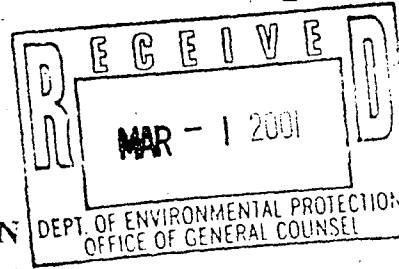


350-4360



STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ALACHUA COUNTY,

Petitioner,

v.

Case No.:

FDEP File Nos. 0010087-003-AC/PSD-FL-228-A
and 0010087-002-AV

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

and

FLORIDA ROCK INDUSTRIES, INC.,

Respondents.

ALACHUA COUNTY'S PETITION FOR FORMAL ADMINISTRATIVE HEARING

Petitioner, Alachua County ("County"), hereby files a petition for formal administrative hearing, pursuant to Sections 120.569 and 403.0872(5), Florida Statutes, and Rules 28-106.111 and 28-106.201, Florida Administrative Code (F.A.C.), to challenge the State of Florida Department of Environmental Protection's ("DEP" or "Department") Notice of Intent to Issue Draft Title V Construction Permit Modification No. 0010087-003-AC and Draft Title V Operation Permit No. 0010087-002-AV for the Thompson S. Baker Cement Plant in Newberry located on County Road 235, 2.5 miles Northeast of Newberry in Alachua County, and states the following:

1. The affected agencies and file numbers in this matter are:
 - a. State of Florida Department of Environmental Protection
Office of General Counsel
c/o Kathy Carter, Agency Clerk
3900 Commonwealth Boulevard, MS 35
Tallahassee, Florida 32399-3000

FDEP File Nos. 0010087-003-AC/PSD-FL-228-A, AC01-267311/PSD-FL-228, and 0010087-002-AV.

- b. United States Environmental Protection Agency
Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street
Atlanta, Georgia 30303

FDEP File Nos. 0010087-003-AC/PSD-FL-228-A, AC01-267311/PSD-FL-228, and 0010087-002-AV.

2. The Petitioner is:

Alachua County
c/o David C. Schwartz, Assistant County Attorney
Office of the County Attorney
12 S.E. 1st Street
Gainesville, Florida 32602-2877
(352) 374-5218

3. Petitioner, Alachua County, is a charter county that is vested with the authority and duty to protect the public health, safety, and welfare of the citizens of Alachua County, in which the subject cement plant is located. The proposed issuance of Draft Title V Construction Permit Modification No. 0010087-003-AC and Draft Title V Operation Permit No. 0010087-002-AV for the cement plant poses a real, immediate, and ongoing threat of discharging such types and quantities of pollutants so as to jeopardize or compromise the health, safety, and welfare of the County's citizens, particularly given the applicants' outstanding and unresolved violations and failure to otherwise demonstrate reasonable assurances that it will comply with all applicable rules, regulations, and permit conditions, as described more fully below. Petitioner is also the owner of property and operates and employs personnel at the Half Moon Fire & Emergency Medical Transport Station at 6005 S.W. State Road 45, approximately 8.2 miles south of the cement plant, and the

Jonesville Fire Station (Station #17) at 401 N.W. 143rd Street, approximately 9.7 miles east of the cement plant. The Jonesville Fire Station is part of the First Alarm assignment to the cement plant for any emergency. The County has also experienced increasing ozone levels and has a substantial interest in protecting its citizens, agriculture, and economy from the deleterious health effects of ozone and other pollutants emitted from the cement plant, and from the potentially adverse consequences of the County becoming non-attainment for ozone, for which volatile organic compounds (VOCs) and nitrogen oxides (NO_x) are precursors. Further, emissions from the cement plant are reasonably expected to degrade the water quality of the nearby Santa Fe River and exacerbate mercury and nitrate levels that are already high and that pose threats to public health and to the recreational utility of this Outstanding Florida Water. As demonstrated, the County clearly is a substantially affected party with standing to challenge the proposed permits.

