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Florida Department of Environmental Protection
Bob Martinez Center
Industrial Wastewater Program
2600 Blair Stone Road, Mail Station 3545
Tallahassee, Florida 3239-2400

November 27, 2019

Re: Supplemental Comments to FDEP's Draft NPDES Permit (Permit No: FL0001562)

On behalf of Miami Waterkeeper and National Parks Conservation Association, please find below a supplement to our May 21, 2019 comment to the Florida Department of Environmental Protection's (FDEP) Draft National Pollutant Discharge Elimination System (NPDES) Permit ("draft permit"). In addition to the other issues identified in our May 21, 2019 letter, the proposed draft permit should not be issued as written because it would violate the antidegradation standards under the Clean Water Act, and relevant federal and state regulations, for the reasons set forth below.

The goal of the Clean Water Act of 1972 is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. §1251(a). A critical tool in "maintain[ing]" the integrity of the Nation's waters is the Clean Water Act's antidegradation requirement, promulgated through regulations throughout the Act's history, and explicitly codified into statute with the 1987 Water Quality Act. Under 33 U.S.C. § 1313(d)(4)(B), permitting standards cannot be revised in violation of the antidegradation policy set forth in that section of the Clean Water Act. The relevant antidegradation policy is dependent on the water body impacted by the permitted source, and the level of protection designated by the state in which it lies.

The EPA has promulgated regulations that create different "Tiers" of protection. "Tier 1" provides an absolute floor for all waters of the United States, offering only minimal protection. "Tier 2" applies to waters whose quality exceeds those standards necessary for "the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water..." For Tier 2 waters, the antidegradation policy requires that water quality not be lower than that necessary to protect "fishable" and "swimmable" uses or other existing uses, and even then can only be lowered after a rigorous review that includes intergovernmental cooperation and full public participation, and after the state establishes "the highest statutory and regulatory requirements for all new and existing point sources. . ." 40 C.F.R. §131.12.

The antidegradation policy is highest for "Tier 3" waters, which are those that have been designated by the relevant state as Outstanding National Resource Waters. The antidegradation policy mandated for Outstanding National Resource Waters goes even further than the strict requirements for Tier 2 waters, prohibiting almost any increased pollution; actions such as permit

revisions cannot lead to any reduction in water quality, beyond “temporary and short-term changes.” See *EPA Water Quality Standards Handbook, Chapter 4: Antidegradation*.¹

In this case, the Tier 3 antidegradation requirements apply: Turkey Point lies on the shoreline of Biscayne National Park, which Florida has designated as an Outstanding National Resource Water. F.A.C. 62-302.700(10). Under the relevant antidegradation standards, no permit revision for a source impacting Biscayne National Park can lead to any reduction in water quality beyond “temporary and short-term changes.” As described in detail in our May 21st comments, the cooling canal system at Turkey Point is discharging various pollutants into Biscayne Bay, most significantly nutrients like phosphorus and nitrogen that can lead to algae blooms and cause other negative environmental effects. The nature of the cooling canal system and its hydrological connection to Biscayne Bay means that the nutrient pollution is neither “temporary” nor “short-term,” but is rather a permanent feature of the continued operation of the cooling canal system.

Applicable Florida surface water quality standards for nutrients state that “[m]an-induced nutrient enrichment (total nitrogen or total phosphorus) shall be considered degradation in relation to the provisions of Rules 62-302.300, 62-302.700, and 62-4.242, F.A.C. [among other things, designating Biscayne National Park as an Outstanding National Resource Water].” Therefore, under the antidegradation requirements of 40 C.F.R. §131.12 and F.A.C. 62-302.700, the new NPDES permit should not allow permanent discharge to Biscayne National Park through the plant’s cooling canal system. This discharge would not only include nutrient pollution, but would also include seepage of pollutants discharged from groundwater into surface water. Since the current permit prohibits such discharges, the draft permit at issue here cannot allow those discharges without violating the Clean Water Act’s anti-degradation requirements.

