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June 10, 1983

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DEPT. OF COUNSEL  
OFFICE OF GENERAL COUNSEL

JUN 10 1983

Dept. of Environmental Regulation  
Office of General Counsel

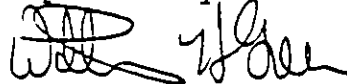
Victoria J. Tschinkel, Secretary  
Florida Department of Environmental Regulation  
c/o Office of General Counsel  
2600 Blair Stone Road  
Tallahassee, Florida 32301

Re: Proposed Permit Nos. 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-27-61038, AC-27-61040, AC-27-61041 and  
AC-27-61042

Dear Madame Tschinkel:

Please find enclosed for filing the original and one copy of the Petition for Formal Administrative Proceedings, filed with regard to the above-referenced proposed permits, in behalf of our client Florida Rock Industries, Inc. These proposed permits pertain to the cement plant portion of a proposed cogeneration facility.

Respectfully submitted,



William H. Green  
Peter C. Cunningham  
Counsel for Florida Rock  
Industries, Inc.

.lsd

Enclosures

cc: Larry Curtin, Esq.

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JUN 10 1983

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL REGULATION Dept. of Environmental Regulation  
Office of General Counsel

|                               |   |                           |
|-------------------------------|---|---------------------------|
| FLORIDA ROCK INDUSTRIES, INC. | ) | State Permit Nos.         |
|                               | ) | AC 27-61012, AC 27-61013, |
| Petitioner,                   | ) | AC 27-61016, AC 27-61017, |
|                               | ) | AC 27-61019, AC 27-61020, |
| vs.                           | ) | AC 27-61021, AC 27-61026, |
|                               | ) | AC 27-61027, AC 27-61030, |
| STATE OF FLORIDA DEPARTMENT   | ) | AC 27-61032, AC 27-61033, |
| OF ENVIRONMENTAL REGULATION   | ) | AC 27-61037, AC 27-61038, |
| and FLORIDA CRUSHED STONE     | ) | AC 27-61040, AC 27-61041, |
| COMPANY,                      | ) | and AC 27-61042.          |
|                               | ) |                           |
| Respondents.                  | ) | CASE NO. _____            |

PETITION FOR FORMAL ADMINISTRATIVE PROCEEDINGS

Petitioner, FLORIDA ROCK INDUSTRIES, INC., by and through undersigned counsel, hereby requests that a formal administrative proceeding under Section 120.57(1), Florida Statutes, be conducted regarding Respondent Department of Environmental Regulation's Notice of Intent to Issue the above listed permits and supporting documentation contained in its "Technical Evaluation and Preliminary Determination" dated May 24, 1983. In support thereof, and pursuant to Florida Administrative Code Chapters 17-1 and 28-5, Petitioner states:

1. Florida Rock Industries, Inc. ("Petitioner") is a Florida corporation engaged in the business of mining, processing and distributing construction aggregates in Florida. Petitioner's business address is:

Florida Rock Industries, Inc.  
Post Office Box 4667  
Jacksonville, Florida 32206

2. The agency affected is:

State of Florida  
Department of Environmental Regulation  
Twin Towers Office Building  
2600 Blair Stone Road  
Tallahassee, Florida 32301

FACTS

3. On May 31, 1983, counsel for Petitioner received a copy of a "Notice of Proposed Agency Action" and various other

plant/cement plant cogeneration facility proposed by Florida Crushed Stone ("Crushed Stone"). The package of documents included a "Technical Evaluation and Preliminary Determination" for State Permit Nos. 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 27-61038, AC 27-61040, AC 27-61041, and AC 27-61042, (and for Federal Permit Nos. PSD-FL-090 and PSD-FL-091 not challenged herein) dated May 24, 1983. In that document, the Department stated that construction of the proposed 1,800 ton per day capacity cement plant and 125 megawatt power plant in Hernando County, near Brooksville, Florida, can be approved and that all applicable State and federal air pollution regulations will be complied with provided that certain specified conditions are met.

4. The permits challenged herein would authorize construction of a cement plant that is to be an integral component of a cogeneration project. The electrical power plant component of the project is the subject of a separate application (Application No. PA 82-17) for site certification now pending under the Florida Electric Power Plant Siting Act, Sections 403.501 et seq., Florida Statutes (Siting Act). The "need for power determination" of the Florida Public Service Commission pursuant to the Siting Act has already been issued. (Exhibit 1) The favorable need determination was based in large part upon the fact that the project utilized cogeneration and thereby furthered the goals of the Florida Energy Efficiency and Conservation Act (Section 366.80, et seq., Florida Statutes). The PSC order specifically found that the proposed cement/power plant combination would produce 6.8% useful thermal energy, based upon the exchange of energy between the power plant and the cement plant. (Id.)