4. The County received a copy of the Intent to Issue the draft permits on January 30, 2001. On February 9, 2001, the County timely filed a Request for Extension of Time to File Petition for Formal Administrative Hearing, seeking an extension of time until March 1, 2001. The Department has not yet acted upon the Request, and by operation of Rule 28-106.111(3), F.A.C., the County still has until at least March 1, 2001, or even until the Request is acted upon, to file a petition. Thus, the filing of this Petition is timely.

5. Disputed Issues of Material Fact:

a. Whether the applicant has violated the volatile organic compounds (VOC) emission limit of 11.55 lbs. per hour and 0.12 lbs. per ton of clinker, established in Table II of the Construction Permit and Section III, Conditions C.12., H.0., and I.1. of the proposed Operation Permit. This issue is one of mixed fact and law, and an issue of material fact remains in dispute, at least so long as the applicant refuses to formally stipulate to an admission of the violations.

b. Whether the applicant has demonstrated that it can effectively control the quality of its raw materials and fuels so as to assure that it will comply with all applicable emission limits, including but not limited to VOCs and NO_x.

c. Whether contributing causes exist for applicant's VOC violations other than the purported contamination of mill scale and fly ash used as raw feed.

d. Whether the requirement for a continuous emission monitor for VOCs, in Specific Condition 6.a. of the proposed modification to the Construction Permit and in Section II, Condition 7.3, and Section III, Condition C.33 of the Operation Permit, is adequate to ensure that the applicant will comply with its VOC emission limit.

e. Whether existing testing and operating data demonstrate that the applicant will meet the required NO_x emissions reduction to 2.8 lb. NO_x/ton of clinker in Table II of the Construction Permit and in Section II, Condition 7.2, and Section III, Conditions C.10., H.0., and I.1. of the proposed Operation Permit without, or with, application of a Low NO_x Multi-Stage Calciner (MSC).

f. Whether the applicant has demonstrated that it will burn tires as a fuel properly and in the manner intended through the permit applications and Specific Condition 4 and 6 of the Construction Permit and Section III, Condition C.3., of the proposed Operation Permit, and so as to assure compliance with its emission limits and permit conditions.

g. Whether the applicant's cement plant, as presently constructed, is capable of consistently emitting substantially lower levels of mercury and total particulate matter (PM) than the proposed emission limits in the subject permits, and whether such limits should be revised downward based upon test results and monitoring data in order to optimize pollution control in the manner described for SO₂, NO_x, VOCs, and CO in Section III, Condition I.1, of the proposed Operation Permit.

h. Whether the applicant's cement plant is reasonably expected to significantly degrade the surface waters of the Santa Fe River, designated Outstanding Florida Waters located approximately 8 miles from the cement plant, and the underlying Floridan Aquifer by way of atmospheric deposition of mercury and nitrogen (as nitrates).

i. Whether the applicant has demonstrated that its cement plant will consistently and simultaneously meet its emission limits for VOCs and NO_x.

j. Whether the applicant has demonstrated reasonable assurances that it will comply with the emission limits for VOCs, NO_x, and with all other applicable rules, regulations, and permit conditions, given (1) the unresolved permit and rule violations for (a) failure to timely notify the Department and the Environmental Protection Agency (EPA) Administrator of commencement of construction; (b) failure to timely notify the Department and the EPA Administrator of the initial plant startup; (c) failure to timely demonstrate compliance with SO₂ limits by way of continuous emission monitoring; (d) VOC exceedances during at least the months of July through September, 2000; (e) failure to immediately notify the Department of the VOC exceedances; and (f) failure to use required and appropriate test methods for VOCs and other pollutants; and (2) existing operating and testing data that demonstrate problems with VOCs and NO_x; (3) the apparent lack of control over the quality of raw materials and fuel supply; (4) lack of any demonstration that tires will be burned as a fuel properly and in a manner that complies with all rules and permit conditions, including emission limits; (5) the applicant's apparent opposition or resistance to the proposed installation of a Low NO_x Multi-Stage Calciner (MSC) and VOC continuous emission monitor; and (6) other possible factors to be determined through discovery. This is an issue of mixed fact and law, but certainly involves issues of material fact in dispute.

