

Chronology of Activities

OGC Number District County

Style of Case

Program Area Mode

Lead Attorney Status

Forum Name Forum Case Number

Permit Appl Final Order Number

Date *	Code	Activity Description
01/09/2004	REX1	RECEIVED FIRST REQUEST FOR EXTENSION OF TIME
01/12/2004	AA	ASSIGNED TO LEAD ATTORNEY JACK J CHISOLM
01/12/2004	ACO	ADMIN. CASE OPENED IN OGC
01/21/2004	AR	RE-ASSIGNED TO LEAD ATTORNEY DOUG D BEASON
04/02/2004	REX2	RECEIVED SECOND REQUEST FOR EXTENSION OF TIME
04/23/2004		ORDER GRANTING EXT. UNTIL 6/15/2004
05/28/2004	RPFH	PETITION FOR FORMAL HEARING RECEIVED
06/03/2004		AMENDED PETITION FOR FORMAL ADMINISTRATIVE HEARING
08/08/2005		STIPULATED DISMISSAL OF PETITION FOR ADMIN HEARING
08/08/2005	CC	CASE CLOSED IN OGC

BEST AVAILABLE COPY

Before the
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
3900 Commonwealth Boulevard
Tallahassee, Florida 32399

CARGILL FERTILIZER, INC.**DEP Permit No. 1050053-033-AC
(PSD - FL-334)****Petitioner,**

v.

OGC Case No. 04-00043**FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION****Respondent****AMENDED PETITION FOR FORMAL ADMINISTRATIVE HEARING**

Petitioner, CARGILL FERTILIZER, INC., by and through its undersigned counsel, requests a formal administrative hearing concerning the proposed Air Construction Permit No. 1050053-033-AC (PSD-FL-334), and in support thereof, states as follows:

1. This Amended Petition is submitted pursuant to Sections 120.569 and 120.57(1), Florida Statutes, and Sections 28-106.201 and 62-110.106, Florida Administrative Code. A petition was originally filed on May 27, 2004. This Amended Petition corrects typographical errors to the original Petition.

PARTIES

2. Petitioner is Cargill Fertilizer, Inc., whose address is 8813 US Highway 41 South, Riverview, Florida 33569, and whose phone number is 813-671-6297. The Petitioner's representatives are set forth at the end of this Petition.

BEST AVAILABLE COPY

3. Respondent, Florida Department of Environmental Protection is an agency of the State of Florida whose address is 3900 Commonwealth Boulevard, Tallahassee 32339.

STANDING

4. Petitioner is the applicant for the permit which is the subject of this Petition. Petitioner's substantial interest are affected by the issuance of the permit because Petitioner would be obligated under threat of civil and criminal liability to comply with each of the terms and conditions of this permit.

NOTICE AND TIMELINESS

5. Petitioner first received notice of Respondent's proposed agency action on December 29, 2003 and published Notice of Intent to Issue on January 3, 2004. On April 21, 2004, Respondent granted an extension until May 28, 2004 in which to file a petition for administrative hearing.

FACTS

6. Respondent has issued a Draft Permit which is attached as Exhibit 1. The Draft Permit includes a Technical Evaluation and Preliminary Determination, a proposed permit with numerous specific conditions, and a Best Available Control Technology Determination.

7. The proposed permit includes four phosphoric acid storage tanks (EU014), one acid clarification tank and one aging tank (EU015), and four acid blend tanks (EU037). Each unit was listed as an insignificant source in a Notice of Determination of Insignificant Sources/Approval to Construct and Operate issued by the Southwest District Office (SWD) on September 27, 1994, pursuant to Rule 62-4.040(1)(B); F.A.C.

8. The proposed permit imposes hourly production and fuel usage rates.

BEST AVAILABLE COPY

9. The proposed permit imposes an emission limit for fluoride from Phosphoric Acid Plants of 1.15 pounds per hour and 5.03 tons per year with a limit basis of 0.009 lb F/ton P₂O₅ input.

DISPUTED FACTS

10. The tanks listed in paragraph 7 are not designed, constructed or operated in such a manner as to make any unit-specific requirements applicable to those units.

11. The tanks listed in paragraph 7, either alone or in combination with other units or activities, would not cause the facility to exceed any major source thresholds.

12. The tanks listed in paragraph 7 would neither emit nor have the potential to emit pollutants in excess of those parameters listed in Section 62-213.430(6)(b)3.

13. Production units at the facility determine process rate based on a daily analysis of the phosphate feed bearing material.

14. The process units at the facility have adequate pollution controls to eliminate a potential for excess emissions when a daily production rate and fuel usage is utilized.

15. The facility is not designed to operate above permitted rates for the plant. The units within the facility depends on steady state conditions for proper operation and will not tolerate drastic or rapid changes to production rates or fuel usage. These units cannot practically be operated at excessive rates for short periods to make up for lost production.

