Limitation: If the mercury emissions from the facility exceed 3.5 lb per 4-hour period, demonstrated either by stack sampling according to Sec. 61.53 or sludge sampling according to Sec. 61.54, then the facility shall monitor mercury emissions at intervals of at least once per year by use of the procedures specified in Sections 61.53(d)(2) and (4). Monitoring results shall be reported and retained according to sections 61.53(d)(5) & (6) or Sections 61.54(f) & (g). [Rules 62-4.070(3) and 62-210.200(PTE), F.A.C.]
- A.11. NESHAP: The facility is subject to 40 CFR Part 61 Subpart A-General Provisions (See Appendix E). The conditions are incorporated into this permit. This includes the Startup Written Notification as pursuant to §61.09 (Notification of startup) of 40 CFR Part 61 Subpart A-General Provisions.
[EPA Determination in letter dated 12/07/10]
- A.12. NESHAP: The facility is subject to 40 CFR Part 61 Subpart E-National Emission Standard for Mercury (See Appendix F). The conditions are incorporated into this permit.
[EPA Determination in letter dated 12/07/10]
- A.13. NSPS: The facility is subject to 40 CFR Part 60 Subpart A-General Provisions (See Appendix G). The conditions are incorporated into this permit.
[EPA Determination in letter dated 12/07/10]
- A.14. NSPS: The facility is subject to 40 CFR Part 60 Subpart M-MMMM-Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units (See Appendix H). The conditions are incorporated into this permit.
[EPA Determination in letter dated 12/07/10]

TESTING REQUIREMENTS

- A.15. Initial Compliance Tests: Within 90 days of reaching the maximum production rate but no later than 180 days after initial startup of the waste-to-energy gasification system using the new gasifier (the option chosen to be the replacement) and modified thermal oxidizer, the waste-to-energy gasification system shall be tested using EPA Method 1-4, EPA 6C, EPA Method 7E, and EPA Method 10 to determine compliance with the NO_x, SO₂, and CO emission limits of 40 CFR 60 Subpart M-MMMM. The testing for NO_x, SO₂, and CO emissions shall consist of 3 runs, each of 60 minutes duration.
[Rule 62-4.070(3), F.A.C.]
- A.16. Initial Compliance Tests: Within 90 days of reaching the maximum production rate but no later than 180 days after initial startup of the waste-to-energy gasification system using the new oxidizer (the option chosen to be the replacement) and modified thermal oxidizer, the waste-to-energy gasification system shall be tested using EPA Method 5 and EPA Method 26A to determine compliance with the particulate and HCl emission limits of 40 CFR 60 Subpart M-MMMM. The testing for particulate emissions and HCl emissions shall consist of 3 runs, each of 60 minutes duration. [Rule 62-4.070 (3), F.A.C. and 40 CFR 60 Subpart M-MMMM]

SECTION 3. EMISSION UNIT SPECIFIC CONDITIONS (FINAL)