k. Whether reasonable assurances of compliance have been demonstrated for tire burning and beryllium at the time of the issuance of the proposed permits, rather deferring this determination to a future date (see Table II of the proposed modification to the Construction Permit and Section III, Condition C.13 and Table 2-1, EU003 Kiln, of the proposed Operation Permit). This is an issue of mixed fact and law, but certainly involves issues of material fact in dispute.

l. Whether the proposed permit limits for mercury of 200 lbs. per year and for total particulate matter (PM) of 0.20 lbs. per ton of dry feed to the kiln, 0.31 lbs. per ton of clinker, 30.00 lbs. per hour, and 110.50 tons per year, in Table II of the Construction Permit and in Section II, Condition 7.1, and Section III, and Conditions C.7, H.0., and I.1., of the Operation Permit, are overly inflated and unrepresentative of projected emission levels, fail to optimize pollution control, and fail to adequately protect public health, safety, and welfare.

m. To the extent that Appendix TV-3, Title V Conditions, was distributed to the applicant only, as stated in Section II, Condition 1, of the draft Operation Permit, and such conditions, once revealed to Petitioner, involve additional issues of material fact, Petitioner reserves the right to raise such issues by way of amendment to the Petition, if necessary. Petitioner further reserves the right to raise additional issues as might come to light through the course of discovery in this proceeding.

6. The ultimate facts are that (1) the applicant committed rule and permit violations, as referenced and described in paragraph 5.j., above, and such violations remain outstanding and unresolved; (2) the applicant has not demonstrate that the cement plant will consistently and simultaneously comply with the existing and proposed emission limits for VOCs and NO_x; (3) the applicant has not demonstrated that tires will be burned as a fuel properly and in a manner that complies with all rules and permit conditions, including applicable emission limits; (4) the applicant has not demonstrated that it can effectively control the quality of its raw materials and fuels so as to

assure that it will comply with all applicable emission limits, including but not limited to VOCs and NO_x; (5) the testing and operating data do not demonstrate that the applicant will meet the required reduction in NO_x to 2.8 lb. NO_x/ton of clinker as provided in Table II of the Construction Permit and in Section II, Condition 7.2 and Section III, C.10., H.O., I.1., of the proposed Operation Permit, without, or with, application of a Low NO_x Multi-Stage Calciner (MSC); (6) applicant's cement plant, as presently constructed, is capable of consistently emitting substantially lower levels of mercury and total particulate matter (PM) than the proposed emission limits in the subject permits; (7) the applicant's cement plant is reasonably expected to significantly degrade the surface waters of the nearby Santa Fe River and the underlying Floridan Aquifer by way of atmospheric deposition of mercury and nitrogen (as nitrates); (8) the applicant has failed to demonstrate reasonable assurances that it will comply with its emission limits for VOCs and NO_x, and with all other applicable rules, regulations, and permit conditions, given the unresolved permit violations and operating and testing data, lack of control over the quality of its raw materials and fuel supply, demonstrated problems and poor performance in the burning of tires as a fuel, the applicant's apparent opposition or resistance to the proposed installation of a Low NO_x Multi-Stage Calciner (MSC) and VOC continuous emission monitor, and other possible factors to be determined. Petitioner presently has only limited access to the testing and operating data, reports, operation logs, correspondence, and other documents and testimony that Petitioner intends to obtain through discovery in this proceeding in order to more thoroughly identify the specific and detailed facts supporting its statement of ultimate facts in this Petition.