16. Compliance test methods for fluoride emissions are based on a 3-hour averaging time. The United States Environmental Protection Agency has determined that averaging times as one month are "practically enforceable".

BEST AVAILABLE COPY

17. The imposition of hourly production rates and fuel usage will impose unnecessary recordkeeping and operational restrictions on the facility without any impact on emissions or the potential to emit regulated pollutants.

18. Respondent has not performed a BACT analysis of the energy, environmental and economic impacts of imposing a lower fluoride standard as a BACT requirement.

19. Respondent has relied on one four year old test as the basis for a lower fluoride standard and has not reviewed the emissions levels achievable and required in the industry.

20. A fluoride emission limit of 0.009 F/ton P₂O₅ has not been imposed as BACT at any other facility in the industry.

21. The current pollution control system performs sufficiently to ensure compliance with BACT and there is no evidence that any other controls would achieve a lower rate.

APPLICABLE RULES AND STATUTES

22. Section 62-213.430, FAC, provides that units or activities shall be considered insignificant emissions units if the following criteria are met:

1. Such unit or activity would be subject to no unit-specific applicable requirement.

2. Such unit or activity, in combination with other units and activities proposed as insignificant, would not cause the facility to exceed any major source threshold(s) as defined in subparagraph 62-213.430(3)(c)1., F.A.C. unless it is acknowledged in the permit application that such units or activities would cause the facility to exceed such threshold(s).

3. Such unit or activity would neither emit nor have the potential to emit:

BEST AVAILABLE COPY

500 pounds per year or more of lead and lead compounds expressed as lead;
1,000 pounds per year or more of any hazardous air pollutant;
2,500 pounds per year or more of total hazardous air pollutants; or
5.0 tons per year or more of any other regulated pollutant.

23. The requirement that BACT be applied to preconstruction reviews is set forth in Section 62-212.400 (5) (c) FAC.

24. The definition of BACT is set forth in Section 62-210.200 (42), FAC and reads as follows:

(42) "Best Available Control Technology" or "BACT" – An emission limitation, including a visible emissions standard, based on the maximum degree of reduction of each pollutant emitted which the Department, on a case by case basis, taking into account energy, environmental and economic impacts, and other costs, determines is achievable through application of production processes and available methods, systems and techniques (including fuel cleaning or treatment or innovative fuel combustion techniques) for control of each such pollutant.

(a) If the Department determines that technological or economic limitations on the application of measurement methodology to a particular part of an emissions unit or facility would make the imposition of an emission standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reductions achievable by implementation of such design, equipment, work practice or operation.

(b) Each BACT determination shall include applicable test methods and shall provide for determining compliance with the standard(s) by means which achieve equivalent results

25. In addition to the specific rules cited above, the proposed permit is issued under Chapters 62-4, 62-204, 62-210, 62-212, 62-296, and 62-297, F.A.C.

BEST AVAILABLE COPY**BASIS FOR RELIEF**

26. The tanks listed in paragraph 7 above are insignificant sources within the meaning of Section 62-213.43(6).

27. Petitioner has provided reasonable assurances that daily rather than hourly production and fuel usage rates will meet all applicable rules. Respondent has issued many comparable permits with hourly rates and is treating Petitioner differently than similarly situated facilities.

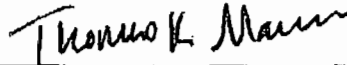
28. Respondent has failed to perform the required BACT analysis for the proposed reduction in allowable fluoride emissions and the lower rate for fluoride is unsupported by the facts in this case.

WHEREFORE, the Petitioner respectfully requests that the following relief be granted:

1. That the Phosphoric Acid Plant storage; clarification; and aging and blending tanks be designated as insignificant sources and not be regulated under the permit;
2. That daily rather than hourly averaging times for production rates and fuel usage be required;
3. That BACT for fluoride emissions from the Phosphoric Acid Plant be set at 0.012 lb F/ton P_2O_5 , and
4. That the expiration date for the permit be adjusted to allow for the full construction schedule at the conclusion of this proceeding.

BEST AVAILABLE COPY

Respectfully submitted,

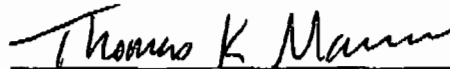


Thomas K. Maurer. Esq.
Florida Bar No. 03311447
Foley & Lardner LLP
111 N. Orange Avenue, Suite 1800
Orlando, Florida 32801
Telephone: (407) 423-7656
Facsimile: (407) 648-1743
Email tmaurer@foley.com

James K. Voyles
Cargill Law Department
15407 McGinty Road West
Wayzata, MN 55391-2399
Telephone: (952)742-2589
Fax: (952) 742-6349
Email James_Voyles@cargill.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition for Formal Administrative Hearing was sent via facsimile and Federal Express to Kathy Carter, Agency Clerk, Department of Environmental Protection, Office of General Counsel, Marjory Stoneman Douglas Building, Room 659, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, this 2nd day of June, 2004.



