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Attorneys and Counselors

July 13, 2020

By Electronic Mail

Kim Walker
Program Administrator
Florida Department of Environmental Protection
Division of Waste Management
Permitting and Compliance Assistance Program
Kim.Walker@dep.state.fl.us

Re: June 26, 2020, FDEP Rule Development Workshop
Chapter 62-701, F.A.C.- Florida CCR Permit Program

Dear Kim:

On behalf of the Florida Electric Power Coordinating Group, Inc. Environmental Committee (FCG-EC), I am submitting this letter for the purpose of providing follow-up written comments regarding the June 26, 2020, Rule Development Workshop concerning Chapter 62-701, Florida Administrative Code (F.A.C.). The FCG-EC is a not-for-profit association of investor-owned, municipally owned, and cooperatively owned electric utilities engaged in the business of providing the majority of electric power to the public in the State of Florida. FCG-EC members own and operate Coal Combustion Residual (CCR) landfills and surface impoundments that are currently subject to the U.S. Environmental Protection Agency (EPA) CCR Rule found at 40 Code of Federal Regulations (C.F.R.) Part 257, Subpart D, and which would be subject to the rules being developed in this agency rulemaking. The FCG-EC fully supports the Florida Department of Environmental Protection's (FDEP or Department) rulemaking and its overall efforts to establish a CCR permit program for Florida and we look forward to working with the Department in this rulemaking.

The FCG-EC's written comments are provided below and, where appropriate, reference line numbers in FDEP's rule draft that was distributed by the agency, via its internet website. The FCG-EC hopes that, to the extent FDEP agrees to incorporate these comments, they are included in the next version of the rule draft that the agency develops.

1. **Rule 62-701.220-General Applicability.**

   - Rule 62-701.220(4); Lines 17-20. As raised by the FCG-EC during the workshop, FDEP is deleting an important rule provision codifying alternate procedure requests that were granted many years ago for certain industrial operations in the context of municipal solid waste landfill (MSWLF) standards. This provision should be retained as there are non-CCR wastes generated at FCG-EC member facilities that would still be addressed through approved alternate procedures. Also, other industry sectors and facilities submitted alternate procedure requests which were granted by FDEP and elimination of this provision would be problematic to those interests. To the extent FDEP is concerned that this provision may conflict with the application of the federal CCR Rule to be incorporated by reference in draft Rule 62-701.804, F.A.C., the FCG-EC suggests that the following sentence be added to the end of this subsection: "This subsection does not apply to Coal Combustion Residual landfills or Coal Combustion Residual surface impoundments subject to regulation under Rules 62-701.804 and 62-701.805, F.A.C."

2. **Rule 62-701.310-Approval of Alternate Procedures and Requirements.**

   - Rule 62-701.310(1); Lines 29-30. During the workshop, FDEP confirmed that while the alternate procedures and requirements process in this rule section would not be available to facilities subject to the agency's CCR rules, the alternate procedures and requirements that may already exist in the federal CCR Rule would not be precluded by this rule language. To clarify this in the draft rule, the FCG-EC recommends the following language be inserted at the end of the subsection on line 30: "However, facilities subject to the provisions of Rule 62-701.804, F.A.C., may request approval of any alternate procedures or requirements that exist in that rule section."

3. **Rule 62-701.804-Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments.**

   - Rule 62-701.804(2)(d); Lines 54-55. In this provision, FDEP provides that when a word, phrase, or term is defined in Part IV, Chapter 403, Florida Statutes (F.S.), and the federal CCR Rule and the definitions are not identical, the definitions provided in the state statute shall apply. The FCG-EC requests examples of where this would be the case. The FCG-EC asserts that the federal definition should control in those instances. The FCG-EC believes that this would be required by EPA prior to its approval of Florida's CCR permit program.

- Rule 62-701.804(4); Lines 74-75. This subsection identifies specific federal rule provisions that FDEP is not adopting by reference. As requested during the workshop, the FCG-EC would like to better understand why FDEP is not adopting the following federal CCR Rule provisions:

  - ✓ §257.71(a)(1)(i). This rule reference addresses existing CCR surface impoundments that may have compacted soil liners with a hydraulic conductivity of $1X10^{-7}$.
  - ✓ §257.91(d)(2). This provision addresses multi-unit groundwater monitoring systems.
  - ✓ §257.95(g)(5). This provision addresses assessment of corrective measures at existing unlined CCR surface impoundments.

4. **Rule 62-701.805-Coal Combustion Residuals Facility Permitting Requirements and Procedures.**

- To reiterate its comments provided during the workshop, the FCG-EC notes that FDEP has established a list of permit requirements referencing the federal CCR Rule provisions that will be adopted. However, there is no corresponding process detailing how, for example, plans, reports, and other technical documents required under the federal CCR Rule should be submitted to FDEP staff for review and approval. The rule should detail the submission, review and approval requirements similar to other FDEP rules. Otherwise, , it is difficult to discern how this approach is any different than the self-implementing approach of the current federal CCR regulatory program.

- Rule 62-701.805(2) and (3); Lines 94-114. To be consistent with the order of requirements in the federal CCR Rule, the FCG-EC suggests that the Operating Requirements currently in subsection (2) appear after the Design Requirements currently found in subsection (3).