7. The statutes and rules that warrant reversal or modification of the Department's proposed action include:

Section 403.021(1-6) and (7)(b), Florida Statutes
Section 403.061(8) and (14), F.S.
Section 403.087(1), (4), and (7), F.S.
Section 403.0872(2), F.S.
Section 403.088(1) and (2)(b), F.S.
Section 403.161(1)(b), F.S.
Rule 62-4.030, Florida Administrative Code
Rule 62-4.130, F.A.C.
Rule 62-4.070(1-3) and (5), F.A.C.
Rule 62-4.080(1), F.A.C.
Rule 62-4.100(2) and (3)(b), F.A.C.
Rule 62-4.160(2), (6), (8), (9), (13)(a) and (c)
Rule 62-4.210(2), F.A.C.
Rule 62-4.242(1)(a) and (b) and (2)(a), F.A.C.
Rule 62-204.220(1) and (2), F.A.C.
Rule 62-204.240(1-5), F.A.C.
Rule 62-210.300(2)(a)1. and 2., F.A.C.
Rule 62-212.300(1)(b-d) and (3)(a)2., F.A.C.
Rule 62-212.400(1)(c), (6) and (7), F.A.C.
Rule 62-213.300(2)(d) and (3)(c), (g) and (k)4., F.A.C.
Rule 62-213.420, F.A.C.
Rule 62-213.440(1), (3)(a)1., and (4)(b)4., F.A.C.
Rule 62-296.320(1)(a), F.A.C.
Rule 62-296.407, F.A.C.
Rule 62-296.701, F.A.C.
Rule 62-302.300(11-12), and (14-17), F.A.C.
Rule 62-302.400(1), (10), and (12)(b)1., F.A.C.
Rule 62-302.500(1)(a)6., F.A.C.
Rule 62-302.530, F.A.C.
Rule 62-302.700(1), (6), (9)(c)60., (9)(e)12., and (9)(i)27. F.A.C.
Rule 62-520.300(1)(a), (b), and (f-h) and (3), F.A.C.
Rule 62-520.400(1)(a) and (d), F.A.C.
40 CFR 60.7(a)(1)
40 CFR 60.7(a)(3)
40 CFR 63.4(a)

8. Petitioner seeks the following relief:
- a. Denial of the Draft Title V Air Operation Permit No. 0010087-002-AV.
 - b. Denial of further extensions of authorization to operate under the auspices of a construction permit.

c. Deletion of authorization to use tires as a fuel, including but not limited to Specific Condition 4 and 6 of the Construction Permit and Section III, Condition C.3., of the proposed Operation Permit.

d. A substantial reduction of the emission limit for mercury, to no more than 97 lbs. per year or lower, based upon operating and test data.

e. A substantial reduction of the emission limit for total particulate matter (PM), to no more than 0.13 lbs. per ton of dry feed to the kiln, or lower, based upon operating and test data, and equivalent reductions in the PM emission limits expressed in other terms.

f. Addition of a permit condition limiting the use of coal as a fuel to only low-mercury content coal.

g. Addition of a permit condition providing a compliance schedule requiring modification of the Construction and Operation Permits to impose EPA's emission limit for PM_{2.5} immediately upon the date of implementation specified by EPA.

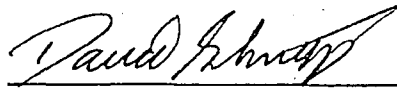
h. Revision of the appropriate permit conditions to provide that all additional construction related to the installation of the VOC continuous emission monitoring system shall be completed by June 1, 2001, all additional construction related to the installation of the Low-NO_x Multi-Stage Calciner (MSC) shall be completed by September 30, 2001, and all compliance testing for the Construction Permit Modifications shall be completed by December 31, 2001.

i. Addition of a permit condition requiring that all continuous emission monitoring results shall be provided and made accessible to the public in real-time data converted to terms that equate to the emission limits established in the permits.

WHEREFORE, Petitioner, Alachua County, pursuant to Sections 120.569 and 403.0872(5), Florida Statutes, and Rules 28-106.111 and 28-106.201, Florida Administrative Code, requests a formal administrative hearing on the above-described matters.

Respectfully submitted this 1st day of March, 2001.

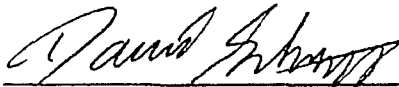
ALACHUA COUNTY ATTORNEY'S OFFICE



David C. Schwartz
Assistant County Attorney
Florida Bar No. 749079
Alachua County Attorney's Office
Post Office Box 2877
Gainesville, FL 32602-2877
(352) 374-5218

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. Mail to Segundo Fernandez, Esquire, Oertel, Hoffman, Fernandez & Cole, P.A., 301 South Bronough Street, Suite 500, Tallahassee, Florida 32301 on this 1st day of March, 2001.



David C. Schwartz
Assistant County Attorney