



Office of
**MANATEE COUNTY
ATTORNEY**

• Board Certified City, County & Local Government Law
• Board Certified Civil Trial

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FAX TRANSMISSION COVER SHEET

Date: December 22, 1997
To: Richard W. Moore, Esq.
Fax: (904) 425-2447
Re: Manatee County v. Piney Point Phosphates, Inc.
Sender: Jeffrey N. Steinsnyder, Senior Assistant County Attorney

YOU SHOULD RECEIVE 28 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL TAMMY AT (941) 745-3750.

1112 Manatee Avenue West, Suite 969, P.O. Box 1000
Bradenton, Florida 34206
(941) 745-3750 • FAX (941) 749-3089

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Piney Point Phosphates, Inc. ("Piney Point"), and Manatee County ("County") on this 18th day of December, 1997.

Recitals

WHEREAS:

A. Piney Point owns a fertilizer manufacturing facility ("Facility") that is located in Manatee County, Florida. The Facility includes an existing sulfuric acid plant ("Existing Plant"), a diammonium phosphate plant ("DAP Plant"), and other related structures and processes.

B. Piney Point is preparing to resume commercial operation at the Existing Plant and the Facility. Piney Point also wants to build and operate a new sulfuric acid plant ("New Plant") at the Facility.

C. Manatee County is a political subdivision of the State of Florida. The County is governed by a Board of County Commissioners ("Board").

D. Piney Point and Manatee County want to ensure that Piney Point's activities at the Facility are conducted in compliance with all applicable laws, especially those laws that are designed to protect human health and the environment. Piney Point and Manatee County want the Facility to be operated in a

manner that is protective of the environment, the residents of Manatee County, and Piney Point's employees.

E. Piney Point and Manatee County now want to resolve their differences, without further litigation.

THEREFORE, in consideration of the promises and covenants contained herein, Piney Point and Manatee County agree that they shall comply with and be bound by the terms and conditions of this Settlement Agreement, as set forth below:

Restart of Existing Plant

1. Piney Point has filed an application with the Florida Department of Environmental Protection ("DEP" or "Department") for a construction permit to modify and restart the Existing Plant. Upon execution of this Agreement by the Board, Piney Point shall request the Department to issue a construction permit ("the Permit") for the Existing Plant, consistent with this Agreement, as follows:

(a) The sulfur dioxide emissions limit in the Permit shall be reduced by 12.5% to 3.5 pounds of sulfur dioxide per ton of 100% sulfuric acid produced or 291.7 pounds of sulfur dioxide per hour, whichever is less. Compliance with this emission limit shall be determined by using a 48-hour rolling average. Three hour averages shall not exceed 4.0 pounds of sulfur dioxide per ton of 100% sulfuric acid produced. These emissions limits may be exceeded only under the conditions provided in DEP Rule 62-

210.700, Florida Administrative Code ("F.A.C."). Exceedances that meet the requirements of DEP Rule 62-210.700, F.A.C., and are caused by temporary operational upsets, plant start-ups or other conditions, shall not be used when calculating the 48-hour rolling average or three hour average.

(b) Compliance with the sulfur dioxide emission limits shall be demonstrated by using the data collected with a continuous emissions monitoring system (CEMS). The CEMS equipment shall be installed, calibrated, certified, maintained, operated and used in accordance with 40 C.F.R. 60, Appendices B and F. Unless the CEMS is inoperable, the CEMS shall be operated and shall record sulfur dioxide emissions data during all operating hours, including periods of start-up, shut-down, load change, and malfunction.

(c) Piney Point shall install cesium-promoted catalyst in the final pass of the Existing Plant (approximately 115,000 liters). The cesium-promoted catalyst shall be used for at least one turnaround cycle, or approximately two years, whichever is longer.

(d) High efficiency mist eliminators shall be installed, maintained and operated at the Existing Plant.

(e) The provisions of the Memorandum of Understanding issued by the DEP on November 21, 1989 shall be added to the Operating Permit as permit conditions. A copy of DEP's Memorandum of Understanding is attached hereto as Exhibit "A".

(f) Each calendar quarter Piney Point shall provide Manatee County with copies of all of the: (i) compliance calculation worksheets for the sulfur dioxide emissions from the Existing Plant; (ii) the hourly CEMS data; and (iii) supporting information necessary to demonstrate compliance with the emissions limitations in the Permit.

(g) The other conditions of the Permit do not need to be changed, unless changes are necessary to make the Permit consistent with the requirements of this Agreement.

2. Manatee County shall not object to the issuance of the Permit, provided the Permit is consistent with the provisions of this Agreement.

3. If DEP issues a Permit that is consistent with the provisions of this Agreement, Manatee County promptly shall withdraw its verified complaint against DEP.

4. Subject to the other provisions of this Agreement, Manatee County shall not object to the repair and restart of the Existing Plant, provided that: (a) DEP issues a Permit that is consistent with the provisions of this Agreement; (b) the repairs do not increase the capacity of the Existing Plant to levels that are greater than 2,000 tons per day of 100% sulfuric acid; (c) the repairs do not increase the emissions from the Existing Plant to levels that are greater than the limits set forth in Paragraph 1, above; (d) Piney Point uses its best efforts to ensure that the Facility is fully and completely repaired, in accordance with the best practices of the industry, to provide safe and reliable

operations in the future; (e) Piney Point complies with any County ordinances (e.g., building codes) that are applicable to the repair and restart of the Existing Plant; and (f) Piney Point fully complies with all of the provisions of this Agreement.

BACT Determination and Permit Conditions for New Plant

5. Piney Point has submitted an application to DEP for a permit to construct the New Plant ("Construction Permit") and DEP has prepared a draft Construction Permit (DEP Permit No. AC41-173305; PSD-FL-144).

6. The Best Available Control Technology ("BACT") determination for the New Plant shall be based upon a comprehensive BACT analysis, which shall be performed by Piney Point in accordance with current U.S. Environmental Protection Agency ("EPA") guidance and in consultation with the County. The BACT determination for the New Plant shall consider information generated from the operation of the Existing Plant, including data on the performance of the cesium catalyst, and shall be subject to approval by DEP.

7. Piney Point shall ask DEP to set the emissions limit for sulfur dioxide emissions from the New Plant at a level no greater than 3.5 pounds per ton of acid produced.

8. Piney Point shall use high efficiency mist eliminators or better technology to reduce the New Plant's emissions of sulfuric acid mist.

9. After Piney Point and Manatee County sign this Agreement, Piney Point and Manatee County promptly shall request the Administrative Law Judge to hold DOAH Case No. 95-5795 in abeyance while Piney Point and Manatee County attempt to resolve their mutual concerns about the BACT determination and the proposed permit conditions for the New Plant.

10. If Manatee County concurs with the BACT determination and the proposed conditions in DEP's draft Construction Permit for the New Plant, Manatee County shall not object to the issuance of the Construction Permit and shall voluntarily dismiss the County's petition in DOAH Case No. 95-5796.

11. Piney Point shall permanently shut down and cease operating the Existing Plant when the New Plant commences commercial operations.

Safety Programs

12. Piney Point shall use its best efforts to protect the safety of its employees and the residents of Manatee County. Piney Point shall comply with all of the local, state and federal safety regulations that are applicable to Piney Point's activities at the Facility.

13. Piney Point already has established the safety programs that are described in Exhibit "B", which is attached hereto and incorporated herein by reference. Piney Point shall continue to implement and improve its existing safety programs for the

Facility. Piney Point shall accelerate the implementation of the safety programs that are required by this Agreement.

14. Piney Point shall implement a Risk Management Program that complies with the regulations established by the United States Environmental Protection Agency ("EPA") in 40 C.F.R. Part 68, when Piney Point resumes operations of the Facility. The processes at the Existing Plant and Facility must comply with the requirements in 40 C.F.R. Part 68 for Program 3.

15. Before Piney Point resumes operations at the Facility, Piney Point shall meet with representatives of Manatee County's emergency response and emergency services department to discuss Piney Point's plans for complying with the EPA regulations in 40 C.F.R. Part 68. If the County's representatives recommend the installation of a public alarm system around the perimeter of Piney Point's Facility, then Piney Point will work diligently to comply promptly with the County's recommendation. Any such alarm shall be under the exclusive control of Piney Point.

16. Some of the EPA requirements in 40 C.F.R. Part 68 are being challenged in pending litigation. If the validity of the EPA requirements has not been conclusively established before Piney Point performs its "Worst case Risk Analysis" and "Alternative Risk Analyses" for the Facility, Piney Point may use the best information that is available to Piney Point at that time, even if Piney Point's approach is not consistent with the requirements of 40 C.F.R. Part 68. Piney Point shall modify its

analyses, if necessary, to comply with the EPA regulations in effect after the EPA litigation is completed.

17. Piney Point shall inspect and maintain the mechanical integrity of the Facility's equipment in accordance with the applicable provisions of the EPA regulations contained in 40 C.F.R. Part 68. In addition, Piney Point will inspect and maintain the mechanical integrity of the Facility's equipment in accordance with the best management practices required under all applicable federal, state and local regulations. These inspections shall be performed daily, weekly, monthly, quarterly and annually, as required under the applicable regulations. All inspections shall be performed by qualified personnel. Any deficiencies in the Facility's equipment shall be corrected immediately to ensure the safe operations of the Facility.

Inspections by Manatee County

18. To assure Manatee County that Piney Point is complying with all of the applicable safety and environmental regulations, Piney Point agrees to the following conditions:

(a) Manatee County's building inspectors shall have access to the Facility to confirm that the Facility is in compliance with the County's Building and Technical Codes and applicable ordinances. Manatee County shall provide reasonable notice to Piney Point before Manatee County's building inspectors visit the Facility.

(b) Manatee County's environmental compliance officials shall have access to the Facility to confirm that the Facility is in compliance with the applicable environmental laws and regulations. Manatee County shall provide reasonable notice to Piney Point before Manatee County's environmental compliance officials visit the Facility.

(c) Manatee County shall be advised by Piney Point as soon as Piney Point has knowledge of any scheduled or unscheduled visit by a representative of DEP, EPA, or the Occupational Safety and Health Administration ("OSHA"). Manatee County recognizes that Piney Point cannot control the timing of inspections by DEP, EPA or OSHA.

(d) Whenever the Facility is visited by DEP, EPA or OSHA, Manatee County shall be allowed to have one or two qualified observers accompany the agency inspectors during their visit to the Facility.

(e) Manatee County shall provide Piney Point with a list of the County representatives that are qualified to attend the inspections by DEP, EPA or OSHA. The County may update the list from time-to-time, as necessary. Unless requested by the inspecting agency, no other persons or County representatives are authorized by this Agreement to accompany the agencies during their inspections to the Facility.

(f) Whenever a representative of Manatee County visits the Facility, the County's representative shall comply with Piney Point's safety regulations and shall follow all reasonable

instructions provided by Piney Point while on Piney Point's property. Piney Point shall provide a copy of its safety regulations to the County so that the County's representatives may review the safety regulations before visiting the Facility.

(g) Piney Point and Manatee County promptly shall provide each other with any report, test result or other information that is received from any agency concerning an inspection of the Facility.

(h) If Manatee County wishes to collect any samples at the Facility, Manatee County shall split the samples with Piney Point, if requested, and promptly shall provide Piney Point with the results of any tests performed on the samples.

(i) During inspections of the Facility, Manatee County's representatives shall notify Piney Point's escort before they take any photographs of the Facility. In this fashion, the County's representative shall give Piney Point's representative an opportunity to view the conditions or area at the Facility that is the subject of the photograph. If Manatee County takes any photograph of the Facility, Manatee County promptly shall provide a copy of the photograph to Piney Point. However, Manatee County shall not take photographs of any equipment or processes reasonably designated by Piney Point as proprietary and confidential. Photographs shall be taken only for authorized regulatory purposes.

(j) Piney Point and Manatee County shall work together in a cooperative manner to ensure and confirm that Piney Point is

complying with all local, state, and federal regulations. If requested, Piney Point shall provide a tour of the Facility once each year for the Board of County Commissioners or the Board's designees.

Reporting to Manatee County

19. Piney Point shall provide Manatee County with a copy of any report or document that Piney Point is required to provide to any state or federal agency, (unless such documents are confidential under state or federal law), including but not limited to: (a) routine reports to DEP or EPA concerning the Facility's stack tests, air emissions, surface water discharges, or other discharges; (b) reports concerning excess emissions, upset conditions or emergencies at the Facility; (c) reports and other information that are required under the provisions of 40 C.F.R. Part 68 or Paragraph 14, above; and (d) reports or other information that must be submitted to DEP pursuant to Paragraph 1, above. These reports and other materials shall be provided to Manatee County at the same time that they are provided to the state or federal agency. Should Piney Point determine that a report or portion thereof is confidential, Piney Point shall take steps to redact the confidential information, or if this is not possible, notify the County of the report and Piney Point's reasons for not providing it to the County. These reports and other materials shall be submitted to the Director of the Manatee

County Department of Environmental Management, P. O. Box 1000,
Bradenton, Florida 34206-1000.

20. Piney Point immediately shall notify Manatee County if there is an accident, malfunction or other event at the Facility that poses a threat to human health or the environment in the areas located adjacent to Piney Point's Facility. Manatee County recognizes that, under such circumstances, Piney Point may be required by law to provide notice to certain local, state, or federal agencies before Piney Point provides notice to Manatee County. Minor exceedances authorized under DEP Rule 62-210.700, F.A.C., are not subject to the notification requirements contained in this paragraph.

