From: Curran, Kimberley
To: Curran, Kimberley
Subject: FW: Rule 62-701.220(4), F.A.C.--FCG
Date: Monday, July 20, 2020 8:59:22 AM
Attachments: Rule 17-701.720.pdf
FDEP Approval Letters.pdf
image002.png

Kim Walker
Program Administrator
Florida Department of Environmental Protection
Permitting and Compliance Assistance Program
Kim.Walker@dep.state.fl.us
(850) 245.8934

From: Mike Petrovich <MikeP@hgslaw.com>
Sent: Friday, July 3, 2020 11:00 AM
To: McBride, Ashanti <Ashanti.McBride@dep.state.fl.us>
Cc: Carl Eldred <CarlE@hgslaw.com>; Bahr, Tim <Tim.Bahr@FloridaDEP.gov>; Kromhout, Elizabeth <Elizabeth.Kromhout@FloridaDEP.gov>; Walker, Kim (Waste) <Kim.Walker@FloridaDEP.gov>
Subject: Rule 62-701.220(4), F.A.C.--FCG

Ashanti-Following up on the rule workshop from last week. I am attaching a copy of former Rule 17-701.720, F.A.C. (later renumbered Rule 62-701.720) addressing industrial solid waste disposal that is referenced in Rule 62-701.220(4), F.A.C., which was discussed during the workshop. Also attached are FDEP letters dated October 10, 1994, and February 5, 1996, regarding FDEP's determination made pursuant to former Rule 62-701.720, F.A.C., that Class I landfill (i.e., municipal solid waste landfill) standards do not automatically apply to FCG member electric utility solid waste disposal facilities although some or all of the Class I landfill standards could be required in individual cases if

warranted. The technical report provided by the FCG to FDEP at that time which was the basis for FDEP's determination is entitled "Evaluation of Solid Waste Management Practices and Requirements-Florida Electric
Utility Industry" (Woodward-Clyde, 1994). If you would like a copy of that, I can send that by separate email(s) as it is a fairly large file. Obviously, a lot of regulatory history here and I'm more than happy to discuss with you further if you wish.

Best,
Mike

Michael P. Petrovich
. . . . . .
Hopping Green & Sams, P.A.

119 South Monroe Street, Suite 300
Tallahassee, FL 32301
Direct: 850.425.2254
Main: 850.222.7500

Legal Assistant: Debi Collins
debic@hgslaw.com
Direct: 850.425.3413

I hgslaw.com I Attorney Bio

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(b) A description of the operation and functions of all processing equipment that will be used, with design criteria and expected performance. The description shall show the flow of solid waste and associated operations in detail, and shall include:

1. Regular facility operations as they are expected to occur;

2. Procedures for start up operations, and scheduled and unscheduled shut down operations; and

3. Potential safety hazards and control methods, including fire detection and control;

(c) A description of loading, unloading, and processing areas. If wastes which are reasonably expected to produce leachate are being processed, the facility shall be designed with a leachate control system to prevent discharge of leachate and mixing of leachate with stormwater;

(d) Identification and capacity of temporary on-site storage areas for recyclable materials, non-processable wastes, unauthorized wastes, and residues;

(e) Provisions for solid waste and leachate containment;

(f) Identification of potential ground water and surface water contamination; and

(g) A plan for disposal of unmarketable recyclable materials and residue, and for waste handling capability in the event of breakdowns in the operations or equipment. Wastes shall be handled on a first-in, first-out basis. Stored putrescible wastes shall not be allowed to remain unprocessed for more than 48 hours unless provisions are made to control vectors and odors.

