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July 17, 2000

Christopher L. Kirts, P.E. (*Via Facsimile and U.S. Mail*)
Air Program Administrator
Florida Department of Environmental Protection
Northeast District
7825 Baymeadows Way, Suite B200
Jacksonville, Florida 32256-7590

Larry Morgan, Assistant General Counsel (*Via Hand Delivery*)
Florida Department of Environmental Protection
3900 Commonwealth Blvd.
Tallahassee, Florida 32399-3000

Re: Florida Rock Industries, Inc.
FDEP Warning Letter No. WL00-0004-AP01-NED

Dear Messrs. Kirts and Morgan:

We represent Florida Rock Industries, Inc. with respect to its Thompson S. Baker Cement Plant in Newberry, Florida. We are in receipt of your July 10, 2000, Warning Letter referenced above, see Exhibit A, attached. As we previously discussed, it is our belief that the Warning Letter was sent in error, and we hereby request that it be retracted.

In issuing the Warning Letter, it is apparent the Department overlooked the provisions of FDEP Permit No. AC01-267311 issued to Florida Rock for its cement plant in Newberry. See copy of permit attached as Exhibit B. We direct you to Specific Condition No. 6 which states:

Performance tests shall begin within 60 days after achieving and maintaining the permitted production rate, but not later than 180 days after initial operation at that rate, using the following EPA reference methods:

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- Method 5 Determination of Particulate Matter Emissions from Stationary Sources
- Method 9 Visual Determination of the Opacity of Emissions from Stationary Sources
- Method 10 Determination of Carbon Monoxide Emissions from Stationary Sources
- Method 22 Visual Determination of Fugitive Emissions from Material Sources
- Method 25 Determination of Volatile Organic Compound Emissions from Stationary Sources
- Method 104 Determination of Beryllium Emissions from Stationary Sources (40 CFR 61, Appendix B)

(Emphasis supplied).

The Warning Letter apparently relies only on a provision in 40 CFR Subpart A 60.8(a), which provides:

Within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial start-up of such facility and at such other times as may be required by the Administrator under section 114 of the Act, the owner or operator of such facility shall conduct performance test(s) and furnish the Administrator a written report of the results of such performance test(s).

See copy of 40 CFR 60.8(a), attached as Exhibit C. The Warning Letter states that the "[f]acility has not submitted compliance tests as required by regulations." However, the more specific provision, Specific Condition No. 6 found in the permit, controls the air performance testing requirements set forth in the cited regulation for this facility and consequently, the facility is not required to commence testing within 180 days from "start up." Florida Rock is entitled to rely on this specific provision and the Department should not proceed as if it were not there.

Please note that Florida Rock's air permit was reviewed by FDEP and the Environmental Protection Agency (EPA) and approved prior to issuance. It is elementary that the FDEP air permit contains the essential information concerning the cement plant's construction, operation and emissions testing. As such, the permit contains all air emissions standards applicable to the facility. The permit contains site-specific construction and operation standards. The permit also contains site-specific air emissions

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monitoring requirements – requirements which are applicable to only the Florida Rock cement plant in Newberry, Florida. Thus, performance tests must be conducted no later than 180 days after initial operation after achieving and maintaining the permitted production rate. As explained below in more detail, the facility has commenced its initial performance testing on July 10, 2000, and will submit all initial air performance test results by August 15, 2000.

It is also patently clear that to have conducted the performance testing 180 days after "start up," but prior to achieving and maintaining the permitted production rate, would have been in violation of Specific Condition No. 6, and would likely have resulted in information of little or no import. Perhaps the Department assumed that the start-up noticed in December of 1999 was for the permitted production rate. We would like to set the record straight that the facility did not achieve the permitted production rate until mid-May 2000. Please note that the permit contemplates the cement plant will operate continuously at the permitted production rate at some point following construction. For the last approximately 6-month period, Florida Rock has been engaged in starting up the plant, commencing operations of critical systems and bringing them online in conjunction with the overall facility, and testing individual components.

The Newberry plant only achieved the permitted kiln clinker production rate (set forth in Specific Condition No. 3) of 95.8 tons per hour (TPH) as determined as a function of the preheater dry feed rate (which is limited to 149.9 TPH) on May 18 - 19, 2000. The plant only achieved and maintained the permitted production rate for two days. Thus, under the FDEP Permit, air performance testing is required to commence no later than 180 days after initial operation at the permitted production rate (from May 18, 2000).

During December of 1999, the Newberry plant only operated an average of 10 percent of the time, and was inoperative 90 percent of the time. During January of 2000, the Newberry plant only operated an average of 40 percent of the time, and was inoperative 60 percent of the time. During February of 2000, the Newberry plant only operated an average of 67 percent of the time, and was inoperative 33 percent of the time. In March of 2000, the Newberry plant operated an average of 62 percent of the time and had 4 days when the plant was completely inoperative. In April of 2000, the plant operated an average of 45 percent of the time and was inoperative for approximately 9 days. In May of 2000, the Newberry plant operated an average of 88.35 percent of the time and had two days when the plant was completely inoperative. In June of 2000, the plant operated 79 percent of the time and was inoperative for two days. This sequence of events is quite normal and expected, when bringing online a major facility of this type.

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Florida Rock is currently in the process of conducting its air performance tests pursuant to Specific Condition No. 6 of the FDEP Air Permit. Many of these tests could not be started until the plant's Continuous Emission Monitors (CEMs) were certified. Specific Condition No. 6 provides "Continuous emission monitors shall be installed and certified, before the initial performance test ..." Due to equipment difficulties associated with the CEMs and the fact that the plant had not yet achieved and maintained the permitted production rate, the CEMs were only certified beginning July 12, 2000.

Koogler & Associates notified the Department on five separate occasions concerning the commencement of air performance testing, including the procedures and protocol it proposed to utilize to accomplish the testing. On May 12, 2000, May 22, 2000, June 16, 2000, June 30, 2000, and July 7, 2000, the Department was notified of the dates of testing, the tests to be performed and the Test Methods proposed to be utilized. See letters attached as Exhibit D. Due to operational reasons, the performance tests did not commence until July 10, 2000.

Initial testing of the particulate matter from the kiln and clinker cooler has been completed, and were submitted to the Department's Northeast District Office on July 14, 2000. These tests of particulate matter emissions demonstrate that the actual emissions were well below that allowed under the standards set by the FDEP Permit, and no visible emissions were detected. We anticipate that the balance of the results of the initial air performance testing outlined in the July 7, 2000, letter from John B. Koogler, P.E., Ph.D. to Mr. Lalit Lalwani, will be submitted to the Department no later than August 15, 2000. Apparently, Mr. Lalwani and / or Mr. Isaac Santos of the FDEP have been onsite during most of the testing.

Based on Specific Condition No. 6 of FDEP Permit No. AC01-267311, the facts as set out in this letter, and the commencement of the air performance testing with the complete notification and coordination with FDEP, we hereby request that Warning Letter No. WL00-0004-AP01-NED be immediately retracted.

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Please contact us if you have any questions.

Sincerely,



Segundo J. Fernandez
Timothy P. Atkinson

Enclosures

c: Douglas Beason, Assistant General Counsel
John S. Baker
Fred Cohrs
Dr. John Koogler, P.E., Ph.D.

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