Land Use and Zoning

21. In the past, Piney Point's predecessor obtained zoning, land use and other approvals from Manatee County for the construction and operation of the Existing Plant. More recently, Piney Point provided Manatee County with preliminary plot plans and other documents which identify the repairs and maintenance improvements that will be made to the Existing Plant before Piney Point resumes operations of the Facility. Within 30 days after the effective date of this Agreement, Piney Point shall revise and update the plan for the Existing Plant to show the proposed repairs and maintenance improvements, consistent with the preliminary plans provided to Manatee County, and shall submit the revised plan to Manatee County for its records.

Thereafter, the revised plan shall be used and enforced by the County when processing Piney Point's applications for building permits for the proposed repairs and improvements to the Existing Plant.

22. Piney Point's plans to construct and operate the New Plant shall be subject to review and approval by Manatee County in accordance with the applicable provisions of the County ordinances in effect at the time such plans are submitted to the County.

23. If Piney Point proposes changes to the revised plan for the Existing Plant or if Piney Point proposes changes to the plan for the Facility, and such changes would be subject to review and approval by Manatee County under the applicable provisions of the County's ordinances, then Piney Point shall comply with the applicable County ordinances in effect at the time the plans for such changes are submitted to the County.

Pending Appeal

24. Piney Point has filed an appeal of DEP's final order regarding Piney Point's plan to restart the Existing Plant. Promptly after the execution of this Agreement by Manatee County and Piney Point, Manatee County and Piney Point shall file a joint motion requesting the District Court of Appeal to abate the appeal (DCA Case No. 97-3828) until DEP takes final agency action concerning Piney Point's application for the Permit authorizing the modification and restart of the Existing Plant. If DEP

issues the Permit with conditions and limitations that are consistent with the terms of this Agreement, Piney Point shall dismiss the appeal in DCA Case No. 97-3828 at such time as the Permit is final and unappealable.

Miscellaneous

25. This Agreement shall become effective when it is approved by the Board of County Commissioners at a duly noticed meeting and signed by the Board's Chairperson.

26. This Agreement constitutes the entire agreement and understanding of the parties as to all matters addressed or referred to herein. This Agreement supersedes all prior and contemporaneous agreements, understandings, representations, and warranties, whether oral or written, relating to such matters.

27. This Agreement may be amended only by a written instrument specifically referring to this Agreement and executed with the same formalities as this Agreement.

28. This Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and assigns.

29. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any action to interpret or enforce this Agreement shall be brought and maintained in the State of Florida. Venue shall be in Manatee County, Florida.

30. Except as otherwise specifically provided in this Agreement, the parties retain all of their rights and remedies at

law and in equity, including but not limited to their right to obtain specific performance and injunctive relief to enforce the terms of this Agreement. If either party commences an action or proceeding to enforce the provisions of this Agreement, the court in its discretion may award reasonable attorneys' fees and costs to the prevailing party.

31. By executing this Agreement, Manatee County and Piney Point permanently release, waive and discharge (collectively "release") any and all claims, causes of action, and damages (collectively "claims"), known or unknown, that either party may have against the other, provided such claims are based upon or arise from facts, events or actions occurring prior to the effective date of this Agreement, and concern or relate to the permits or approvals needed for the commencement of operations at the Existing Plant or New Plant. For the purposes of the release contained in this paragraph, "Manatee County" and "Piney Point" are defined broadly to include the parties and their officers, elected officials, employees, consultants, attorneys, and all other agents serving for or on behalf of the parties, individually and collectively. For the purposes of this release, "claims" shall include but not be limited to those causes of action that are based upon a temporary or permanent taking of property rights, or violations of equal protection, or violations of civil rights.

32. Except as provided in Paragraph 30, above, Manatee County and Piney Point each shall pay all of their own costs,

fees and expenses (collectively "Costs"), including but not limited to those Costs that: (a) have been incurred in DOAH Case No. 95-5795 or are associated with the New Plant; (b) have been incurred as a result of the parties' disagreement about the legal requirements governing the restart and operation of the Facility; and (c) are incurred in the future when the parties perform their respective obligations under this Agreement.

33. No delay or failure to exercise a right under this Agreement shall impair such right or be construed to be a waiver thereof, but such right may be exercised from time to time and as often as deemed expedient. The failure of Piney Point or the County at any time to require performance by the other party of any term in this Agreement shall in no way affect the right of Piney Point or the County thereafter to enforce same; nor shall waiver by Piney Point or the County of any breach of any term of this Agreement be taken or held to be a waiver of any succeeding breach of such term or as a waiver of any term itself. To be effective, any waiver must be in writing and signed by the party granting the waiver. Any waiver shall be limited to the particular right so waived and shall not be deemed to waive any other right under this Agreement.

34. Piney Point represents that: (a) it is a corporation duly organized under the laws of the State of Florida or qualified to do business in the State of Florida; (b) this Agreement has been duly authorized, executed and delivered in the

State of Florida; and (c) Piney Point has the ability and authority to perform its obligations under this Agreement.

35. It is agreed between the parties hereto that no provision of this Agreement is intended to create any third-party beneficiaries hereunder, or to authorize anyone not a party to this Agreement to maintain an action pursuant to the terms or provisions of this Agreement.

36. If any provision of this Agreement is held to be void or invalid by a court of competent jurisdiction, that provision shall be deemed severable from the remainder of the Agreement and shall not affect any other provision of this Agreement. If a provision of this Agreement is deemed invalid due to its scope or breadth, that provision shall be enforced and deemed valid within the scope or breadth permitted by law.

IN WITNESS WHEREOF, this Agreement has been duly executed by Piney Point Phosphates, Inc., and Manatee County on the dates set forth below.

PINEY POINT PHOSPHATES, INC.

By: *Robert C. Stewart*
Robert C. Stewart
Senior Vice President

Signed, sealed and delivered in the presence of:

Howard S. Harrison
Witness Signature

Robert S. Bolt
Witness Signature

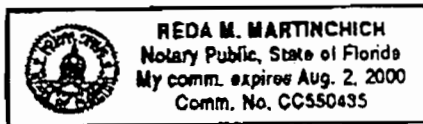
Howard S. Harrison
Print Witness Name

Robert S. Bolt
Print Witness Name

STATE OF FLORIDA
COUNTY OF

The foregoing Settlement Agreement was acknowledged before me this 17th day of December, 1997, by Robert C. Stewart, as the Senior Vice President of Piney Point Phosphates, Inc., on behalf of the corporation. He/~~She~~ is personally known to me or has produced _____ as identification.

Reda M. Martinich
Notary Public - State of Florida



Print Name: Reda M. Martinich
Commission Number: CC550435
Commission Expiration Date: 8/2/2000

MANATEE COUNTY BOARD OF COUNTY COMMISSIONERS

By: Patricia M. Glass
Patricia Glass, Chair
Board of County Commissioners

ATTEST:

Dated: December 18, 1997

R. B. Shore, Clerk of Court

By: Jerry L. Juma,
Deputy Clerk,

C:\WPDOCS\SETTLMT2.AGT

EXHIBIT "A" TO SETTLEMENT AGREEMENT
BETWEEN PINEY POINT PHOSPHATES, INC.
AND MANATEE COUNTY

Best Operational Start-Up Practices
For Sulfuric Acid Plants

BEST OPERATIONAL START-UP PRACTICES
FOR SULFURIC ACID PLANTS

1. Only one sulfuric acid plant at a facility should be started up and burning sulfur at a time. There are times when it will be acceptable for more than one sulfuric acid plant to be in the start-up mode at the same time, provided the following condition is met. It is not acceptable to initiate sulfur burning at one sulfuric acid plant when another plant at the same facility is emitting SO₂ at a rate in excess of the emission limits imposed by the permit or rule, as determined by the CEMS emission rates for the immediately preceding 20 minutes.

2. A plant start-up must be at the lowest practicable operating rate, not to exceed 70 percent of the designated operating rate, until the SO₂ monitor indicates compliance. Because production rate is difficult to measure during start-up, if a more appropriate indicator (such as blower pressure, furnace temperature, gas strength, blower speed, number of sulfur guns operating, etc.) can be documented, tested and validated, the Department will accept this in lieu of directly documenting the operating rate. Implementation requires the development of a suitable list of surrogate parameters to demonstrate and document the reduced operating rate on a plant-by-plant basis. Documentation that the plant is conducting start-up at the reduced rate is the responsibility of the owner or operator.

3. Sulfuric acid plants are authorized to emit excess emissions from start-up for a period of three consecutive hours provided best operational practices, in accordance with this agreement, to minimize emissions are followed. No plant shall be operated (with sulfur as fuel) out of compliance for more than three consecutive hours. Thereafter, the plant shall be shut down. The plant shall be shut down (cease burning sulfur) if, as indicated by the continuous emission monitoring system, the plant is not in compliance within three hours of start-up. Restart may occur as soon as practicable following any needed repairs or adjustments, provided the corrective action is taken and properly documented.

4. Cold Start-Up Procedures.

a. Converter.

(1) The inlet and outlet temperature at the first two masses of catalyst shall be sufficiently high to provide immediate ignition when SO₂ enters the masses. In no event shall the inlet temperature to the first mass be less than 800°F or the outlet temperature to the first two masses be less than 700°F.

These temperatures are the desired temperatures at the time the use of auxilliary fuel is terminated.

(2) The gas stream entering the converter shall contain SO_2 at a level less than normal, and sufficiently low to promote catalytic conversion to SO_3 .

b. Absorbing Towers.

The concentration, temperature and flow of circulating acid shall be as near to normal conditions as reasonably can be achieved. In no event shall the concentration be less than 96 percent H_2SO_4 .

5. Warm Restart.

a. Converter.

The inlet and outlet temperatures of the first two catalyst masses should be sufficiently high to ensure conversion. One of the following three conditions must be met:

(1) The first two catalyst masses inlet and outlet temperatures must be at a minimum of 700°F ; or

(2) Two of the four inlet and outlet temperatures must be greater than or equal to 800°F ; or

(3) The inlet temperature of the first catalyst must be greater than or equal to 600°F and the outlet temperature greater than or equal to 800°F . Also, the inlet and outlet temperatures of the second catalyst must be greater than or equal to 700°F .

Failure to meet one of the above conditions, requires use of cold start-up procedures.

To allow for technological improvements or individual plant conditions, alternative conditions will be considered by the Department in appropriate cases.

b. Absorbing Towers.

The concentration, temperature and flow of circulating acid shall be as near to normal conditions as reasonably can be achieved. In no event shall the concentration be less than 96 percent H_2SO_4 .

EXHIBIT "B" TO SETTLEMENT AGREEMENT
BETWEEN PINEY POINT PHOSPHATES, INC.
AND MANATEE COUNTY

Safety Program for Piney Point Phosphates, Inc.

SAFETY PROGRAM FOR PINEY POINT
PHOSPHATES, INC.

This document describes the safety program that is used by Piney Point Phosphates, Inc., at its fertilizer manufacturing facility in Manatee County, Florida. This document supplements the provisions of the Settlement Agreement dated December 18, 1997 between Piney Point Phosphates, Inc., and Manatee County.

1. Piney Point shall have a professionally trained Safety Superintendent who shall be primarily responsible for Piney Point's safety policies and training programs at the Facility. The Safety Superintendent shall report to Piney Point's Safety Director, who in turn shall report to the Senior Management (e.g., Senior Vice President) of the Company. The Safety Department shall have appropriate authority over safety issues at the Facility. The Safety Department and Piney Point's Senior Management shall work together closely to ensure that Piney Point's Safety Policy is followed at all times.
2. Piney Point shall appoint an in-house Safety Committee that shall meet at least once each month to discuss safety issues affecting the Facility. At a minimum, the Safety Committee shall include members selected from the various operating departments within the Company. The Safety Committee shall be under the direction of the Safety Superintendent and shall perform the following tasks:
 - a. The Committee shall perform announced and unannounced inspections of the Facility to ensure that the facility is in compliance with all applicable safety laws and regulations, as well as company requirements and best management practices concerning safety;
 - b. The Committee shall plan, develop and present formal training programs for each employee on a monthly basis;
 - c. The Safety Committee shall oversee bi-weekly safety meetings between Piney Point's employees and their direct supervisors; and
 - d. The Safety Committee shall respond to the Company's Senior Management each month about the Company's safety program. The committee will present recommendations for improvements of any potential problems or shortcomings of these programs and recommend any corrective actions needed.