(3) Operational requirements. A permit application for a materials recovery facility shall include the following operational requirements:

(a) An operation and maintenance manual describing the facility operations, the persons responsible for the operations, and types of equipment that will be used. All activities at the facility shall be performed in accordance with the manual and plans for the facility. Manuals and plans shall be updated as operations change but no less frequently than upon renewal of the operation permit;

(b) A plan to screen the wastes received by the facility, that specifies inspection procedures and procedures to handle unauthorized wastes;

(c) A contingency plan to cover operations interruptions and emergencies such as fires, explosions, or natural disasters; and

(d) A closure plan that identifies the steps needed to close the facility. The closure plan shall provide for the following:

1. Owner or operator notification to the Department in writing 180 days before the date the facility is expected to close. No waste shall be received by the facility after the expected closing date;

2. Within 30 days after receiving the final solid waste shipment, the owner or operator shall remove or otherwise dispose of all solid waste or residue in accordance with the approved closure plan; and

3. Closure must be completed within 180 days after receiving the final waste quantity. Closure will include removal of all recovered materials from the site. When closure is completed, the owner or operator shall certify in writing to the Department that closure is complete. The Department will make an inspection within 30 days to verify the closure and advise the owner or operator of the closure status.

(4) Financial responsibility. The owner or operator of a materials recovery facility shall post a performance bond payable to the Department to cover the cost of properly closing the facility, if one or more of the following conditions exist:

(a) Where the owner of the land or materials recovery facility and the operator of the facility are not the same person; or

(b) If the operator of the facility could stockpile waste that may create an environmental threat if the facility closes without properly disposing of the waste.

(5) Stormwater. Stormwater shall be controlled in accordance with Chapter 17-25, F.A.C., and any water management district rules. A copy of any permit for stormwater control, or documentation that no permit is required, shall be submitted to the Department before the facility receives waste for disposal.

Specific Authority 403.061, 403.704 FS. Law Implemented 403.702, 403.704, 403.707 FS. History—New 1-6-93.

17-701.720 Industrial Solid Waste Disposal.

(1) Applicability. After January 6, 1995 except as provided below, and subject to the provisions of Rule 17-701.220, F.A.C., solid waste disposal units which accept primarily industrial wastes other than construction and demolition debris, clean debris, or those materials specified as acceptable in Class III landfills in Rule 17-701.340(3)(d), F.A.C., shall meet the following requirements:

(a) Solid waste disposal units constructed after January 6, 1995 or for which an application for a permit or site certification was not received and deemed complete by the Department before January 6, 1995 shall meet the same requirements of this chapter as apply to Class I landfills. This requirement also applies to lateral expansions of solid waste disposal units.

(b) All other solid waste disposal units which receive waste after January 6, 1995 shall comply with the same operational and closure requirements of Rules 17-701.500, 17-701.510, 17-701.600, 17-701.610, 17-701.620, and 17-701.630, F.A.C., as apply to Class I landfills.

(2) Alternate requirements for specific facilities. The owner or operator of an industrial waste disposal facility may request approval of alternate procedures and requirements in accordance with Rule 17-701.310, F.A.C.

(3) Alternate requirements for types of industrial operations. A person or organization

representing a specific type of industrial operation may request general approval for all such industrial operations. Such request for a specific type of industrial operation shall be submitted by 7-6-94 and shall be accompanied by an analysis of the waste stream and operational procedures intended to demonstrate that the standards for Class I landfills are inappropriate for that waste stream. This deadline shall be tolled during the time that any required, complete Quality Assurance Plan is being reviewed and acted on by the Department. The Department shall offer assistance to the waste generators in determining what types of information may be submitted. If the Department determines that such submittal, along with any additional information supplied, includes the information specified in subsection (4) of this section, then the provisions of subsection (1) of this section shall not apply to that type of industrial operation. Instead, the Department shall, after an evaluation of the submittals and any additional information submitted, initiate rulemaking to set standards for the construction, operation and closure of disposal facilities at that type of industrial operation, including lateral expansions of existing facilities.

(4) Guidelines. The following guidelines are offered for those persons or organizations requesting such alternate requirements for industrial waste disposal facilities or types of industrial operations.

(a) The request should include a detailed description of those wastes which are typically disposed of. This description should include:

1. An analysis of the chemical, biological and physical properties of the waste;

2. An analysis of any predicted movements of such waste in ground water;

3. An analysis of the likelihood of such wastes causing violations of ground water quality standards or criteria if released into the environment, taking into account any applicable zones of discharge; and

4. An analysis of the likelihood of such wastes releasing methane or other gases into the atmosphere.

(b) The request should include a detailed description of the operational and management practices at the facility. The description should include:

1. A demonstration that the facility operator follows appropriate procedures to assure that only the described industrial wastes are disposed of in the industrial waste disposal unit; and

2. A demonstration that the facility will have equipment and features necessary to comply with Rule 17-701.500(11), F.A.C.

