

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

FLORIDA MINING & MATERIALS, INC.,)	
Petitioner,)	
v.)	DOAH Case No.
STATE OF FLORIDA DEPARTMENT OF)	
ENVIRONMENTAL REGULATION,)	OGC Case No. 83-0314
Respondent.)	

NOTICE

TO: Division of Administrative Hearings
The Oakland Building
2009 Apalachee Parkway
Tallahassee, Florida 32301

Please be advised that the State of Florida Department of Environmental Regulation has received nineteen (19) Petitions for Hearing in the above-styled case. Pursuant to Section 120.57(1)(b)3., Florida Statutes, the Secretary has decided not to act as hearing officer and requests that the Division of Administrative Hearings assign this matter to a hearing officer to conduct all necessary proceedings required under the law and submit a Recommended Order to this Agency. The forwarding of these Petitions is not a waiver of the Agency's right to assert the Petitioner's lack of standing to bring this action or any other material defects in the Petitions. Attached are the original Petitions for Administrative Hearing filed in this case.

DONE this 14 day of June, 1983.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION

Silvia Murrell Alderman for
William W. Deane
Assistant General Counsel
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BEFORE THE STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA MINING & MATERIALS, INC.,)	
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Petitioner,)	
)	DOAH Case No.
v.)	
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STATE OF FLORIDA DEPARTMENT OF)	OGC Case No. 83-0314
ENVIRONMENTAL REGULATION,)	
)	
Respondent.)	

NOTICE OF TRANSCRIPTION

TO: C. Thomas Davidson, Esquire
Lawson, McWhirter & Grandoff
Post Office Box 3350
Tampa, Florida 33601

YOU ARE HEREBY NOTIFIED that in accordance with Chapter 120, Florida Statutes, the Department of Environmental Regulation will provide mechanical transcription equipment at all upcoming hearings in this cause. The recording tapes will be made available to all parties upon request. Any parties desirous of having a court reporter present shall make their own arrangements with the reporter of their choice. Original written transcriptions may be ordered directly from the court reporter at the requesting party's expense.

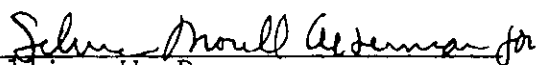
YOU ARE HEREBY FURTHER NOTIFIED that in accordance with Chapter 80-150, Laws of Florida, should you decide to appeal any decision made by the Department of Environmental Regulation or take exception to any finding of fact of the hearing officer with respect to any matter considered at a hearing of the Department, you may need to ensure that a verbatim record of the proceedings is made. Such a record shall include the testimony and evidence upon which the appeal is to be based.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and one true copy of the foregoing Notice and Notice of Transcription have been furnished by U.S. Mail to the Division of Administrative Hearings, The Oakland Building, 2009 Apalachee Parkway, Tallahassee, Florida 32301; and a true copy to C. THOMAS DAVIDSON, ESQUIRE, Lawson, McWhirter & Grandoff, Post Office Box 3350, Tampa, Florida 33601; to LAWRENCE N. CURTIN, ESQUIRE, Holland and Knight, Post Office Drawer BW, Lakeland, Florida 33802, and to the following on this 14 day of June, 1983.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION


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STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION JUN 13 1983

Dept. of Environmental Regulation
Office of General Counsel

FLORIDA MINING & MATERIALS, INC.,)
)
Petitioner,)
)
-vs-)
)
DEPARTMENT OF ENVIRONMENTAL)
REGULATION,)
)
Respondent.)

CASE NO. _____

PETITION FOR FORMAL HEARING

This is a Petition for Formal Proceeding on a matter before the Department of Environmental Regulation, pursuant to Florida Statute §120.57(1).

1. The Petitioner is Florida Mining & Materials, Inc.. whose address is 605 South Broad Street, Brooksville, Florida.

2. The Respondent is the Department of Environmental Regulations, an agency of the State of Florida as defined in §120.57(1), Florida Statute, whose address is 1600 Blairstone Road, Tallahassee, Florida.

3. The Respondent has received an application from Florida Crushed Stone Company ("Crushed Stone") for permission to construct and operate a Power Plant/Cement Plant Cogeneration Facility and has indicated its intentions to grant this application.