3. The Safety Superintendent and the Safety Committee shall thoroughly investigate every accident, injury and near miss that occurs at the Facility. For such events, a report shall be presented to Piney Point's management concerning the event, the probable cause of the event, and the appropriate response or remedy by Piney Point.
4. All of Piney Point's employees and outside contractors shall have training and experience appropriate for their job responsibilities. As applicable, the Company's employees and contractors shall be trained in the following areas:
 - The operation of forklifts, payloaders, cranes, Highreach cranes, Gantry cranes and other mobile equipment'
 - How to comply with Scaffolding Standards;
 - Control of Hazardous Energy Lockout and Tagout procedures (e.g., steam, electricity, liquids, etc.);
 - How to comply with Confined Spaces Permit Entry (e.g., tanks and vessels);
 - The operation of hand tools, power tools, and other hand-held equipment;
 - The use of personal protective equipment, including hard hats, eye protection, hand protection, acid suits, face shields, goggles, respirators, and hearing protection;
 - Hazard Communication and D.O.T. Requirements;
 - Welding and Burning Standards;
 - Fire Protection Standards;
 - Electrical Standards;
 - Walking and Working Surfaces Standards (e.g., platforms, ladders, etc., as to use, construction and location);
 - Machinery and Machine Guarding Requirements;
 - Line Breaking Procedure and Permitting;
 - First Aid/C.P.R. and Bloodborne Pathogen Training (Hepatitis & AIDS exposure prevention);

- Fall Protection Standards;
 - Evacuation and Trenching Standards;
 - Hazard Incident training;
 - Radioactive Materials training;
5. Piney Point shall comply with all OSHA Process Safety Management Requirements for Highly Hazardous Chemicals, including the requirements concerning:
- Employee Participation;
 - Process Safety Information;
 - Operating Procedures;
 - Process Hazard Analysis;
 - Training/Refresher Training;
 - Contractor Training (including general and site specific training);
 - Pre-Startup Safety Review;
 - Mechanical Integrity (tank and equipment testing);
 - Hot Work Permit;
 - Management of Change (in any process or material of construction);
 - Incident Investigation;
 - Emergency Planning and Response;
 - Compliance Audits;
 - Control of Contractors' Entrance and Exit of Facility
6. When hiring new employees at the Facility, Piney Point shall consider the person's awareness of and knowledge about safety and environmental issues, together with the person's work skills.
7. With regard to each new employee, Piney Point shall:
- a. Perform a complete physical examination of the individual;

- b. Perform drug testing or screening for substance abuse;
 - c. Ensure that the person has received at least 8 hours of basic safety training; and
 - d. When appropriate, provide up to 1 week of additional training in the specific areas of the individual's job responsibilities.
8. The Company shall solicit safety suggestions from its employees and provide appropriate awards for those suggestions that materially benefit the Company's Safety Program. Each safety suggestion shall be evaluated by the Company's Safety Committee.

C:\WPDOCS\MAN66

STATE OF FLORIDA, COUNTY OF MANATEE

This is to certify that the foregoing is a true and correct copy of the documents on file in my office.

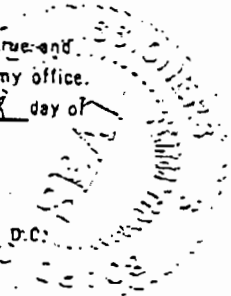
Witness my hand and official seal this 28 day of

December 1997

R. B. SHORE

Clerk of Circuit Court

By: Jane Leah





DEPARTMENT OF
ENVIRONMENTAL PROTECTION

DEC 20 1996

JOHN R. COPY

MANATEE COUNTY
OFFICE OF THE COUNTY ATTORNEY

*Board Certified City, County and Local Government Law
†Board Certified Civil Trial

H. Hamilton Rice, Jr., County Attorney *†
Tedd N. Williams, Chief Assistant County Attorney
Paul G. Bangel, Senior Assistant County Attorney
Mark P. Barnebey, Senior Assistant County Attorney *
William C. Henry, Senior Assistant County Attorney for Risk Management
Patricia McVoy, Senior Assistant County Attorney *
Mitchell O. Palmer, Senior Assistant County Attorney
Jeffrey N. Steinsnyder, Senior Assistant County Attorney *

December 16, 1996

Hamilton S. Oven, Plant
Siting Coordinator
Department of Environmental Protection
2600 Blainstone Road, MS-48
Tallahassee, Florida 32399-2400

Re: Manatee County Air Pollution Control Code
CAO File No. 2041-010

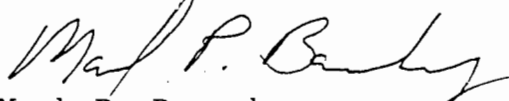
Dear Buck:

Pursuant to your request, enclosed is a copy of Ordinance No. 96-22, Manatee County Air Pollution Control Code. I have also enclosed a copy of Ordinance No. 96-51 which amended this Code. As the Code is currently written, the most significant portions of the Code are found in Section V.D relating to the burning of fuel containing more than 1% sulfur. However, it should be noted that this is a re-adoption of the standard that had been in effect for many years in Manatee County.

If you have any questions regarding this matter, please do not hesitate to contact either Jeff Steinsnyder or me at Suncom 527-3750.

Thank you again for your assistance in dealing with the power plant siting process.

Sincerely,


Mark P. Barnebey
Senior Assistant County Attorney

MPB:mh
Enclosure

cc: H. Hamilton Rice, Jr., County Attorney
Jeffrey N. Steinsnyder, Assistant County Attorney

ADOPTED: 11/05/96
FILED W/STATE: 11/06/96
EFFECTIVE: 11/05/96

RECEIVED
NOV 15 1996
COUNTY ATTORNEY

ORDINANCE 96-51

AN ORDINANCE OF MANATEE COUNTY, FLORIDA, AMENDING ORDINANCE NO. 96-22, THE AIR POLLUTION CONTROL CODE, TO REPEAL SECTION XI PROVIDING SPECIFIC PERFORMANCE STANDARDS AND RENUMBERING SECTIONS XII THROUGH XIX; AND PROVIDING FOR AN EFFECTIVE DATE.

SECRETARY OF STATE

Nov 6 12 30 PM '96

FILED

FILED FOR RECORD
R.B. SHORE
CLERK OF CIRCUIT COURT
MANATEE COUNTY, FLORIDA
Nov 12 8 50 AM '96

WHEREAS, the Board of County Commissioners of Manatee County, Florida (hereinafter "Board"), a political subdivision of the State of Florida, has the authority under Section 125.01(1)(j), Florida Statutes, to establish and administer programs for air pollution control; and

WHEREAS, it continues to be the intent of the Board to provide for the protection and enhancement of the air quality of Manatee County in order to protect human health and safety and to prevent injury to plants and animal life and to property; to foster the comfort and convenience of the citizens of Manatee County; to promote the economic and social development of this County; and to facilitate the enjoyment of the natural attractions of this County; and

WHEREAS, on October 22, 1996, the Board of County Commissioners held a public hearing and adopted Ordinance 96-22, the Air Pollution Control Code; and

WHEREAS, on October 29, 1996, the Board was informed that several major industries within Manatee County could not meet the Specific Performance Standards adopted as Section XI of the Ordinance; and

WHEREAS, on November 5, 1996, the Board adopted Resolution 96-274, declaring an emergency exists which permits the adoption of this Ordinance with less than ten days notice to the public; and

WHEREAS, the requirements for adopting an ordinance on an emergency basis pursuant to Section 125.66(3), Florida Statutes, have been followed by the Board; and

WHEREAS, the Board has directed the Specific Performance Standards to be referred to a technical advisory committee for review.

NOW, THEREFORE, be it ordained by the Board of County Commissioners of Manatee County, Florida as follows:

SECTION I.

Section XI. Specific Performance Standards are hereby repealed in its entirety. Section XII through XIX shall be renumbered accordingly.

SECTION II. Effective Date.

This Ordinance shall take effect upon acceptance by the Postal Authorities of the Government of the United States for special delivery by certified mail to the Department of State.

PASSED AND DULY ADOPTED, WITH A QUORUM PRESENT AND VOTING, BY THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, this, the 5 day of November, 1996.

BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA

BY: [Signature]
Chairman

ATTEST

[Signature] deputy clerk
R.B. SHORE, III
Clerk of the Circuit Court

STATE OF FLORIDA, COUNTY OF MANATEE
This is to certify that the foregoing is a true and correct copy of the documents on file in my office.
Witness my hand and official seal this 5th day of November, 1996.
R. B. SHORE
Clerk of Circuit Court
By: [Signature] D.C.

RESOLUTION 96-274

A RESOLUTION OF THE MANATEE COUNTY BOARD OF COUNTY COMMISSIONERS DECLARING AN EMERGENCY EXISTS AND THAT AN IMMEDIATE ENACTMENT OF AN AMENDMENT TO ORDINANCE 96-22 IS NECESSARY.

FILED FOR RECORD
R.B. SHORE, CLERK
NOV 12 8 50 AM '96

SECRETARY OF STATE
NOV 6 12 30 PM '96
FILED

WHEREAS, on October 22, 1996, the Board of County Commissioners held a public hearing and adopted Ordinance 96-22, the Air Pollution Control Code; and

WHEREAS, on October 29, 1996, the Board was informed that several major industries within Manatee County could not meet the Specific Performance Standards adopted as Section XI of the Ordinance; and

WHEREAS, on October 29, 1996, Florida Power and Light Company indicated that they would discontinue operation of their Manatee Plant so as to be in compliance with the Ordinance; and

WHEREAS, this has been reported to the Board of County Commissioners that this could have the effect of causing interruption of power along the southwest coast of Florida; and

WHEREAS, these prospective effects were not presented to the Board at the time of adoption; and

WHEREAS, a possible interruption of electric service would create an immediate danger to and hardship upon to the citizens of Manatee County; and

WHEREAS, both commercial and private users of electricity would be effected by such and interruption; and

WHEREAS, there is insufficient time prior to the effective date of Ordinance 96-22 to provide the required notice for regular Board action on this matter which could result in a technical violation of the operations of the Manatee Plant to occur; and

WHEREAS, the Board has directed the Specific Performance Standards to be referred to a technical advisory committee for review.

NOW, THEREFORE, be it resolved by the Board of County Commissioners of Manatee County as follows:

1. An emergency exists and that the immediate enactment of an amendment to Ordinance 96-22 is required to protect the health, safety and welfare of the public.
2. Four-fifths or more of the Board declare such an emergency exists.
3. A copy of this resolution shall be forwarded to the Secretary of State by special delivery, by certified mail.
4. This Resolution shall take effect upon adoption.

PASSED and duly adopted, by a vote of 6 to 1 by the Board of County Commissioners of Manatee County, Florida, this, the 5 day of November, 1996.

BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA

BY: Stan Stupka
Chairman

ATTEST:

by Judy La Mee, deputy clerk
R.B. SHORE, III
Clerk of the Circuit Court

STATE OF FLORIDA, COUNTY OF MANATEE
This is to certify that the foregoing is a true and correct copy of the documents on file in my office. Witness my hand and official seal this 5th day of November, 1996.
R. B. SHORE
Clerk of Circuit Court
By: Alice P. ... D.C.

ADOPTED: 10/22/96
FILED W/STATE: 11/05/96
EFFECTIVE: 11/05/96

RECORDED _____
PAGE NO _____
EXHIBIT NO _____

ORDINANCE NO. 96-22
AIR POLLUTION CONTROL CODE

AN ORDINANCE OF MANATEE COUNTY, FLORIDA; ADOPTING AN AIR POLLUTION CONTROL CODE PROVIDING FOR A DECLARATION OF INTENT; PROVIDING FOR POWERS AND DUTIES OF THE DIRECTOR; ADOPTING CERTAIN PROVISIONS OF THE FLORIDA ADMINISTRATIVE CODE PERTAINING TO AIR QUALITY BY REFERENCE AND PROVIDING FOR CERTAIN MORE STRINGENT LOCAL STANDARDS; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITED ACTS; PROVIDING FOR PERMITS; PROVIDING FOR PREVENTION OF SIGNIFICANT DETERIORATION; PROVIDING FOR ANTI-TAMPERING; PROVIDING FOR GASOLINE VAPOR CONTROL; PROVIDING FOR STATIONARY SOURCES EMISSION LIMITING AND PERFORMANCE STANDARDS; PROVIDING FOR SPECIFIC PERFORMANCE STANDARDS; PROVIDING FOR SOURCE SAMPLING AND MONITORING; PROVIDING FOR COMPLIANCE REPORTING; PROVIDING FOR RIGHT OF ENTRY AND INSPECTIONS; PROVIDING FOR ADMINISTRATION AND ENFORCEMENT; PROVIDING FOR AN ORDER FOR CESSATION OF OPERATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR SUCCESSOR AGENCIES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Manatee County, Florida (hereinafter "Board"), a political subdivision of the State of Florida, has the authority under Section 125.01(1)(j), Florida Statutes, to establish and administer programs for air pollution control; and

WHEREAS, the Board finds that growth in the amount, complexity and concentration of air pollution in Manatee County brought about by increasing urbanization, industrial development, and the increasing number and use of motor vehicles has resulted in mounting dangers to the public health and welfare, including injury to the public health, injury to agricultural crops and livestock, and damage to and deterioration of property; and

WHEREAS, it continues to be the intent of the Board to provide for the protection and enhancement of the air quality of Manatee County in order to protect human health and safety and to prevent injury to plants and animal life and to property; to foster the comfort and convenience of the citizens of Manatee County; to promote the economic and social development of this County; and to facilitate the enjoyment of the natural attractions of this County; and

WHEREAS, pursuant to Section 403.182(1)(b), Florida Statutes, local pollution control programs must provide for requirements compatible with, stricter or more extensive than those imposed under Chapter 403, Florida Statutes, and regulations issued thereunder; and

WHEREAS, the Board administers the local pollution control program for Manatee County, Florida; and

WHEREAS, the Board desires to adopt air quality standards and rules in this Ordinance by incorporating by reference Florida Administrative Code Rules, or by adopting stricter or more extensive standards as applicable, in order to implement the air pollution control program authorized under Section 125.01(1)(j), Florida Statutes; and

WHEREAS, air quality regulations promulgated by the Environmental Action Commission of Manatee County expired on October 1, 1995; and

WHEREAS, the Board has determined that the protections of the former Article 2 of the Code of Environmental Regulations should be continued in this Ordinance and it is the Board's intent to reenact local air pollution control regulations; and

FILED FOR RECORD
R.B. SHREVE
CLERK OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA
Nov 7 9 20 AM '96
RECEIVED
NOV 08 1996
COUNTY ATTORNEY

WHEREAS, the Board, in adopting this Ordinance, intends to carry out the mandates of the federal Clean Air Act as implemented in Florida by the Department of Environmental Protection through Chapter 403, Florida Statutes;

NOW, THEREFORE BE IT ORDAINED by the Board of County Commissioners of Manatee County, Florida as follows:

Section I. Declaration of Intent

A. Section 125.01(1)(j), Florida Statutes, authorizes the Board to promulgate and adopt an Air Pollution Control Code in order to protect the health, safety and welfare of the citizens of Manatee County.

