



Florida Department of Environmental Protection

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Charlie Crist
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Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

May 4, 2010

Mr. A. Stanley Meiburg
Acting Regional Administrator
Region IV
U. S. Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303-8960

Dear Mr. Meiburg:

On behalf of the Governor of Florida, I am writing to reiterate my October 15, 2009, recommendations for the designation of "attainment," "nonattainment," and "unclassifiable" areas in Florida with respect to the 2008 revised national ambient air quality standard (NAAQS) for lead, and to provide additional information in support of my recommendation regarding Hillsborough County.

In my October letter, I recommended that the area encompassed within a radius of five (5) kilometers centered at UTM coordinates 364.0 East and 3093.5 North, Zone 17, in Hillsborough County – which is currently designated unclassifiable for lead by the U.S. Environmental Protection Agency (EPA) at 40 CFR 81.310 – remain so designated, and that the rest of the state be designated as attainment for the revised lead NAAQS. For all the reasons set forth in that letter, I still believe this is the most appropriate action for EPA to take. However, I understand that EPA believes it may have no choice but to designate all or part of Hillsborough County as nonattainment for lead based on historical monitoring data. I disagree with this position. I believe no purpose would be served by making a nonattainment designation in this case, and that EPA does have the flexibility to continue the existing unclassifiable designation.

The purpose of designating an area nonattainment is to initiate a planning process to bring about emissions reductions needed to eliminate a violation of the NAAQS. In the case of Hillsborough County, the conditions that caused previous violations of the lead standard no longer exist. The secondary lead smelter responsible for high ambient concentrations in the past (the former Gulf Coast Recycling facility) has essentially been demolished and is being rebuilt from the ground up by new owners. The new facility, EnviroFocus Technologies, when complete later this year, will be the best controlled lead recycling facility in the U.S., with multiple controls on its process operations, including operating within a total enclosure under negative pressure. It will not cause or contribute to any violation of the NAAQS.

Michael W. Sole
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Mr. A. Stanley Meiburg
Page 2
May 4, 2010

All of the EnviroFocus control measures are embodied in the federally enforceable air construction permit enclosed with my October letter. I understand that your staff were actively engaged in review of the modeling data and draft permit for the EnviroFocus facility, and never expressed concerns with the proposed emission controls at the facility and the then-upcoming lead designations. If EPA anticipated the need for further emissions reductions to assure compliance with the NAAQS, and the need for a nonattainment designation to bring about those reductions, we believe it had an obligation under 40 CFR 124.13 to raise those issues during the formal comment period on the draft permit. I assume these issues were not raised because the air modeling results referenced in that permit show that the maximum impact of the EnviroFocus facility is predicted to be approximately 50% of the standard and would occur at the fence line of the new facility. This would seem to represent the optimal environmental outcome and obviate the need for any follow-up nonattainment planning process.

Based on the foregoing, it is clear that the past monitoring data do not adequately represent current or anticipated conditions in the area of the EnviroFocus facility. The modeling data for this area show a very different anticipated result, which would be attainment with the new lead NAAQS. In light of this conflicting information, I maintain that this area that cannot be classified on the basis of available information as meeting or not meeting the NAAQS and, according to Section 107 of the Clean Air Act, should continue to be designated as unclassifiable.

Figure 1 (attached) is an aerial view/map showing the location of the EnviroFocus facility (dark blue) relative to nearby ambient monitoring sites and airports. Figure 2 is a closer view of the facility locale. To verify that the new facility will not cause or contribute to any violation of the lead NAAQS, the Hillsborough County Environmental Protection Commission will continue to operate the two current lead monitoring sites located 0.2 kilometers south and 0.4 kilometers north of the center of the facility (labeled "CSX" and "Patent," respectively, on the maps). In addition, the county recently began operating two new monitoring sites located 0.3 kilometers northwest and 0.9 kilometers north of the facility (labeled "EFS" and "Kerly," respectively). The data from all of these monitors will be collected in accordance with state and federal quality assurance requirements and submitted to DEP and EPA. The primary reason for continuing the current designation of unclassifiable is to provide time for this network of four monitors to collect data representative of the changed conditions in the area.

