

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of:)	Permit No.: 0050009-002-AV
)	
Smurfit Stone Container Corporation)	
1 Everitt Avenue,)	
Panama City, FL 32401)	
Petitioner)	File No.: 02-K-AP

ORDER ON REQUEST
FOR
ALTERNATE PROCEDURES AND REQUIREMENTS

Pursuant to Rule 62-297.620, Florida Administrative Code (F.A.C.), Smurfit Stone Corporation located in Bay County petitioned to install an opacity monitor in a location which does not meet the minimum distances from flow disturbances pursuant to 40 CFR 60 Appendix B Performance Specification 1 (PS-1).

Having considered Petitioner's request, the following Findings of Fact, Conclusions of Law, and Order are entered:

FINDINGS OF FACT

1. On July 10, 2002, the Department received Petitioner's request for approval of an alternate location to install an opacity monitor for recovery boiler No. 2. A request was made for additional information in a letter to Petitioner dated August 1, 2002. Petitioner responded by letter dated August 19, 2002, which included a diagram of the proposed location for the monitor path.
2. The opacity monitor is required pursuant to 40 CFR 63 Subpart MM.
3. The Petitioner has requested to certify the monitor using 40 CFR 60 Appendix B, Performance Specification 1 (PS-1). However, no suitable location is available which meets these requirements. Section 8.1(2)(i) of PS-1 specifies a minimum of four duct diameters downstream and two diameters upstream of flow disturbances. Alternate locations for monitoring are provided in PS-1 if the company demonstrates that the alternate location is equivalent to the average opacity measured at a location meeting the criteria of PS-1 sections 8.1(2)(i) and 8.1(2)(ii).

4. The proposed location is adjacent to where particulate matter (PM) testing is done.
5. On July 29, 2002, Martin Costello of DEP visited the mill to evaluate the ductwork and flow disturbances in the vicinity of the proposed monitoring location.

CONCLUSIONS OF LAW

1. The Department has jurisdiction to consider Petitioner's request pursuant to Rule 62-297.620 F.A.C.
2. The Department concluded that Petitioner has provided reasonable justification to install the opacity monitor in the proposed location, subject to the terms of this order. The monitor path will be parallel to the long axis of the ESP. This path orientation will most likely pass through the highest opacity region of the stack.

ORDER

Having considered Petitioner's request, it is hereby ordered that:

1. Petitioner may install each of the two opacity monitors in the location described in the attached Figure 1 (monitoring path labeled "A") provided that a demonstration is made after installation which shows that the installation produces data which is representative of the actual opacity exiting the exhaust stack from Recovery Boiler No. 2. The demonstration shall consist of a comparison of Method 9 observations to the opacity monitor readings over a 3-hour period while the boiler is operating above 90 percent of permitted capacity. The average opacity error from the monitor shall not exceed 7.5 percent opacity relative to the Method 9 readings. If this criteria cannot be met, the petitioner shall submit a written request to the Department proposing another location which can meet either this criteria or the criteria in PS-1 sections 8.1(2)(i) and 8.1(2)(ii).
2. Within 45 days following the final PS-1 certification testing and the above demonstration, Petitioner shall submit a report to the DEP Emissions Monitoring Section detailing the certification test data and results of the demonstration. Pursuant to 40 CFR 63.8(e)(4) and (5) the performance evaluation (performance specification) testing of the continuous opacity monitor shall be conducted before the performance test for particulate matter required in 40 CFR 63.7 for Recovery Boiler No. 2.
3. The Title V operating permit shall be revised to reference this alternative monitoring location after a successful demonstration has been made.
4. This Order shall expire September 1, 2014, at which time Petitioner may request an extension to continue to locate the monitor at this alternate location. A significant change to the opacity monitoring systems after the demonstration required in item 1 above, such as changing

the monitoring path, or major changes to the ductwork in the vicinity of the monitor, will cause this order to expire at such time.

PETITION FOR ADMINISTRATIVE REVIEW

The Department's proposed agency action will become final upon expiration of the petition period described below unless a timely petition for an administrative hearing is filed pursuant to Sections 120.569 and 120.57 F.S., before the deadline for filing a petition. The procedures for petitioning for a hearing are set forth below.

A person whose substantial interests are affected by the proposed agency action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida, 32399-3000. Petitions filed by the permit applicant or any of the parties listed below must be filed within twenty-one days of receipt of this notice of intent. Petitions filed by any persons other than those entitled to written notice under Section 120.60(3) of the Florida Statutes must be filed within twenty-one days of publication of the public notice or within twenty-one days of receipt of this notice, whichever occurs first. Under Section 120.60(3), however, any person who asked the Department for notice of agency action may file a petition within twenty-one days of receipt of that notice, regardless of the date of publication. A petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57 F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention will be only at the approval of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205 of the Florida Administrative Code.

A petition that disputes the material facts on which the Department's action is based must contain the following information: (a) The name and address of each agency affected and each agency's file or identification number, if known; (b) The name, address, and telephone number of the petitioner, the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination; (c) A statement of how and when petitioner received notice of the agency action or proposed action; (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate; (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action; (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and (g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts upon which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any such final decision of the Department on the application have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation is not available in this proceeding.

NOTICE OF APPEAL RIGHTS

Any party to this order has the right to seek judicial review of it under Section 120.68 of the Florida Statutes, by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department of Environmental Protection in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice must be filed within thirty days after this order is filed with the clerk of the Department.

DONE AND ORDERED this 18th day of September, 2002
in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



HOWARD L. RHODES, Director
Division of Air Resource Management
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2600 Blair Stone Road
Tallahassee, Florida 32399-2400
(850) 488-0114

Clerk Stamp

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to §120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

 9/18/02
(Clerk) (Date)

Attachment: Figure 1