(c) If the person or organization is requesting that less stringent liner requirements apply, the request should include one or more of the following:

1. A demonstration that leachate from the waste, if released into the environment, will pose little or no threat to the public or the environment, and will not violate ground water quality standards and criteria, taking into account any applicable zones of discharge;

2. An analysis of the likelihood and extent that such leachate will be released into the environment; and

3. A demonstration that leachate from the waste will not have an adverse effect on the proposed liner system, if any.

(d) If a person or organization is requesting that less stringent gas control systems apply, the request should include a demonstration that either:

1. The waste is not expected to produce any significant amounts of gases; or

2. The less stringent gas control system requested shall meet the requirements of Rule 17-701.400(10)(a)1., F.A.C.

(e) If a person or organization is requesting that less stringent ground water monitoring requirements apply, the request should include an analysis of the leachate produced by the waste indicating those constituents which may enter the ground water in the case of leakage.

(f) If a person or organization is requesting that less stringent initial or intermediate cover requirements apply, the request should include a demonstration that the less stringent requirements will provide an equal degree of protection from odors, fires, vectors, and blowing dust.

(g) If a person or organization is requesting that less stringent closure requirements apply, the request should include a demonstration that:

1. Infiltration of rainfall after closure will be minimized; or

2. Leachate generated after closure will not cause a violation of water quality standards during the long-term care period.

(5) This section is not intended to limit the Department's authority to require permits and permit conditions necessary to protect the public health and the environment. Between January 6, 1993 and January 6, 1995 and during any rulemaking procedures that the Department may undertake pursuant to subsection (3) of this section, the Department will continue to evaluate any applications for industrial waste disposal units on a case by case basis.

Specific Authority 403.061, 403.704 FS. Law Implemented 403.702, 403.704, 403.707 FS. History—New 1-6-93.

17-701.730 Construction and Demolition Debris Disposal.

(1) Clean debris. Clean debris may be used as fill material in any area, including waters of the State, subject to receipt of a dredge and fill permit from the Department where applicable. Clean debris used as fill material is not solid waste, and such use does not require a solid waste permit under this rule. Clean debris that is not used as fill material shall be disposed of as construction and demolition debris.

(2) Landfill disposal. Construction and demolition debris may be disposed of in a permitted landfill. However, pursuant to Section 403.706(2), F.S., each county must initiate by July 1, 1989, a program to develop segregated disposal areas for

Department of
Environmental Protection

Lawton Chiles
Governor

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Virginia B. Wetherell
Secretary

October 10, 1994

Mr. Thomas M. DeRose
Hopping Boyd Green & Sams
123 South Calhoun Street
Post Office Box 6526
Tallahassee, Florida 32314

Dear Mr. DeRose:

The Department has received the report for the Florida Electric Power Coordinating Group (FCG) entitled "Evaluation of Solid Waste Management Practices and Requirements" which was submitted to us on July 6, 1994 in accordance with the provisions of Rule 62-701.720(3), Florida Administrative Code (F.A.C.) The Department has determined that this submittal generally includes the information specified in Rule 62-701.720(4), F.A.C., and therefor the provisions of Rule 62-701.720(1), F.A.C., shall not apply to the industrial operations covered by your report.

After we have finished reviewing this report we will provide comments to FCG, and may request additional information. Upon determination that this application is complete, the Department intends to initiate rulemaking in order to set standards for the construction, operation and closure of solid waste disposal facilities at industrial operations. At that time, it may be helpful to schedule a meeting to discuss the Department's comments in more detail and to discuss the rulemaking schedule. Until this rulemaking is complete, you should be aware that the Department will continue to evaluate any applications for industrial waste disposal units on a case-by-case basis, and will require the applicant to provide reasonable assurance that such units will not cause pollution in violation of Department water quality standards. While Class I landfill standards will not automatically apply, some or all of these standards may be required in individual cases.