4. The Petitioner has received notice of proposed agency action (i.e. proposed action by the Respondent) in the form of the issuance of a permit to Florida Crushed Stone Company numbered AC 27-61038.

5. Related to proposed permit AC 27-61038 are proposed permits AC 27-61012, AC 27-61013, AC 27-61016, AC 27-61017, AC 27-61019, AC 27-61020, AC 27-61021, AC 27-61026, AC 27-61027, AC 27-61030, AC 27-61032, AC 27-61033, AC 27-61037, AC 27-61040, AC 27-61041, and AC 27-61042; and the following Federal Permit Numbers: PSD - FL-090 and PSD - FL-091 (the "Proposed Permits").

6. The Petitioner has learned of this intention through the

Regulation published in The Daily Sun Journal on May 27, 1983. The application, the proposed permit and the related proposed permits affect the substantial interests of the Petitioner in the following manner:

a. Florida Crushed Stone Company ("Crushed Stone") submitted application Number PA82-17 (the "Application") to the Department of Environmental Regulation, ("DER") to build a 125 MW power plant on a site to be located near Brooksville, Florida in the Southwest quarter of Section 8, of TS 225, R 19 E, in Hernando County.

b. The power from said plant is to be used to power a proposed Crushed Stone cement plant, and the stack gases from the plant are to be used to help heat a kiln at the cement plant.

c. FMM has a cement plant located two to three miles northwest of the proposed Crushed Stone Power and Cement Plants.

d. The proposed DER permits relate to the cement plant pollution emissions.

e. The application relates to the Power Plant but contains pollution emission studies relating to the Power Plant and the Cement Plant.

f. Studies located in the Air Quality Review in Crushed Stone's Application indicate that when both the proposed Crushed Stone Cement and Power Plant are in operation, total particulate matter in the ambient air will increase to 149 micrograms per cubic meter of air on a 24-hour basis, and to 59 micrograms per cubic meter of air on an annual basis and the allowable SO₂ increment for the nearby Class I Clean Air Area will be consumed by the Proposed Power and Cement Plants.

g. Respondent has promulgated regulations regarding the discharge of sulphur dioxide and particulates:

(i) The Florida Ambient Air Quality Standards for particulate matter are:

1) Twenty-four hour maximum-150 micrograms per cubic meter, and

2) Annual geometric mean maximum-60 micrograms per cubic meter. [Florida Administrative Code Rule 17-2.300(3)(b)].

(ii) Respondent has promulgated the maximum allowable increases (Prevention of Significant Deterioration Increments) for a class:

I Air Area for Sulphur Dioxide are:

- 1) Annual arithmetic mean - 2 micrograms per cubic meter,
 - 2) Twenty-four hour maximum - 5 micrograms per cubic meter,
 - 3) Three hour maximum - 25 micrograms per cubic meter.
- (Florida Administrative Code Rule (7-2.310(1)(b))).

h. If the models on which the Crushed Stone expectations are based are accurate and the proposed plants are built, then no new construction in the area west and northwest of Brooksville, controlled by Florida Administrative Code Rule 17-2.300(2), could be undertaken if the operation of this new construction would result in an addition of more than one microgram of particulate matter per cubic meter to the ambient air of the area on either a 24-hour basis or on an annual basis; and as to sulphur dioxide, no construction could be undertaken if the operation of this new construction would result in the addition of more than 1.4 micrograms per cubic meter to the ambient air on the annual basis; 1 microgram per cubic meter to the ambient air on the 24-hour basis; and 8.1 micrograms per hour to the ambient air on the 3-hour maximum basis.

i. The types of new construction controlled by Florida Administrative Code 17-2.300(2) and the operation of which would, of necessity, result in the addition to the ambient air of more than one microgram per cubic meter of particulate of the area on either a 24-hour or annual basis, or which would result in the addition to the ambient air of more than 1.4 micrograms per cubic meter on an annual basis, 1.0 micrograms per cubic meter on a 24-hour basis and 8.1 micrograms per cubic meter on a 3-hour maximum basis, would be numerous.

j. The types of industrial and business activity which

late matter on either a 24-hour basis or an annual basis, or more than 1.4 micrograms per cubic meter on an annual basis, 1 microgram per cubic meter on a 24-hour basis or 8.1 micrograms per cubic meter on a 3-hour maximum basis are very few. Thus, certification of the Crushed Stone project would drastically adversely affect nearby land owners in the west and northwest Brooksville area by reducing materially the potential uses of their lands.