Thomas K. Maurer. Esq.
Florida Bar No. 03311447
Foley & Lardner LLP
111 N. Orange Avenue, Suite 1800
Orlando, Florida 32801
Telephone: (407) 423-7656
Facsimile: (407) 648-1743

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

**CARGILL FERTILIZER, INC.,
(Green Bay Phosphate Fertilizer Facility),**

Petitioner,

v.

OGC #04-0043
DEP Permit 1050053-33-AC

DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Respondent.

**ORDER GRANTING REQUEST FOR EXTENSION
OF TIME TO FILE PETITION FOR HEARING**

This cause has come before the Florida Department of Environmental Protection upon receipt of a request made by Petitioner CARGILL FERTILIZER, INC. – GREEN BAY FACILITY, to grant an extension of time to file a petition for an administrative hearing TO ALLOW TIME TO RESOLVE WITH FDEP VARIOUS ISSUES PERTAINING TO THE TERMS OF THE REVISED VERSION OF THE PERMT for its location in Polk County, Florida. Because the request shows good cause for the extension of time,

IT IS ORDERED:

The request for an extension of time to file a petition for administrative proceeding is granted. Petitioner shall have until **June 15, 2004**, to file a petition in this matter. Filing shall be complete on receipt by the Office of General Counsel, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

DONE AND ORDERED on this 23rd day of April, 2004, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



JACK CHISOLM, Deputy General Counsel
3900 Commonwealth Boulevard, M.S. 35
Tallahassee, Florida 32399-3000
850-245-2242 facsimile 850-245-2302

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via
_ U. S. Mail facsimile only, this 23rd day of April, 2004, to:

James K. Voyles
Attorney
Cargill Law
Post Office Box 5624
Minneapolis, MN 55440

facsimile: 952-742-6349 (or 7503)

W. Douglas Beason, Assistant General Counsel
STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION
3900 Commonwealth Boulevard - Mail Station 35
Tallahassee, FL 32399-3000
850-245-2242 facsimile 850-245-2302

with a courtesy copy to:

Trina L. Vielhauer
Chief
Bureau of Air Regulation

facsimile: 850-921-9533

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CARGILL FERTILIZER, INC.,
[GREEN BAY PHOSPHATE FERTILIZER FACILITY],

Petitioner,

v.

DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Respondent.

OGC #04-0043
Permit #1050053-033-AC
PSD-FL-334

**ORDER GRANTING SECOND REQUEST FOR EXTENSION
OF TIME TO FILE PETITION FOR HEARING**


This cause has come before the Florida Department of Environmental Protection upon receipt of a request made by Petitioner CARGILL FERTILIZER, INC., to grant an extension of time to file a petition for an administrative hearing on the Intent to Issue for the modifications to the Green Bay Phosphate fertilizer Facility. Because the request shows good cause for the extension of time,

IT IS ORDERED:

The request for an extension of time to file a petition for administrative proceeding is granted. Petitioner shall have until Friday, May 28, 2004, to file a petition in this matter. Filing shall be complete on receipt by the Office of General Counsel, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

DONE AND ORDERED on this 21st day of April, 2004, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


JACK CHISOLM, Deputy General Counsel
3900 Commonwealth Boulevard, M.S. 35
Tallahassee, Florida 32399-3000
850-488-9314 facsimile 850-921-3000

*per dia @ OGC on 4/26
ignore huls) & keep
mine w/ date of 6/14/04-12*

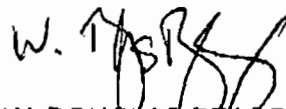
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via
___ U. S. Mail facsimile ONLY, this 22nd day of April, 2004, to:

James K. Voyles
Cargill Law
P.O. Box 5624
Minneapolis, MN 55440-5624

facsimile: 952-742-6349
alt. facsimile: 952-742-7503

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



W. DOUGLAS BEASON,
Assistant General Counsel
Florida Bar No. 379239
3900 Commonwealth Boulevard, MS #35
Tallahassee, Florida 32399-3000
Telephone (850) 245-2242
Facsimile (850) 245-2302

With an internal courtesy copy to:

Ann Qullian, DEP SW Dist. Office via fax only 813-7446458



RECEIVED

APR 05 2004

April 2, 2004

BUREAU OF AIR REGULATION

**VIA OVERNIGHT DELIVERY
VIA FACSIMILE: 850.245.2303**

Office of General Counsel Florida Department
of Environmental Protection
3900 Commonwealth Boulevard
Mail Station #35
Tallahassee, Florida 32399-3000

Office of General Counsel:

RE: Cargill Fertilizer, Inc.: Draft Permit No. 1050053-033-AC; PSD-FL-334
Green Bay Phosphate Fertilizer Facility
*Request for an Additional Extension of the Time in Which to File Petition for
Hearing, Mediation or Alternate Remedies, or in the alternative, Petition for an
Administrative Hearing*

Office of General Counsel:

Cargill Fertilizer, Inc. ("Cargill") requests from the Florida Department of Environmental Protection ("FDEP") an additional extension of the time in which to file a petition for an administrative hearing, mediation or alternate remedies with respect to the above referenced permit ("Permit").