As stated in our May 21st comments, the area identified in Figures 1 and 2 of the draft permit depict property ownership beyond the Turkey Point Power Plant. Authorization of discharge into the Everglades Mitigation Bank and publicly-owned lands would be a violation of the antidegradation standards, as these would be areas that had not been covered by the previous permit and would be a reduction in water quality that is neither “temporary” nor “short-term.”

Our May 21st comments also included our concern that the monitoring plan will not capture violations of water quality standards. The increased monitoring proposed for the wastewater treatment and effluent disposal facilities, and the adjacent groundwater and surface waters, is insufficient, as stated earlier. Impacts to the quality of groundwater or to the extent of the groundwater impacted, would certainly not be “temporary” or “short-term.”

Another critical area of concern is that the permit does not state how possible violations of surface water quality will be addressed. While we support the addition of more monitoring stations, daily thresholds for salinity, nutrients, and other physical-chemical parameters, and public access to water quality data (including raw hourly, monthly, and annual reports), the permit must also describe a procedure for how violations of surface water quality will be addressed. Monitoring protocols described in the draft permit do not address the response that would occur once an issue

¹ <https://www.epa.gov/sites/production/files/2014-10/documents/handbook-chapter4.pdf>

has been detected; this seeming lack of a response to issues upon detection would also be a violation of the antidegradation standards.

Discharge into these areas may also be considered a backsliding under Clean Water Act section 402(o), as releases into previously unpermitted areas do not represent an existing Technology-Based Effluent Limitation (TBEL) or a Water Quality Based Effluent Limitation (WQBEL) developed specifically for this case, nor are they the result of a change in state standards. According to the EPA NPDES Permit Writers' Manual, TBELs are designed to prevent pollution by requiring a minimum level of effluent quality attainable through the use of demonstrated technologies for reducing discharge of pollutants into waters of the United States. NPDES permit writers are required by 40 CFR §125.3(a) to develop technology-based treatment requirements, consistent with CWA 301(b) that represent the minimum level of control that must be imposed in a permit. Site-specific TBELs are supposed to represent the best professional judgment (BPJ) of the permit writer and are applied to the circumstances of the applicant. *See EPA NPDES Permit Writers' Manual, Chapter 5: Technology-Based Effluent Limitations.*² WQBELs are designed to protect the quality of the specific waterbody receiving the discharge; they are imposed when TBELs are not sufficient to protect water quality. Parameter-specific WQBELs in NPDES permits involve a site-specific evaluation of the discharge (or proposed discharge) and its potential effect on the receiving water or an evaluation of the effects of multiple sources of a pollutant on the receiving water (e.g., through a total maximum daily load [TMDL] analysis). The parameter-specific approach allows for controlling individual parameters before a water quality impact has occurred or for helping return water quality to a level that will meet designated uses. *See EPA NPDES Permit Writers' Manual Chapter 6: Water Quality-Based Effluent Limitations.*² For reissued permits, if any of the limitations are less stringent than limitations on the same pollutant in the previous NPDES permit, the permit writer then conducts an anti-backsliding analysis and, if necessary, revises the limitations accordingly. Any violations of surface water quality that may result from unintended releases for which there is no planned response may be considered a backsliding, a "relaxation of effluent limitations," as there is no TBEL or WQBEL written for these circumstances, and there would be no limitations on these releases. *See EPA NPDES Permit Writers' Manual Chapter 7: Final Effluent Limitations and Anti-backsliding.*²

Given the risk of violating antidegradation standards and possible backsliding, we implore you to carefully evaluate these concerns. Thank you for your consideration of our comments. Please do not hesitate to contact us if you have questions at rachel@miamiwaterkeeper.org or cmclaughlin@npca.org.

Sincerely,



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² <https://www.epa.gov/sites/production/files/2014-10/documents/handbook-chapter4.pdf>