A. Waste-to-Energy Gasification System with Thermal Oxidizer, Scrubber/Secondary Heat Exchanger & Baghouse

- A.17. **Initial Compliance Test (New Configuration):** Within 90 days of reaching the maximum production rate but no later than 180 days after initial startup of the waste-to-energy gasification system using the new gasifier (the option chosen to be the replacement) and modified thermal oxidizer, the waste-to-energy gasification system (baghouse) shall be tested using EPA Method 9 to determine compliance with the visible emissions standard listed in Specific Condition No. A.7. of this permit. The visible emissions testing shall consist of one run of duration 30 minutes.
[Rules 62-4.070(3), 62-296.401(1)(a), and 62-297.310(7)(a)1, F.A.C.]
- A.18. **Initial Compliance Test:** Within 90 days of reaching the maximum production rate but no later than 180 days after initial startup of the waste-to-energy gasification system using the new gasifier (the option chosen to be the replacement) and modified thermal oxidizer, the ash conveying system (including conveyor transfer points) shall be tested using EPA Method 22 to determine compliance with the visible emissions standard listed in Specific Condition No. A.8. of this permit. The visible emissions testing shall consist of three 1-hour observation periods.
[Rules 62-4.070(3) and 40 CFR Subpart M]
- A.19. **Initial Compliance Tests:** Within 90 days of reaching the maximum production rate but no later than 180 days after initial startup of the waste-to-energy gasification system using the new gasifier (the option chosen to be the replacement) and modified thermal oxidizer, the waste-to-energy gasification system shall be tested using EPA Method 23 to determine compliance with the dioxins and furans emission limits of 40 CFR 60 Subpart Mmmm. The testing for dioxins and furan emissions shall consist of 3 runs, the minimum test run duration shall be 3 hours (180 minutes).
[Rule 62-4.070(3), F.A.C. and 40 CFR 60 Subpart Mmmm]
- A.20. **Initial Compliance Test:** Within 90 days of reaching the maximum production rate but no later than 180 days after initial startup of the waste-to-energy gasification system using the new gasifier (the option chosen to be the replacement) and modified thermal oxidizer, the waste-to-energy gasification system shall be tested using EPA Method 29 to determine compliance with the cadmium, lead, and mercury emission limits of 40 CFR 60 Subpart Mmmm and the mercury emission limits of 40 CFR 61 Subpart E. The testing for cadmium, lead, and mercury shall consist of 3 runs, the minimum test run duration shall be 2 hours (120 minutes). [Rule 62-4.070(3), F.A.C., §60.53 and §60.54 of 40 CFR Part 61 Subpart E-National Emission Standard for Mercury, and 40 CFR 60 Subpart Mmmm]
- A.21. **Test Requirements (Calculation of Emission Rate):** The indicated emission rate or concentration shall be the arithmetic average of the emission rate or concentration determined by each of the separate test runs unless otherwise specified in a particular test method or applicable rule.
[Rule 62-297.310(3), F.A.C.]

SECTION 3. EMISSION UNIT SPECIFIC CONDITIONS (FINAL)

A. Waste-to-Energy Gasification System with Thermal Oxidizer, Scrubber/Secondary Heat Exchanger & Baghouse

- A.22. **Test Requirements:** The permittee shall notify the Compliance Authority in writing at least 30 days prior to any required tests. Tests shall be conducted in accordance with the applicable requirements specified in Appendix D (Common Testing Requirements) of this permit.
[Rule 62-297.310(7)(a)9, F.A.C.]
- A.23. **Test Methods:** Required tests shall be performed in accordance with the following reference methods.

Method	Description of Method and Comments
EPA 1	Sample and Velocity for Stationary Sources
EPA 2	Determination of Stack Gas Velocity and Volumetric Flow Rate
EPA 3	Gas Analysis for Carbon Monoxide, Oxygen, Excess Air, and Dry Molecular Weight
EPA 4	Determination of Moisture Content in Stack Gases
EPA 5	Determination of Particulate Emissions from Stationary Sources.
EPA 7E	Determination of Nitrous Oxide Emissions from Stationary Sources (Instrumental Analyzer Procedures).
EPA 9	Visual Determination of the Opacity of Emissions from Stationary Sources.
EPA 10	Determination of Carbon Monoxide Emissions from Stationary Sources.
EPA 22	Visual Determination of Fugitive Emissions from Material Sources and Smoke emissions from Flares.
EPA 23	Determination of Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans from Stationary Sources.
EPA 26A	Determination of Hydrogen Halide and Halogen Emissions From Stationary Sources – Isokinetic Method
EPA 29	Determination of Metal Emissions from Stationary Sources.
EPA 101A	Determination of Particulate and Gaseous Mercury Emissions from Sewage Sludge Incinerators

The above methods are described in Appendix A of 40 CFR 60 and are adopted by reference in Rule 62-204.800, F.A.C. No other methods may be used unless prior written approval is received from the Department.
[Rules 62-204.800 and 62-297.100, F.A.C.; and Appendix A of 40 CFR 60]

- A.24. **Test Procedure:** The stack sampling facility must comply with Rule 62-297.310(6), F.A.C.
- A.25. **Test Procedure:** Testing of emissions shall be conducted with the emissions unit operation at permitted capacity. For compliance testing purposes only, the maximum operation rate is 0.72 tons/hr. of dry biosolids processed. Permitted capacity is defined as 90 to 100 percent of the maximum operation rate allowed by the permit. If it is impractical to test at permitted capacity, an emissions unit may be tested at less than the minimum permitted capacity; in this

SECTION 3. EMISSION UNIT SPECIFIC CONDITIONS (FINAL)

A. Waste-to-Energy Gasification System with Thermal Oxidizer, Scrubber/Secondary Heat Exchanger & Baghouse

case, subsequent emissions unit operation is limited to 110 percent of the test load until a new test is conducted. Once the unit is so limited, operation at higher capacities is allowed for no more than 15 consecutive days for the purpose of additional compliance testing to regain the authority to operate at the permitted capacity. [Rule 62-297.310(2), F.A.C.]

