



Department of Environmental Protection

CM file

Lawton Chiles
Governor

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Virginia B. Wetherell
Secretary

August 15, 1996

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mr. Jeffrey M. Stewart
IMC-Agrico Company
P.O. Box 2000
Mulberry, Florida 33860-1100

RE: Final Order to Deny a Variance Request
IMC-Agrico Company's Lonesome Mine Facility
AO20-229875, -214083, -240891, -237639 and -200344

Dear Mr. Stewart:

The Department of Environmental Protection (Department) has reviewed IMC-Agrico Company's request for a variance to extend the expiration dates for the above referenced permits. Based on a review of the request and the appropriate regulations, a variance is not warranted. Therefore, the Final Order to Deny a variance request is enclosed.

The Order is final upon execution unless a petition for an administrative proceeding (hearing) is filed pursuant to the provisions of Section 120.57, Florida Statutes (F.S.), in accordance with the following procedures and results in a different decision.

Any person whose substantial interests are affected by the Department's Final Order to Deny a variance may petition for an administrative proceeding (hearing) in accordance with Section 120.57, F.S. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, Telephone: 904/488-9730, Fax: 904/487-4938. Petitions filed by the variance applicant and the parties listed below must be filed within 14 (fourteen) days of receipt of this Order. Petitions filed by other persons must be filed within 14 days of publication of the public notice or within 14 days of the receipt of this Order, whichever first occurs. 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, F.S.

The petition shall contain the following information: (a) The name, address, and telephone number of each petitioner, the applicant's name and address, the Department Permit File Number and the county in which the proposed source will operate; (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 the petitioner contends warrant reversal or modification of the Department's action or proposed action; (f) A statement of which rules or statutes the petitioner contends require reversal or modification of the Department's action or proposed action; and, (g) A statement of the relief sought by the petitioner, stating precisely the action the 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 the Order. Persons whose substantial interests will be affected by any decision of the Department with regard to the application/request 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 the Order in the Office of General Counsel of

"Protect, Conserve and Manage Florida's Environment and Natural Resources"

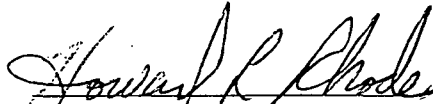
Mr. Jeffrey M. Stewart
IMC-Agrico Company
Letter: Order to Deny a Variance Request
Page 2 of 2

the Department, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000. Failure to petition within the allowed time frame constitutes a waiver of any right 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 60Q-2.010, Florida Administrative Code (F.A.C.).

If IMC-Agrico Company decides to file a petition for an administrative proceeding (hearing), then you must, at your expense, publish the enclosed "Public Notice pursuant to Rule 62-103.150(2)(e), F.A.C., one time only in the legal ad section of a newspaper of general circulation in the area affected pursuant to Rule 62-103.150(2)(c), F.A.C. For the purpose of this rule, "publication in a newspaper of general circulation in the area affected" means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031, Florida Statutes (F.S.), in the county where the activity is to take place. Where there is more than one newspaper of general circulation in the county, the newspaper used must be one with significant circulation in the area that may be affected by the permit. If you are uncertain that a newspaper meets these requirements, please contact the Department at the address or telephone number listed below. The applicant shall provide proof of publication to the Department's Bureau of Air Regulation at 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, Telephone: 904/488-1344, Fax: 904/922-6979, within 7 (seven) days of publication. Failure to publish the notice and provide proof of publication within the allotted time is independent grounds for denial of the variance request.

If there are any questions, call Mr. Bruce Mitchell at 904/488-1344 or write to Mr. C. H. Fancy, Chief, Bureau of Air Regulation, at the above letterhead address.

Sincerely,



Howard L. Rhodes, Director
Division of Air Resources
Management

HLR/bm

Enclosures

cc: Clair Fancy, P.E., Chief, BAR
Patricia Comer, Esq., DEP

IN THE MATTER OF APPLICATION
FOR VARIANCE FOR PERMITS BY:

DEP File Nos.: AO29-229875
AO29-214083
AO29-240891
AO29-237639
AO29-200344
Hillsborough County

IMC-Agrico Company
P.O. Box 2000
Mulberry, Florida 33860-1100

FINAL ORDER TO DENY

The Department of Environmental Protection (Department) hereby issues this FINAL ORDER to DENY a variance to extend the expiration dates for the above referenced air permits as detailed in the request letter dated January 31 for the reasons stated below. The affected facility is the IMC-Agrico Company's Lonesome Mine operation that is located off State Road 39 South in Hillsborough County. When in operation, the facility dried wet phosphate rock, transferred it to storage silos, and then loaded it into railcars.

