



# Florida Department of Environmental Protection

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Rick Scott  
Governor

Jennifer Carroll  
Lt. Governor

Herschel T. Vinyard Jr.  
Secretary

October 7, 2011

Via U.S. Mail and filed electronically at [regulations.gov](http://regulations.gov)

Ms. Lisa P. Jackson, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, Northwest  
Washington, DC 24060

Re: Petition for Reconsideration and Request to Stay Final Rule  
Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and  
Ozone and Correction of SIP Approvals  
76 Fed. Reg. 48,208 (Aug. 8, 2011); EPA-HQ-OAR-2009-0491

Dear Ms. Jackson:

The Florida Department of Environmental Protection (Department) respectfully requests that the United States Environmental Protection Agency (EPA) convene a proceeding under Section 307(d) of the Clean Air Act to reconsider its Cross-State Air Pollution Rule (Rule) and stay the effectiveness of the Rule pending reconsideration. Alternatively, the Department requests that EPA postpone the effective date of the Rule pursuant to Section 705 of the Administrative Procedure Act, pending review of the Rule by the U.S. Court of Appeals for the District of Columbia Circuit.

The Department understands the underlying purpose of the Rule, i.e., to protect downwind states' air quality by curbing emissions of precursor pollutants in upwind states. The Department supports the achievement of this purpose through the orderly implementation of well-considered regulations that are thoroughly developed and do not impede the nation's economy. The Rule's unanswered questions regarding Florida's projected downwind contribution to Texas and statewide heat input estimation suggest that the Rule may have some fundamental flaws. In addition, the Rule's rapid compliance deadline poses a threat to Florida's economy and the reliability of Florida's electrical power grid.

As you know, the version of the Rule that was issued as final was drastically different than earlier versions of the rule (proposed Rule). For example, the proposed Rule concluded that Florida had a significant downwind contribution to particulate matter (PM) nonattainment areas in Alabama and Georgia. The Rule on the other hand finds that Florida does not significantly contribute PM in Alabama and Georgia, but instead contributes to ozone season pollution in Texas. Moreover, Florida's ozone season nitrogen dioxide (NO<sub>x</sub>)

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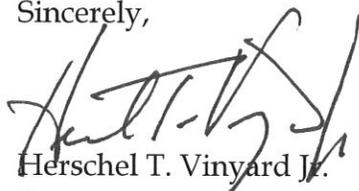
budget in the final Rule is less than half of the budget in proposed Rule. This profound change requires more than a 25 percent reduction in emissions as compared to actual 2010 emissions. To make matters worse, this 25 percent reduction must be achieved in a mere seven months. These drastic differences between the proposed and final Rule effectively circumvented (1) the right for the public to provide meaningful and insightful comments to the final Rule and (2) the ability for Florida businesses to plan for compliance with the final Rule. These losses can only be addressed by your reconsideration and stay of the final Rule. The Department raised this very issue to EPA in its official comment letter dated January 31, of this year, when we urged EPA to re-propose the rule so as "to allow states and other affected entities the opportunity to comment on the reanalysis prior to any final agency action."

The temporary reconsideration of the Rule would not result in uncontrolled downwind pollution if EPA's existing transport rule - the Clean Air Interstate Rule (CAIR) - remains in place. There is no question that CAIR has been very effective in reducing Florida's NOx emissions. Since 2005, when CAIR became law, Florida sources have reduced NOx emissions by approximately 64 percent or over 65,000 tons during the ozone season. Moreover, as several additional CAIR-related pollution control projects are completed, the State is likely to see further reductions in ozone season NOx emissions. For example, new Selective Catalytic Reduction (SCR) systems at Gulf Power's Crist Unit 6 and the Orlando Utilities Commission's Stanton Unit 1 are on pace for an orderly construction and startup, and extremely low emitting, natural gas-fueled combined cycle generating units are under construction in place of residual oil-fueled units at the Florida Power and Light's Cape Canaveral and Riviera plants.

In summary, because the Department has been afforded very little time to evaluate the final Rule which impacts Florida in a significantly different manner than did the proposed Rule, and because the compliance deadline is a mere seven months away, the Department is concerned that Florida's businesses may not be able to meet this new environmental responsibility without comprising the electrical system reliability. Additional time will provide the Department with an opportunity to adequately evaluate compliance options, review and approve any necessary physical and operational plant improvements, develop necessary markets for NOx allocations, and resolve any ensuing transmission constraints on the electrical grid.

For these reasons, the Department requests that EPA reconsider the Rule and stay the Rule's effectiveness.

Sincerely,

A handwritten signature in black ink, appearing to read "Herschel T. Vinyard Jr.", written over a printed name and title.

Herschel T. Vinyard Jr.  
Secretary