5. The proposed cement kiln (Permit No. AC 27-61026),

device -- a single bag collector. (P. 3.2 of the Preliminary Determination.)

6. The Best Available Control Technology determination for the Crushed Stone cement plant proposed in the Department's Preliminary Determination would allow the following emissions:

particulate matter - 69.3 pounds per hour  
sulfur dioxide - 74.3 pounds per hour  
nitrogen oxides - 359.0 pounds per hour

According to the Department's Technical Evaluation, the proposed cement/power plant cogeneration facility in toto would emit various air pollutants in the following quantities:

particulate matter - 595 tons per year  
sulfur dioxide - 5475 tons per year  
nitrogen oxides - 4598 tons per year  
carbon monoxide - 197 tons per year  
hydrocarbons - 59 tons per year

7. The allowable concentrations of several pollutants in Florida's ambient air are restricted to specified maximum levels by the National and State Ambient Air Quality Standards (AAQS) established in 40 CFR Part 50 and Florida Administrative Code Rule 17-2.300, respectively. These standards were established to protect the public health and welfare. Among the pollutants for which AAQS have been set are particulate matter and sulfur dioxide. In addition, 40 CFR §52.51(c) and Florida Administrative Code Rule 17-2.310 establish maximum increases in the ambient air concentration of those two pollutants that may be allowed over baseline concentrations (PSD increments).

8. Because of the AAQS and PSD increments, the quality of the ambient air must be viewed as a finite natural resource that can accommodate only a limited amount of air pollution. DER's Technical Evaluation indicates that if the Crushed Stone cogeneration facility emits particulate matter and sulfur dioxide at the rates proposed, ambient air concentrations of those pollutants will closely approach certain of the applicable AAQS and PSD increments. In particular, if DER's modeling studies are

portion of the 24-hour Class I PSD increment in the Chassahowitzka National Wilderness Area 20 kilometers west of the proposed site.

SUBSTANTIAL INTERESTS AFFECTED

9. Petitioner owns approximately 3,066 acres of land located approximately six miles north of Brooksville, Florida in Hernando and Citrus Counties. Petitioner also leases approximately 2,427 acres of land contiguous to its property. Petitioner currently mines, processes and stores construction aggregate on the above described property, which is located approximately 3.5 miles from the site of the proposed Crushed Stone facility which is the subject of Permit No. PSD-FL-090.

10. The emission levels established for the cogeneration project in Permit Nos. 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 27-61038, AC 27-61040, AC 27-61041, and AC 27-61042 (and in Federal Permit Nos. PSD-FL-090 and PSD-FL-091) will determine the extent to which Crushed Stone will be allowed to use up the ambient air resource in the vicinity of the proposed cogeneration project, Petitioner's nearby property, and the Chassahowitzka Class I PSD area. If, as proposed, the permits allow the Crushed Stone project to increase ambient air pollutant concentration levels to or near AAQS, or to consume most or all of the PSD increments, further industrial growth in the area will be restricted or effectively precluded. Substantial interests of Petitioner will consequently be determined in this proceeding, because the permits will determine how much of the ambient air resource will remain available to Petitioner and others in the immediate vicinity. Petitioner's ability to expand its business through building a manufacturing or other facility at its Hernando County property will be directly

11. In this regard, it should be noted that on March 25, 1983, General Portland, Inc., filed an application to construct an air pollution source (a cement plant) on property owned by Petitioner, approximately 3.5 miles from the site of the proposed Crushed Stone facility. The ability of General Portland to obtain approval for its proposed cement plant, which would emit both particulate matter and sulfur dioxide, could depend upon whether the emission limits imposed on the Crushed Stone plant provides sufficient "room" to accommodate the General Portland plant. If General Portland's proposed cement plant is approved, substantial quantities of raw materials will be furnished by Petitioner for use in the plant. In addition to the sale of raw material to General Portland, Petitioner will also receive rent from General Portland for the plant site.

12. Regardless of the General Portland application, Petitioner will be substantially affected because the emission limits allowed for the Crushed Stone project will largely determine the extent to which Petitioner would be restricted in making use of its land in Hernando County and may, in fact, cause or contribute to violations of AAQS. Petitioner, therefore, has standing to initiate these proceedings pursuant to Section 120.57(1), Florida Statutes.

13. Petitioner has requested leave to intervene in the separate site certification proceeding involving the power plant portion of the project, and over the objection of Crushed Stone, was admitted as a full party upon the Hearing Officer's finding that Petitioner had sufficiently alleged that its substantial interests would be affected in that proceeding. Petitioner's interests are similarly affected by the proposed agency action challenged herein.

