

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

FLORIDA CHAPTER OF
THE SIERRA CLUB, AND
SAVE OUR SUWANNEE, INC.

Petitioners,

DEP File No. 1210465-001-AC, PSD-FL-259

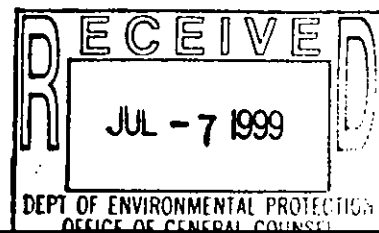
vs.

FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION
and SUWANNEE AMERICAN CEMENT
COMPANY, INC.

Respondents.

PETITION FOR ADMINISTRATIVE HEARING

Petitioners, FLORIDA CHAPTER OF THE SIERRA CLUB and SAVE OUR SUWANNEE, INC., through undersigned counsel, and pursuant to Section 120.57(1), Section 120.569 and Section 403.412(5), Florida Statutes, file this Petition for (formal) Administrative Hearing concerning Respondent FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION'S Notice of Permit Denial to Respondent SUWANNEE AMERICAN CEMENT COMPANY, INC., which had applied for an air construction permit for a proposed portland cement plant in Suwannee County, Florida. Petitioners do not contest the Department's permit denial, per se, which was predicated largely on the applicant's past compliance record. Rather, Petitioners contend that applicant did not otherwise provide reasonable assurance that the remaining requirements of the Department would not be violated. Petitioners, thus, maintain that this proceeding provides the only point of entry to raise those issues, which are important to the air, surface water and other natural resources of the State of Florida.



The following information is offered in accordance with Rule 62-103.155, Fla. Admin.

Code:

a. Name, address & telephone numbers of Petitioners:

Florida Chapter of the Sierra Club
c/o Kathy Cantwell
1701 SW 117th Street
Gainesville, Florida 32607
(352) 332-8831

Save Our Suwannee, Inc.
c/o Svern A. Linskold, President
P.O. Box 669
Bell, Florida 32619
(904) 935-2960

[Note: Pleadings and Orders should be addressed and furnished to
Petitioners' counsel.]

b. Statement of receipt of notice:

Petitioners' counsel received a copy of the Notice of Denial dated June 22, 1999,
on June 24, 1999, via certified mail from the Department.

c. Substantial interests affected:

Petitioners, FLORIDA CHAPTER OF THE SIERRA CLUB, and SAVE OUR
SUWANNEE, INC., claim an interest in the proceedings pursuant to Section
403.412(5), Fla. Stats., in that Petitioners are Florida corporations and thus are
citizens of the State of Florida, and further that they have an interest in the
activities subject to the Department's Notice of Denial which will have the effect
of impairing or otherwise injuring the air, water or other natural resources of the
State of Florida. The activities subject to the Notice of Denial, if that Denial is not
properly substantiated, have or will have the effect of impairing or otherwise
injuring the air, water or other natural resources of the State of Florida.

d. Disputed issues of material fact and law:

1. Whether Respondent, SUWANNEE AMERICAN CEMENT COMPANY,
INC. ["SUWANNEE AMERICAN"], has provided reasonable assurance that the
activity subject to the permit denial will not discharge, emit or cause pollution in
contravention of Department standards or rules;

2. Whether the Department has provided sufficient basis for denial such that the
Respondent's substantial interests will not be adversely affected in subsequent
matters which look to the basis of this permit denial as precedent;

3. Whether the Department's Notice of Denial properly found that all requirements for the permit sought (except past compliance violations) had been satisfied by the applicant in this matter;

4. Whether Respondent, SUWANNEE AMERICAN, has provided reasonable assurance that it will not violate the Department's rules governing the protection and anti-degradation of Outstanding Florida Waters;

5. Whether the Department has complied with its own rules requiring denial of a permit based on failure of an applicant to demonstrate reasonable assurance that its operation will not significantly degrade an Outstanding Florida Water;

6. Whether Respondent, SUWANNEE AMERICAN, has provided sufficient information concerning the impact of its proposed facility with respect to atmospheric deposition of regulated pollutants and the concomitant impact on ecological, biological, wildlife and water resources of the State of Florida;

e. Ultimate facts warranting modification of the Department's action:

1. Based on the information supplied by Applicant, the operation which is the subject of the Department's Notice of Denial, would, if permitted, result in significant degradation of the Santa Fe River due to atmospheric deposition of mercury or mercury compounds.

2. The Santa Fe River is an Outstanding Florida Water.

3. This same atmospheric deposition of mercury would have a significantly adverse impact on or would injure or harm fish and biota in the Santa Fe River, and possibly result in prohibition of human consumption of fish from the Santa Fe River.

4. The amount of deposition calculated by SUWANNEE AMERICAN coupled with the geochemistry of the Santa Fe River favor bio-accumulation of mercury in the Santa Fe River.

5. To the extent the Department's Notice of Denial is silent on the issue of mercury deposition and significant degradation of the Santa Fe River, an Outstanding Florida Water, it may be presumed that the Department did not include this issue in its basis for denial, notwithstanding the error of that action.

6. A future permit applicant, thus, may assume, based on the information contained in the SUWANNEE AMERICAN application, that similar mercury loadings and atmospheric deposition of mercury compounds at the Santa Fe River or at another Outstanding Florida Water will not trigger a Department permit denial, to the detriment of the substantial interests of Petitioners and their interests in the air, water or natural resources of the State of Florida.

7. The provisions of Section 403.412(5), Fla. Stats., are to be liberally construed to provide for citizen standing to protect the air, water and natural resources of the State of Florida. To that end, Petitioners' only point of entry to raise issues pertinent to those environmental and natural resource interests is afforded by the Department's Notice of Permit Denial.

8. The activities which are the subject of the Department's Notice of Denial have or may reasonably be expected to have the effect of impairing or otherwise injuring the air, water or other natural resources of the State of Florida.

f. Rules and statutes which support Petitioners' claim for relief:

Rule 62-210, F.A.C., Rule 62-212, F.A.C., Rule 62-4.070, F.A.C., Rule 62-4.070(5), F.A.C., Rule 62-302.700, F.A.C., Chapter 403, Florida Statutes.

g. Relief sought:

Petitioners, FLORIDA CHAPTER OF THE SIERRA CLUB and SAVE OUR SUWANNEE, INC., respectfully request that Respondent, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, modify its Notice of Denial of the permit in the above-captioned matter to include specifically as a basis that, based on information supplied by the Applicant, the atmospheric deposition of mercury will result in significant degradation of the Santa Fe River, an Outstanding Florida Water, in contravention to Rule 62-302.700, Florida Administrative Code.