k. FMM is a substantial nearby landowner. FMM owns more than 4,000 acres in Hernando County, northwest of Brooksville in Sections 23, 24, 14, and 15 of TS 215, R18 E. On that site, FMM operates a limestone quarry and cement plant, utilizing approximately 1600 acres. On the remaining 2400 acres of the site, FMM has intended to engage in other business or industrial activities.

l. FMM has a substantial interest in assuring that proper safeguards and requirements are incorporated into any certification so that the adverse impact upon air quality will be minimized and the right and ability of FMM to engage in business activities will be protected.

m. The cement plant of FMM, as required by the DER, is operated with stringent and expensive technological controls to thoroughly protect the environment. Florida Crushed Stone proposes to build and operate a cement plant which would be powered by its proposed generator. FMM has a substantial interest in assuring that Crushed Stone does not unreasonably and unnecessarily degrade the environment by using inadequate technological controls for the purpose of subsidizing its cost of producing cement and gaining a competitive advantage over FMM.

7. The Petitioner contends that the permit should not be issued to Crushed Stone based upon the following disputed issues of material fact:

a. "New Source" as defined by Chapter 17-2.100(104) Florida Administrative Code is "a source which is not in existence, for which an application for a permit to construct has not been submitted before the effective date of _____"

construct its power plant/cement plant from used and new components. Crushed Stone contends that the use of some used components in the construction of the plant exempts the plant from Federal New Source Performance Standards as set forth in 42 U.S.C. §7411 and 7475. Petitioner disputes this and contends the proposed project is a Federal New Source, 42 U.S.C. §7475.

b. In any event, the construction of a new plant at a new location and in a new location and in a new state is new construction and qualifies the proposed plants as "New Sources" as set forth in Chapter 17-2.500(2)(d) 2 F.A.C.

c. "Best Available Control Technology" as defined by Chapter 17-2.100(22) F.A.C. is "an emission limitation standard, based on the maximum degree of reduction of each pollutant emitted which the Department, on a case by case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable through application of production processes and available methods, systems and techniques for control of each pollutant." BACT is intended to be a step toward the attainment of the Ambient Air Quality Standards. The Petitioner contends that the review conducted by the Respondent for the cement plant and power plant proposed by Crushed Stone does not constitute Best Available Technology based upon the following:

i) Petitioner's cement plant, although built 2 years earlier, is of virtually the same size and production capacity as that proposed by Crushed Stone, and is capable of meeting and does meet the Respondent's BACT limitations imposed in 1981 of 3.0 lb. per hour for sulphur dioxide emissions and 31.1 lb. per hour for total particulate matter emissions. Thus if it is incomprehensible that a new up-to-date plant could not do this and therefore, this clearly represents available technology. Yet Crushed Stone's permits, if approved, will allow the emission of 74.3 lb. per hour of sulphur dioxide and 49.5 lb. per hour of particulate matter; and

ii) Currently operating power plants in Florida are capable of meeting and do meet the New Source Performance Standards (NSPS).

could not do this, and therefore, these plants clearly do represent available technology. The contrast with Crushed Stone's requests is striking;

1) The NSPS for sulphur dioxide is 1.2 lb. per million BTU heat input and a 90% reduction in sulphur dioxide emissions, yet Crushed Stone's permits, if approved, will allow the emissions of 1.2 lb. per million BTU heat input and 1200 lb. per hour, maximum 3-hour average when the boiler alone is operated or 1250 lb. per hour, maximum 3-hour average, when the boiler and cement plant operate together. Conspicuously absent is the additional requirement of 90% reduction in sulphur dioxide emissions; and

2) The NSPS for particulates is 0.03 lb. per million BTU heat input yet Crushed Stone's permits, if approved, will permit the emission of 0.10 lb. per million BTU heat input for particulates.