MONITORING REQUIREMENTS

- A.26. Mercury Monitoring Requirements: The facility shall monitor mercury emissions at intervals of at least once per year by use of procedures specified in Sections 61.53(d)(2) and (4), which includes using EPA Method 101A. Monitoring results shall be reported and retained according to Sections 61.53(d)(5) & (6) or Sections 61.54(f) & (g). [Rules 62-4.070(3) and 62-210.200(PTE), F.A.C.]

RECORDS AND REPORTS

- A.27. Recordkeeping: In order to demonstrate compliance with Specific Conditions No. A.3., and pursuant to Rule 62-4.070(3), F.A.C., the permittee shall maintain a monthly log at the facility for a period of at least five years from the date the data is recorded. The log, at a minimum, shall contain the following:

Monthly

- Designation of the month and year of operation for which the records are being tabulated;
- Consecutive 12-months total of amount of dry biosolids processed;
- Consecutive 12-months total of nitrogen oxides (NO_x) emissions, VOC emissions, sulfur dioxide (SO₂) emissions, carbon monoxide (CO) emissions, total HAPs emissions, and each HAP emission; and
- Each month total of nitrogen oxides (NO_x) emissions, VOC emissions, sulfur dioxide (SO₂) emissions, carbon monoxide (CO) emissions, total HAPs emissions, and each HAP emission. [Rule 62-4.070(3), F.A.C.]

Once the emission factors have been determined from the stack testing (after the new gasifier (the option chosen to be the replacement) has been installed and the thermal oxidizer modified), the emission factors shall be used to compute the above listed quantities as appropriate, in addition to any AP-42 factors as appropriate, starting with the month of September 2012.

Note: A consecutive 12-month total is equal to the total for the month in question plus the totals for the eleven months previous to the month in question. A consecutive 12-month total treats each month of the year as the end of a 12-month period. A 12-month total is not a year-to-date total. Facilities that have not been operating for 12 months should retain 12-month totals using whatever number of months of data is available until such a time as a consecutive 12-month total can be maintained each month. The monthly logs shall be completed by the end of the following month. [Rule 62-4.070(3), F.A.C.]

SECTION 3. EMISSION UNIT SPECIFIC CONDITIONS (FINAL)

A. Waste-to-Energy Gasification System with Thermal Oxidizer, Scrubber/Secondary Heat Exchanger & Baghouse

- A.28. **Documentation:** Supporting documentation (chemical usage tracking logs, MSDS sheets, purchase orders, EPA "As Supplied" data sheets, EPA Method 24, etc.) shall be kept for each chemical and associated products which includes sufficient information to determine usage rates and emissions. These records shall be made available to the Department upon request. Documentation of each chemical reclaimed will use a mass balance method to determine usage/emissions (amount used minus amount collected for disposal or recycle). The log and documents shall be kept at the facility for at least five years and made available to the Department.
[Rule 62-4.070(3), F.A.C.]
- A.29. **Emission Rate Recordkeeping:** Logs must document the method, calculations, and formulas used in determining the usage rate and the emission rate. This includes, but is not limited to, the product name, density, individual and total HAP contents, and individual and total VOC content. All calculations, including those used to derive emission credits for mass balance, must be clearly documented, and may be presented in the form of a template of sample calculations, which is filed with the logs required in this specific condition and available for review on site by regulatory inspectors.
[Rule 62-4.070(3), F.A.C.]
- A.30. **Test Reports:** The permittee shall prepare and submit reports for all required tests in accordance with the requirements specified in Appendix D (Common Testing Requirements) of this permit. For each test run, the report shall also indicate the information listed in Rules 62-297.310(8)(c) 12., 18., and 19., F.A.C.
[Rule 62-297.310(8), F.A.C.]
- A.31. **Test Reports:** Electronic copies of reports of certain performance tests shall be submitted to EPA using EMT (Emissions Reporting Tool) as indicated in 40 CFR 60 Subpart M. [40 CFR 60 Subpart M]
- A.32. **Annual Operating Report:** An Annual Operating Report is required to be completed and submitted for this facility as specified in Appendix C (Common Conditions) of this permit. This facility is classified as a Title V facility because it is subject to the mercury NESHAP regulation (40 CFR Part 61 Subpart E - National Emission Standard for Mercury) and the existing sewage sludge incineration unit NSPS regulation (40 CFR Part 60 Subpart M - Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units).
[Rule 62-210.370(3), F.A.C.]