Respectfully submitted,

BOYES & ASSOCIATES, P.A.



Patrice Boyes, Esq.

Fla. Bar No. 892520

P.O. Box 1424

Gainesville, Florida 32602, or

602 S. Main Street


Gainesville, Florida 32601

(352) 372-2684

Fax (352) 375-8306


VERIFICATION OF PLEADING

I HEREBY CERTIFY that for purposes of Section 403.412(5), Fla. Stats., I have read the foregoing Petition for Administrative Hearing pursuant to the Florida Department of Environmental Protection's Notice of Denial of an air permit to construct and operate a portland cement plant by Suwannee American Cement Company, Inc., and I understand it, and further certify that the foregoing facts are true to the best of my knowledge and belief, this 1st day of July, 1999.


Kathy Cantwell, for Florida Chapter of the
Sierra Club

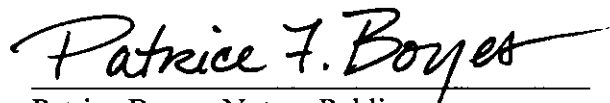
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Svenn Lindsfold, for Save Our Suwannee

ACKNOWLEDGEMENT

BEFORE ME appeared Kathy Cantwell and Svenn Lindsfold, who acknowledged that they are the persons who executed the foregoing Verifications of Pleading in their capacities as Authorized Representative of Florida Chapter of the Sierra Club, and as President of Save Our Suwannee, Inc., and who are personally known to me and who did not take an oath, this 2nd day of July, 1999.


Patrice Boyes, Notary Public
My commission expires:



PATRICE F BOYES
My Commission CC813247
Expires Dec. 30, 1999

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and a true and correct copy of the foregoing Petition have been furnished by facsimile and overnight courier to the Florida Department of Environmental Protection, Office of General Counsel, 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399-3000, with a true and correct copy to Joe Anderson, President, Suwannee American Cement Company, Inc., P.O. Box 410, Branford, Florida 32008 on this 6th day of July, 1999.


Patrice Boyes, Attorney

to avoid delay

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

SUWANNEE AMERICAN CEMENT
COMPANY, INC.,

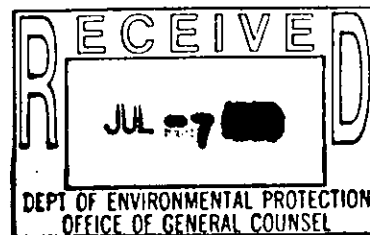
Petitioner,

v.

CASE NO.:

DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Respondent.



**PETITION FOR FORMAL ADMINISTRATIVE PROCEEDINGS
AND NOTICE OF INTENT TO SEEK SANCTIONS**

Pursuant to Sections 120.569 and 120.57, Fla. Stat., and Rule 28-106.201, Fla. Admin. Code, Petitioner Suwannee American Cement Company, Inc., hereby requests formal administrative proceedings on the Department of Environmental Protection's proposed denial of Petitioner's application for an air construction permit for a portland cement plant to be located near Branford, Suwannee County, Florida. In support of this petition, Petitioner states as follows:

Parties

1. The agency affected is the Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400. DEP's File Number for this application is 1210465-001-AC, PSD-FL-259.

2. Petitioner is Suwannee American Cement Company, Inc., P. O. Box 410, Branford, Florida 32008. For purposes of this proceeding, Petitioner's address shall be that of its undersigned attorneys, Oertel, Hoffman, Fernandez & Cole, P.A., P. O. Box 1110, Tallahassee, Florida 32302-1110 (301 S. Bronough Street, 5th Floor, Tallahassee, Florida 32301), telephone (850) 521-0700, facsimile (850) 521-0720.

Substantial Interests Affected

3. Petitioner is the applicant for the above-referenced air construction permit. The application sought a permit to construct a new dry process, preheater/precalciner type portland cement plant. By denial of the permit, DEP prevents Petitioner from constructing and operating its facility, and producing portland cement for use in construction projects.

Notice

4. Petitioner received notice of the proposed permit denial in the form of the Notice of Permit Denial signed by DEP Secretary David H. Struhs, filed with the Agency Clerk on June 22, 1999, attached as Exhibit 1. Petitioner received this notice when it was sent by facsimile delivery to its undersigned counsel on June 23, 1999. The Notice was addressed to "Joe Anderson, III, President, Suwannee American Cement Company, Inc.;" however, DEP had been advised by Petitioner by letter of June 15, 1999, received by DEP on June 21, 1999, copy attached as Exhibit 2, that Fred W. Koester is President of Petitioner.

Alleged Basis for Permit Denial

5. DEP cites as the basis for denying Petitioner's permit application DEP Rule 62-4.070(5), Fla. Admin. Code. This rule indicates that the Department "shall take into consideration a permit applicant's violation of any Department rules at any installation when determining whether the

applicant has provided reasonable assurances that Department standards will be met." The Notice of Permit Denial further states that the Department "may also consider the compliance history of the permit applicant's related entities, including Anderson Columbia Company, Inc." In so doing, DEP expands the plain meaning of the rule, which references only the "permit applicant's" compliance history.

6. DEP asserts that, since 1987, Anderson Columbia Company, Inc., "and many other companies run by Anderson Columbia principals have either paid civil penalties for environmental violations or have active cases against them." The Department concludes its discussion of "this compliance history" by stating that the applicant "has failed to provide reasonable assurance that the proposed installation will be constructed and operated in compliance with the Department's applicable standards."

7. The Notice of Permit Denial (Exhibit 1) does not detail what other environmental violations of Anderson Columbia Company, Inc., or other companies "run by Anderson Columbia principals," constitute an unacceptable compliance history. Petitioner can only assume that such alleged prior violations did not involve the permit applicant, Suwannee American Cement Company, but rather they involved companies known as Asphalt Pavers, Inc.; Columbia Paving, Inc.; Anderson Columbia Company, Inc.; Anderson Mining Corp.; Anderson Columbia Thermal Systems, Inc.; and A-C Sons, Inc. Petitioner bases its assumption in this regard on a press release and "History of Non-Compliance" posted on the Department's internet web site on June 21, 1999, the day before DEP's issuance of the notice of intent to deny. The press release and "history of non-compliance document" are attached as Exhibits 3 and 4.

