

THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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NOV 12 2004

In the Matter of an  
Application for Permit by:

BUREAU OF AIR REGULATION

OGC CASE NO.: 04-1739

FDEP Draft Permit No.: 0250020-013-AV

Tarmac America, Inc.  
Tarmac Pennsuco Cement Plant  
Miami-Dade County, Florida

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**SECOND REQUEST FOR ENLARGEMENT OF TIME**

By and through undersigned counsel, Tarmac America, Inc. (Tarmac ) hereby requests, pursuant to Florida Administrative Code Rule 62-110.106(4), an enlargement of time, to and including January 11, 2005, in which to file a Petition for Administrative Proceedings in the above-styled matter. As good cause for granting this request, Tarmac states the following:

1. On or about October 5, 2004, Tarmac America, Inc. received from the Department of Environmental Protection ("Department") an "Intent to Issue Title V Air Operation Permit Revision" and accompanying "Revised Draft Permit," (Draft Permit No.0250020-013-AV), for the Tarmac Pennsuco Cement Plant, located at 11000 NW 121 Way, Medley, Miami-Dade County, Florida.
2. October 13, 2004, Tarmac filed a request for an extension of time to file a petition challenging the Draft Permit so that the parties could have time to discuss potential clarifications or corrections.
3. By Order dated October 18, 2004, the Department granted the requested extension until November 12, 2004.

4. Based on Tarmac's initial review, the Revised Draft Permit and associated documents contain several provisions that warrant clarification or corrections.

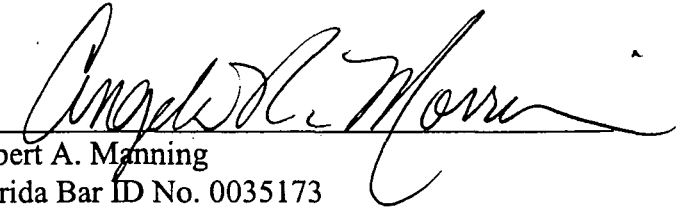
5. Tarmac and DEP are in the process of discussing possible resolutions to the issues needing clarification or correction.

6. Tarmac is now requesting until January 11, 2005, in order to resolve remaining issues before the Department's intended deadline to send all Title V renewals to the Environmental Protection Agency as proposed permits.

7. This second request is filed simply as a protective measure to avoid waiver of Tarmac's right to challenge certain conditions contained in the Revised Draft Title V Permit. Grant of this request will not prejudice either party, but will further their mutual interest and hopefully avoid the need to file a Petition and proceed to a formal administrative hearing.

WHEREFORE, Tarmac America, Inc. respectfully requests that the time for filing of a Petition for Administrative Proceedings in regard to the Department's Intent to Issue Title V Air Operation Permit Revision No.0250020-013-AV be formally extended to and including January 11, 2005.

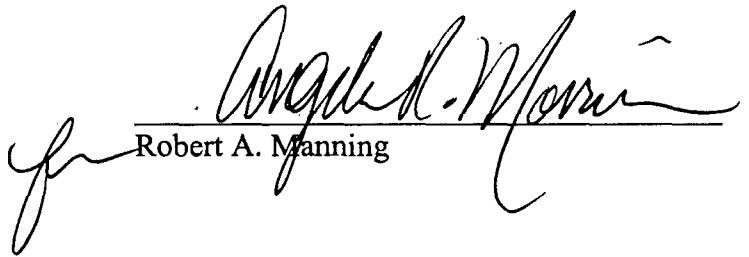
RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of November, 2004.

By:   
for Robert A. Manning  
Florida Bar ID No. 0035173  
Hopping Green & Sams, P.A.  
123 South Calhoun Street  
Post Office Box 6526  
Tallahassee, Florida 32314  
(850) 222-7500  
(850) 224-8551 Facsimile

Attorneys for Tarmac America, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery to Kathy Carter, Agency Clerk, and Doug Beason, General Counsel, Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, Suite 300, Tallahassee, Florida 32399-3000; and Trina Vielhauer, Florida Department of Environmental Protection, Division of Air Resource Management, 111 S. Magnolia Drive, Suite 23, Tallahassee, Florida 32399 this 12<sup>th</sup> day of November, 2004.