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Public Participation

Notice of Opportunity to Submit Comments or Participate in Public Hearing

*Florida Administrative Weekly**Volume 38, Number 9, March 2, 2012*

The **Clean Marina Program** announces a workshop to which all persons are invited.

DATE AND TIME: Tuesday, April 3, 2012, 1:00 p.m. – 4:00 p.m.

PLACE: Department of Environmental Protection, Northeast District Office, 7825 Baymeadows Way, Suite 200B, Jacksonville, FL 32256

GENERAL SUBJECT MATTER TO BE CONSIDERED: Clean Marina Compliance Assistance Workshop for new and existing marine and freshwater marinas, boatyards, and retailers. Participants can learn about marina safety measures, regulations, and best management practices. Participants can also learn how to participate in the Clean Marina Program to become designated a Clean Marina and how to apply for grant funding for pumpout facilities from the Clean Vessel Act Program.

A copy of the agenda may be obtained by contacting: Sheena Chin, Department of Environmental Protection, 7825 Baymeadows Way, Suite 200B, Jacksonville, FL 32256, (904)256-1513 or Sheena.Chin@dep.state.fl.us.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Sheena Chin, Sheena.Chin@dep.state.fl.us. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

For more information, you may contact: Sheena Chin, Sheena.Chin@dep.state.fl.us.

The **Division of Air Resource Management** announces a hearing to which all persons are invited.

DATE AND TIME: April 11, 2012, 10:00 a.m.

PLACE: Department of Environmental Protection, Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803

GENERAL SUBJECT MATTER TO BE CONSIDERED: The Department of Environmental Protection (DEP) announces that a public hearing pursuant to the requirements of 40 C.F.R. 60.23 will be held, if requested, at the date, time and place given above. The purpose of the public hearing is to receive comments on DEP's proposal to submit to the U.S. Environmental Protection Agency (EPA) a Designated Facility Plan under section 111(d) of the federal Clean Air Act for implementation of the sewage sludge incinerator regulations promulgated by EPA on March 21, 2011. DEP has identified one facility subject to these regulations.

It is not necessary that the hearing be held or attended in order for persons to comment on DEP's proposed submittal to EPA. Any request for a public hearing must be submitted by letter or e-mail to: Marnie Brynes, Department of Environmental Protection, Division of Air Resource Management, 2600 Blair

Stone Road, MS #5500, Tallahassee, Florida 32399-2400, Marnie.Brynes@dep.state.fl.us and received no later than April 2, 2012. Any comments must be submitted by letter or e-mail to Tiffany Lanh at the above address or Tiffany.Lanh@dep.state.fl.us, with a copy to Ms. Brynes, and received no later than April 2, 2012. If no request for a public hearing is received, the hearing will be cancelled, and notice of the cancellation will be posted at the following website: <http://sharepoint.dep.state.fl.us/PublicNotices/default.asp>.

Persons may also contact: Ms. Brynes, (850)717-9029, to find out if the hearing has been cancelled. The materials comprising DEP's proposed 111(d) Plan are accessible from the above website by clicking on the April 11 hearing link. The materials may also be inspected during normal business hours at the DEP, Division of Air Resource Management offices, 111 S. Magnolia Dr., Suite 23, Tallahassee, Florida, or accessed with the aid of any DEP District Air Section or DEP-approved local air pollution control office.

A copy of the agenda may be obtained by contacting: Ms. Lanh by letter or e-mail, or by calling (850)717-9015.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Ms. Brynes at (850)717-9029 or Marnie.Brynes@dep.state.fl.us. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

For more information, you may contact: Ms. Lanh by letter, e-mail or by calling: (850)717-9015.