8. DEP has changed its interpretation of Rule 62-4.070(5), F.A.C., and has implemented its changed interpretation of this rule without validly amending the rule through the rulemaking process. This is evidenced by the fact that, to the best of Petitioner's knowledge, DEP has, prior to this action, consistently issued permits to applicants whose history of violation of DEP rules is similar to or more extensive than that of any or all of the companies referred to in Exhibit 4. Further, to the best of Petitioner's knowledge, DEP has not previously considered persons or companies other than the actual entity applying for the permit, such as officers, directors, shareholders, or employees, or companies who share officers, directors, shareholders, or employees with the permit applicant, when evaluating an applicant's history of violation of Department rules.

9. None of these other entities are the same entity as the applicant, Suwannee American Cement Company, Inc. DEP Rule 62-4.070(5) only authorizes consideration of the permit applicant's prior compliance history, not the compliance history of other corporations who may (or may not) have common shareholders, employees, officers, or directors. In addition, the fact that an individual serves as a director of a corporation does not establish that individual's control over corporate activities, as directors act collegially as a board of directors, and generally lack the individual authority to bind or control the corporation.

10. Further, some of the alleged instances of noncompliance by other companies shown on Exhibit 4 allege a connection with "Joe Anderson" as either a director or officer of the named corporation. This document does not specify whether the person identified is Joe Anderson, II (who has no connection with Petitioner), or his son, Joe Anderson, III, former president of Petitioner. It is unknown at this time whether the actions which form the basis of the allegations of violation by all of those other companies occurred at a time when Joe Anderson, III, was an officer or director of

such other companies. In any event, DEP has no rational basis for equating prior actions of these individuals or their other companies with an alleged inability of this applicant to comply with the law. DEP is literally imposing the alleged transgressions of the father on the son, and on companies with which the son had some connection.

11. DEP also apparently relies on several matters which were settled by consent orders, including several in which only small fines (less than \$500.00) were assessed. It is unknown at this time whether such consent orders in fact constituted or contained a finding of wrongdoing or that a violation occurred. If they did not, then DEP is guilty of fraudulently inducing a party to enter into a consent order and forego its right to defend against the charges in the case, and then later acting as if the party was found guilty.

12. The alleged "violations" by these other entities are matters which do not involve any persons who will have day-to-day control over Petitioner's cement plant; do not involve operations similar to those proposed by Petitioner; or are otherwise wholly unrelated to Petitioner's pending application. DEP apparently subscribes to the theory of "guilt by association," and arbitrarily chooses to ignore the reasonable assurances which have been given by Suwannee American through the permit application process that its facility will meet all applicable standards. DEP has afforded Suwannee American no presumption of innocence, but has instead improperly shifted the burden to Suwannee American to prove its lack of guilt.

13. Finally, DEP also cites matters still in litigation with the other entities, including one (OGC Case No. 96-0156) which was decided against DEP on summary judgment. DEP also apparently believes that, because these other entities declined to settle regulatory disputes with the Department, and are seeking to have the courts decide these matters, then they are "guilty as charged"

by DEP even prior to hearing or adjudication. The proposed denial of Petitioner's permit application on these grounds seeks to penalize Petitioner for the actions of these other entities in defending themselves or otherwise protecting their own interests in those cases. In doing so, DEP is penalizing the Petitioner for actions taken by other parties, which actions are protected by constitutional guarantees, such as the right to defend oneself against false charges, the right to freedom of expression and freedom of choice. For example, DEP cites the failure of Anderson Columbia to enter into a Consent Order in OGC Case No. 97-1582, DEP's subsequent suit against Anderson Columbia in OGC Case No. 97-2002C, and Anderson Columbia's quiet title action against DEP. While settlements are favored in the law, such policy consideration cannot serve to deny litigants resort to a full judicial proceeding. 22nd Avenue Drugs, Inc. v. Maisonneuve Investments, Inc., 313 So.2d 112, 113 (Fla. 3d DCA 1975); St. Regis Paper Company v. Hill, 202 So.2d 201, 202 (Fla. 1st DCA 1967). These other entities have constitutional rights of due process and access to courts under Article I, Sections 9 and 21 of the Florida Constitution and Article XIV of the United States Constitution, and it is highly improper for DEP to penalize a permit applicant for another party's exercise of its own constitutional rights.

Disputed Issues of Material Fact

14. Petitioner has initially identified the following disputed issues of material fact, which it reserves the right to supplement as additional facts become known to it:

(a) Whether Suwannee American Cement Company, Inc., has ever caused or contributed to a violation of any Department rules at any installation.

(b) Whether Suwannee American Cement Company, Inc., is a company operated by principals of Anderson Columbia Company, Inc.

(c) Whether Consent Orders previously entered into by the Department (or its predecessor agencies) and either Asphalt Pavers, Inc.; Columbia Paving, Inc.; Anderson-Columbia Company, Inc.; Anderson Mining Corporation; or Anderson Columbia Thermal Systems, Inc., constituted determinations that violations of Department rules had occurred; and whether, if such consent orders do constitute determinations of violations, such violations constitute evidence of Petitioner's inability to give reasonable assurance that it can construct and operate its proposed cement plant in accordance with applicable air quality statutes and rules.

(d) Whether there has been any final, adjudicated determination that A-C Sons, Inc., has violated any rules of the Department by its acquisition or ownership of property in Dixie County, Florida; and whether, even if such a violation was established, it would constitute evidence of Petitioner's inability to give reasonable assurance that it can construct and operate its proposed cement plant in accordance with applicable air quality statutes and rules.

(e) Whether alleged violations of rules relating to submerged lands use, dredging or filling, or discharges of water by Anderson Columbia, Inc. or Panhandle Land & Timber Company have been adjudicated; and whether such alleged violations, even if proven, constitute evidence of Petitioner's inability to give reasonable assurance that it can construct and operate its proposed cement plant in accordance with applicable air quality statutes and rules.

(f) Whether Asphalt Pavers, Inc.; Columbia Paving, Inc.; Anderson-Columbia Company, Inc.; Anderson Mining Corporation; Anderson Columbia Thermal Systems, Inc.; A-C Sons, Inc.; Panhandle Land & Timber Co., or persons with operational control over such entities, will have any operational control over the cement plant proposed by Petitioner.

(g) Whether Petitioner has affirmatively provided reasonable assurance based on plans, test results, installation of pollution control equipment, or other information that the construction and operation of the cement plant will not emit pollution in contravention of Department standards or rules.

(h) Whether alleged past violations by other companies, even if attributable to Petitioner or its principals, outweigh the reasonable assurance established by plans, test results, pollution control equipment, and other information provided by Petitioner in the permit application process, that the proposed facility will be constructed and operated in compliance with applicable statutory and rule criteria, and will not emit pollution in contravention of Department standards or rules.

