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December 31, 1998

Jeffrey Brown
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Florida Department of Environmental Protection
2600 Blairstone Road, MS-35
Twin Towers
Tallahassee, Florida 32301

Re: In the Matter of an Application for Permit Modification by Rinker Materials Corporation, DEP File No. 0250014-006-AC

Dear Jeff:

This letter is a follow up to our recent conversations regarding Rinker's request for extension of time to file a petition for administrative hearing regarding the Department's Intent to Issue the above-referenced permit. On behalf of Rinker, our firm filed the request approximately two weeks ago. While we have not yet received a written order from the Department, I understand from talking to you that the Department will be granting an extension until January 31. I also understand from you that the Department is willing to meet with Rinker on January 22, 1999, to discuss possible resolution of the disputes between the parties. While no time or date has been finalized as yet, we would prefer the meeting to be that day in the mid to late morning, although we can accommodate Department schedules otherwise.

When we last spoke, you requested that I provide you with an agenda of the meeting. While not writing this in the form of a formal agenda, I believe the following list of issues will be helpful in establishing what topics Rinker anticipates discussing at the meeting, as well as in providing guidance as to who Rinker plans to bring and would like the Department have in attendance at the meeting. There may be some additional items that Rinker may want to address, but the following generally represents the main issues of concern.

In summary, Rinker has the following concerns about the Department's proposed action, all of which it would like to discuss at the meeting:

1. Whether the Department should amend Rinker's existing construction permit to provide that whole tires and tire derived fuels be reduced from up to 40 per cent of heat input to up to 30 per cent. Yes, addressed in technical evaluation - no test ever been done in this type of plant at > 25% tires

may be 20% tires

to Dept knowledge

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2. Whether the Department should reduce combustion of non-hazardous solid waste to 11 tons a day. *30% solid waste, including sewage sludge allowed in permit*

3. Whether the Department should require additional record keeping to document compliance with non-hazardous waste combustion requirements. *was in Eb. Extra record keeping was volunteered by applicant King Day (Good Faith)*

4. Whether Rinker should be allowed to have its existing construction permit amended to state that it authorizes combustion of non hazardous solid waste, oil filters, booms and rags from non hazardous petroleum spill clean up and oil filters generated off site. *will give them that. It is in the proposed permit*

5. Whether the Department has the legal authority to require permit changes that make Rinker's construction permit more stringent, even though such changes were not requested by Rinker as part of its permit application, and if so what criteria do the Department have to meet to justify imposition of the changes. *Dept does not believe they can meet limits at 40% - Dept know at what point. In Eb, require only 10% can't be calculated at all because of 11% rates. Kill unit temperature in furnace at these rates*

6. Whether the Department has properly interpreted 40 CFR 60, Subpart Eb, and other applicable federal regulations, so as to support its apparent conclusion that federal regulations require reduction in the combustion of municipal solid waste as currently permitted by the Department in Rinker's air construction permit. *Eis does not apply to cement plants, however it gave us reasonable assurance that they could burn small amounts of solid waste*

7. Whether the Department rules require that Rinker publish notice of the proposed agency action. *Need to. All can't must be public noticed.*

8. Whether the Department has the legal authority to request new and additional information from Rinker (such as in its May 5 letter) regarding permit modification issues more than 30 days after Rinker's submission of its original application to make changes to the construction permit, or more than 30 days after any response by Rinker to a request for additional information made by the Department within 30 days of the original application. Similarly, whether the Department has legal authority to base any of its agency action in this matter on Rinker's failure to submit additional information subsequently requested by the Department after the last 30-day request for additional information. *Get info on 4/16/98 (under 41(b)) finally request for info on 5/5. They gave us waiver from 6/12 to August 17. Got another waiver till 10/12, Oct 12 to Nov 30*

9. Whether the Department can base any of its agency action on Rinker's failure to provide information regarding matters about which the Department did not ask during its review of Rinker's original air construction permit application. *Yes, as it was processed as modification*

10. Whether Rinker can provide information, either at the meeting or within a reasonable period of time following the meeting, to resolve disputed issues with the Department in a matter which would avoid further contention over the preceding issues identified. *Fuller, FLS*

While this list is not intended necessarily to be exhaustive, it is designed to provide the best summary at this time of the issues likely to be brought up by Rinker at the meeting. As you can see, the issues raised go beyond purely technical issues relating to the pending application, and address significant policy and legal issues, such as whether the Department should be able to modify permit conditions in an unrequested manner, when publication of notice should be required, and what limitations should be imposed on cement kilns for the incineration of municipal solid waste. Therefore, Rinker respectfully requests that the meeting include attendance by Howard Rhodes, Clair Fancy, Al Linero, whoever is involved in permit processing for this matter, and yourself and/or

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some other appropriate representative from the Office of General Counsel. Rinker tentatively plans to have in attendance Mike Vardeman, Scott Benyon, John Koogler, myself, and possibly an additional consultant or consultants who can address some of the technical questions raised by the Department in its May 5 request for additional information, including information about cement kiln combustion elsewhere in the country.

At the same time, Rinker does not necessarily need to resolve all of the issues raised in this letter, provided a mutually satisfactory accord can be reached. Furthermore, while Rinker has raised some legal concerns regarding the appropriateness of the Department's asking for certain information or proposing certain permit changes, Rinker would like to satisfy the Department's concerns without having to argue over the legal concerns. Hopefully we can resolve this matter in a mutually satisfactory manner.

As I mentioned to you recently, I shall be out of town the first two weeks of January. I appreciate the Department's courtesy in not requiring Rinker to file any further documents relating to its request for extension of time during this time period. I will follow up with you on January 15 or 20 to make sure arrangements are still set. If there are any changes or other actions that need Rinker's immediate attention during this time, please contact Mike Vardeman or John Koogler. Thank you.

Yours truly,



Daniel H. Thompson

DHT/wsg

cc: Mike Vardeman
Scott Benyon
John Koogler