  
Robert A. Manning

**AGREEMENT**

DADE COUNTY DEPARTMENT OF )  
ENVIRONMENTAL RESOURCES MANAGEMENT )  
Complainant, )  
)  
VS. )  
Tarmac America, Inc. )  
Respondent )  
\_\_\_\_\_ )

THIS AGREEMENT, entered into by and between MIAMI-DADE COUNTY DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT (hereinafter referred to as DERM), and Tarmac America, Inc. (hereinafter referred to as Tarmac or Respondent) pursuant to Section 24-5(15)(c) Miami-Dade County Environmental Protection Ordinance, shall serve to redress the alleged violations of Section 24-55 of the Code of Miami-Dade County as set forth in a June 17, 1997 Notice of Violation and Orders for Corrective Action, concerning the site located at 11000 NW 121 Way, Medley, DADE County, Florida (Folio #30-2031-001-0030).

The DERM finds the following:

**FINDINGS OF FACT**

1. The DERM is an agency of Miami-Dade County, a political subdivision of the State of Florida which is empowered to control and prohibit pollution and protect the environment within Dade County pursuant to Article VIII, Section 6 of the Florida Constitution, the Dade County Home Rule Charter and

Section 403.182 of the Florida Statutes.

2. Tarmac is a Delaware corporation that has its principal place of business in Norfolk, Virginia. Tarmac owns and operates a portland cement manufacturing plant located in Dade County, Florida, under the authority of DEP permit no. AC 13-169901. Tarmac is currently doing business in the State of Florida and is a person within the meaning of section 403.031(5), Florida Statutes.
  
3. Tarmac's cement plant (Pennsuco Plant) in Dade County includes kiln # 2, a wet process, direct-fired cement kiln that originally was constructed in 1969. In wet process cement manufacture, a slurry of filtrate of crushed limerock containing between 20% and 40% moisture content is introduced into an inclined kiln for calcination into quicklime (calcium oxide) clinker by the application of high thermal energies. At Tarmac's kiln # 2, this thermal energy currently is provided primarily by the direct firing of crushed coal. Flow from the coal mill both conveys the crushed coal to the kiln and serves as the primary combustion air for the kiln.
  
4. On July 8, 1980 the United States Environmental Protection Agency (EPA) issued Final Determination PSD-FL-050 for proposed fuel conversions of the Pennsuco kilns 1,2 and 3 from natural gas to coal. Condition #8 of the Final Determination limited coal-fired NOx emissions from kiln # 2 to 118 lb/hr at the maximum operating rate or 4.73 lb/ton of

clinker produced at lesser operating rates. These limiting emission rates were proposed by Respondent to ensure validity of the exemption from further Prevention of Significant Deterioration (PSD) review (no net increase in emissions). The PSD permit and accompanying regulatory materials specifically contemplated the possibility, based on published emission rate information for large utility boilers and site-specific variables that could not be quantified in advance, that actual NOx emissions while firing coal could be higher than predicted. However, Tarmac produced published test data which reported that "emissions of NOx are less using coal than when using gas or oil as a fuel for cement kilns" due to the "characteristics of the flame". Also, the EPA concurred with Tarmac "that operating conditions can be found which will result in reduced emissions or at least no net increased emissions" when utilizing coal instead of gas.

5. The conversion to coal for kiln # 2 was deferred for several years, and that kiln was never converted under PSD-FL-050. On August 21, 1989 Respondent again submitted an application to the Florida Department of Environmental Regulation (FDER, now known as the Florida Department of Environmental Protection, DEP) to convert kiln # 2 to coal. In this application Respondent requested, based on NOx emission rate data associated with a dissimilar kiln, a maximum allowable NOx emission rate of 169.25 lbs/hr for kiln # 2.
6. On February 27, 1991 DEP issued Construction Permit No. AC

13-169901 (exhibit A attached) to convert kiln # 2 to coal firing. Specific Condition # 5 of said permit limited NOx emissions to 113.8 lbs/hr. Additionally Specific Condition # 12 in DEP permit no. AC 13-169901 required that after the commencement of operation while firing coal, Tarmac shall conduct NOx emissions tests every two months for up to one year. In the event that the required compliance testing resulted in NOx emissions in the range of 113.8 lbs/hr to 169.3 lbs/hr, Specific Condition #12 of said permit provided Tarmac with the opportunity to request DEP to re-evaluate BACT and consider adjustment of the NOx emissions limitations upward from 113.8 lbs/hr to a maximum of 169.3 lbs/hr. The permit stated that DEP would not initiate enforcement proceedings while evaluating an adjustment of the NOx limitation, provided Tarmac made reasonable efforts to limit air emissions.