(i) Whether Petitioner can provide reasonable assurance that the proposed facility will be constructed and operated in accordance with applicable statutory and rule criteria, and will not emit pollution in contravention of Department standards or rules.

(j) Whether DEP has issued permits and continues to issue permits to applicants whose history of violation of DEP rules is similar to or more extensive than that of any or all of the companies referred to on Exhibit 4.

(k) Whether, in processing a permit application, DEP has ever previously considered violations of DEP rules by entities other than the permit applicant; and whether such action would be arbitrary, capricious, irrational, and contrary to the plain meaning of Rule 62-4.070(5).

(l) Whether DEP has ever based a permit denial on violations of Department rules by some entity other than the permit applicant; and whether such a permit denial would be arbitrary, capricious, irrational, and contrary to the plain meaning of Rule 62-4.070(5).

(m) Whether DEP has ever considered the phrase "permit applicant" in Rule 62-4.070(5) to include officers, directors, shareholders, or employees of the applicant, or to include other companies which have officers, directors, shareholders, and employees in common with the applicant; and whether such an interpretation would be arbitrary, capricious, irrational, and contrary to the plain meaning of Rule 62-4.070(5).

Statement of Ultimate Facts and Statutes Entitling Petitioner to Relief

15. Petitioner alleges that its permit application, as amended and supplemented through the application process, provides reasonable assurance that all applicable statutory and rule standards will be met in the construction and operation of its proposed cement plant. Petitioner is entitled to issuance of its permit, pursuant to Sections 120 and 403, Fla. Stat. and Rule Chapters 62-4, 62-210, and 62-212, Fla. Admin. Code, including but not limited to Rule 62-4.070, Fla. Admin. Code.

Notice of Intent to Seek Sanctions and Notice to Department of Insurance


16. Petitioner also gives notice of its intent to seek sanctions, including the recovery of its attorney's fees and costs, pursuant to Sections 120.569(2)(c) and 120.595(1), Fla. Stat. The Department has issued the Notice of Permit Denial for an improper purpose; namely, to harass Petitioner and its officers, directors, and shareholders, and to needlessly increase the cost of Petitioner's efforts to obtain a permit. The Department's apparent frustration with and desire to punish entities other than Petitioner does not provide factual or legal justification for denial of this permit. Further, actions by other entities in exercising their constitutionally guaranteed rights to due process and access to courts provide no factual or legal basis to deny Petitioner's permit. DEP's proposed denial of Petitioner's permit is designed primarily to achieve a politically popular result for

the benefit of some public officials, at the expense of the Petitioner, and this goal institutes in improper purpose.

17. Notice of intent to seek sanctions is provided at the outset of this litigation in order to accomplish the preventative effects of the cited statutes of avoiding improper and unnecessary litigation and promoting "the orderly conduct of proceedings." See, Mercedes Lighting and Electrical Supply, Inc. v. State Department of General Services, 560 So.2d 272, 279 (Fla. 1st DCA 1990). Further, in accordance with Section 284.30, Fla. Stat., Petitioner is providing a copy of this Petition to the Department of Insurance, Division of Risk Management, to give notice of DEP's potential monetary liability to Petitioner.

WHEREFORE, Petitioner requests that this petition be forwarded to the Division of Administrative Hearings for the conduct of formal administrative proceedings pursuant to Sections 120.569 and 120.57(1), Fla. Stat. Petitioner seeks entry of recommended and final orders issuing the air construction permit for which Petitioner has applied, and Petitioner also seeks sanctions and such other relief as is just and proper.

FILED and SERVED this 7th day of July, 1999.


KENNETH G. OERTEL
Fla. Bar I.D. No. 128808

M. CHRISTOPHER BRYANT
Fla. Bar I.D. No. 434450

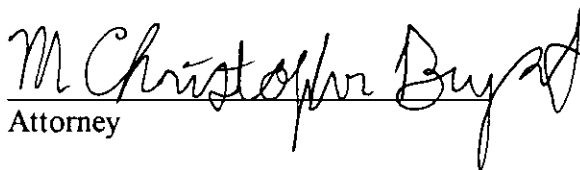
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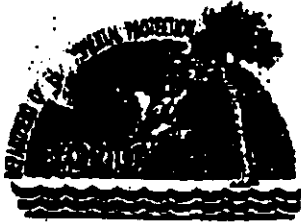
GEORGE T. REEVES
Fla. Bar I.D. No. 0009407
General Counsel
Suwannee American Cement Company, Inc.
P. O. Box 1829
Lake City, FL 32056
(904) 752-7585

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and one copy of the foregoing has been filed by HAND-DELIVERY with the Department of Environmental Protection, Office of General Counsel, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and a true copy was served by Certified Mail, Return Receipt Requested, to Department of Insurance, Division of Risk Management, Bureau of State Liability Claims, 200 East Gaines Street, Tallahassee, Florida 32399-0338, this 7th day of July, 1999.


Attorney

MCB/dg
SACCPetition.Pld



Department of Environmental Protection

Job Bush
Governor

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

David B. Scrubs
Secretary

In the Matter of an
Application for Permit by:

Joe Anderson, III, President
Suwannee American Cement Company, Inc.
PO Box 410
Branford, Florida 32008

DEP File No. 1210465-001-AC, PSD-FL-259
Branford Plant, Portland Cement Plant
Suwannee County

NOTICE OF PERMIT DENIAL

The applicant, Suwannee American Cement Company, Inc., applied on November 30, 1998, to the Department for an air construction permit for a proposed plant near Branford, to be located at US Highway 27 at County Road 49, Suwannee County. The application is to construct a new dry process, preheater/precalciner type portland cement plant.

The Department has permitting jurisdiction under the provisions of Chapter 403, Florida Statutes (F.S.), and Florida Administrative Code (F.A.C.) Chapters 62-4, 62-210, and 62-212. The above actions are not exempt from permitting procedures. The Department has determined that an air construction permit is required to construct the facility.

The Department hereby denies the permit for the following reasons:

Rule 62-4.070, F.A.C., establishes the standards which are applicable to the Department's review of the application for the requested permit. The permit applicant must affirmatively provide the Department with reasonable assurance that the construction and operation of the proposed facility "will not discharge, emit, or cause pollution in contravention of Department standards or rules." If, after review of the permit application and all other relevant information, the Department determines that the applicant has not provided reasonable assurance that the construction and operation of the installation will comply with the Department's applicable standards or rules, the Department must deny the permit.