DEPARTMENT OF HEALTH

The Emergency/Legal/Medical/Outreach Committee of the **Florida Coordinating Council for the Deaf and Hard of Hearing** announces a telephone conference call to which all persons are invited.

DATE AND TIME: Friday, March 9, 2012, 3:30 p.m. (EST)

PLACE: Conference Call: 1(888)808-6959, Conference Code: 5221678031#;

<http://www.streamtext.net/text.aspx?event= FCCDHH>


GENERAL SUBJECT MATTER TO BE CONSIDERED: The subject of the meeting will be the contents and production of a Florida Civil Rights Handbook for persons with hearing loss.

A copy of the agenda may be obtained by contacting: Mary Grace Tavel at info@fccdh.org or by telephone or TTY: Phone: (850)245-4913, Toll-Free phone: 1(866)602-3275, TTY: (850)245-4914, Toll-free TTY: 1(866)602-3276.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 7 days before the workshop/meeting by contacting: Mary Grace Tavel at info@fccdh.org; or by

Requests for Districts/Locals to Provide Assistance to Public**Memorandum- Via Electronic-Mail****Florida Department of
Environmental Protection**

TO: Rick Bradburn Northwest District
Khalid AlNahdy Northeast District
Caroline Shine Central District
Robert Wong Southwest District
Lennon Anderson Southeast District
Ajaya Satyal South District

FROM: Chad R. Stevens, Administrator 
Regulatory Reform & Legislative Coordination Section
Office of Business Planning
Division of Air Resource Management

DATE: March 1, 2012

SUBJECT: Public Information Package - 111(d) State Plan Pre-Hearing Submittal- Sewage
Sludge Incinerators


Notice is hereby given that the Department of Environmental Protection will hold a public hearing, if requested, pursuant to 40 CFR 60.23 on April 11, 2012, to hear comments on a proposal to submit to the U.S. EPA a Designated Facility Plan under section 111(d) of the federal Clean Air Act for implementation of the sewage sludge incinerator regulations for existing sources promulgated by EPA on March 21, 2011. DEP has identified one facility subject to these regulations. The materials comprising the proposed revision are posted at <http://www.dep.state.fl.us/air/rules/regulatory.htm>. Please assist any member of the public who may contact you asking to view these materials.

Attached please find the notice of public hearing that is scheduled to appear in the Florida Administrative Weekly (FAW) on March 2, 2012.

www.dep.state.fl.us

**Memorandum- Via Electronic-Mail****Florida Department of
Environmental Protection**

TO: Daniela Banu Broward County Department of Planning
 & Environmental Protection, Ft. Lauderdale
Patrick Wong Miami-Dade County Department of Environmental
 Resource Management, Miami
Steve Pace Regulatory & Environmental Services Department,
 Jacksonville
Jerry Campbell Hillsborough County Environmental Protection
 Commission, Tampa
Jodi Dittell Orange County Environmental Protection Department,
 Orlando
James Stormer Palm Beach County Health Department,
 West Palm Beach
Peter Hessling Pinellas County Department of Environmental
 Management, Clearwater
John Hickey Sarasota County Natural Resources Department,
 Sarasota

FROM: Chad R. Stevens, Administrator 
 Regulatory Reform & Legislative Coordination Section
 Office of Business Planning
 Division of Air Resource Management

DATE: March 1, 2012

SUBJECT: Public Information Package - 111(d) State Plan Pre-Hearing Submittal- Sewage
 Sludge Incinerators

Notice is hereby given that the Department of Environmental Protection will hold a public hearing, if requested, pursuant to 40 CFR 60.23 on April 11, 2012, to hear comments on a proposal to submit to the U.S. EPA a Designated Facility Plan under section 111(d) of the federal Clean Air Act for implementation of the sewage sludge incinerator regulations for existing sources promulgated by EPA on March 21, 2011. DEP has identified one facility subject to these regulations. The materials comprising the proposed revision are posted at <http://www.dep.state.fl.us/air/rules/regulatory.htm>. Please assist any member of the public who may contact you asking to view these materials.