B. It is hereby determined that uniform regulation and control of air pollution throughout Manatee County is required in order to protect the health, safety and welfare of the citizens of Manatee County. This Ordinance is hereby enacted pursuant to authority granted to the Board under Chapter 125, Florida Statutes.

C. The Board recognizes that the Florida Department of Environmental Protection (FDEP) has environmental regulatory and enforcement authority pursuant to Chapter 403, Florida Statutes. It is the intent of the Board to require compliance with the FDEP's air pollution control rules in Manatee County, unless the Board has adopted a more stringent standard as may be otherwise provided herein, so as to further the policies of preventing significant deterioration, protecting air quality existing at the time the Board adopted its standards, and of upgrading or enhancing air quality.

D. It is the intent of the Board to provide the authority for compliance and enforcement activities regarding this Ordinance and for any air quality permits issued by the Department of Environmental Protection under Chapter 62-210, F.A.C. It is not the Board's intent to perform compliance or enforcement activities on facilities owned or operated by Manatee County government.

Section II. Powers and Duties of the Director

The Director of the Manatee County Environmental Management Department shall have the following powers and duties to:

1. issue Citations, pursuant to the provisions of Chapter 162, Florida Statutes, against any person violating any provision of this Ordinance or alternatively to enforce the same by initiating appropriate administrative and/or judicial proceedings.
2. require copies of records required by FDEP permits relating to the emissions of any air pollutant source.
3. use Department resources to determine compliance with this Ordinance by means of field studies, inspections, monitoring and sampling.

4. conduct investigations to obtain information as is relevant to determine compliance of any air pollutant source with the requirements of this Ordinance.
5. establish, maintain and operate air quality monitoring stations and other devices and methodologies designed to measure air pollution.

Section III. Adoption of State Air Pollution Rules

A. The provisions of Chapters 62-204, 62-210, 62-212, 62-215, 62-243, 62-252, 62-296, and 62-297, F.A.C., and any and all subsequent renumbering of Chapter divisions that does not result in a change in scope or content of this Ordinance, are hereby adopted and incorporated herein by reference, except as otherwise provided herein.

B. Rules of the Florida Department of Environmental Protection (FDEP), as adopted herein and incorporated by reference, shall be interpreted consistently with official FDEP policy. For purposes of this Ordinance, official FDEP policy shall include written policy statements signed by the Secretary of the Florida Department of Environmental Protection or an employee with delegated authority to bind the FDEP with regard to the particular policy statement. Other documented representations of FDEP policy may be used in support of a policy interpretation, but shall not in and of themselves be considered official policy.

C. In the incorporation of provisions of Chapters 62-204, 62-210, 62-212, 62-215, 62-252, 62-296, and 62-297, F.A.C., references to "the Department" are to be replaced by references to "the Board" only with respect to compliance, reporting and enforcement provisions.

D. Each rule-section adopted by reference shall be deemed a separate section of this Ordinance as if the text were fully set forth herein.

Section IV. Definitions.

A. Definitions contained in Rule 62-210.200, Florida Administrative Code, are hereby adopted and incorporated by reference and shall apply to this Ordinance.

B. The following specific definitions shall apply to this Regulation:

1. "Board" shall mean the Board of County Commissioners of Manatee County, Florida.
2. "Citation" shall mean any official enforcement action taken by the Director of the Environmental Management Department.
3. "Department" shall mean the Manatee County Environmental Management Department.
4. "Director" shall mean the head of the Manatee County Environmental Management Department.


5. "EPA" shall mean the federal Environmental Protection Agency.
6. "F.A.C." shall mean the Florida Administrative Code.
7. "FDEP" shall mean the Florida Department of Environmental Protection.
8. "F.S." shall mean the Florida Statutes.
9. "Local Enforcement Agents" or "Authorized Agents of the County" - shall mean those persons designated by the Director as having the required technical expertise and knowledge to conduct inspections and pursue enforcement to ensure compliance with this Ordinance.
10. "MMBtu/hr" shall mean a heat input rate of one million British thermal units per hour.
11. "Motor Vehicle" shall be as defined in Section 320.01, Florida Statutes.
12. "Person" shall mean any individual, corporation, governmental agency, business trust, estate, partnership, association, two or more persons having a joint or common interest, or any other legal entity.
13. "PM10" shall mean particulate matter smaller than 10 microns in diameter.

Section V. Prohibitions.

A. Circumvention. No person shall circumvent any air pollution control device, or allow the emission of air pollutants without the applicable air pollution control device in place and operating properly.

B. Exceedance of Ambient Air Quality Standards. No person shall cause or contribute to a violation of air quality standards as set forth in Rules 62-204.240 and 62-204.260, F.A.C.

C. Exceedance of Emission Standards. No person shall cause, let, permit, suffer, or allow the discharge into the atmosphere of Manatee County of any pollutant from any source or activity in excess of emission standards established herein or set forth in an FDEP Air Construction or Operation permit. Excess emissions specifically allowed by Rule 62-210.700, F.A.C. shall not be violations of this Ordinance unless specifically prohibited by this Ordinance. The Director may request written verification that any such emissions fall within the designated conditions. Excess emissions that are caused entirely or in part by poor maintenance, poor operation, failure to comply with previously negotiated or permitted written Best Management Practices of the FDEP or the Board, or any other equipment or process failure which may be reasonably prevented during start-up, shut-down, or malfunction, are prohibited.

D. Burning of Fuel Containing Sulfur. No person shall burn, or permit the burning in any facility of any fuel containing more than one percent (1.0%) sulfur. 

E. Operation. No plant or source shall operate at capacities that exceed the limits of operation of a pollution control device or exceed the capability of the plant or pollution control device to maintain the air emission within the standard limitation imposed by this Ordinance, or by permit conditions.

F. Concealment. No person shall build, erect, install, or use any article, machine, equipment or other contrivance, the use of which will conceal an emission that would otherwise constitute a violation of any of the provisions of this Ordinance.

G. Falsification. No person shall make any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this Ordinance, or to falsify, tamper with, or render inaccurate any monitoring device, method or data required to be submitted or maintained under this Ordinance.

Section VI. Permits Required.

A. No air pollution source may be constructed, modified or operated in Manatee County in violation of any conditions specified in the FDEP permit, or certification authorizing the activity or as may be incorporated by reference within the conditions of a permit authorizing the Activity. Violation of any such permit or certification condition is a violation of this Ordinance.

B. No air pollution source may be constructed, modified or operated in Manatee County without a valid permit as may be required by FDEP pursuant to Rule 62-210.300, F.A.C., *PERMITS REQUIRED*.

C. The Director shall not have the authority to require either a local Air Construction Permit or a local Air Operation Permit in the absence of a specific delegation of permitting authority from FDEP.

D. An applicant for an FDEP permit for a new source, renewal, or modification of an existing source shall submit a copy of such permit application to the Director for his/her review pursuant to FDEP requirements and provisions of this Ordinance. Reasonable assurances shall be provided that all FDEP and Board standards have been or will be met by the applicant or the activity sought to be permitted. In order to provide assurance that a new source, renewal, or modification of a source that proposes to increase emissions will meet or exceed requirements as set forth in Rules 62-204.240 and 62-204.260 F.A.C. The Director at his/her discretion may request additional information necessary for the Department to conduct appropriate EPA/FDEP-approved air quality modeling.

E. Preconstruction review requirements, as set forth in Rule 62-212.300, F.A.C., *GENERAL PRECONSTRUCTION REVIEW REQUIREMENTS*, are adopted and incorporated herein by reference. All review comments and questions will be submitted to FDEP for that agency's determination of the appropriateness of applicable rules for their inclusion in a permit completeness review.

F. Activities or facilities under a citation or citations issued by the Director at the time of application for an FDEP permit shall have the citation(s) resolved prior to the Director recommending approval of an application involving the same activity or facility.

G. Where an Annual Operating Report for Air Pollutant Emitting Facility, per Rule 62-210.370, F.A.C. is required by FDEP for a facility within Manatee County, a copy of such report shall also be submitted to the Department. Failure to submit copies of this report to the Department shall be considered a violation of this Ordinance.

Section VII. Prevention of Significant Deterioration (PSD).

The provisions of Rule 62-204.260(2), F.A.C., **MAXIMUM ALLOWABLE INCREASES (PREVENTION OF SIGNIFICANT DETERIORATION INCREMENTS)** are incorporated herein by reference.

Section VIII. Anti-Tampering

The provisions of Chapter 62-243, F.A.C., **TAMPERING WITH MOTOR VEHICLE AIR POLLUTION CONTROL EQUIPMENT**, are adopted and incorporated herein by reference. Portions of this Chapter that refer to "this state" or "Florida" shall be specifically construed to mean "Manatee County."

Section IX. Gasoline Vapor Control

The provisions of Chapter 62-252, F.A.C., **GASOLINE VAPOR CONTROL**, are adopted and incorporated herein by reference.

Section X. Stationary Sources Emission Limiting and Performance Standards.

All provisions contained in Chapter 62-296, F.A.C., **STATIONARY SOURCES - EMISSION STANDARDS** that are pertinent to Manatee County are adopted and incorporated herein by reference, except as may be modified herein.

Section XI. Specific Performance Standards

A. NOx Emissions - Generally. No owner or operator of a facility classified or categorized as a "Major Source of Air Pollution" or "Title V Source" in Rule 62-210.200(173) shall cause, let, permit, suffer or allow the discharge into the atmosphere of Manatee County gases that contain nitrogen oxides (NOx) in excess of 0.27 lbs/MMBtu heat input.

B. NOx Emissions During Ozone Season. No owner or operator of a facility classified or categorized as a "Major Source of Air Pollution" or "Title V Source" in Rule 62-210.200(173) shall cause, let, permit, suffer or allow the discharge into the atmosphere of Manatee County gases containing nitrogen oxides (NOx) in excess of 42 tons per day (TPD) during ozone season (May 15 through September 15). Daily ozone season NOx emissions shall be determined based on Continuous Emissions Monitoring data.

C. PM10 Emissions. No owner or operator of a facility classified or categorized as a "Major Source of Air Pollution" or "Title V Source" in Rule 62-210.200(173) F.A.C. shall cause, let, permit, suffer or

allow the discharge into the atmosphere of Manatee County gases that contain particulate matter (PM10) in excess of 0.03 lbs/MMBtu heat input, or exhibit greater than 20 percent (20%) opacity except for one six-minute period per hour of not more than 27 percent (27%) opacity. Where the presence of uncombined water is the only reason for failure of an emission to meet the requirements of this Ordinance, such sections shall not apply.

D. SO2 Emissions. No owner or operator of a facility that burns a fuel containing more than one percent (1.0%) sulfur shall cause to be released into the atmosphere of Manatee County any gases that contain sulfur dioxide (SO2) in excess of 0.80 lb/MMBtu heat input. Major Air Pollution Sources that burn any fuel containing more than one percent (1.0%) sulfur shall provide the Department with Continuous Emissions Monitoring data in order that the Department may verify compliance with the emissions limits set forth herein at any given time. This equipment, and the method by which such Continuous Emissions Monitoring data are transmitted in real time to the Department, shall be approved by the Director and operational prior to start-up of the new or modified facility.

E. Measurement of NOx and SO2 Emissions. Compliance with emissions limits for SO2 and NOx, except for measurements of daily NOx emissions during ozone season, shall be based on a 30-day rolling average. Rolling averages shall be calculated and recorded each day based on the previous 30 boiler operation days.

Section XII. Source Sampling and Monitoring

Source sampling and monitoring shall be performed in compliance with Chapter 62-297, F.A.C., SOURCE SAMPLING AND MONITORING.

Section XIII. Compliance Reporting

A. A person responsible for the operation of any permitted facility that may be a source of air pollution shall make available to the Director or an authorized agent of the County, upon request, records of tests and operations that are necessary to demonstrate compliance with applicable air regulations and permit conditions.

B. In case of a breakdown or lack of proper functioning of any facility or equipment or operation causing or which could reasonably be expected to cause an exceedance of a permitted emission limit or the release of a reportable quantity of a substance regulated by Title III of the Superfund Amendments and Reauthorization Act (PL99-499, October 17, 1986), it shall be the duty of the person responsible for the facility or its operation to promptly notify the Department and to provide the Director or other authorized agent of the County immediate safe access to the premises for the purpose of investigating the problem. Notification to the Department shall occur as soon as is practicable, but no later than twenty-four (24) hours after the start of the incident, except where specific agreements with the Department take precedence. Should the incident take place during those hours when the Department offices are closed, notification shall be made to the Director by calling (941) 747-HELP.

Section XIV. Right of Entry; Inspections.

A. Any authorized agent of the County may at any reasonable time enter and inspect, for the purpose of ascertaining the state of compliance with a permit or permits granted by the FDEP or the provisions of this Ordinance, any property, premises, or place, except a building that is used exclusively for a private residence, on or at which any air pollutant source is located or being constructed or installed or where records that are required under FDEP rule or this Ordinance are kept.

B. Any authorized agent of the County may at reasonable times have access to and copy any records required under this Ordinance; inspect any monitoring equipment or method; sample for any air pollutants or emissions that the owner or operator of such source may be releasing to the atmosphere or which may be otherwise located on the owner's or operator's property; and obtain any other information necessary to determine compliance with applicable FDEP permit conditions or the requirements of this Ordinance.