Pursuant to Rule 62-4.070(5), F.A.C., the Department must take into consideration a permit applicant's violation of any Department rules at any installation when determining whether the applicant has provided reasonable assurances that the Department standards will be met. In determining whether the permit applicant has provided such reasonable assurance, the Department may also consider the compliance history of the permit applicant's related entities, including Anderson Columbia Co., Inc. Since 1987, Anderson Columbia Co., Inc. and many other companies run by Anderson Columbia principals have either paid civil penalties for environmental violations or have active cases against them. Based upon its review of this compliance history, the Department has determined that the permit applicant has failed to provide reasonable assurance that the proposed installation will be constructed and operated in compliance with the Department's applicable standards. Accordingly, the Department must deny the requested permit.

A person whose substantial interests are affected by the Department's permit denial may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57 of the 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 Mail Station #35, 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399-3000. Petitions filed by the permit applicant or any of the parties listed below must be filed within fourteen days of receipt of this Notice of Permit Denial. Petitions filed by any persons other than those entitled to written notice under section 120.60(3) of the Florida Statutes must be filed within fourteen days of receipt of this Notice of Permit Denial. A petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57 F.S., or to intervene in this

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

Printed on recycled paper.

Notice of Permit Denial

Mr. Joe Anderson, III, President, Suwannee American Cement Company, Inc.

Branford Plant

DEP File No. 1210465-001-AC, PSD-FL-259

June 22, 1999

Page 2 of 3

proceeding and participate as a party to it. Any subsequent intervention will be only at the approval of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205 of the Florida Administrative Code.

A petition that disputes the material facts on which the Department's action is based must contain the following information: (a) The name and address of each agency affected and each agency's file or identification number, if known; (b) The name, address, and telephone number of the petitioner, the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination; (c) A statement of how and when petitioner received notice of the agency action or proposed action; (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate; (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action; (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and (g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts upon which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any such final decision of the Department on the application have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57 F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention will be only at the approval of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205 of the Florida Administrative Code.

This Notice constitutes final agency action 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 which conforms to Rule 62-110.106, F.A.C. Upon timely filing of a petition or a request for an extension of time this Notice will not be effective until further order of the Department.

If either a petition for administrative hearing or a request for extension of time is not timely filed with the Department, then this Notice shall constitute final agency action. Any party to this order would then have the right to seek judicial review 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 of Environmental Protection in the Office of General Counsel, Mail Station #35, 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399-3000; 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 thirty days after this order is filed with the clerk of the Department.

Executed in Tallahassee, Florida.



David B. Struhls
Secretary
Department of Environmental Protection

Notice of Permit Denial

Mr. Joe Anderson, III, President, Suwannee American Cement Company, Inc.

Branford Plant

DEP File No. 1210465-001-AC, PSD-FL-239

June 22, 1999

Page 3 of 3

CERTIFICATE OF SERVICE

The undersigned duly designated deputy agency clerk hereby certifies that this Notice of Permit Denial and all copies were sent by certified mail (*) and copies were mailed by U.S. Mail before the close of business on 6-22-99 to the person(s) listed:

Mr. Joe Anderson, III *
Mr. Frank Darabi, P.E.
Mr. Steve Cullen, P.E.
Mr. Ernest E. Frye, Director, NE District
Mr. Gregg Worley, EPA
Mr. John Bunyak, NPS
Mr. Jim Stevenson, DEP
Mr. Tom Workman, DEP
Mr. Mark Latch, DEP
Mr. Craig Pittman, St. Petersburg Times
Ms. December McSherry *
Mr. Svann Lindakold *
Mr. Tom Greenhalgh *
Mr. Al Mueller *
Mr. Dave Bruderly *
Mr. Chris Bird, Alachua Co. DER *
Mr. John Mousa, Alachua Co. DER *
Mr. Chuck Clemons, Chairman, Alachua Co. Board of Co. Commissioners *
Mr. J. Calvin Gaddy *
Ms. Patrice Boyes, Esq. *
Ms. Kathy Cantwell *
Mr. Ralph Ashodian *
Ms. Virginia Seacrist *
Dr. Bob and Lynn Milner *
Ms. Linda Pollini *

Clerk Stamp

FILING AND ACKNOWLEDGMENT FILED, on this date, pursuant to §120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Kenn Joben
(Clerk)

6-22-99
(Date)



Suwannee American Cement Co. Inc.

P.O. Box 38
Old Town, FL 32680

Phone: 352 542-7942 FAX: 352 542-3417

June 15, 1999

State of Florida
Department of Environmental Protection
Mail Station 5500
2600 Blair Stone Road
Tallahassee, FL 32399-2400
Attention: Mr. Howard L. Rhodes

RECEIVED

JUN 21 1999

**DIVISION OF AIR
RESOURCES MANAGEMENT**

Dear Mr. Rhodes:

As you know, our letter of 10 June included the following:

1. Resumes of Chuck Yagel and myself.
2. Draft Organizational Chart for the plant.
3. Key position job descriptions.
4. Listing of Plant Consultants.

Upon further review of these documents, we have realized that certain further modifications and clarifications are in order.

As we assured you during our meeting last week, Chuck Yagel and I are providing the primary expertise and direction for this new state-of-the-art facility. In light of recent events, we now realize that this may not provide you with adequate assurance of the continued proper operation and maintenance of the plant. Consequently, the Anderson family has decided to relinquish all direction of Suwannee American Cement.

We would like to advise you that I am now the President of Suwannee American Cement, and Chuck Yagel is the Vice President of Operations. We have been tasked only with the direction of Suwannee American Cement, and have no prior history in any function with the Anderson Family. We are fully and solely committed to the efficient and environmentally responsible operation of Suwannee American Cement.

Throughout our careers in the cement industry, we have maintained good reputations for environmentally responsible operations, and it is our firm personal commitment to maintain that record. In order to fulfill that goal, we will staff our company with only the most qualified personnel who share our vision of environmental excellence.



As you know, we are not yet able to assign names to any of the positions we have defined in our organization. As we progress farther in our project, we will recruit the most competent personnel available in the cement industry to fill all critical positions. As a matter of fact, even the Organizational Chart is only preliminary, since it may change significantly in order to best avail ourselves of special talents various people within the industry could bring us.

We have modified our Draft Organizational Chart to reflect our new structure. A copy of this revised document is attached.

Additionally, I have modified my resume to better describe the job duties of the positions I have held.

In reviewing our previous submittal, I realize we failed to properly address the duties of the Environmental Compliance Officer. Considering the sensitivity and importance of this position, we have elaborated on the position in our Key Job positions submittal. A revised copy is attached.