Cargill received the original "Intent to Issue" for the modifications to the Green Bay Phosphate Fertilizer Facility and the "Public Notice of Intent to Issue" from the FDEP on December 29, 2003. Cargill initially requested an extension of time on January 8, 2004, to which no direct response was received. However, on March 4, 2004, Cargill received a revised version of the Permit via e-mail. Cargill seeks this additional extension to resolve with FDEP various issues pertaining to the terms of the revised version of the Permit.

While Cargill is confident such issues can be resolved without the need for a formal proceeding, in order to fully protect and reserve its right to a hearing, mediation or other remedy, Cargill requests an extension. My client, David Jellerson, has discussed this additional extension with the FDEP New Source Review Permitting Administrator, Jim Pennington.

James K. Voyles
Attorney
(952) 742-2589

Mailing Address:
P.O. Box 5624
Minneapolis, MN 55440-5624

Location/Shipping Address:
15407 McGinty Road West
Wayzata, MN 55391-5624

Facsimile:
(952) 742-6349
or (952) 742-7503

Therefore, Cargill hereby requests an additional extension until May 14, 2004, or such other extension period FDEP deems adequate to provide Cargill and FDEP a reasonable opportunity to resolve any issues with respect to the Permit, and further requests the FDEP suspend its intent to issue accordingly.

In the event FDEP declines to grant Cargill's extension request, Cargill hereby petitions for an administrative hearing and provides FDEP the following pertinent information:

- (a) *The name, address, and telephone number of petitioner; the FDEP's identification number for the Agency action and the county in which the subject matter or activity is located:*

Cargill Fertilizer, Inc.
Green Bay Facility
8813 U.S. Highway 41, S.
Riverview, FL 33569

Permit No. 1050053-033-AC; PSD-FL-334
Polk County

- (b) *A statement of how and when each petitioner received notice of Agency action.*

Cargill received notice via U.S. Mail on December 29, 2003.

- (c) *A statement of how each petitioner's substantial interests are affected by the Agency action.*

Cargill's facility is the subject of the Permit.

- (d) *A statement of the material facts disputed by petitioner, if any.*

Cargill is unsure if there are any material facts in dispute at this time. The Draft permit contains conditions which appear to be inconsistent with the intended project and the application. Therefore, Cargill desires the extension to resolve these issues and to determine if material facts are in dispute and wishes to work with FDEP on the Permit's conditions accordingly.

- (e) *A statement of facts which petitioner contends warrant reversal or modification of the Agency action.*

Cargill is unsure if there are any material facts warranting reversal or modification at this time. Draft permit contains conditions which appear to be inconsistent with the intended project and the application. Therefore, Cargill desires the

Office of General Counsel
April 2, 2004
Page 3

extension to resolve these issues and to determine if material facts are in dispute and wishes to work with FDEP on the Permit's conditions accordingly.

- (f) *A statement of which rules or statutes petitioner contends require reversal or modification of the Agency action.*

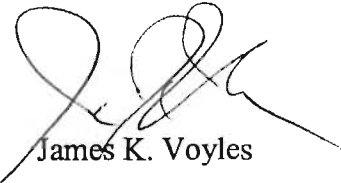
Cargill is unsure if there are any rules or statutes requiring reversal or modification at this time. Draft permit contains conditions which appear to be inconsistent with the intended project and the application. Therefore, Cargill desires the extension to resolve these issues and to determine if material facts are in dispute and wishes to work with FDEP on the Permit's conditions accordingly.

- (g) *A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Agency action.*

Cargill is unsure if Departmental action is required at this time. Draft permit contains conditions which appear to be inconsistent with the intended project and the application. Therefore, Cargill desires the extension to resolve these issues and to determine if material facts are in dispute and wishes to work with FDEP on the Permit's conditions accordingly.

Cargill thanks you for your consideration and continued cooperation. Please contact me with any questions or concerns.

Very truly yours,



James K. Voyles

JKV:rl
340731

cc: Mr. Jim Pennington
Florida Dept. of Environmental Protection
2600 Blair Stone Road
Tallahassee, FL 32399-2400

David Jellerson/Fert/Riverview, FL
Taylor Abel/Fert/Green Bay, FL