Attached please find the notice of public hearing that is scheduled to appear in the Florida Administrative Weekly (FAW) on March 2, 2012.

www.dep.state.fl.us

Notifications to Other States**Florida Department of
Environmental Protection**

Division of Air Resource Management
2600 Blair Stone Road, MS. 5500
Tallahassee, Florida 32399-2400

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

Via Electronic Mail

March 1, 2012

Mr. Ronald Gore, Chief
Air Division
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130

Re: 111(d) State Plan Pre-Hearing Submittal– Sewage Sludge Incinerators

Dear Mr. Gore:

Notice is hereby given that the Department of Environmental Protection will hold a public hearing, if requested, pursuant to 40 CFR 60.23 on April 11, 2012, to consider a proposal of Florida's 111(d) State Plan for Sewage Sludge Incinerators. Please find the attached notice of public hearing that is scheduled to appear in the Florida Administrative Weekly (FAW) on March 2, 2012. The public and affected states are invited to present comments on the proposed plan revision at the hearing, if held, but may also submit written comments prior to April 11, 2012, by letter or e-mail to Ms. Tiffany Lanh, Department of Environmental Protection, Division of Air Resource Management, 2600 Blair Stone Road, Mail Station 5500, Tallahassee, Florida 32399-2400, or tiffany.lanh@dep.state.fl.us.

If you have any questions or comments, please contact Ms. Tiffany Lanh of my staff at (850) 717-9015 or tiffany.lanh@dep.state.fl.us.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chadwick R. Stevens".

Chadwick R. Stevens, Administrator
Regulatory Reform & Legislative Coordination Section
Office of Business Planning
Division of Air Resource Management

CRS/tkl

Attached: Notice to be published March 2, 2012, in the Florida Administrative Weekly

www.dep.state.fl.us



Florida Department of Environmental Protection

Division of Air Resource Management
2600 Blair Stone Road, MS. 5500
Tallahassee, Florida 32399-2400

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

Via Electronic Mail

March 1, 2012

Mr. James A. Capp, Chief
Air Protection Branch
Georgia Department of Natural Resources
4244 International Parkway, Suite 120
Atlanta, Georgia 30354

Re: 111(d) State Plan Pre-Hearing Submittal- Sewage Sludge Incinerators

Dear Mr. Capp:

Notice is hereby given that the Department of Environmental Protection will hold a public hearing, if requested, pursuant to 40 CFR 60.23 on April 11, 2012, to consider a proposal of Florida's 111(d) State Plan for Sewage Sludge Incinerators. Please find the attached notice of public hearing that is scheduled to appear in the Florida Administrative Weekly (FAW) on March 2, 2012. The public and affected states are invited to present comments on the proposed plan revision at the hearing, if held, but may also submit written comments prior to April 11, 2012, by letter or e-mail to Ms. Tiffany Lanh, Department of Environmental Protection, Division of Air Resource Management, 2600 Blair Stone Road, Mail Station 5500, Tallahassee, Florida 32399-2400, or tiffany.lanh@dep.state.fl.us.

If you have any questions or comments, please contact Ms. Tiffany Lanh of my staff at (850) 717-9015 or tiffany.lanh@dep.state.fl.us.

Sincerely,

Chadwick R. Stevens, Administrator
Regulatory Reform & Legislative Coordination Section
Office of Business Planning
Division of Air Resource Management

CRS/tkl

Attached: Notice to be published March 2, 2012, in the Florida Administrative Weekly

www.dep.state.fl.us



Florida Department of Environmental Protection

Division of Air Resource Management
2600 Blair Stone Road, MS. 5500
Tallahassee, Florida 32399-2400

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

Via Electronic Mail

March 1, 2012

Ms. Maya Rao, Chief
Air Division
Mississippi Department of Environmental Quality
Post Office Box 2261
Jackson, Mississippi 39225

Re: 111(d) State Plan Pre-Hearing Submittal– Sewage Sludge Incinerators

Dear Ms. Rao:

Notice is hereby given that the Department of Environmental Protection will hold a public hearing, if requested, pursuant to 40 CFR 60.23 on April 11, 2012, to consider a proposal of Florida's 111(d) State Plan for Sewage Sludge Incinerators. Please find the attached notice of public hearing that is scheduled to appear in the Florida Administrative Weekly (FAW) on March 2, 2012. The public and affected states are invited to present comments on the proposed plan revision at the hearing, if held, but may also submit written comments prior to April 11, 2012, by letter or e-mail to Ms. Tiffany Lanh, Department of Environmental Protection, Division of Air Resource Management, 2600 Blair Stone Road, Mail Station 5500, Tallahassee, Florida 32399-2400, or tiffany.lanh@dep.state.fl.us.