We remain highly sensitive to the need to protect the pristine nature of the Ichetucknee River. While we are fully confident that our plant will not adversely affect this wonderful natural resource, we realize many people may remain apprehensive. Accordingly, we will initiate and maintain a public liaison office that will respond to all public queries and concerns in a timely manner. Further, we will list the telephone number of at least one responsible contact individual within Suwannee American Cement, who will be available at any time to respond to public concerns.

We trust this additional information will provide further reassurance that Suwannee American Cement will be a good neighbor dedicated to preserving the environment with all its natural beauty.

Should you have any further questions, please don't hesitate to call either Chuck Yagel or me.

Sincerely,

A handwritten signature in black ink, appearing to be "Fred W. Koester", is located below the word "Sincerely,".

Signed by Chuck Yagel for
Fred W. Koester
President
Suwannee American Cement

Enclosures

KEY POSITION JOB DESCRIPTIONS

PLANT MANAGER

Has the responsibility for plant operations and maintenance. Has the authority to expend funds and take any necessary actions to assure a safe, efficient and environmentally responsible plant operation.

PRODUCTION MANAGER / ENVIRONMENTAL COMPLIANCE OFFICER

Reports directly to the plant manager. Is responsible for the day to day operation of the plant. Has operational authority over all plant equipment and is the Environmental Compliance Officer.

The Environmental Compliance Officer, in conjunction with the Plant Process Engineer-has responsibilities and duties as follows:

- Has complete responsibility for plant compliance with all emissions permit requirements
- Directs and is responsible for calibration of all plant emissions monitoring equipment and instruments
- Directs and is responsible for acquisition of all data required for environmental monitoring and emissions control performance reporting
- Directs maintenance of equipment for remote real-time monitoring of plant emissions data.
- Has the authority to expend necessary funds for emissions compliance related issues.
- Provides liaison with DEP on all compliance-related matters.

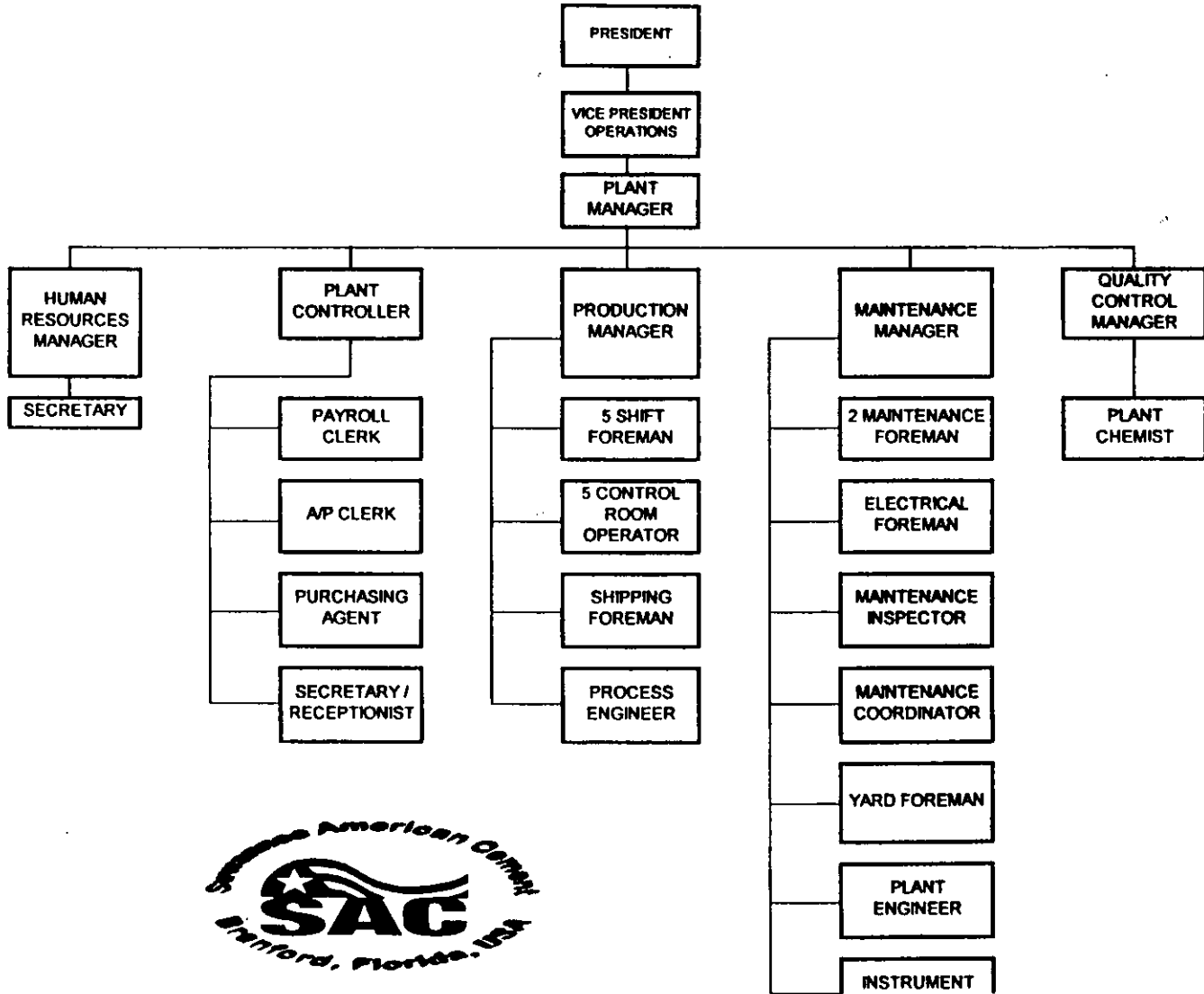
MAINTENANCE MANAGER

Reports directly to the plant manager. Is responsible for the short and long term equipment maintenance as well as plant cleanliness. Has the authority to expend funds necessary to assure equipment integrity and maintain an adequate spare parts inventory.

QUALITY CONTROL MANAGER

Reports directly to the plant manager. Is responsible for product quality to assure compliance with cement specifications. Has the authority for material control and release of product for shipment.