- Rule 62-701.805(7); Lines 123-129. FDEP is requiring financial assurance for closure and post-closure care for CCR units. While the federal CCR Rule provides for substantive closure and post-closure care requirements, EPA does not require financial assurance for closure or post-closure of CCR units. The FCG-EC wishes to better understand why FDEP is suggesting such requirements at this time and the technical rationale and underlying statutory authority for this proposal.

- Rule 62-701.805(8)(c); Lines 142-144. The draft rule requires that notice of intent to close a CCR unit be provided to the agency 30 days prior to receipt of the final "load" of waste. As provided in comments during the workshop, the advance notification proposed and the terminology used (e.g., load of waste) are inconsistent with the federal CCR Rule approach. Specifically, the federal CCR Rule requires notice after the known final receipt of waste (CCR or non-CCR), or after the two-year time period for initiation of closure for units that have not received CCR or any non-CCR wastestream, or after CCR is no longer being removed for beneficial use. 40 C.F.R § 257.102(e). The FCG-EC believes that this notice requirement is inconsistent with the above-referenced provisions of the federal CCR Rule which demonstrate the need for additional flexibility in the context of CCR unit closure and to facilitate potential reclamation of CCR. Accordingly, this requirement should be removed from the agency's next draft of the rule. Finally, there is a typographical error on line 142 as the subpart number of "257" should be inserted before "102(g)."

- Rule 62-701.805(8)(f)2. and 3.; Lines 163-166. The draft rule states that FDEP will provide "approval" when post-closure care requirements have been completed and when it is appropriate to release a CCR unit from post-closure care. The FCG-EC believes specific timeframes should be included in the draft rule for FDEP to complete its review of relevant information and either approve or not approve requests for agency concurrence that post-closure care requirements have been completed and that a release of a CCR unit from post-closure care is warranted. The FCG-EC maintains that 90 days would be more than adequate time for FDEP to review each of these types of requests. The FCG-EC requests that these specific rule provisions be modified accordingly.

- Rule 62-701.805(9); Lines 167-169. The FCG-EC maintains that this subsection addressing alternative closure requirements should be reworded as it does not direct a potential permittee to do anything specifically other than noting the existence of alternative closure requirements in 40 C.F.R. §257.103.

- Rule 62-701.805(11)(b); Lines 181-184. As you know, some CCR units are currently authorized under the Florida Power Plant Siting Act (PPSA). Based on the FCG-EC's review of the draft rule, it is not clear how a state CCR permit would be incorporated into a facility's conditions of certification under the PPSA. The FCG-EC requests a meeting between FCG-EC representatives and the Department's Division of Waste Management and Siting Coordination Office to determine how a state CCR

permit would be incorporated into a facility's conditions of certification under the PPSA. Lastly, the FCG-EC believes that CCR units that have already initiated closure prior to the effective date of these FDEP rules should be allowed to continue such closure under existing permit requirements or conditions of certification.

- Rule 62-701.805(11)(c); Lines 185-193. The FCG-EC notes some typographical errors. On line 190, the term "rules" needs to be capitalized and the cross-reference on line 192 needs to be corrected to Rule 62-701.805(12)(a).

- Rule 62-701.805(12); Lines 224-229. The FCG-EC believes that the proposed five-year permit duration is unnecessarily short. CCR units and facilities undergo little change and so a longer permit duration is justified. The FCG-EC maintains that a ten-year permit renewal or review would be more appropriate and would be consistent with what has been proposed by EPA under its federal CCR permit program. Similarly, the FCG-EC believes that the proposed $10,000.00 fee for an operation permit or renewal of an operation permit is too high and unreasonable.

  Based on the FCG-EC's reading of the draft rule, it is unclear if a new CCR unit that is yet to be constructed would be subject to both the $10,000.00 fee for a construction permit and the $10,000.00 fee for an operation permit The FCG-EC maintains that the imposition of two permit fees of this magnitude would be unreasonable. Lastly, assuming that a modification to the conditions of certification for a PPSA-certified facility is required either to incorporate requirements for continuing operation of an existing CCR unit or to authorize construction of a new unit, the FCG-EC maintains that the $10,000.00 fee normally required for PPSA modifications should cover the permit fees to be established in Rule 62-701.805(12).

5. **Form 62-701.900(37)-Application to Construct, Operate, Modify, or Close a CCR Unit.**

- In Section A.1., the term "horizontal" should be replaced with "lateral" to be consistent with federal CCR Rule terminology.

- In Section A.2., the term "long-term" should be replaced with "post-closure" to be consistent with federal CCR Rule terminology.

- In Section A.11., FDEP is requesting the estimated total construction costs for the facility to be permitted. How is cost of construction pertinent to any

specific environmental statutory or rule criteria? The FCG-EC believes that this should be eliminated.

- In Section A.13., information is requested concerning surrounding land uses and zoning. The FCG-EC believes that such information is not relevant particularly since the CCR units are located within existing power plant sites and have been in existence for many years. Furthermore, it is the FCG-EC's understanding that such information is not required in the context of other solid waste management facilities in Florida. If it is, the FCG-EC would like to understand where such examples might be found in other FDEP rules or forms.

The FCG-EC very much appreciates the consideration that FDEP gives its comments and comments of the regulated community. After you have reviewed these comments, should you have any questions, please do not hesitate to contact me at (850) 425-2254.

Sincerely,

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