C. No person shall refuse reasonable entry or access to any authorized agent of the County who requests entry for purposes of inspection and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection.

D. An inspection pursuant to this Section may be conducted only after:

1. Consent for the inspection is given by the owner/operator/person in charge; or
2. The appropriate inspection warrant is obtained, pursuant to Sections 933.20-933.30, F.S., from a judge of any county court or circuit court of the State of Florida that has jurisdiction over the place or thing to be inspected.

Section XV. Administration and Enforcement.

A. The provisions of this Ordinance shall be administered by the Board of County Commissioners of Manatee County. The enforcement of this Ordinance shall be provided by authorized agents of the County.

B. Violations of this Ordinance are punishable under the provisions of Chapter 162, Florida Statutes, and Section 125.69, Florida Statutes.

C. Enforcement actions taken by the Director pursuant to Ch. 162, F.S., shall be appealable in the manner set forth in Sec. 305 of the Manatee County Land Development Code, unless the County establishes a separate Environmental Code Enforcement process by Ordinance. In that event, that process will control.

D. The Board may, by Resolution, establish fees for the implementation of this Ordinance. Such fees shall be used to defray the costs of the County's air quality program.

Section XVI. Order for Cessation of Operations

The Director may issue an Order requiring cessation of activities that constitute a violation or violations of this Ordinance to any facility when such

activities create an immediate health hazard, threaten damage to the public health, or threaten or cause irreparable injury or damage to property. The Order shall only require that action necessary to obtain compliance with this Ordinance. An Order issued by the Director shall be effective upon personal service on an individual authorized to accept process for the facility. Any person receiving such an Order for cessation of operations shall immediately comply with the requirements thereof. It shall be a violation of this Ordinance for any person to fail or refuse to comply with an Order issued and served under the provisions of this Section. No such Order shall extend in duration longer than forty-eight (48) hours unless the Board authorizes the immediate filing of an action in a court of competent jurisdiction to permanently abate the activity. A decision of the Director made pursuant to this Section may be appealed by any aggrieved person to the Circuit Court. An appeal shall be filed within thirty (30) days of the rendition of the Order to be appealed in accordance with Rules of Appellate Procedures 9.110.

Section XVII. Severability.

In the event that any provision of this Ordinance is declared by a court of competent jurisdiction to be void, unconstitutional, or unenforceable, all remaining provisions and portions of this Ordinance shall remain in full force and effect. All of the provisions of this Ordinance are severable and the legality and enforceability of any one or more of them is not contingent or dependent upon the validity of any other provision.

Section XVIII. Successor Agencies.

References to Federal, State and local agencies within the body of this Ordinance shall include their successor agencies.

Section XIX. Effective Date.

This Ordinance shall take effect upon filing with the Department of State.

PASSED AND DULY ADOPTED, WITH A QUORUM PRESENT AND VOTING, BY THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, this, the 22nd day of October, 1996.

BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA

BY: St. Stephen
Chairman

ATTEST: R.B. EHORE
Clerk of the Circuit Court



STATE OF FLORIDA, COUNTY OF MANATEE
This is to certify that the foregoing is a true and
correct copy of the documents on file in my office
Witness my hand and official Seal this 22nd day of
Nov 1996
R. B. EHORE
Clerk of Circuit Court
Susan Blomquist

Borden
Amay
Registered



RTP ENVIRONMENTAL ASSOCIATES INC.®

AIR • WATER • SOLID WASTE CONSULTANTS

239 U.S. Highway 22 East
Green Brook, New Jersey 08812-1909

(908) 968-9600
Fax: (908) 968-9603

AL
JR

RECEIVED

JAN 30 1996

BUREAU OF
AIR REGULATION

January 26, 1996

Mr. Clair H. Fancy, P.E.
Florida Department of Environmental Protection
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Re: Draft PSD Permit for a New Sulfuric Acid Plant, Piney Point Phosphates, Inc., DEP Permit Numbers AC 41-173305 and PSD-FL-144

Dear Mr. Fancy:

RTP Environmental Associates, Inc. has been hired by Manatee County, Florida to assist the County with its evaluation of the PSD permit application filed by Piney Point Phosphates, Inc. On behalf of Manatee County, we have reviewed Piney Point's application and DEP's draft PSD permit to determine whether the application and PSD permit are in compliance with the applicable state and federal standards.

This letter contains our preliminary comments about this subject. Our primary concerns relate to the BACT analysis, the permit conditions, engineering details, and the modeling assessment. Based on the materials we have reviewed to date, we were unable to find sufficient information to complete our review of the BACT and modeling analyses. Also, some inconsistencies between the current operating permit for the existing plant and the draft construction permit for the proposed plant exist.

BACT ANALYSIS:

- (1) Inherently lower polluting technologies such as SAPs with higher SO₂ to SO₃ conversion efficiencies are not discussed in the permit application. The National Park Service notes in a May 30, 1995 letter that there are considerable emissions data which show that lower emissions are achievable with the technology proposed by Piney Point Phosphates, Inc. In June 6, 1995 correspondence, the applicant's consultant notes that:

"...SO₂ emissions can be expected to be low just after plant turnaround (...typically every 18 months), and much higher just prior to a turnaround. The gradual deterioration of the catalyst contributes to higher emissions."

Thus, according to Piney Point Phosphates, Inc., lower emission levels appear to be achievable with the proposed technology. The applicant's consultant goes on however to note that:

- 2 -

"[t]he high cost associated with turnarounds (catalyst cost/labor cost/cost due to loss of production) makes it impractical to conduct frequent plant shutdowns to replace the catalyst."

The applicant's assertions are restated in the Department's Technical Evaluation and BACT Review, where the Department notes that

"...in cases such as this where the process itself is the 'control device', a lower allowable limit does not of itself force lower emissions. In a typical sulfuric acid plant, SO₂ emissions are lowest just after a catalyst change and gradually rise as the catalyst loses reactivity. Continuous emission monitoring data typically show that SO₂ emissions start out very low after a catalyst change and then may rise to near the new source performance standard (4.0 lb/ton) at the end of the catalyst's life. The effect of lowering the allowable limit would be to require more frequent catalyst changes at greatly increased costs which would likely [emphasis ours] be prohibitive."

Based on the above descriptions, it would appear that lower allowable limits would indeed force lower SO₂ emissions, at least near the end of the catalyst life.

In our opinion, the elimination of lower emission limits does not appear to meet the USEPA "top-down" BACT guidance (i.e., October 1990 USEPA Draft document New Source Review Workshop Manual), which requires that control efficiencies, expected emission rates, expected emissions reductions, economic impacts (cost effectiveness, i.e., base and incremental dollars per ton of pollutant removed), environmental impacts, and energy impacts be determined for each more effective control technology not selected as BACT. Therefore, it would be helpful if the BACT analysis had been performed for a series of emission limits more restrictive than the NSPS limit, continuing the BACT "top-down" evaluation process until either an emission limit could not be eliminated or NSPS levels were reached. The applicant should have provided cost analyses which demonstrated for the public record why more frequent maintenance or catalyst replacement is not BACT. Also, the applicant should have documented for the public record why additional catalyst or different types of mist eliminators are either not technically feasible, are uneconomical, or will not achieve additional emissions reductions.

- (2) The 1992 Air & Waste Management Association (AWMA) publication Air Pollution Engineering Manual, formerly USEPA Document AP-40, lists three scrubbing technologies available to SAPs: sodium sulfite (Wellman-Lord process), hydrogen peroxide, and ammonia. Under the "top-down" BACT requirements, these scrubbing technologies should have been evaluation^{ed} as an addition to, rather than a replacement of, the dual absorption process. Only the ammonia scrubber was evaluated in the 1989 permit application materials. However, the 1989 documents did

Weak
Statement

This involves
divulging production
costs
No understanding
of the process!

These are for
Sulfur/SO₂
recovery from
power plants or
metallurgical SAPs
Not a demonstrated
technology for SAPs
and therefore are
not available and need not
be evaluated!

- 3 -

not present control efficiencies in terms of percentage or amount of pollutant removed, or cost effectiveness figures (both for base and incremental dollar per ton of pollutant removed), as required by the "top-down" BACT process. The hydrogen peroxide scrubbing technology, which was not evaluated in the 1989 permit application, generates no by-product or purge streams (since the H₂SO₄ produced in the scrubber is returned to the plant) and has been applied successfully to single-absorption plants. In addition to the technologies identified in the AWMA publication, it appears that the applicant did not identify other potential technologies which may be applicable as control equipment through technology transfer or innovative technology guidelines.

not demonstrated
for dual abs.

- (3) In June 6, 1995 correspondence responding to the National Park Service's concerns about the proposed emissions levels, the applicant's consultant noted

"... there is a wide consensus on the part of the regulatory agencies and the industry on this issue [NSPS represents BACT]".

In the Department's BACT determination, the statement is made that more stringent controls have not been required as BACT based on the BACT/LAER Clearinghouse. While this is useful information, this and other information provided to date in the public record do not provide sufficient information to determine BACT for this source.

The rationale presented by the applicant for selecting NSPS as BACT appears to be a "bottom-up" BACT analysis, which the USEPA has rejected (USEPA guidance memo dated June 13, 1989). The proposed BACT represents the baseline emissions case, because BACT can be no worse than NSPS. In an April 22, 1987 USEPA guidance memo, USEPA specifically states that

"The fact that the NSPS for this source category... does not require sulfur dioxide (SO₂) scrubbing should not influence the BACT analysis. In a BACT analysis, an NSPS simply defines a minimal level of control. The fact that a technology was not selected for the NSPS (or that a pollutant is not regulated by the NSPS) is in no way indicative of the qualifications of a technology as a BACT candidate. The only reason for comparing control options to an NSPS is to determine whether the control option would result in an emissions level less stringent than the NSPS. If so, that option is unacceptable."

Based on USEPA guidance, the NSPS is the highest allowable emission level and has no other significance with respect to performing a BACT analysis. NSPS can be allowed as BACT only if lesser emission levels and other control technologies have been fully evaluated under "top-down" BACT criteria and found to be either unavailable, cost prohibitive, or otherwise impractical.

However, see
EPA's July 27, 1987
memo "In only
a few cases with
BACT the same as
NSPS."

PERMIT CONDITIONS:

The current operating permit for the existing SAP (Operating Permit A041-197112 issued in 1991) appears to be more restrictive in many respects than the draft permit for the new SAP. For example:

(a) The current operating permit specifies equipment make and maximum allowable heat input rates for equipment used to heat the SAP process equipment. No such conditions exist in the draft permit.

Burner?

(b) SO₂ and SAM emission limits are given as the lesser of lb/ton or lb/hr values in the existing permit. The draft permit specifies just lb/hr limits. At production rates less than the nominal 2700 tons/day, the draft permit might allow emissions greater than NSPS levels.

Permit limits are always based on maximum rates, lb/hr is not the limit - just the basis.

(c) Annual performance tests for SO₂, SAM, and opacity are required for the source in the existing permit, while testing is required in the draft permit only before permit expiration. Therefore, the new SAP could have SAM and visible emissions greater than the permit limits for nearly five years before the violations were discovered.

ONLY A PERFORMANCE TEST IS REQ'D BEFORE EXPIRING OP. PERMIT.

! RIDICULOUS! THE ANNUAL PERMIT CAN BE INCLUDED IN THE OPERATING PERMIT

(d) Initial compliance testing is not required in the draft permit although such testing is required by the NSPS at 40 CFR 60.80 et seq. and 60.8.

NSPS only requires performance test - not annual stack test. Can be req'd at any time under Sect. 114. RIDICULOUS! SEE COND. #6.

(e) The current operating permit acknowledges that process leaks do occur and requires regular inspections and prompt repairs of any leaks or other fugitive emissions. The draft permit, which has no such requirements, should in our opinion be revised to require inspection/repair activities and include recordkeeping and reporting requirements specifying the frequency of these activities and the procedures to be followed.

THIS IS THE PURVIEW OF THE OPERATING PERMIT!

(f) Unlike the current operating permit, the draft permit does not contain a general prohibition limiting the amount of fugitive particulates.

NOTHING IN NSPS RE/FUGITIVES

In our opinion, the other areas of the draft permit which could be improved are:

(a) Averaging times for the permit limits should be specified in the draft permit. The NSPS requires running 3-hour arithmetic averages. Other documents (such as AP-42) refer to 2-hour NSPS requirements. The permit should specify averaging times to avoid any confusion.

COVERED IN #16 - MEMO 8.

(b) While the draft permit requires an SO₂ CEM which meets the NSPS requirements of 40 CFR 60.84, no recordkeeping or reporting requirements to the Department are specified.

THIS WILL BE SPECIFIED IN THE OPERATING PERMIT.

The NSPS requirements do not require calculation of lb/hr values which are necessary for determining compliance with the Department's emission limits. The Department should add appropriate monitoring requirements to insure permit compliance.

THIS IS THE DEPT'S STANDARD PRACTICE - 16/hr FOR ENFORCEMENT ON A MASS BASIS. THE NSPS FORM (16/ton) IS THE SAME THING: $\frac{16}{\text{ton}} \times \frac{\text{ton}}{\text{hr}} = \frac{16}{\text{hr}}$

(c) The draft permit allows occurrences of excess exceedances in accordance with Rule 62-210.700, FAC. Permit conditions should specify the minimum amount of information necessary for the quarterly reports required under Rule 62-210.700(6), FAC to ensure that Best Operational Practices were followed and malfunctions were not related to poor maintenance, which are prohibited by Rule 62-210.700(4), FAC.