The applicant, IMC-Agrico Company requested a variance pursuant to Section 403.201(1)(c), Florida Statutes (F.S.), which allows persons to seek variance from the Department's rules and regulations to relieve or prevent hardship. Such variances are limited to 24 months. The Department rule provisions from which the applicant requests a variance is Rule 62-210.300(2)(a)3.c., Florida Administrative Code (F.A.C.), which provides that:

"the operation permit for an emissions unit which has been shut down for five years or more prior to the expiration date of the current operation permit shall be renewed for a maximum period not to exceed ten years from the date of shutdown, even if the emissions unit is not maintained in operational condition, provided the conditions given in Rule 62-210.300(2)(a)3.b., F.A.C., are met and the owner or operator demonstrates to the Department that failure to renew the permit would constitute a hardship, which may include economic hardship."

IMC-Agrico Company states that it would be too expensive to reactivate the operation in order to demonstrate compliance with the current permits. Reactivation would impose major rebuilding and upgrading of many of the emissions units/activities (i.e., rail track and wet rock unloading systems) due to weathering and deterioration. The company estimates that rebuilding and upgrading costs are \$500,000. Drying operations at this facility have been shut down since 1987-88. There has been no attempt to activate the existing operation since shutdown as the company has stated that it currently does not need the product from the operation of this facility and forecasts that the anticipated startup date is around the year 2003. This, in effect, will have some emissions units/activities out of operation for over 17 years.

The following air emissions units/activities are listed below with their respective permit expiration dates. The expiration dates correspond to 10 years since the time of shutdown. At the end of the shutdown period, the permittee may apply for new construction permits or may simply demonstrate compliance with the existing permit conditions and apply for a permit renewal.

<u>SOURCE</u>	<u>PERMIT NUMBER</u>	<u>EXPIRATION DATE</u>
No. 1 Phosphate Rock Dryer	AO29-229875	May 26, 1998
No. 2 Phosphate Rock Dryer	AO29-214083	June 9, 1997
Dry Phosphate Storage and Transfer	AO29-240891	May 25, 1998
Unground Phosphate Rock Loadout	AO29-237639	June 8, 1998
Fuel Preheater	AO29-200344	October 1, 1996

The facility's total permitted air pollutant emissions in tons per year are: Particulate matter - 541.4; Nitrogen oxides - 486.2; Sulfur dioxide - 1374.0; Carbon monoxide - 64.2; and, Volatile organic compounds - 14.2.

Rule 62-210.300(2)(a)3.c., F.A.C., limits an operation permit renewal to 10 years after the shutdown date of an emissions unit. The rule establishes a fair and reasonable period of inactivity during which the permits can be renewed up to a maximum of 10 years after shutdown of an emissions unit. Where, as here, the company states that it does not have any specific plans to upgrade the existing systems/operations, the rule contemplates that new air construction permits will be required. It would provide an unfair competitive advantage and there would be no environmental benefit when a company can inactivate emissions units for a period greater than 10 years and start them up without meeting current emission limiting standards, including Best Available Control Technology (BACT), that newer emissions units have to meet.

Because of the deteriorated state of some of the emissions units/activities and the length of time since ceasing operations, any rebuilding and upgrading of these emissions units/activities beyond the 10 year shutdown period should be evaluated through preconstruction review requirements for Prevention of Significant Deterioration, which could include a determination of BACT and the issuance of new air construction permits. This would allow the Department to evaluate the air pollutants Particulate matter, Nitrogen oxides, and Sulfur dioxide. Minimally, the determination would effect a substantial reduction in the potential and allowable Sulfur dioxide emissions by restricting the sulfur content in the fuel oil used. The issuance of new air construction permits would establish current air pollutant emission limiting standards for the affected emissions units/activities comparable to those required of industry currently constructing and modifying facilities in the area.

The \$500,000 cost that the company alleges would be needed to upgrade and rebuild the existing emissions units/activities in order to demonstrate compliance with the permit conditions must be considered against the benefits that the company enjoyed in not being required to maintain 5 (five) emissions units/activities for an 8-10 year period. Since these benefits may have been substantial, a hardship has not been demonstrated.

Because the cost of demonstrating compliance in order to renew the existing air permits has not been shown to be a hardship and the renewal of the existing air permits without the demonstration of compliance, which issuance of a variance would amount to when the applicant admits that the existing emissions units/activities have deteriorated such that upgrading and rebuilding of this equipment will be required to comply with the existing permits, violates the statutory requirement that the source of pollution must be equipped with pollution control facilities that will abate or prevent pollution to the degree that will comply with the standards adopted by the Department, the granting of a variance is not warranted.

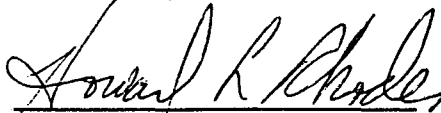
This Order is final upon execution unless a petition for an administrative proceeding (hearing) is filed pursuant to the provisions of Section 120.57, F.S.