7. Tarmac did not convert kiln # 2 to coal for an extended period of time after issuance of permit no. AC 13-169901 in 1991 due to reported variabilities in demand for cement and fuel prices. Accordingly, the performance tests were delayed until coal-firing actually commenced. On April 24, 1994 Respondent initiated the bi-monthly compliance testing for a one year period ending April 1995. By letter dated July 21, 1995, Tarmac provided DEP with data from six stack emission tests performed while firing coal in kiln # 2. NOx emissions exceeded permittable levels at every testing event. Tarmac requested in its July 21, 1995 letter to DEP that the NOx

limit be re-evaluated and, based on a statistical analysis of the test results, be adjusted to 445 lbs/hour. DEP's August 24, 1995 response stated that Tarmac's request was "not representative of BACT under PSD rules and that the NOx test results were beyond the range of values for re-evaluation, set by Tarmac."

8. Thereafter, there were several discussions and exchanges of correspondence through which Tarmac, attempted to initiate DEP re-evaluation of the NOx emission limitation. DEP declined to re-evaluate the NOx emission limitation and ultimately expressed its preference that Tarmac evaluate and then implement physical improvements that would result in continuous compliance with the original NOx emission projections (113.8 lbs/hr).
9. On May 28, 1996 Respondent's consulting firm submitted a plan for testing NOx emission levels using a modified coal burner nozzle installed on kiln # 2. Testing was to commence by early June 1996 and test data was to be submitted to DEP by early August 1996.
10. On October 16, 1996 DEP issued a letter to Respondent stating that DEP had not received NOx emissions testing data as stated in the May 28, 1996 letter. DEP requested that Tarmac provide immediate assessment of the NOx emission using the modified burner nozzle. Resolution of the NOx emission violation was to be achieved by the end of 1996.



11. Resolution of the elevated NOx emissions issue was not achieved and pursuant to the FDEP/DERM air permitting delegation agreement, on April 14, 1997, FDEP referred the continuing NOx emissions violation at the subject site to DERM for follow-up enforcement action.
12. On June 17, 1997 DERM issued a Notice of Violation (NOV) and Orders for Corrective Action and Settlement for exceedances of permitted NOx emission rates. Said NOV ordered Respondent to submit a written plan detailing proposed corrective actions to ensure that the allowable limits for emissions are not exceeded.
13. Tarmac has reported that its analysis indicates that the level of NOx emissions demanded by DEP can be achieved at kiln #2 while firing coal only by developing alternatives that require very substantial expenditures, such as converting kiln # 2 to indirect firing (or other alternative technology), or modernizing its existing wet process system by converting it to employ dry process technology.
14. Tarmac has expressed a willingness to adopt whichever NOx emission reduction option is most cost-effective, taking into consideration the age of the existing equipment and the degree of reduction in NOx and other criteria pollutant emissions achievable by each alternative. Due to the reported costs involved, the substantial preliminary engineering work

required, as well as the need to design for the integration of new systems into existing operations, Tarmac has stated its need for additional time in which to select and implement its best alternative method. If no economically feasible alternative can be developed, Tarmac will cease operating kiln # 2 on coal.

15. Tarmac hereby consents to the terms of this Agreement without either admitting or denying the factual or legal allegations made by DERM in this Agreement or in the Notice of Violation and Orders for Corrective Action and Settlement; and
16. In an effort to insure continued protection of the health and safety of the public and the environment of Dade County and to insure compliance with Chapter 24, Miami-Dade County Environmental Protection Ordinance and to avoid time-consuming and costly litigation, the parties hereto stipulate and agree to the following, and it is ordered:
17. Upon execution of this Consent Agreement Respondent shall, on an interim basis, meet the NOx emission limit monthly average of 220 lbs/hr for kiln # 2 with 240 lbs/hr being the maximum limit on an instantaneous basis. This NOx emission limit shall remain in effect until the applicable requirements set forth in paragraphs # 21, 22 or 23 of this Agreement are implemented. Respondent shall then meet NOx emission limitations for kiln # 2 as required.

18. In order to verify compliance with paragraph # 17 of this Agreement, Respondent shall install and have operational a continuous emission monitor on kiln #2 by June 1, 1998. Respondent shall obtain DERM concurrence of the system prior to installation. Until the aforementioned continuous emission monitoring system is operational, Respondent shall conduct monthly NOx emission verification testing. Additionally, beginning in July 1, 1998, respondent shall submit to DERM a written Nox emission monitoring report including the monthly Nox emissions chart from kiln #2. This report shall be due by the fifteenth of the month and shall contain the information obtained from the preceding month. The first report is due to DERM by July 15, 1998. Report submittals shall continue until the expiration of this Agreement in accordance with paragraph 38 of this Agreement.
  