STANDARD CONDITION

KIM

Maximum (upper limit) emission limits during malfunctions should be specified in the permit, based on modeling analyses, to insure that ambient concentrations in excess of ambient air quality standards do not occur. If greater excess emissions should occur, immediate notification of the Department and Manatee County should be required in the permit.

DREAMED UP SOMETHING NEW, (NOT FINANCIALLY REQ'D)

(d) An attachment to the Royster Phosphates July 6, 1990 letter to the Department and USEPA documents (AP-42) show that SAM formation in the absorber is strongly influenced by acid exit temperatures, varying by over an order of magnitude. In our opinion, the permit should contain conditions requiring minimum acid exit temperatures to minimize mist generation and subsequent SAM emissions.

CAN'T REDESIGN PROCESS

(e) Different NO_x emission factors were used by the Department (0.12 lb/ton) and the applicant (0.08 lb/ton). It does not appear that the existing source was ever tested for NO_x. Since the proposed facility is almost a major PSD source at the Department's emission factor (about 39.4 tpy), the emission limit of 0.12 lb/ton should be specified in the permit for NO_x.

NO_x INCREASE IS ONLY 19.7% 3000!!!

NO_x should be measured at the facility, at least during an initial stack test, to verify that the plant is not a significant PSD source of NO_x. Testing is particularly appropriate here because the applicant has not performed any BACT or modeling analyses for this pollutant. It is not uncommon for the Department to require such testing when an emission factor was used to show the source was not significant for some regulatory purpose.

Include initial NO_x test? O.K.

NO RULE REQ'IT FOR NO_x SINCE NOT EVEN CLOSE TO PSD.

Addressing the above issues in the draft PSD permit would make the permit conditions more precise and afford a greater degree of certainty for Manatee County.

ENGINEERING DETAILS:

(1) We are unable to find a description of startup-shutdown processes in any of the materials in the public record. Are any combustion sources used during startup or shutdown which might require permits? Would emissions during startup-shutdown periods affect the predicted potential emission rates? Would stack characteristics during startup-shutdown periods be different enough to affect modeled ambient impacts?

I TOLD KIM TO BE SURE AND INCLUDE A COPY OF THE M.O.U. WITH THE PERMITS MAILED. (SHE MAY NOT HAVE.)

Malfunctions are allowed in the draft permit for a specified number of hours per day. However, we are unable to find any description in the public record of: the types and frequencies of malfunction conditions

VARIES, WOULD INVOLVE SPECULATION AT BEST.

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which might occur at the facility; the resulting emissions; the effect on PSD applicability; and the potential ambient impacts.

- TO MY KNOWLEDGE, WE'VE NEVER REQ'D THIS IN A SAP CONSTR. PMT.*
- (2) The NSR Manual states that fugitive emissions, to the extent that they are quantifiable, are to be considered in any subsequent analyses (e.g., air quality impacts) for major PSD sources. The Clearing House for Inventories and Emission factors (CHIEF) CD-ROM system provides SAP fugitive emission factors for sulfuric acid mist (SAM) due to process equipment leaks. In addition, specific condition 12 of the current operating permit for the existing SAP acknowledges that fugitive SO₂ and SO₃ emissions at the existing sulfuric acid plant will occur due to equipment leaks and other fugitive sources as a result of normal operations. In the materials we reviewed, we were unable to find any evidence that fugitive emissions from process equipment leaks, or any other fugitive emission sources (e.g., loading and unloading operations, storage tank vents, convertors, concentrators, etc.), were included in the modeling analyses as required by the NSR Manual.

- NO OLEUM TOWER IS INCLUDED ON THE FLOWSHEET OR MENTIONED IN THE APPL. (IS THIS GUY A FUGITIVE OR WHAT?)*
- (3) Oleum, a mixture of sulfuric acid and sulfur trioxide, can be an intermediate and/or final product in sulfuric acid plants. Oleum is included in the list of toxic substances (59 FR 4478) subject to pending regulation under the accidental release prevention requirements of Title III (CAA Section 112(r)(7)). Will the proposed facility produce oleum as a final product? Does oleum occur as an intermediate product in any of the plant equipment? If so, what measures (e.g., engineering design, mechanical equipment, operational procedures, and employee training) will be required to prevent accidental releases of this substance.

Manatee County is particularly sensitive about operational impacts from fugitive and malfunction emissions and wants to be assured that impacts from these conditions will not cause problems.

MODELING ANALYSES:

- (1) Sulfuric acid is listed in version 4.0 of the Department's Air Toxics Working List. A modeling analysis of ambient impacts of SAM to demonstrate compliance with the Department's 8-hour and 24-hour Ambient Reference Concentrations (ARCs) for H₂SO₄ was not included in available information. To address the County's concerns, we believe modeling should be performed which considers stack and fugitive emissions during periods of both normal operations and startup-shutdown-malfunction conditions.
- (2) Manatee County is concerned about local acidification that may be caused by the facility. Given the potential emissions of SO₂ and SAM from the stack alone under normal conditions (1,971 and 74 tons/year, respectively, not accounting for fugitive or startup-shutdown-malfunction emissions), the amount of deposition of these emissions to the local area could be significant. In our opinion, an analysis of SO₂ and H₂SO₄ deposition rates should be required for the proposed source to determine impacts on local soil, vegetation, surface and ground waters as part of the required AQRV analyses. Recent revisions

- 7 -

to the ISC models include algorithms to quantify both dry and wet deposition.

- (3) Modeling included in the permit application was performed only for the current SO₂ standards and increments. USEPA proposed in the November 15, 1994 (59 FR 58958) and March 7, 1995 (60 FR 12492) Federal Registers to revise the SO₂ standards to include a very short-term (5-minute) SO₂ standard. Although the eventual form of this standard is uncertain, implementation of the standard is likely to focus on those sources that may produce high 5-minute peak SO₂ concentrations. Sulfuric acid plants were included in the list of SO₂ emission sources which warranted further investigation (59 FR 12496).

Has the applicant or the Department estimated short-term SO₂ impacts (of perhaps 1-hour) for the proposed facility at this time (while the permitting process is in progress and the modeling analyses can be easily performed) so that potential problems in the local area from acute short-term exposure can be assessed? Such modeling should consider the potential for short-term SO₂ emission peaks from the proposed source.

As described in the March 7, 1995 Federal Register, ambient SO₂ monitoring, rather than air quality modeling, is expected to be the primary basis for delineating problem areas. Therefore, the Department should consider requiring post-construction ambient air monitoring of SO₂ at this time in order to demonstrate that the facility will not produce short-term ambient SO₂ impacts in excess of the eventual standard. Ambient monitoring should be performed in accordance with the proposed revisions to 40 CFR 58 for the short-term SO₂ standard. This monitoring would aid in providing assurance to Manatee County of local safety.

Again, Manatee County is particularly sensitive about operational impacts from fugitive and malfunction emissions as well as normal operations and wants to be assured that impacts will not cause problems.

INFORMATION REQUEST

We would greatly appreciate the Department's assistance in determining whether the applicant has provided all of the necessary information with its permit application. We particularly would like to receive the following information:

- (1) The BACT analyses discussed above, if such analyses were prepared. It would be helpful for our review to have copies of any analyses that exist that would fulfill the BACT criteria discussed above. We will then be able to assist Manatee County in their BACT review.
- (2) A computer-ready copy of the modeling input and output files so that we may verify the modeling analysis results.

- 8 -

- (3) The details of the GEP stack height analysis so that we may verify the GEP analysis.
- (4) Data the Florida Department of Environmental Protection supplied to USEPA's contractor preparing the Background Report for the AP-42 section on Sulfuric Acid Plants. These data summarized 242 separate compliance source tests from eleven different sulfuric acid plants. We also would like to see any more recent data that has been collected by DEP concerning SAPs. Please provide this information so that we may review the summarized data to determine the range of expected pollutant emissions for this type of source.

Dec 3, 1992
Background Documents
Sec. 5-17

We are requesting the above materials to continue our independent review of the permit application for Manatee County. Please contact David Dee when any of these materials are available so that someone from his office may pick them up.

If you have any questions, please feel free to contact either myself at 908-968-9600 or David Dee, Esq. at 904-681-0311.

Sincerely,

RTP ENVIRONMENTAL ASSOCIATES, INC.®



Donald F. Elias
Principal

DFE/WEC/wec

cc: D.Dee, Landers & Parsons
A.Linero, C.Holladay, FDEP
D.Beason, FDEP-OGC
P.Chrostowski, The Weinberg Group
W.Corbin/LPPPP Project File, RTP Environmental Associates

**RTP ENVIRONMENTAL ASSOCIATES INC.[®]**

AIR - WATER - SOLID WASTE CONSULTANTS

239 U.S. Highway 22 East
Green Brook, New Jersey 08812-1909(908) 968-9600
Fax: (908) 968-9603

February 7, 1996

Mr. Clair Fancy, P.E.
Florida Department of Environmental Protection
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, FL 32399-2400

RE: Piney Point Phosphates, Inc., DEP Permit Nos. AC41-173305 and PSD-FL-144

Dear Mr. Fancy:

As discussed during our telephone conversation yesterday, we are involved in assisting Manatee County in reviewing the applications for the above-referenced facility. We provided our initial comments in our January 26, 1996 letter, detailing information that would be helpful in completing our review. This letter summarizes the outstanding items, based on our telephone conversation.

1. While acknowledging add-on controls have not traditionally been applied to dual-absorption sulfuric acid plants, this technology has been used on single-absorption plants throughout the industry and is commonly applied to a variety of industries to control acid gases. We are in the process of preparing some cost analyses for typical SO₂ controls which we will submit to the Department as available. However, we have had difficulty in obtaining any information on the hydrogen peroxide scrubbing technique which was purchased by Monsanto from Dupont. It would be helpful if the Department could solicit from Monsanto or the applicant additional information sufficient to be able to perform a quantitative assessment (dollars per ton of pollutant removed) for this technology.
2. Please provide a copy of the General Chemical Permit. It is our understanding from discussions with the Park Service that this permit contains an automatic ratchet which takes effect after one-year of operation. This means that the emission levels can be lowered to below the NSPS levels based on one year of operating data. You had indicated that you have a copy of this permit.
3. The November 30, 1989 permit application indicates that the proposed sulfuric acid plant will generate an annual average net 20.8 megawatts electric for sale. During

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RE: Piney Point Phosphates, Inc.

February 7, 1996

Page 2

True in terms of emissions from power generation.

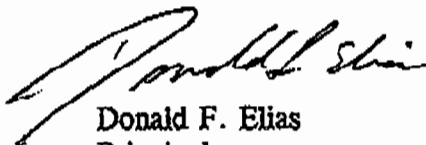
no boiler our phone conversation, we were informed that electric power generation is not part - *no fuel firing for power generation* of this project. If power generation is intended, is there a separate starter motor for the generator or a boiler, with or without supplemental firing? It was unclear in the application exactly how the electric power would be generated. *excess steam. Other parts of plant to not have capability to use all of excess steam.*

4. The County is especially concerned about impacts during malfunction operations. As the permit allows malfunctions to occur (Specific Condition No. 9), the County would be interested in determining what the effect of such malfunctions might be. Therefore, it would be helpful to obtain any assessments that have been performed for malfunctions (i.e., duration, frequency of occurrence, and off-site impacts compared to the Florida Air Toxic policy, proposed 5-minute SO₂ standard or other appropriate measures of acute exposure from sulfuric acid mist or SO₂ emissions). If no analyses are available, any assistance in providing exit conditions and emission estimates would be useful in order to allow us to perform independent analyses.
5. A copy of the information provided to the USEPA for AP-42 (see attached). This will help the County obtain a better understanding of the range of emissions from plants in Florida.
6. Finally, we will be assessing the impact of increased catalyst replacement schedules. We will review the information provided by you at the meeting, and will provide our analyses to the Department as they are available.

Thank you again for your assistance. We look forward to assisting the Department in its review of the application and helping provide assurances to the County that proper procedures have been followed and that the plant has appropriate permit conditions to ensure proper control. Should you need to discuss any of the above requests further, please feel free to contact either William E. Corbin or myself at the above telephone number.

Sincerely,

RTP ENVIRONMENTAL ASSOCIATES, INC.®



Donald F. Elias
Principal

DFE/mpj

cc: D. Dee/A. Linero/J. Reynolds/C. Holladay/D. Beason/W. Corbin/Proj. File: LPPPP

BACKGROUND REPORT

AP-42 SECTION 5.17

SULFURIC ACID

Prepared for

**U.S. Environmental Protection Agency
OAQPS/TSD/EIB
Research Triangle Park, NC 27711**

**December 3, 1992
1-96**

**Pacific Environmental Services, Inc.
Post Office Box 12077
Research Triangle Park, NC 27709-2077
919/941-0333**

Note: Pyrite was eliminated from this update of Section 5.17 due to data inconsistency (i.e., the emission factors should be higher with higher oleum percentages).

Spent Acid

Minimum (0 Percent Oleum):

1.11 kg/Mg (2.22 lbs/ton) from Source Test # 18

Maximum (77 Percent Oleum):

1.20 kg/Mg (2.40 lbs/ton) from Source Test # 16

The maximums and minimums for controlled emissions are shown below:

Dark Virgin Sulfur

Minimum (0 Percent Oleum):

0.26 kg/Mg (0.52 lbs/ton) from Source Test # 2A

Maximum (13 Percent Oleum):

1.80 kg/Mg (3.6 lbs/ton) from Source Test # 2B

Spent Acid

Minimum (0 Percent Oleum):

0.014 kg/Mg (0.028 lbs/ton) from Source Test # 3C

Maximum (56 Percent Oleum):

0.20 kg/Mg (0.40 lbs/ton) from Source Test # 4


The emission factors quoted in this update are, in some cases, different than those included in the previous update. Other than those changes noted above, the differences are the result of minor changes that were necessary to correct mistakes made in transmitting the data from Reference 11.