Figures 1 and 2 also show some modeling results based on the EnviroFocus permit application. The model output, which includes all point sources in the area and an assumed negligible background concentration, was post-processed to show the maximum one-month average concentration for each receptor site in the area for the "worst" modeled year (2004), a conservative approximation of the three-month average upon which the lead standard is based. The outer border of the light pink area in the figures represents a modeled concentration of 0.015 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), or 10% of the NAAQS level. The outer border of the light blue area in Figure 2 represents a modeled concentration of $0.0075 \mu\text{g}/\text{m}^3$, or 5% of the NAAQS level. This figure shows that at a distance of 1.5 kilometers (red circle) from the center

of the current unclassifiable area, the predicted concentrations drop to approximately 5% of the NAAQS level. As further illustration of the extremely localized nature of these impacts, a lead monitor ("Tessy") was operated from 1998 to 2002 at a location approximately two kilometers north of the old Gulf Coast Recycling facility and did not record any concentrations that would have exceeded the revised lead standard.

In our recent discussions with Region 4 staff, we have been told that, despite the dramatically changed conditions in the area and the fact that the problem of high lead concentrations in the past has apparently been corrected, EPA cannot retain the unclassifiable designation but, instead, must designate all or part of the county nonattainment based on the historical monitoring record. This interpretation appears to be more a matter of agency policy than a legal requirement, and we disagree with it on the following grounds.

- The Clean Air Act gives great deference to Governors' recommendations for areas within their states, providing only that EPA may make any modifications it *deems necessary* (42 U.S.C. § 7407(d)(1)(B)(ii) (*emphasis added*)). We have not heard any reasons, either during the permit review period or since, as to why EPA finds it necessary to designate all or part of Hillsborough County as nonattainment. A nonattainment designation will not offer any additional environmental benefit, but it will create an unnecessary stigma to the community and result in an unnecessary administrative burden to both federal and state government over the next several years. Emission controls equivalent to the best available control technology (BACT) are being put in place under the present designation of unclassifiable. The emission reductions are federally enforceable through the EnviroFocus air construction permit and will also be incorporated into the state implementation plan (SIP).
- It has been established that EPA may use modeling or monitoring data in making attainment status designations. From *630 f2d 462: PPG Industries v. EPA*:

"The agency is not required by the Act, nor by its own policies, to prefer monitoring to modeling in making attainment status designations. We acknowledge that "(t)heoretically, of course, actual air quality tests would have to be superior to modeling assumptions *if there were sufficient monitors to constitute a fair test of the ambient air in a county.*" If, however, EPA based a nonattainment designation on predictions of future violations, as the agency may do under the act (see Part I supra), monitored data which merely show historical attainment of air-quality standards do not undermine the agency's designation. Once EPA has chosen modeling as a basis for its designation, *monitored data are relevant in a challenge to that designation only if (1) the parties proffering the data offer evidence of its reliability, and (2) the data tend to show that the agency's predictions were unsupportable*" (*emphasis added*).

We read this decision as allowing EPA to use the EnviroFocus modeling data to support an unclassifiable designation on the basis that (1) the historical monitoring data in the area of the old Gulf Coast Recycling facility do not constitute a fair test of the ambient air in Hillsborough County given the changed emission conditions, and (2) the historical

Mr. A. Stanley Meiburg
Page 4
May 4, 2010

monitoring data would be relevant only if such data show the modeling to be unsupported, which they do not.

Given the significant environmental improvements resulting from construction of the new EnviroFocus facility now well underway, and the apparent flexibility EPA has to give greater weight to modeling results than monitoring data in this unique situation, I reiterate my firm belief that continuing the unclassifiable designation is appropriate until sufficient monitoring data are collected to verify attainment.

Finally, I understand that EPA may have concerns about the possible impact of the EnviroFocus facility on lead concentrations at two nearby general aviation airfields. The locations of these airfields relative to the new EnviroFocus facility are shown on Figure 1. The same modeling that predicts ambient lead concentrations to drop to about 5% of the lead NAAQS at a distance of about 1.5 kilometers from center of the unclassifiable area also predicts that the impact of the facility at both the Peter O. Knight and Vandenberg (Tampa Executive) airports would drop to well less than 1% of the lead NAAQS. There is simply no interaction of lead impacts from the EnviroFocus facility or any other point source with these airports that would warrant a designation of nonattainment.