Any party to this Order has the right to seek judicial review pursuant to Section 120.68, F.S., 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, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000; and, by filing a copy with the appropriate District Court of Appeal. Notice of

Appeal must be filed within 30 (thirty) days from the date the Notice is filed with the Clerk of the Department.

EXECUTED in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Howard L. Rhodes, Director
Division of Air Resources
Management

CERTIFICATE OF SERVICE

The undersigned duly designated deputy agency clerk hereby certifies that this **FINAL ORDER TO DENY** and all copies were sent by certified mail before the close of business on 8-21-96 to the person(s) listed:

cc: Jeffrey M. Stewart, IMC-Agrico Company

The undersigned duly designated deputy agency clerk hereby certifies that this **FINAL ORDER TO DENY** and all copies were sent by U.S. mail on the same date 8-21-96 to the person(s) listed:

cc: Jerry Campbell, Hillsborough County Environmental Protection Commission

Clerk Stamp

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

Kimi Joben
(Clerk)

8-21-96
(date)

HLR/bm

PUBLIC NOTICE

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF ADMINISTRATIVE PROCEEDING ON VARIANCE APPLICATION

File Nos.:AO29-229875
AO29-214083
AO29-240891
AO29-237639
AO29-200344

Hillsborough County

The Department of Environmental Protection (Department) gives notice of the receipt of a petition for and the initiation of an administrative proceeding (hearing) on its Order to Deny a variance to IMC-Agrico Company, P.O. Box 2000, Mulberry, Florida 33860-1100, regarding the above referenced air operation permits. The variance request was to allow an extension of the expiration dates for the above referenced permits beyond the timeframe allowed by Rule 62-210.300(2)(a)3.c., Florida Administrative Code (F.A.C.). The affected facility is the Lonesome Mine operation located off State Road 39 South in Hillsborough County.

The administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the proposed agency action and result in the issuance of a variance as requested by the applicant or as modified in the course of the proceeding or by settlement. Persons whose substantial interests will be affected by any decision of the Department with regard to the application/request have the right to petition to become a party to the proceeding. The petition must be filed within 14 days after publication of this notice and must be filed (received) with the Department's Office of General Counsel, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, Telephone: 904/488-9730, Fax: 904/487-4938, (and the assigned Hearing Officer at the Division of Administrative Hearings, Department of Administration, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550). 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 the allowed time period constitutes a waiver of any right such person has to request a hearing under Section 120.57, Florida Statutes (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 60Q-2.010, F.A.C.

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.

The Department will not enter a final settlement or otherwise resolve the issues in this proceeding until after the expiration of the 14 day time period in which a petition can be filed.

The application/request and the Department's Order to Deny are available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at:

Department of Environmental Protection
Bureau of Air Regulation
111 S. Magnolia Drive, Suite 4
Tallahassee, Florida 32301
Telephone: (904)488-1344
Fax: 904/922-6979

Hillsborough County Environmental Protection Commission
1410 North 21st Street
Tampa, Florida 33605
Telephone: 813/272-5530
Fax: 813/272-5605

Is your RETURN ADDRESS completed on the reverse side?

SENDER: <ul style="list-style-type: none"> • Complete items 1 and/or 2 for additional services. • Complete items 3, and 4a & b. • Print your name and address on the reverse of this form so that we can return this card to you. • Attach this form to the front of the mailpiece, or on the back if space does not permit. • Write "Return Receipt Requested" on the mailpiece below the article number. • The Return Receipt will show to whom the article was delivered and the date delivered. 		I also wish to receive the following services (for an extra fee): 1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery Consult postmaster for fee.	
3. Article Addressed to: Mr. Jeffrey M. Stewart IMC-Agrico Company Post Office Box 2000 Mulberry, Florida 33860-1100		4a. Article Number Z 392 940 896	
		4b. Service Type <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise	
		7. Date of Delivery	
5. Signature (Addressee)		8. Addressee's Address (Only if requested and fee is paid)	
6. Signature (Agent)			

Thank you for using Return Receipt Service.

PS Form 3811, December 1991 U.S. GPO: 1993-352-714 **DOMESTIC RETURN RECEIPT**

Z 392 940 896



Receipt for Certified Mail
 No insurance coverage provided
 Do not use for International Mail
 (See Reverse)

** By Certified Mail
 Mailed to Jeffrey M. Stewart
 8-21-96 Sk*

PS Form 3811, March 1993

Sent to	IMC-Agrico Company
Street and P.O. Box	Jeffrey M. Stewart P.O. Box 2000
P.O., State and Zip Code	Mulberry, FL 33860-1100
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, and Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

Copied:
 1- Jerry Campbell
 2- Clair Fancy
 3- Pat Comer
 4- Bruce Mitchell
 5- John Brown
 8-21-96 Sk

fold at line over top of envelope to the right of the return address

CERTIFIED

Z 392 940 896
MAIL