Reference 12

The State of Florida, Department of Environmental Regulation, provided PES with a summary listing of the results of 242 separate compliance source tests from 11 different sulfuric acid plants. The data was not used to update the emission factors for Section 5.17, however, since none of the background information (e.g., testing procedures, calibration information, process descriptions, etc.) was available to verify the test results.

MEMORANDUM

TO: Clair Fancy

FROM: Donald F. Elias 

DATE: February 12, 1996

SUBJECT: FDEP Cost-Effectiveness Review - Additional Catalyst Change

In reviewing the numbers provided to us by John Reynolds (copy attached), several questions arise.

1. The analysis is based on a 0.5 pound per ton reduction in SO₂ emissions. This would equate to a 12.5% reduction, which appears to be low. The graph provided by the applicants would indicate about a 0.8 pound per ton (20%) reduction from the permitted level, while the NSPS Document (EPA 450/3-85-012) indicated that a 2.0 pound per ton (50%) reduction could occur. We feel a more reasonable value to use would be a 25% reduction.
2. The analysis included a considerable sum for lost production. In discussions with Dennis Crumpler and Bill Batavuk of USEPA [(919) 541-0871 and 5309], they explained that it is usually inappropriate to include costs for lost production in BACT analyses. In order for this to be included, the applicant must demonstrate that the lost production is solely for the air pollution control requirement. In other words, it must be documented that the catalyst replacement cannot be done during any other normal maintenance or downtimes at the facility. Additionally, lost production should only include the actual loss of production for the sulfuric acid plant and not other downstream processes, as that production should be addressed through normal scheduling.
3. The proposed two-week shutdown for the catalyst production anticipates other maintenance activity at the facility. A more typical time for catalyst replacement alone would be 2-5 days.
4. The cost for catalyst replacement, other than lost production, does not appear to match the original application. We are uncertain as to where these new numbers came from.
5. Finally, in the calculation of cost-effectiveness, the cost for the additional catalyst replacement only occurs every other year. In other words, one catalyst is being replaced approximately every 18-24 months to maintain the plant's emissions below four pounds per ton. The incremental change, and hence the incremental cost, only occurs on every other cycle. Therefore, the cost per ton of pollutant removed should be further reduced by a factor of two.

As discussed before, we will be providing additional comments and alternative analyses for your review. Thank you for your assistance. Should you wish to discuss these above issues further, please feel free to contact me at (908) 968-9600.

cc: J.Reynolds/A.Linero/W.Corbin/LPPPP-Proj.File

COST EFFECTIVENESS OF ONE ADDITIONAL
SHUTDOWN FOR CATALYST CHANGE TO REDUCE
SO2 EMISSIONS BY 0.5 lb/Ton 100% H2SO4

Cost Basis: (FOB Plant)
\$50/Ton - 98% H2SO4 FOB Plant
\$360/Ton P2O5 - 54% H3PO4 (M.G.)
\$200/Ton - Diammonium Phosphate
18 - Month Turnaround (Typical)
2 - Week Shutdown (Typical)

Calculation of Emission Reduction:

2,700 Tons/day X 0.5 lb SO2/Ton X 365 days/yr
X Ton/2,000 lb = 246 Tons SO2/yr Not Emitted

Calculation of Shutdown Cost:

Catalyst Replacement	\$ 126,000
Crane/Equipment Rental	12,500
Misc. Equipment/Supplies	9,000
Contract Labor	52,500
Plant labor	89,000
Lost Production	<u>5,712,000</u>
Total	\$6,001,000

Calculation of Cost Effectiveness:

\$6,001,000/246 = \$24,394/Ton SO2

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REVISED* COST EFFECTIVENESS OF ONE ADDITIONAL
SHUTDOWN FOR CATALYST CHANGE TO REDUCE
SO₂ EMISSIONS BY 0.5 lb/Ton 100% H₂SO₄^b

Cost Basis: (FOB Plant)
\$50/Ton - 98% H₂SO₄ FOB Plant^c
18 - Month Turnaround (Typical)^d
4 - Day Shutdown (Typical)^e

Calculation of Emission Reduction:
2,700 Tons/day x 0.5 lb SO₂/Ton x 365 days/yr
x Ton/2,000 lb = 246 Tons SO₂/yr Not Emitted

Calculation of Additional Catalyst Change Costs:

Catalyst Replacement	\$ 126,000
Crane/Equipment Rental	12,500
Misc. Equipment/Supplies	9,000
Contract Labor	52,500 ^f
Plant labor	89,000 ^f
Lost production	<u>540,000^g</u>
Total (per replacement)	\$829,000

\$829,000/replacement x 1 additional replacement/1.5 years
= \$552,667/year Total Annualized Cost

Calculation of Cost Effectiveness:
\$552,667/year / 246 Tons/year = \$2247/Ton SO₂^h

Calculation of Cost Effectiveness
Without Lost Production^g
\$289,000/replacement x 1 additional replacement/1.5 years
= \$192,667/year Total Annualized Cost

\$192,667/year / 246 Tons/year = \$783/Ton SO₂

*Revisions from the Department's original cost analyses are bolded or footnoted.

^bBasis for 0.5 lb/ton reduction is 4.0 and 2.0 lb/ton immediately preceding and following catalyst replacement for typical 18 month catalyst replacement interval, giving an average of 3.0 lb/ton without additional catalyst replacement. Assuming a linear increase in emissions as a function of catalyst age, average emissions would be 2.5 lb/ton for an additional catalyst replacement at 9 months (i.e., average of 2.0 and 3.0 lb/ton). The difference of 0.5 lb/ton (i.e., 3.0 - 2.5 lb/ton) is the reduction in average SO₂ emissions. The NSPS Review Document (EPA-450/3-85-012, p. 5-4) notes emissions can be less than 1.0 lb/ton immediately after a catalyst change. This would be a 0.75 lb/ton reduction in average SO₂ emissions (i.e., average of 4.0 and 1.0 minus average of 2.5 and 1.0 lb/ton).

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REVISED COST EFFECTIVENESS OF ONE ADDITIONAL
SHUTDOWN FOR CATALYST CHANGE TO REDUCE
SO2 EMISSIONS BY 0.5 lb/Ton 100% H2SO4
(Concluded)

^aFor this analysis, we assumed that sulfuric acid is purchased at \$50/Ton FOB Plant for the full production rate of the sulfuric acid plant (2700 Tons/day) and, therefore, the operation of the downstream phosphate fertilizer plant is not reduced. Since there is no loss in fertilizer production, the costs the Department included to purchase both intermediate and final products at the phosphate fertilizer plant are ignored.

^dTurnaround provided by applicant, which translates to one additional catalyst change per 18 month interval, giving an annualization factor of 0.667 yr^{-1} (i.e., 1 additional change/1.5 years). NSPS Review Document (EPA-450/3-85-012, P. 5-4) notes that typical turnaround times may exceed 30 months, giving an annualization factor as low as 0.4 yr^{-1} .

^eTelephone conversations with USEPA headquarters staff in Research Triangle Park indicate that shutdown times associated only with the control activity (i.e., catalyst replacement time) only can be included in BACT cost analyses. The BACT cost analysis should not include lost production associated with repairs to or maintenance of the facility. A more typical time for catalyst replacement alone is 2-5 days, maximum. In addition, costs for lost production can only be included if the catalyst replacement could not be performed during any other maintenance cycle.

^fPlant labor is probably not a valid cost item since the plant labor would still be paid if the plant were operating. Also, the contract and plant labor amounts are probably excessive. (i.e., given for the period of 2 weeks) (see footnote e).

^g\$50/Ton (H2SO4 FOB Plant Cost) x 2700 Tons/day x 4 days = \$540,000 (see also footnote e).

^hCost effectiveness figures may be much lower based on information in the NSPS Review Document. If typical turnaround time is 24 months (instead of 18 months) and catalyst replacement occurs at 12 months, the cost is \$1685/Ton SO2. If typical emissions are 1.0 lb/Ton after catalyst replacement with an 18 month turnaround, the cost is \$1494/Ton SO2. At the extreme, if typical emissions are 1.0 lb/Ton after catalyst replacement with a typical 24 month turnaround and catalyst replacement occurs every 12 months, the cost is only \$1120/Ton SO2. These figures are still conservative in that catalyst replacement alone can probably be accomplished in less than 4 days - with a considerable savings in lost production (H2SO4 replacement costs) and labor costs.

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In Re: Petition for Declaratory Statement;
Piney Point Phosphates, Inc.,

Case No. _____

Petitioner.

**PINEY POINT PHOSPHATES, INC.'S
PETITION FOR DECLARATORY STATEMENT**

Piney Point Phosphates, Inc. ("Piney Point"), by and through the undersigned counsel and pursuant to Section 120.565, Florida Statutes, and Rule 62-103.510, Florida Administrative Code, respectfully requests the Department of Environmental Protection ("DEP") to render a Declaratory Statement. As grounds therefor, Piney Point alleges:

1. Piney Point owns a phosphate fertilizer manufacturing facility, which includes a sulfuric acid plant, located at 13300 U.S. Highway 41 North, Palmetto, Florida. For purposes of this petition, Piney Point's address is that of its undersigned counsel.

2. Piney Point is a substantially affected person within the meaning of Section 120.565(1), Florida Statutes, for the reasons stated in this petition.

Statutes and Rules Entitling Petitioner to Relief

3. Piney Point is entitled to relief pursuant to Chapters 120 and 403, Florida Statutes, and Chapter 62, Florida Administrative Code. Without limiting the generality of the foregoing, the specific agency rules and statutory provisions that entitle Piney Point to relief are:

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DEPARTMENT OF
ENVIRONMENTAL PROTECTION
OFFICE OF GENERAL COUNSEL

Section 120.565, Florida Statutes and Rule 62-103.510, Florida Administrative Code, relating to declaratory statements.

Section 403.087, Florida Statutes, relating to circumstances requiring a permit from DEP.

Rule 62-210.300(1), Florida Administrative Code, relating to when air construction permits are required.

Rule 62-210.300(5), Florida Administrative Code, relating to notification of start up.

Rule 62-210.200(238), Florida Administrative Code, defining "reconstruction" of an emissions unit.

Rule 62-210.200(185), Florida Administrative Code, defining "modification."

Rule 62-212.400(2)(d)4, Florida Administrative Code, relating to modifications to major facilities.

Rule 62-296.402, Florida Administrative Code, setting out New Source Performance Standards for sulfuric acid plants.

Additionally, Piney Point is entitled to relief pursuant to the counterpart federal regulations in 40 C.F.R. Parts 52 and 60, insofar as those regulations are applicable and incorporated by DEP rule into Chapter 62, Florida Administrative Code.

STATEMENT OF FACTS

4. Accompanying this petition is an Appendix containing documents that relate to the facts alleged. The Appendix materials are incorporated by reference in this petition.

5. Piney Point is not aware of any disputed facts.

Plant Background

6. Piney Point's phosphate fertilizer manufacturing facility includes, among other things, a Monsanto double-absorption sulfuric acid plant. This sulfuric acid plant is the subject of a

currently valid DEP permit, No. A041-197112, to operate an air pollution source. Appendix Tab A. Among other things, this permit requires the sulfuric acid plant to comply with New Source Performance Standards ("NSPS") for Sulfuric Acid Plants, as set forth in Rule 62-296.402, Florida Administrative Code.

7. The sulfuric acid plant was constructed to its present configuration in the mid-1970s following preconstruction review and the September 1, 1975 issuance of DEP permit No. AC41-3042B to construct an air pollution source. The successor operation permit, No. A041-2042B, was issued in 1976. Appendix Tab B.

8. The Piney Point sulfuric acid plant was in operation until June 1992 when it temporarily ceased operating because of market conditions. The plant was fully operable when production stopped. In previous years, plant operations ceased from time-to-time for periodic maintenance or due to market conditions, as is the practice at all sulfuric acid plants associated with fertilizer manufacturing facilities.

9. Depending on the nature and scope of the necessary periodic maintenance and repairs, which can be substantial and expensive, the sulfuric acid plant can be idle for maintenance turnarounds for as little as two weeks or longer than a month depending on the operating plan of the facility. Additionally, and also like all other fertilizer manufacturing facilities in Florida and elsewhere, the Piney Point sulfuric acid plant has operated at different rates and different times due to maintenance and repairs,

fertilizer market conditions, and the market price of sulfuric acid compared to the cost of producing sulfuric acid.

10. At no time has Piney Point management determined or intended that the sulfuric acid plant was to be permanently shut down. In accordance with the business decision of Piney Point management to resume operations at the Piney Point facility, including the restart of the sulfuric acid plant, there have been, and still are, Piney Point employees working at the plant to keep plant components in operational condition and to prevent deterioration. This idle plant maintenance program was undertaken at an expense of more than nine million dollars, in addition to an expenditure of over eight million dollars at the associated Wingate Mine.

11. To the same end, Piney Point has maintained its DEP permit to operate the sulfuric acid plant, No. AO41-197112. Appendix Tab A. Further, Piney Point has applied to DEP for a facility-wide operating permit pursuant to Title V of the Clean Air Act Amendments of 1990. Appendix Tab C (excerpt from application). Currently, the Title V application, which was submitted in July 1996 and includes the sulfuric acid plant, is undergoing normal processing by DEP.