Again, thank you for your continued support of our efforts to fully implement the Clean Air Act in Florida. If you have any questions regarding this letter, please contact Joseph Kahn, Director of the Division of Air Resource Management (850-488-0114).

Sincerely,



Michael W. Sole
Secretary

Attachments

cc: Mimi Drew, Deputy Secretary, Regulatory Programs, DEP
Joseph Kahn, Director, Division of Air Resource Management, DEP

Figure 1

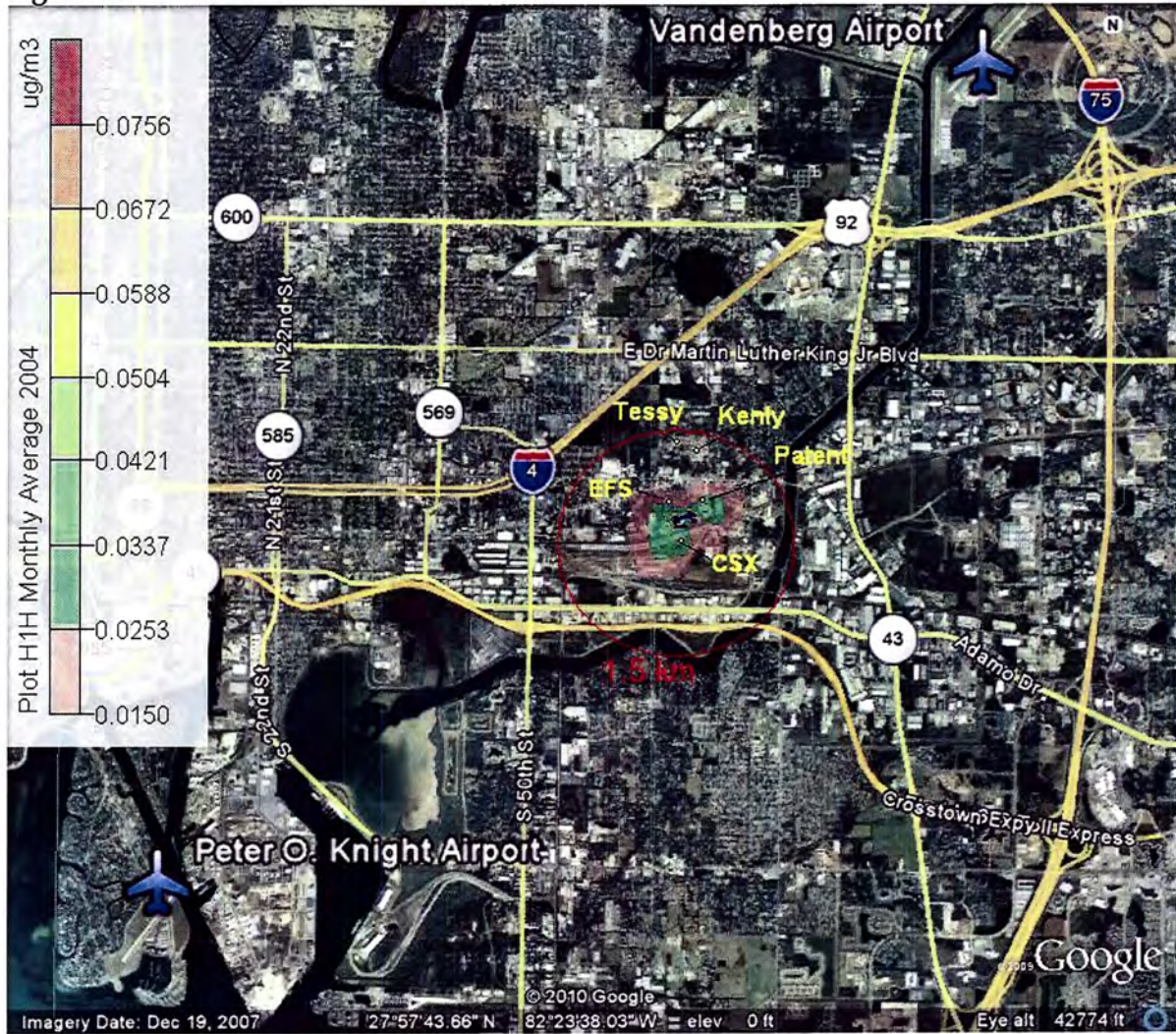


Figure 2