If you have any questions or comments, please contact Ms. Tiffany Lanh of my staff at (850) 717-9015 or tiffany.lanh@dep.state.fl.us.

Sincerely,

Chadwick R. Stevens, Administrator
Regulatory Reform & Legislative Coordination Section
Office of Business Planning
Division of Air Resource Management

CRS/tkl

Attached: Notice to be published March 2, 2012, in the Florida Administrative Weekly

www.dep.state.fl.us

Public Comments on Proposed State Plan

No written comments were received from the public.

DEP Response to Public Comments

Not applicable.

Pre-Hearing Submittal to EPA
Pre-Hearing Submittal Letter



**Florida Department of
Environmental Protection**

Division of Air Resource Management
2600 Blair Stone Road, MS 5500
Tallahassee, Florida 32399-2400

Rick Scott
Governor

Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

Via Electronic Mail and U.S. Mail

March 1, 2012

Mr. R. Doug Neeley, Chief
Air Toxics Monitoring Branch
United States Environmental
Protection Agency - Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8909

SUBJECT: 111(d) State Plan Pre-Hearing Submittal— Sewage Sludge Incinerators

Dear Mr. Neeley:

Notice is hereby given that pursuant to 40 CFR 60.23(c), the Department of Environmental Protection will hold a public hearing, if requested, on April 11, 2012, at 10:00 a.m., at the Department of Environmental Protection, Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida, to hear comments on its proposal to submit to the EPA, Florida's 111(d) State Plan for sewage sludge incinerators. The proposed State Plan incorporates the March 21, 2012, promulgation of the Emission Guidelines, 40 CFR 60, subpart MMMM, for sewage sludge incinerators. DEP has identified one facility subject to these regulations.

Enclosed please find the notice of public hearing that is scheduled to appear in the Florida Administrative Weekly on March 2, 2012, as well as a copy of Florida's proposed 111(d) Plan pre-hearing submittal. These documents are submitted to you as notification to the Administrator pursuant to the requirement of 40 CFR 60.23(c).

Your review and comments prior to the hearing will be appreciated. For expediency, comments may be submitted to Marnie Brynes by fax, (850) 717-9001, or by e-mail, marnie.brynes@dep.state.fl.us. If you have any technical questions about this proposed state plan submittal, please contact Ms. Tiffany Lanh at (850) 717-9015 or tiffany.lanh@dep.state.fl.us.

Sincerely,

Chad R. Stevens, Administrator
Regulatory Reform & Legislative Coordination Section
Office of Business Planning
Division of Air Resource Management

CRS/tkl
Enclosures

www.dep.state.fl.us

Materials Enclosed with Pre-Hearing Submittal

The materials listed as enclosures in the Pre-Hearing Submittal letter are the same materials that were made available for public inspection on the division's website. The materials being included for Florida's 111(d) State Plan final submittal are unchanged from the materials made available for public inspection.

EPA Comments on Pre-Hearing Submittal

No written comments were received from EPA.

DEP Response to EPA Comments

Not applicable.

EXHIBIT 1

TABLE OF CONTENTS

Affidavit of Paul Cairney 1

ORAL ARGUMENT NOT YET SCHEDULED

**IN THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT**

NATIONAL ASSOCIATION OF CLEAN)	
WATER AGENCIES, <i>et al.</i> ,)	
)	
Petitioners,)	
)	No. 11-1131 (Lead)
v.)	and Consolidated Cases
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, <i>et al.</i> ,)	
)	
Respondents.)	

AFFIDAVIT OF PAUL CAIRNEY

This day comes Paul Cairney, who, being duly sworn, deposes and says as follows:

1. My name is Paul Cairney. I am over the age of 18, am under no legal disability, and am competent to make this affidavit.
2. I have personal knowledge of the facts stated herein, or have otherwise obtained knowledge of the facts stated herein, by speaking with knowledgeable individuals and/or reviewing applicable corporate records regarding the subjects below. If called to testify, I would testify to the matters stated in this affidavit.
3. I am Chief Operating Officer of Intervenor MaxWest Environmental Systems, Inc. ("MaxWest"). In that capacity, my primary responsibilities include overseeing MaxWest's Biosolids Gasification Facility located at the City of Sanford South Water Reclamation Facility in Sanford, Florida. I have held this position since September 2012.
4. From February 2010 to August 2012, I was the Vice President of Manufacturing and Design for MaxWest, and was responsible for the development,

design and manufacturing of the MaxWest biogasification system and ancillary components in Sanford.