DISPUTED ISSUES OF MATERIAL FACT

14. Petitioner can at this time identify the following

a) Whether the project as proposed to be permitted would cause violations of State and federal AAQS for total suspended particulate matter or sulfur dioxide;

b) Whether the emission limits proposed in the various permits as representing the Best Available Control Technology were established on the basis of the maximum degree of reduction of each pollutant emitted which, taking into account energy, environmental and economic impacts, and other costs, is achievable through application of production processes and available methods, systems and techniques for pollution control, as per Florida Administrative Code Rule 17-2.100(22).

c) Whether the air quality dispersion modeling used by DER to evaluate the impacts of the proposed facility inappropriately excluded meteorological conditions that occurred during the baseline meteorological period;

d) Whether the air quality impact analysis took into account all sources of fugitive dust that would be created by the project.

e) Whether DER properly assessed and evaluated the PSD increment consumption that the proposed facility would cause;

f) Whether DER's analysis of impacts on soils, vegetation, visibility and growth-related air quality impacts was adequate under Florida Administrative Code Rule 17-2.500;

g) Whether the proposed 310 foot height for the cement kiln/power plant flue gas stack is appropriate;

h) Whether construction of the cogeneration project depends upon the approval and construction of both the proposed cement plant and the proposed 125 megawatt steam electric generating plant, which is the subject of current proceedings under the Siting Act.

i) Whether the cement plant is an "associated facility" of a cogeneration project for which a certification

DISPUTED ISSUES OF LAW

15. Whether the Secretary of DER has statutory authority in lieu of the Governor and Cabinet to issue air construction permits for an "associated facility" of a cogeneration project which is the subject of proceedings under the Siting Act.

16. Whether reasonable assurance has been provided that the proposed allowable emissions of the cement plant will comply with the applicable air quality standards and PSD increment provisions of Florida Administrative Code Chapter 17-2.

17. Whether the emission limitations proposed for the facility constitute Best Available Control Technology.

ULTIMATE FACTS ALLEGED

18. Petitioner alleges the following ultimate facts:

(a) The cement plant as proposed to be permitted would cause or contribute to violations of State and federal ambient air quality standards;

(b) The proposed emission limitations do not constitute Best Available Control Technology as that term is used in Florida Administrative Code Rule 17-2.630;

(c) The air quality impacts that the proposed facility would have upon the Chassahowitzka Class I PSD area were improperly evaluated;

(d) The analysis of impacts on soils, vegetation, visibility and growth-related air quality impacts was inadequate;

(e) The cement plant is an associated facility of a cogeneration project pending certification under the Siting Act.

LAW ENTITLING PETITIONER TO RELIEF

19. The law entitling Petitioner to relief includes, but is not limited to, Chapters 120 and 403, Florida Statutes, Titles 17 and 28, Florida Administrative Code, the Constitution



OTHER PERTINENT FACTS

20. Although Petitioner contends that the Secretary of DER does not have jurisdiction to issue the permits described herein, it has raised other issues as a protective measure; however, nothing contained in this petition is intended to waive Petitioner's right to raise these or any other issues in any other appropriate forum or proceeding including the proceeding currently pending under the Siting Act for the cogeneration project.

21. Petitioner has also challenged the propriety of the DER's Preliminary Determination on the proposed federal PSD permits for the cement plant (PSD FL-091) and the power plant (PSD FL-090) by separate petitions filed this date.

22. Petitioner reserves the right to raise or join any additional issues which may become relevant during the course of these proceedings.

REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Department of Environmental Regulation:

- A. Institute formal proceedings pursuant to Section 120.57(1), Florida Statutes;
- B. Grant a formal hearing pursuant to Section 120.57(1), Florida Statutes;
- C. Find that the Secretary of DER has no authority to issue the permits challenged herein; and
- D. Provide such other relief as may be appropriate.

DATED this 10th day of June, 1983.