12. Consistent with Piney Point's intention to restart the sulfuric acid plant, DEP has maintained, and continues to recognize and maintain the air pollutant emissions from the Piney Point sulfuric acid plant in its Emissions Inventory. Consequently, those emissions are presumed by DEP to be occurring, and the ground

BEST AVAILABLE COPY

1.0 SYNOPSIS OF APPLICATION

1.1 Applicant

Royster Phosphates, Inc.
U.S. Highway 41
P.O. Box 1329
Palmetto, Florida 34220

1.2 Facility Location

Royster Phosphates, Inc. operates a phosphate chemical fertilizer manufacturing facility approximately nine miles north of Palmetto, Florida on U.S. Highway 41 in Manatee County. The complex occupies 660.7 acres and the UTM coordinates are Zone 17, 348.5 km east and 3057.3 km north.

1.3 Project Description

Royster Phosphates, Inc. is proposing to construct a Monsanto Enviro-Chem double absorption sulfuric acid plant and a cogeneration facility which will use export steam from the new sulfuric acid plant to generate electrical power. The new sulfuric acid plant will have a rated capacity of 2700 short tons per day of 100 percent H_2SO_4 . The cogeneration facility will be rated at 20.8 megawatts average annual export of electrical power.

Royster has one existing double absorption sulfuric acid plant which has a permitted capacity of 2000 short tons per day of 100 percent H_2SO_4 . This plant will be permanently shutdown when the new sulfuric acid plant

level ambient air concentrations resulting from those emissions are considered by DEP when analyzing air quality impacts and increment consumption from other emissions units seeking permits to construct air pollution sources.

Decision to Restart the Plant

13. In 1996, Piney Point management decided to resume operations at the fertilizer manufacturing facility including the restart of the sulfuric acid plant. The plan to restart the plant, scheduled for late 1997, required the repair and replacement of certain plant components. Following that work, the restarted plant would have the same capacity, design basis and physical configuration as previously permitted and there would be no change in the pollutants emitted. The restarted sulfuric acid plant will comply with its DEP operating permit, including NSPS for sulfuric acid plants.

14. In connection with the scheduled restart, in December 1996 representatives of Piney Point met with DEP personnel at DEP's Southwest District Office. At that meeting, Piney Point described its plans for the plant restart and provided information on the nature and scope of the repair, maintenance, and replacement of component parts of the sulfuric acid plant. Piney Point told DEP personnel that repair, maintenance and replacement of component parts at the sulfuric acid plant would cost approximately 16.9 million dollars. Another 1.3 million dollars would be spent on facilities associated with the sulfuric acid plant primarily on a new auxiliary boiler which is the subject of a separate permit and

which services the fertilizer facility as a whole. Correspondence between Piney Point and DEP, Appendix Tabs D and E, indicate that as a consequence of the December meeting and the information provided by Piney Point, DEP did not consider the sulfuric acid plant restart, or the planned repairs, to require any additional DEP permits.

15. With the exception of the mist eliminators, the plant components undergoing repair, maintenance, or replacement do not affect the permitted emissions of air pollutants from the sulfuric acid plant. Replacement of the mist eliminators will not increase the emissions of air pollutants from the sulfuric acid plant. Furthermore, with the exception of the cooling tower that was destroyed by the 1993 "No Name Storm," these plant components are commonly repaired or replaced in the course of scheduled plant turnarounds, including the work on the mist eliminators.

16. Piney Point's proposed maintenance and repairs, and the routine nature of this work are more fully described in letters to DEP of March 5 and March 26, 1997 from Mr. Robert C. Stewart, Senior Vice President of Piney Point. These letters and accompanying materials are at Appendix Tabs F and G, respectively.

17. Consistent with the December 1996 meeting with DEP and Rule 62-210.300(5), Florida Administrative Code, and as a direct consequence of DEP's oral and written statements that additional permits were not required, Piney Point began preparations for the plant restart by expending or otherwise committing significant sums of money.

Manatee County

18. In January 1997, Manatee County contacted DEP urging that the restart of the Piney Point sulfuric acid plant must be permitted anew by undergoing full new source ("PSD") review because, in the view of Manatee County, the plant had been "shut down." Manatee County also argued that the contemplated repairs amount to a "major modification" thus triggering substantial, expensive, and time consuming permitting requirements. Alternatively, Manatee County complained that the restarted plant should be subject to NSPS contending that the repair work is a "modification" or "reconstruction." This last contention does not appear to recognize that the sulfuric acid plant is already subject to and in compliance with NSPS for sulfuric acid plants.

19. Piney Point responded to Manatee County's contentions and has demonstrated that the sulfuric acid plant has not been shut down and the repairs to the sulfuric acid plant do not constitute "reconstruction," "modification" or "major modification." From February 1997 until the present, Piney Point has provided DEP and Manatee County with voluminous correspondence and documents, and has arranged various meetings and conferences to discuss the repairs to the sulfuric acid plant. Despite overwhelming evidence produced by Piney Point, Manatee County has persisted in trying to have DEP burden Piney Point with lengthy and expensive permitting requirements for the repair of the sulfuric acid plant without any meaningful air pollution consequences.

20. On March 3, 1997, Manatee County formally filed documents with DEP threatening to sue the agency if its demands were not met.

21. Because of this threat by Manatee County, and desiring to avoid litigation, Piney Point suspended its plans to repair the plant and instead attempted in good faith to negotiate with Manatee County. These negotiations stemmed from a meeting organized by DEP, where representatives of Piney Point and Manatee County fully discussed the plans to restart the sulfuric acid plant at Piney Point. At that meeting Piney Point agreed to certain changes to the current operating permit for the sulfuric acid plant, agreed to incorporate various rules of operation in the permit, and agreed to additional safety and inspection procedures not currently required by law. Through additional meetings with Manatee County, its counsel and its consultants, these agreements were formalized in a written settlement agreement and sent to Manatee County. At no time did the representatives from Manatee County state that the County would not agree to the repair and restart of the sulfuric acid plant.

22. This settlement effort was rebuffed and repudiated by Manatee County on April 25, 1997 when Manatee County rejected the settlement agreement. Not only did Manatee County totally oppose the restart of the sulfuric acid plant, the County, through counsel, stated Manatee County may consider certain "disincentives" if Piney Point attempted to go forward with the repairs to the sulfuric acid plant. These disincentives included:

- Looking at every operation at the Piney Point facility, such as the NPDES permit and the phosphoric acid plant to see what permits could be opposed in order to stop or hinder the resumption of operations at the facility.
- Preventing Piney Point from utilizing its historic shipping facility at the Manatee County owned Port Manatee for the shipment of product from its facility.
- Seeking more stringent BACT requirements than which the existing plant (and all other similar plants in Florida) is currently permitted.
- Using political influence to hinder the resumption of operations at the facility. This would include contacting the Governor, legislators, and other political figures to stop or hinder operation at the facility and making contacts with OSHA, EPA and DEP for further investigations or inspections of the facility in order to slow down or stop resumption of operations at the Piney Point facility.

23. Manatee County does not want the Piney Point plant to ever be restarted and members of its County Commission have stated so publicly.

Necessity for Declaratory Statement

24. Although Piney Point does not believe the issues raised by Manatee County concerning the plant restart are legitimate, or have been advanced for proper purposes, this Petition for Declaratory Statement is necessary to bring about an orderly resolution of those issues. At the same time, Piney Point hopes that this proceeding will avoid the lawsuit threatened by Manatee County against the agency.

Points On Which A Declaration Is Requested

25. Piney Point respectfully requests DEP to convene such informal proceedings as necessary and, pursuant to Section 120.565, Florida Statutes, and Rule 62-103.510, Florida

Administrative Code, render a declaratory statement finding that Piney Point may perform the work described in this petition and restart the sulfuric acid plant without further air pollution construction permits.

26. More particularly, Piney Point requests a declaration that, within the meaning of DEP's rules and Chapter 403, Florida Statutes, the proposed work by Piney Point is neither "reconstruction" nor a "modification" nor a "major modification" and that the plant has not otherwise been "shut down." Additionally, Piney Point requests the declaratory statement to confirm that the sulfuric acid plant, as already permitted to operate by DEP, is in compliance with NSPS requirements for sulfuric acid plants.

27. Finally, in that DEP is already familiar with the facts stated in this petition and the issues raised, Piney Point respectfully requests that this proceeding be expedited and concluded as swiftly as possible.

FILED this ___ day of May, 1997 with the Agency Clerk of the Department of Environmental Protection, Tallahassee, Florida.

HOLLAND & KNIGHT
Lawrence N. Curtin
315 South Calhoun Street
Suite 600
Tallahassee, Florida 32301

AMUNDSEN & MOORE
Paul H. Amundsen
Richard W. Moore
502 East Park Avenue
Tallahassee, Florida 32301

Co-Counsel for Petitioner

By: 

Paul H. Amundsen

cc: Douglas Beason, Esquire
David Dee, Esquire

APPENDIX - TAB A



Florida Department of Environmental Regulation

Southwest District • 4520 Oak Fair Boulevard • Tampa, Florida 33610-7347

Lawton Chiles, Governor

813-623-5561

Carol M. Browner, Secretary

NOTICE OF PERMIT ISSUANCE

CERTIFIED MAIL

In the Matter of an Application
for permit by:

DER File No.: A041-197112
County: Manatee

Mr. Daniel D. Harris
Plant Manager
13300 U.S. Highway 41 N.
Palmetto, Florida 34221

Enclosed is Permit Number A041-197112 to operate the sulfuric acid plant located at your Piney Point plant in Palmetto, issued pursuant to Section 403, Florida Statutes.

A person whose substantial interests are affected by this permit may petition for an administrative proceeding (hearing) in accordance with Section 120.57, Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within 14 days of receipt of this permit. Petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. Failure to file a petition within this time period shall constitute a waiver of any right such person may have to request an administrative determination (hearing) under section 120.57 Florida Statutes.

The Petition shall contain the following information;

- (a) The name, address, and the telephone number of each petitioner, the applicant's name and address, the Department Permit File Number and the county in which the project is proposed;
- (b) A statement of how and when each petitioner received notice of the Department's action or proposed action;
- (c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action;
- (d) A statement of the material facts disputed by petitioner, if any;
- (e) A statement of facts which petitioner contends warrants reversal or modification of the Department's action or proposed action;

- (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Department's action or proposed action; and
- (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this permit. Persons whose substantial interests will be affected by any decision of the Department with regard to the application have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 14 days of receipt of this notice, in the Office of General Counsel at the above address of the Department. Failure to petition within the allotted time frame constitutes a waiver of any rights such person has to request a hearing under Section 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-5.207, F.A.C.

This permit is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above paragraphs or unless a request for extension of time in which to file a petition is filed within the time specified for filing a petition and conforms to Rule 17-103.070, F.A.C. Upon timely filing of a petition or a request for an extension of time this permit will not be effective until further Order of the Department.

When the Order (Permit) is final, any party to the Order has the right to seek judicial review of the Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 2600 Blair Street Road, Tallahassee, Florida 32399-2400; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date the Final Order is filed with the Clerk of the Department.

Royster Phosphates, Inc.
Palmetto, FL
A041-197112

Page 3

Executed in Tampa, Florida

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION

David R. Zell

David R. Zell
Air Permitting Engineer
4520 Oak Fair Boulevard
Tampa Florida 33610-7347
Phone (813) 623-5561 Ext. 416

DRZ/
Attachment

CERTIFICATE OF SERVICE

The undersigned duly designated deputy agency clerk hereby certifies that this NOTICE OF PERMIT ISSUANCE and all copies were mailed by certified mail before the close of business on JUL - 3 1991 to the listed persons.

FILING AND ACKNOWLEDGEMENT FILED,
on this date, pursuant to Section
120.52(11), Florida Statutes, with
the designated Department Clerk,
receipt of which is hereby
acknowledged.

Therilyn Quispe
Clerk

JUL - 3 1991
Date



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JUN 29 1976

STATE OF FLORIDA DEPARTMENT OF POLLUTION CONTROL

D.E.R. S.W. SUB-DISTRICT

PERMITTED BY S.W. SUB-DISTRICT OFFICE DEPT. OF ENVIRONMENTAL REGULATION

PERMIT NO. A041-2042B DATE 8/5/76

APPLICATION TO OPERATE/CONSTRUCT POLLUTION SOURCES 60th Da

SECTION I - GENERAL INFORMATION FOR ALL POLLUTION SOURCES I TO BE FILLED IN BY APPLICANT

SEP 23 1976

Source Type: Air Pollution
Type application: [X] Operation [] Temporary Operation [] Construction
Status Source: [] New [X] Existing [X] Modification
Source Name: Borden, Inc. County: Manatee
Source Location: Street: U. S. Hwy. 41 - Piney Point City: Piney Point (N. Palmetto)
Appl. Name and Title: J. W. Smith, Production Manager
Appl. Address: P. O. Box 908, Palmetto, Florida 33561

II TO BE FILLED IN BY REGION (*BY BUREAU OF PERMITTING)

Table with 6 columns: Control No., Region, County, Type, *Project, *Exp. Date

Source Description:
Control Equipment:

Water Permits

Receiving Body Code: Station No.: Influent: Surface Water Code: Effluent:
Effluent: Average Design % Reduction
Flow rate, MGD
BOD, lbs/day
Susp. Sol., lbs/day
Other:

Air Permits

Operating Time: [] Continuous [] Intermittent
Fuel: Type M-BTU/hr. In Put
Incinerator: Capacity, tons/day Mfg. & Model Type Waste
Pollutant Emissions, lbs/day Actual Design Allowable
Particulate
Sulfur Oxides
Other:

Implementation: Estimated Appl. Filing Date