5. MaxWest's has operated two generations of gasification units in Sanford.

6. MaxWest's Generation 1 Gasifier operated from May 2009 to September 2011, for a total operating time of approximately 2,500 hours.

7. Between May of 2009 and May of 2010, MaxWest analyzed every aspect of the Generation 1 Gasifier's design with the intention of improving the system.

8. In May 2010, MaxWest decided to modify its Generation 1 Gasifier and create a Generation 2 Gasifier to resolve identified operational constraints and to improve the system's efficiency.

9. While discussing a construction permit for certain modifications to the Generation 1 Gasifier with the Florida Department of Environmental Protection ("Florida DEP"), MaxWest was asked by the state agency to seek an applicability determination regarding the 40 CFR Part 61, Subpart E, National Emission Standard for Hazardous Air Pollutants for Mercury ("Subpart E regulations") from the federal Environmental Protection Agency. I did so in a letter to the EPA dated August 26, 2010.

10. In December 2010, I received a reply to my letter of August 26, 2010 from EPA's Office of Enforcement and Compliance Assurance. The letter concluded that the Subpart E regulations applied to MaxWest's gasifier as a "sewage sludge incinerator," and notified MaxWest of the then-proposed Sewage Sludge Incinerator Rule ("SSI Rule"). (Letter to P. Cairney from R. Duffy, Dec. 7, 2010, attached hereto as Ex. 2.)

11. Subsequently, the Florida DEP issued a Technical Evaluation and Preliminary Determination for MaxWest's gasifier modification project which stated that

MaxWest's facility is subject to the SSI Rule's emission testing and operation permit regulations "by EPA designation." (Technical Evaluation, Aug. 26, 2011, attached hereto as Ex. 3.)

12. About a month later, the Florida DEP issued a final air construction permit modification. This permit specifically states on page 9 that the SSI Rule applies to MaxWest by "EPA Determination" as stated in the Dec. 7, 2010 letter. (Final Permit, Sept. 20, 2011, attached hereto as Ex. 4.)

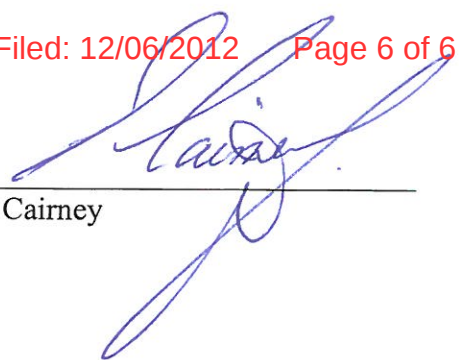
13. As a result of EPA's determination that MaxWest's facility is an SSI, and the Florida DEP's determination that the SSI Rule should therefore be applied to MaxWest, MaxWest is currently required to comply with all SSI Rule requirements, including the development, by March 2013, of an application to EPA to satisfy Title V regulatory requirements (a "Title V Application").

14. To prepare its Title V Application, MaxWest has incurred expense and considerable employee time developing various components of the application, including, and not limited to: an operation, maintenance and malfunction plan; a start-up plan and shut-down plan; training assignments and development of training materials; and a plan to institute parametric data recording.

15. As a result of the SSI Rule's application to MaxWest's facility in Sanford, substantial expense has already been incurred, and will continue to be incurred, in the effort to comply with the SSI Rule.

Further sayeth the deponent not.

<signatures on following page>




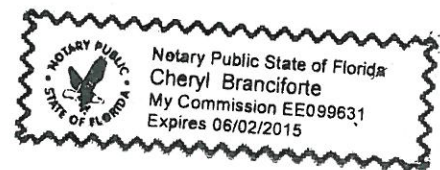
Paul Cairney

STATE OF FLORIDA)

COUNTY OF SEMINOLE)

The foregoing affidavit was acknowledged before me this 6th day of
December 2012, by Paul Cairney, as Chief Operating Officer of Intervenor MaxWest
Environmental Systems, Inc.



Notary PublicMy commission expires: June 2, 2013Notary's Registration #: EE 099 631

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