19. On or before January 31, 1998, Respondent shall provide in writing to DERM its method for eliminating exceedances of the NOx emission limitations as stipulated in permit no. AC 13-169901 for kiln # 2. The method provided shall correspond with the applicable requirements set forth below in paragraphs 21, 22 or 23 of this Agreement.
  
20. If Respondent chooses to implement the requirements set forth in paragraph 22, Respondent shall submit applications by completing forms designated by agency regulations, signed by the appropriate company representative and sealed by a Florida registered professional engineer, with the

appropriate fee, for the required air construction permits and/or permit modifications to the FDEP or Dade County DERM, as appropriate. Said application shall be submitted by February 15, 1998. Additional information requested by the appropriate agencies shall be provided by Respondent within fourteen (14) days of the date Respondent receives the request, unless the reviewing agency determines that additional time is necessary due to the scope of its request. If Respondent chooses to implement the requirements set forth in paragraph 23 of this Agreement, these same permitting procedures shall apply, except that the deadline for submitting the applications shall be June 30, 1998. In all cases Respondent shall diligently apply for and seek in a timely manner to obtain any other necessary approvals to perform the work within the same applicable timeframes stipulated above.

21. If Respondent relinquishes its authorization to burn coal in kiln # 2, it shall notify DEP and DERM in writing by January 31, 1998, that it surrenders permit no. AC 13-169901, and within 90 days thereafter shall cease utilizing coal, and operate kiln # 2 only on those fuels currently authorized under DEP permit no. AO 13-238048 provided that emissions levels for NOx do not exceed the previously established RACT limitation and SO2 emissions do not exceed the current regulations.

22. Alternatively to the requirements set forth in paragraph # 21

of this Agreement, if kiln # 2 is converted to indirect firing or other DERM and DEP accepted technology that meets the NOx limits in permit no. AC 13-166901, construction shall be completed within 12 months after receiving the construction permit modifications referenced in paragraph #20, above, and any other required permits, and then Respondent shall meet the same BACT NOx emission limitations and all other emission limitations as set forth in construction permit NO. AC 13-169901.

23. Alternatively to the requirements set forth in paragraphs # 21 and # 22 of this Agreement, if the plant's manufacturing process is changed to dry process technology, construction shall be completed within 36 months after the required permits have been issued and then Respondent shall meet the permitted emission limitations. *5/1/04 BUT AC EXTENDED TO 1/05*  
*5/1/01*
24. Commencing at the next time at which such fees are due under DEP's regulations, Respondent shall pay to FDEP the Title V permitting fee for kiln # 2 NOx emissions based on the monthly interim average of 220 lbs/hr. This fee shall be effective upon execution of this Consent Agreement and shall remain in effect until Respondent is in compliance with kiln # 2 permitted NOx emissions limitations.

#### SAFETY PRECAUTIONS

25. The Respondent shall maintain the subject site, during the

pendency of this Agreement, in a manner which shall not pose a hazard or threat to the public at large or the environment and shall not cause a nuisance or sanitary nuisance as set forth in Chapter 24, Miami-Dade County Environmental Protection Ordinance.

**VIOLATION OF REQUIREMENTS**

26. This Agreement constitutes a lawful order of the Director of the Department of Environmental Resources Management and is enforceable in a civil or criminal court of competent jurisdiction pursuant to Chapter 24, Miami-Dade County Environmental Protection Ordinance. Violation of any requirement of the Agreement may result in enforcement action by DERM. Each violation of any of the terms and conditions of this Agreement by the Respondent shall constitute a separate offense.

### SETTLEMENT COSTS

27. The Respondent hereby certifies that he has the financial ability to comply with the terms and conditions stipulated herein and to comply with the payments specified in this Agreement.
28. DERM has determined, that due to DERM's Administrative costs incurred to bring the subject facility into compliance and other sums recoverable pursuant to Section 24-57(e) of the Miami-Dade County Code, an environmental remediation fee of \$200,000.00 is appropriate. DERM will allow \$50,000 (25%) of the required \$200,000.00 environmental remediation fee to be used towards offsetting the costs of continuous emission monitoring equipment installation at kiln #2 (Pennsuco Plant). If for any reason Respondent fails to install the required continuous emission monitoring system Respondent shall pay DERM the full environmental remediation fee of \$200,000.00. The Respondent shall within thirty (30) days of the effective date of this Agreement, submit to DERM a certified check in the amount of \$150,000.00, for environmental remediation as set forth in Section 24-57(e) for the purpose of the enforcement of environmental laws in Dade County. The check shall be made payable to DERM and sent to the Department of Environmental Resources Management, c/o Sharon Crabtree, Suite 1100, 33 SW 2nd Avenue, Miami, Florida, 33130.