Respectfully submitted,

HOPPING BOYD GREEN & SAMS

Of Counsel:

John Tolson, General Counsel



William H. Green  
Peter C. Cunningham

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and one copy of the foregoing PETITION FOR FORMAL ADMINISTRATIVE PROCEEDINGS has been filed with Victoria J. Tschinkel, Secretary, Department of Environmental Regulation, 2600 Blair Stone Road, Tallahassee, Florida 32301, and copies furnished to the following by U.S. Mail on this 10th day of June, 1983:

Lawrence N. Curtin, Esquire  
Holland & Knight  
Post Office Drawer BW  
Lakeland, Florida 33802

W. J. Tschinkel

STATE OF FLORIDA  
COUNTY OF HERNANDO

**NOTICE OF PROPOSED AGENCY ACTION**  
The Department of Environmental Regulation gives notice of its intent to issue permits to Florida Crushed Stone Company to construct an air pollutant emitting facility. These permits will give the company partial approval to construct a combined cement plant-power plant facility. This facility will be located near Brooksville in Hernando County, Florida. A best available control technology (BACT) determination was required for emissions of sulfur dioxide (SO2), nitrogen oxides (NOx), particulate matter (PM), and carbon monoxide (CO). A prevention-of-significant-deterioration (PSD) air quality impact analysis was also required for emissions of these pollutants. By authority of the U.S. Environmental Protection Agency (EPA), the Department has also reviewed the proposed construction under federal prevention of significant deterioration regulations (40 CFR 51.21) and has made a preliminary determination that the construction can be approved provided certain conditions are met.

Maximum emissions of pollutants in tons per year from the facility will be as follows:

| Pollutant | Emissions |
|-----------|-----------|
| PM        | 595       |
| SO2       | 5,475     |
| NOx       | 4,598     |
| CO        | 197       |

Emissions from the facility will consume PSD increment but will not violate any state or federal ambient air quality standards. The maximum percent of allowable PSD increment consumed will be as follows:

| Class I Increment | Percent Consumed |
|-------------------|------------------|
| SO2               |                  |
| Three-hour        | 68               |
| 24-hour           | 80               |
| Annual            | 30               |
| PM                |                  |
| 24-hour           | 18               |
| Annual            | 8                |

| Class II Increment | Percent Consumed |
|--------------------|------------------|
| SO2                |                  |
| Three-hour         | 15               |
| 24-hour            | 23               |
| Annual             | 30               |
| PM                 |                  |
| 24-hour            | 76               |
| Annual             | 12               |

Copies of the applications for permits submitted by Florida Crushed Stone Company and a summary of the basis of the Department's proposed action are available for public review in the following locations:

Department of Environmental Regulation  
Southwest District  
7601 Highway 301 North  
Tampa, Florida 33610

Department of Environmental Regulation  
Bureau of Air Quality Management  
2600 Blair Stone Road  
Tallahassee, Florida 32301

Hernando County Public Library  
238 Howell Avenue  
Brooksville, Florida 33512

Any person may send written comments on the proposed action to Mr. Clair Fancy at the Department's Tallahassee address. All comments mailed within 30 days of publication of this notice will be considered in the Department's final determination. Any person who is substantially affected by the Department's proposed permitting decision may request a hearing in accordance with Section 120.57, Florida Statutes, and Florida Administrative Code Rules 17-1 and 28-5. The request for hearing must be filed (received) in the Office of General Counsel of the Department at 2600 Blair Stone Road, Tallahassee, Florida 32301, within fourteen (14) days of publication of this notice. Failure to file a request for hearing within this time period shall constitute a waiver of any right such person may have to request a hearing under Section 120.57, Florida Statutes.

This notice and opportunity to request a hearing applies to the Department's proposed approval of the cement plant portion of the facility and EPA's proposed approval of the combined cement plant-power plant facility. The Department's proposed action on the power plant portion of the facility is the subject of a separate notice to be published pursuant to the Power Plant Siting Act.

On this day personally appeared before me Harlan H. Phillips to me well-known, who by me being first duly sworn, deposes and says that he is the General Manager/Editor of The Sun-Journal, published in the City of Brooksville, the County of Hernando, and the State of Florida; that said newspaper has been continuously published in Hernando County, Florida, at least once a week and also has been entered as second-class matter at the Post Office in the City of Brooksville, Hernando County, Florida, for a period of one year next preceding the first insertion of the attached legal notice of process; that said newspaper has been published in accordance with Chapter 14830, General Laws of Florida, and all provisions of said Statute have been complied with; that the attached legal notice of process was published in said newspaper once each week for a period of

ONE weeks, to-wit: in the issues of said newspaper on

MAY 27, 1983

*Harlan H. Phillips*

Harlan H. Phillips, General Manager/Editor, The Sun-Journal

I came to and subscribed before me this 27<sup>TH</sup> day of MAY, 1983 A.D.

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXPIRES AUG 6 1986  
BONDED THRU GENERAL INS., UNDERWRITERS

BY: *Janet Schlotter*  
Notary Public

Filed 19 at ..... O'clock ..... M. and Recorded in .....  
Book No ..... Page .....

Record Verified .....

Clerk, ..... Court, Hernando County, Fla.

By ..... D.C.

DER

JUN 07 1983

BAQM