Suwannee American Cement
DRAFT ORGANIZATIONAL CHART



FRED W. KOESTER

PRESIDENT

- Retired and Consultant to Lafarge Corporation, Great Lakes Region, July 1994
- **Lafarge Corporation, Great Lakes Region: President and Senior Vice President, Lafarge Corporation, May 1992**

Operations/Marketing/Profit & Loss responsibility for six cement plants with annual revenues of \$400,000,000.
- **Lafarge Corporation, Southern Region: President and Senior Vice President, Lafarge Corporation,, February 1987**

Operations/Marketing/Profit & Loss responsibility for six cement plants with annual revenues of \$350,000,000.
- **General Portland Inc.: Executive Vice President., April 1985**

Full responsibility for 5 of 9 operating divisions of the company
- **General Portland Inc.: Senior Vice President., August 1984**

Full responsibility for 4 of 9 operating divisions of the company
- **General Portland Inc.: Senior Vice President-Operations, April 1982**
- **General Portland Inc.: Vice President and General Manager, Trinity North Division, May 1981**
- **General Portland Inc.: Director-Preheater Plants Projects, June 1977**
- **General Portland Inc.: Director-Maintenance Planning, January 1977**
- **General Portland Inc.: Operations Manager, Trinity Division, 1975**
- **General Portland Inc.: Plant Manager, Fort Worth, 1973**
- **General Portland Inc.: Assistant Plant Manager, Houston, 1972**
- After 11 years in various cement industry operations positions, joined General Portland as Maintenance Manager, Paulding Plant, in 1970

BSME, Marquette University



DESTINATION

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Email Us



NEWS



FOR IMMEDIATE RELEASE: June 21, 1999
CONTACT: Catherine Arnold, 850/488-1073

DEP DENIES ICHETUCKNEE CEMENT PLANT PERMIT *Anderson Columbia's Prior Environmental Record the Deciding Factor*

TALLAHASSEE -- The Florida Department of Environmental Protection announced today that an air quality permit application submitted by Suwannee American Cement Company, Inc. for construction of a cement manufacturing plant in Branford, Florida has been denied. DEP Secretary David B. Struhs said that several factors were weighed prior to reaching a final conclusion. The determining factor was the poor environmental record of Anderson Columbia, whose principal runs Suwannee American.

The notice signed by Secretary Struhs reads in part:

The permit applicant must affirmatively provide the Department with reasonable assurance that the construction and operation of the proposed facility "will not discharge, emit, or cause pollution in contravention of Department standards or rules." If, after review of the permit application and all other relevant information, the Department determines that the applicant has not provided reasonable assurance that the construction and operation of the installation will comply with the Department's applicable standards or rules, the Department must deny the permit.

Further, the notice states that:

Based on its review of Anderson Columbia's compliance history, the Department has determined that the permit applicant has failed to provide reasonable assurance that the proposed installation will be constructed and operated in compliance with the Department's applicable standards. Accordingly, the Department must deny the requested permit.

DEP's authority to take this action is found in Chapter 403.087 of the Florida Statutes. Specific authority to reject this permit is found in rule 62-4.070 of the Florida Administrative Code (*The Department shall take into consideration a permit applicant's violation of any Department rules at any installation when determining whether the applicant has provided reasonable assurances that Department standards will be met*). Since 1987, Anderson Columbia Co., Inc. and many other companies run by Anderson Columbia principals have either paid civil penalties for environmental violations or have active cases against them by DEP (see following documenting

EXHIBIT 3

alleged violations of department rules).

"This decision should place the regulated community on notice – compliance counts. Permits will not be approved based on blue prints and plans alone. With history as our guide, we will work to see that our environment is protected. Once harmed – the environment can never be made whole again," said Strubs.

-MORE-

DEP Fact Sheet



E-MAIL Contact DEP Communications

Last updated:
June 21, 1999



NEWS

ANDERSON COLUMBIA, Inc.

HISTORY OF NON-COMPLIANCE

1. OGC# 86-1487 Asphalt Pavers, Inc. (Columbia Paving) (Joe Anderson – Director)

Nature of the Violations: Air quality

DEP Action Taken: A consent order was executed in December of 1986. Case was closed in February of 1987.

Action Taken by Asphalt Pavers, Inc.: Paid \$2,000 in civil penalties.

2. OGC# 86-1663 Columbia Paving, Inc. (Joe Anderson – Director)

Nature of the Violations: Air quality

DEP Action Taken: A consent order was executed in May of 1987. The case was closed in February of 1990.

Action Taken by Columbia Pavers, Inc.: Did not pay the small penalty assessed.

3. OGC# 87-1079 Columbia Paving, Inc. (Joe Anderson – Director)

Nature of the Violations: Air quality

DEP Action Taken: A consent order was executed in September of 1987. The case was closed in September of 1988.

Action Taken by Columbia Pavers, Inc.: Paid \$5,300 in October of 1988.

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EXHIBIT 4

4. OGC# 88-0002 Columbia Paving, Inc. (Joe Anderson – Director)

Nature of the Violations: Columbia Pavers operated a drum mix asphalt plant in Madison County. In October of 1987, the Department documented a VE violation that was double the allowable limit in CP's permit.

DEP Action Taken: A consent order was executed in April of 1988. The case was closed in April of 1988.

Action Taken by Columbia Pavers, Inc.: CP paid \$350 in civil penalties. There were no corrective actions required other than continued monitoring and reporting.

5. OGC# 88-0714 Anderson-Columbia Co., Inc. (Joe Anderson – Director)

Nature of the Violations: AC operated a drum mix asphalt plant in Suwannee County. In April of 1988 AC conducted a stack test on the baghouse stack. The test indicated noncompliance in that the particulate emission rate for the three run average 7.98 lbs./hr as opposed to 6.9 lbs/hr allowable under a specific condition of the permit.

DEP Action Taken: A consent order was executed in October of 1988. The case was closed in October of 1988.

Action Taken by Anderson Columbia Co., Inc.: AC paid \$400 in civil penalties. There was no corrective actions required other than continued monitoring and reporting.

6. OGC# 92-0263 Anderson Columbia Co., Inc. (Joe Anderson – Director)

Nature of the Violations: Air

DEP Action Taken: A consent order was executed in August of 1992. The case was closed in September of 1992.

Action Taken by Anderson Columbia Co., Inc.: Paid \$1,920 in civil penalties.

7. OGC# 95-0776 Anderson Mining Corp. (Joe Anderson – Vice- President)

Nature of the Violations: Anderson Mining operated three mines located at Columbia City in Columbia County, one in Lanier in Suwannee County, and one in Dowling Park in Lafayette County. DEP made the determination in 1994 that these "nonmetallic mineral processing plants" needed to be permitted. Anderson Mining constructed and operated the facilities without obtaining permits.

DEP Action Taken: A consent order was executed in April of 1995 requiring after the fact permits and payment of penalties.

Action Taken by Anderson Mining: Anderson Mining did not admit in the CO that it needed permits, but agreed to obtain permits and pay a civil penalty. The penalty has been paid while the statuses of permits are under

review.