Thank you for your timely submittal of this information. We will contact you and your client as soon as our completeness review is concluded.

Sincerely,

Mary Jean Yon, Administrator
Solid Waste Section

MJY/lr

cc: Phil Coram
Chris McGuire
District Waste Program Administrators

FLORIDA

Department of Environmental Protection

Lawton Chiles
Governor

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

Virginia B. Wetherell
Secretary

February 5, 1996

William D. Preston
Hopping Green Sams & Smith, P.A.
123 South Calhoun Street
Tallahassee, Florida 32301

RE: Rule 62-701.720, F.A.C.

Dear Mr. Preston:

Your client, the Florida Electric Power Coordinating Group, Inc., has filed a rule challenge to the Department's proposed repeal of Rule 62-701.720, F.A.C. As you know, that rule specifically applied Class I landfill standards to many industrial waste disposal areas, but allowed facilities or industry groups to exempt themselves from those standards by submitting certain information to the Department. The Florida Electric Power Coordinating Group, Inc. did submit such information, and the Department determined that it was sufficient to qualify for the exemption.[1] As a result, disposal areas at power plants are now subject to a case-by-case determination of appropriate design and operational criteria.

Your clients now fear that the repeal of this rule could be interpreted to also repeal this exemption, and thus subject disposal areas at power plants to all Class I landfill standards. Let me assure you that this is not the case. If the rule is repealed, the requirement for industrial waste disposal areas to meet Class I landfill standards will also be repealed, and the Department has no intention of reinstituting this requirement. Even if it did, it is the Department's position that the exemption already granted to the Florida Electric Power Coordinating Group, Inc. would remain valid. If, at some point, additional rulemaking was initiated to regulate industrial waste disposal, your clients would have the opportunity to participate in that rulemaking.

Nonetheless, the Department has no objection to adding language to Chapter 62-701, F.A.C., to clarify this position. The Florida Pulp and Paper Association has submitted proposed language which it believes does this. Assuming that the repeal of Rule 62-701.720, F.A.C., goes forward, the Department agrees

[1] Of course, this exemption applies only to the requirement that all Class I landfill standards apply; it does not mean that none of the Class I landfill standards can ever be applied on a case-by-case basis.

to file a Notice of Change adding this language, or language which accomplishes the same purpose, before certifying the repeal. The Department also agrees to consult with you prior to filing such Notice.

Your client also has concerns about the repeal of Rule 62-710.100, F.A.C., specifically language stating that the Department intended regulate used oil in a manner consistent with the Federal regulations and interpretations thereof promulgated by the U.S.E.P.A. While the Department's intent has not changed, we have no objection to clarifying this in the rule. You have submitted proposed language which essentially restates the Department's intent in a different rule section. Assuming that the repeal of Rule 62-710.100, F.A.C., goes forward, the Department agrees to file a Notice of Change adding this language, or language which accomplishes the same purpose, before certifying the repeal. The Department agrees to consult with you prior to filing such Notice. I would also note that the Department will be initiating rulemaking shortly to address more substantive issues in Chapter 62-710, thus providing your client an opportunity to address used oil regulation in more detail.

Finally, your client has expressed concern that the various repeals and consolidations of intent, definition, alternate procedures, and forms sections in the solid waste rules would be confusing to the general public, and has recommended that, if the rule repeals go forward, language be placed into each rule chapter informing the reader where to find relevant definitions, forms, etc. The Department agrees that this would be helpful, and further agrees to work with the Secretary of State to find a way to include such information without decreasing the number of rules repealed. The Department agrees to use the language you have submitted as a basis for either rule changes or explanatory notes, and agrees to consult with you prior to filing any Notice of Change.

It is my understanding that, as a result of this letter, you will agree to a continuance of the rule hearing you requested regarding the solid waste rules until a time mutually agreeable to all parties. Of course, this does not mean that you give up your right to proceed with the rule challenges. If my understanding is incorrect, please let me know as soon as possible so that I may reconsider the Department's position and prepare for the rule hearing.

Sincerely,

John M. Ruddell

John M. Ruddell, Director
Division of Waste Management

cc: Chris McGuire
Mary Jean Yon