d. Best Available Control Technology requires the Respondent to take into account the economic impacts of their determination in making their decision. The Petitioner contends that this has not been done as Respondent's BACT determination will severely affect the economy of the local area, in general, and the Petitioner, specifically, in the following ways:

i) ~~Due~~ to the proximity of the site to the Class I Chassahowitzka National Wilderness Area, sulphur dioxide emissions are limited by the PSD (Prevention of Significant Deterioration) increment of five (5) micrograms per cubic meter of air. Approval of Crushed Stone's application will use the remainder of this increment and completely preclude the construction of new facilities or the expansion of any existing facilities in the area west and northwest of Brooksville; and

ii) Due to the limitation of the Ambient Air Quality Standards for particulates of 150 micrograms per cubic meter of air on a 24-hour basis and 60 micrograms per cubic meter on an annual basis, approval of Crushed Stone's application will elevate the ambient standard to 149 microgram per cubic meter on a 24 hour basis and 59 micrograms per cubic meter on an annual basis. This brings the area

and produces a virtual ban on any further construction or emissions by anyone.

e. It is apparent that Crushed Stone has merely requested the maximum allowable emissions for sulphur dioxide and total particulates. It is also apparent that the Respondent has merely required Crushed Stone to be just clean enough so as to not violate the Ambient Air Quality Standards. Clearly this is not the maximum degree of reduction and therefore not BACT.

f. The Respondent has failed to consider the use or allocation of the PSD increment;

i) Cogeneration, particularly of the limited extent proposed by Florida Crushed Stone Company (6.5%), cannot, in and of itself, justify the granting of the permit. The air quality standards of the Clean Air Act apply to both cogeneration and electric utility steam generating units; and

ii) Allocation of the PSD increment cannot be justified on the basis of "first-come, first-served". EPA has recommended to the states their adoption of a specific procedure for the allocation of the increment to achieve, on a long term basis, the purposes of the Clean Air Act.

8. The Petitioner contends that the following represents the ultimate facts as alleged and those rules and regulations entitling Petitioner to relief:

a) That construction of Crushed Stone's proposed cement and power plant are new sources as defined in Chapter 17-2.100 (104) F.A.C. and thus must be subject to Best Available Control Technology review of Chapter 17-2.500(5)(c) 1 F.A.C.;

b) That Best Available Control Technology, requires an emission standard which reflects the maximum degree of pollutant reduction achievable through available systems and methods and that Petitioner has demonstrated available systems and methods which are capable of meeting emission levels below those proposed by Crushed Stone. Therefore, that which is proposed by Crushed Stone and that which is proposed to be permitted by the Respondent are not BACT and thus are in conflict with Chapter 17-2.500(5)(a) 1 F.A.C. and in conflict

c) Chapter 17-2.100(22) F.A.C. requires the consideration of economic impacts in the BACT review which Respondent has failed to do; and

d) That Respondent has failed to demonstrate any rationale for their short and long term considerations of use of the PSD increment as required in 40 CFR 51.24.

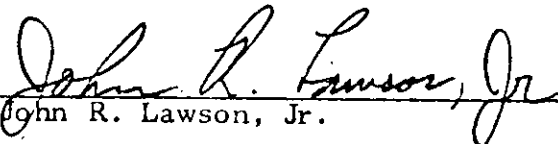
WHEREFORE, Petitioner requests:

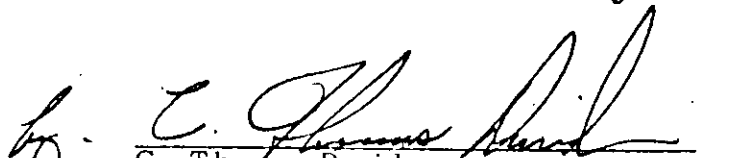
A. That this petition be forwarded to the Division of Administrative Hearings for the assignment of a hearing officer.

B. That a formal proceeding pursuant to §120.57(1), F. S., be convened.

C. That after the issuance of a recommended order, the Respondent issue a final order denying the application for the permit.

Respectfully submitted,


John R. Lawson, Jr.

by: 
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Attorneys for Petitioner
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by United States Mail, to the following individuals on this 9th day of May, 1983:

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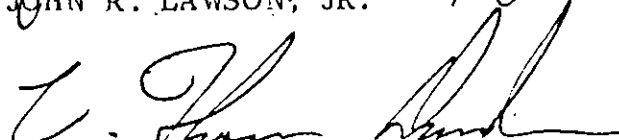
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