8 OGC# 95-2775 Anderson Columbia Thermal Systems, Inc.

Nature of the Violations: The violations related to the use of a soil remediation unit, which operated at the Pensacola Naval Air Station in November and December of 1994. The permit to operate the unit was violated as follows: (1) Soil contaminated with solvents other than petroleum were burned; (2) startup VE testing was not performed as required; (3) annual tests for various emissions were not conducted as required by the permit; (4) no records were kept of the pre-burn soil analysis as required by the permit; (5) notice of moving to a new site was not provided as required by the permit.

DEP Action Taken: A consent order was executed in January of 1996. The case was closed in January of 1999.

Action Taken by Anderson Columbia Thermal Systems, Inc.: A civil penalty of \$6,500 was paid in January of 1996.

9. OGC# 96-0156 A-C Sons, Inc. (Joe Anderson - Vice-President)

Nature of the Violations: A-C Sons bought a piece of contaminated property from Continental Turpentine. A-C Sons took no action to remediate the contamination or to restrict access to the contaminated property.

DEP Action Taken: DEP sued A-C Sons in circuit court seeking injunctive relief requiring cleanup. The court granted summary judgment in favor of A-C Sons. An appeal of the circuit court action will be taken.

Action Taken by A-C Sons, Inc.: A-C Sons has opposed any efforts by DEP to resolve the case.

10. OGC# 96-0530 DEP v. Anderson Columbia Co., Inc.

Nature of the Violation: Dredging and filling of the Bagdad site without a permit, discharge of untreated stormwater to the Blackwater River, disposal of land clearing debris in wetlands.

DEP Action Taken: A consent order was entered May 7, 1996. After the consent order was entered to address violations caused by the disposal of gravel into the river and the unauthorized use of state lands, an amended consent order was entered December 10, 1996, along with a temporary use agreement. The amended consent order was challenged and the DEP withdrew its consent to that amendment. The TUA remained in effect.

Action Taken by Anderson Columbia Co., Inc.: Anderson Columbia paid a \$4,000 penalty. It also completed the work under the consent order. It violated the TUA. Those violations are the subject of the lawsuit filed by DEP in OGC# 97-2002C.

11. OGC# 97-0089C DEP v. Anderson Columbia Co., Inc.

Nature of the Violations: After Hurricane Opal, DEP issued an emergency order to Anderson Columbia to

operate a rock crusher at the Bagdad facility to dispose of hurricane debris. Anderson Columbia continued to use the crusher long after the emergency. It was also discharging contaminated water from its truck washing operation and rock piles.

Action Taken by DEP: DEP sued Anderson Columbia and then entered a consent final judgment.

Action Taken by Anderson Columbia: Anderson Columbia paid \$20,000 in penalties and moved the rock crusher.

2. OGC# 97-1100 DEP v. Anderson Columbia Co., Inc.

Nature of the Violation: This case dealt with the illegal disposal of gravel in the Blackwater River. The violations were incorporated into OGC# 97-2002C

13. OGC# 97-1392C Anderson Columbia Co., Inc. v. DEP

Nature of the Violation: Anderson Columbia sued DEP in circuit court asking for a temporary injunction to prevent DEP and the Marine Patrol from enforcing state regulations against the barges delivering gravel to the Bagdad facility on the Blackwater River.

DEP Action Taken: DEP fought the motion and the judge refused to enter the temporary injunction. Anderson Columbia dismissed the case.

14. OGC# 97-1582 DEP v. Anderson Columbia Co., Inc.

Nature of the Violations: This was a proposed consent order and temporary use agreement, respectively, that were prepared in an attempt to settle all the outstanding violations at that time. These documents were never executed and DEP sued Anderson Columbia and Panhandle Land & Timber Co. Inc. in OGC# 97-2002C.

15. OGC# 97-1579 DEP v. Anderson Columbia Co., Inc. and Panhandle Land & Timber Co.

Nature of the Violations: Violations of the stormwater permit (did not construct in accordance with the permit, modified the system without a permit, untimely submittal of as-builts); violations of water quality standards for turbidity and pH, illegal disposal of solid waste on the Bagdad site and in the Blackwater State Forest, fill violations from construction of a wooden fence and disposal of gravel in the river and wetlands.

DEP Action Taken: DEP filed a counterclaim against Anderson Columbia and Panhandle Land & Timber for these violations.

Action Taken by Anderson Columbia and Panhandle Land & Timber: They sued DEP to quiet title under the Butler Act to lands beneath the Blackwater River and for damages caused by DEP's actions to restrict the use of barges at the Bagdad site.

###

DEP Fact Sheet



Last updated:
June 21, 1999

DEP ROUTING AND TRANSMITTAL SLIP

TO: (NAME, OFFICE, LOCATION) 3. _____
 1. DOUG BEASAW - OIC 4. _____
 2. MAIL STATION # 35 5. _____

PLEASE PREPARE REPLY FOR:

SECRETARY'S SIGNATURE

DIV/DIST DIR SIGNATURE

MY SIGNATURE

YOUR SIGNATURE

DUE DATE _____

COMMENTS:

INFORMATION FAXED
 TO SEZ UNDO FERNANDEZ
 ON 6/25/99 PER HIS
 REQUEST.

FYI, RE:
 SURVIVOR AMERICAN.

ACTION/DISPOSITION

DISCUSS WITH ME

COMMENTS/ADVISE

REVIEW AND RETURN

SET UP MEETING

FOR YOUR INFORMATION

HANDLE APPROPRIATELY

INITIAL AND FORWARD

SHARE WITH STAFF

FOR YOUR FILES

FROM: JOE KAHN DATE: 6/25/99 PHONE: 921-9519

A complete project file is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at:

Dept. of Environmental
Protection
Bureau of Air Regulation
Suite 4, 111 S. Magnolia Drive
Tallahassee, Florida, 32301
Telephone: 850/488-0114
Fax: 850/922-6979

Dept. of Environmental
Protection
Northeast District
Suite 200B, 7825 Baymeadows
Way
Jacksonville, Florida 32256
Telephone: 904/448-4300

The complete project file includes the application and information submitted by the responsible official, exclusive of confidential records under Section 403.111, F.S. Interested persons may contact the Administrator, New Source Review Section, or the Department's reviewing engineer for this project, Joseph Kahn, P.E., at 111 South Magnolia Drive, Suite 4, Tallahassee, Florida 32301, or call 850/488-0114, for additional information.

Post-it* Fax Note	7671	Date	6/25/99	# of pages	1
To	SEWARD FERNANDEZ	From	JOE KAHN		
Co./Dept.		Co.	FOEP		
Phone #	521-0700	Phone #	921-9519		
Fax #	521-0720	Fax #	922-6979		