29. Except as otherwise provided under paragraph 33 below, in the event Respondent fails to submit, modify, implement, obtain, provide, operate, comply and or complete those items listed in paragraphs 17,18,19,20,21,22 or 23 (as applicable) herein, the Respondent shall pay DERM a civil penalty of one hundred dollars (\$100.00) per day for each day of non-compliance and the Respondent shall be subject to enforcement action in a civil or criminal court of competent jurisdiction for such failure pursuant to the provisions set forth in Chapter 24, Miami-Dade County Environmental Protection Ordinance. Said payment shall be made by Respondent to DERM within ten (10) days of receipt of written notification and shall be sent to the Department of Environmental Resources Management, c/o Sharon Crabtree, at 33 S.W. 2nd Avenue, Miami, Florida 33130.

#### **GENERAL PROVISIONS**

30. Respondent shall allow authorized representatives of DERM access to the property at reasonable times for purposes of determining compliance with this Consent Agreement and the rules and regulations set forth in Chapter 24, Miami-Dade County Environmental Protection Ordinance.

31. The DERM expressly reserves the right to initiate appropriate legal action to prevent or prohibit the future violations of applicable statutes or the rules promulgated thereunder.



32. Entry into this Consent Agreement does not relieve Respondent of the responsibility to comply with applicable federal, state or local laws, regulations and ordinances.
33. If any event occurs which causes delay, or the reasonable likelihood of delay, in complying with the requirements or deadlines of this Agreement, Respondent shall have the burden of demonstrating to DERM, that the delay was, or will be, caused by circumstances beyond the control of Respondent. Upon occurrence of the event(s) causing delay, or upon becoming aware of a potential for delay, Respondent shall promptly notify DERM orally within twenty four (24) hours and shall, within five (5) days of oral notification to the DERM, notify DERM in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which Respondent intends to implement these measures. If DERM determines that the delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for as reasonable a period as may be determined based on such circumstances. Excessive Emissions pursuant to Florida Administrative Code (F.A.C.) 62-210.700 may be considered a reasonable delay in emissions compliance with this Agreement provided Respondent complies with the requirements of this paragraph. The Respondent shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with

the notice requirements of this paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements or deadlines of this Agreement.

34. This Agreement shall neither be evidence of a violation of this Chapter or other environmental laws nor shall it be deemed to impose any limitation upon any investigation or action by DERM in the enforcement of Chapter 24, Miami-Dade County Environmental Protection Ordinance.
35. In consideration of the complete and timely performance by the Respondent of the obligations contained in the Agreement, DERM waives its rights to seek judicial imposition of damages or criminal or civil penalties for the matters alleged in this Agreement and the June 17, 1997 Notice of Violations and Orders for Correction Action.
36. This Agreement shall become effective upon the date of execution by the Director, Environmental Resources Management.
37. This Agreement shall expire upon written concurrence by The DERM, at such time as Respondent ceases to utilize coal in kiln #2 and has shown to be in compliance with paragraph 21 of this agreement or files with DEP and DERM a certificate of compliance documenting that it has commenced commercial operation and has shown to be in compliance with the prescribed requirements of paragraphs 22 or 23.

\_\_\_\_\_  
Date

\_\_\_\_\_  
John D. Carr, President  
Tarmac America, Inc.

BEFORE ME, the undersigned authority, personally appeared  
\_\_\_\_\_ who after being duly sworn, deposes and  
says that he has read and agrees to the foregoing.

Sworn to and subscribed before me this \_\_\_\_\_ day of

\_\_\_\_\_, 1998 by \_\_\_\_\_  
(name of affiant)

Personally Known \_\_\_\_\_ or Produced Identification \_\_\_\_\_.  
(Check one)

Type of Identification Produced: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

2/2/98?

\_\_\_\_\_  
Date  
Management

\_\_\_\_\_  
John W. Renfrow, P.E., Director  
Environmental Resources

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

DERM  
Complainant  
VS.  
Tarmac America, Inc.  
Respondent