

Jeb Bush
Governor

Department of Environmental Protection

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

David B. Struhs
Secretary

October 27, 2003

CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Celso Martini, Plant Manager
Suwannee American Cement
PO Box 410
Branford, Florida 32008

RE: DEP File No. 1210465-003-AC (PSD-FL-259B)
Cement Plant- Branford, Suwannee County, Florida

Dear Mr. Martini:

During our meeting of October 22, Suwannee American Cement [SAC] indicated its intent to conduct testing to determine if the addition of slaked lime to the process will reduce sulfur dioxide [SO₂] emissions when the raw mill is not operating. Currently, the moist raw materials, largely limestone, are dried and conveyed to the raw mill's dust control equipment for control of SO₂. SAC also indicated that it will use existing equipment silos and bins such that no additional equipment will be installed for this testing.

Because the proposed testing does not constitute a modification nor will the testing involve any construction activities, the Department does not believe a permit modification is required. Should any construction or modification become necessary, the Department will require a construction permit. **In addition, all terms and conditions of the current construction permit shall apply at all times during the slaked lime testing.**

If you have any questions, please contact Al Linero of my staff at 850/921-9523.

Sincerely,

Trina L. Vielhauer, Chief
Bureau of Air Regulation

cc: Chris Kirts, NED

Greg
AL

"More Protection, Less Process"

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1. Article Addressed to:

Mr. Celso Martini
 Plant Manager
 Suwannee American Cement
 Post Office Box 410
 Branford, FL 32008

2. Article Number (Copy from service label)

7000 2870 0000 7028 3314

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

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A. Received by (Please Print Clearly) B. Date of Delivery

Susan Vaughan 10-31-03

C. Signature

 Susan Vaughan
 Agent
 Addressee

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 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
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4. Restricted Delivery? (Extra Fee) Yes
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Postage	\$
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Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

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 Celso Martini
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 PO Box 410
 City, State, ZIP+4
 Branford, FL 32008

PS Form 3800, May 2000

See Reverse for Instructions

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1. Article Addressed to:

Mr. Celso Martini
 Plant Manager
 Suwannee American Cement
 Post Office Box 410
 Branford, FL 32008

2. Article Number (Copy from service label)
 7000 2870 0000 7028 3314

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1789

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) *Susan Vaughan* B. Date of Delivery *10-31-03*

C. Signature *Susan Vaughan* Agent Addressee

Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

PSD 259 B
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**U.S. Postal Service
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OFFICIAL USE

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Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
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Sent To *Celso Martini*
 Street, Apt. No., or PO Box No.
PO Box 410
 City, State, ZIP+4
Branford, FL 32008



KOOGLER & ASSOCIATES
ENVIRONMENTAL SERVICES

4014 NW THIRTEENTH STREET
GAINESVILLE, FLORIDA 32609
352/377-5822 • FAX/377-7158

624-00-01

December 13, 2002

RECEIVED

DEC 16 2002

BUREAU OF AIR REGULATION

Mr. Al Linero
Florida Department of Environmental Protection
Twin Towers Office Building
2600 Blair Stone Road, MS 5500
Tallahassee, Florida 32399-2400

Subject: Suwannee American Cement Company, Inc.
Permit No. 1210465-001-AC/PSD-FL-259
Air Construction Permit Extension

Dear Mr. Linero:

The above-captioned air construction permit issued to the Suwannee American Cement Company, Inc. (SAC) on June 1, 2000, has an expiration date of May 30, 2003. By this letter, we are requesting that the expiration date of the permit be extended until May 30, 2006. This request is made pursuant Condition No. 6 of Section II, *Facility-wide Specific Conditions* of the above-captioned permit and Rules 62-4.070, 62-4.080; 62-4.210 and 62-210.300(1), F.A.C.

The attached construction schedule (dated November 24, 2002) shows that the anticipated startup of the kiln is now projected to be in early 2003. The permit extension through May 30, 2006 will allow, with a reasonable margin of safety, for the startup and debugging all elements of the plant, performance tests to demonstrate that the plant can operate at permitted capacity, emission testing to demonstrate compliance with all emission limiting standards of the above-captioned permit, the preparation and submission of a complete Title V Air Operating Permit to the FDEP Northeast District Office, and the time necessary for SAC to evaluate and install a tire burning system. The requested extension will avoid the possibility of missed deadlines and the urgent and perhaps untimely scheduling of activities and/or testing to comply with a more restrictive permit expiration date.

The plant is being constructed as described in documents submitted to the Department in support of the Air Construction Permit and as described in the Department's *Best Available Control Technology Determination*. Particulate matter (PM and PM10) emissions from the kiln/raw mill and from all other applicable material process, handling and/or transfer points except the clinker cooler, will be controlled by fabric filters (baghouses) which were determined to be *Best Available Control Technology* (BACT). The PM/PM10 emissions from the clinker cooler will be controlled by electrostatic precipitator which was determined to be BACT for this emission unit. The sulfur dioxide emissions from the kiln/raw mill will be controlled by process absorption inherent to dry process Portland cement plants operating in Florida. The nitrogen

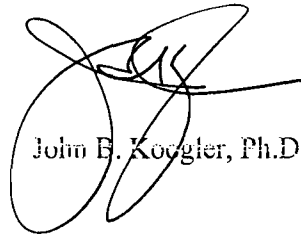
oxides (NO_x) and carbon monoxide (CO) will be controlled by process design and work practice standards. The process design includes multi-stage combustion with a separate line combustion chamber incorporated specifically to minimize NO_x emissions. This design was determined to be BACT and it is the most advanced process designed employed for NO_x and CO control in the State of Florida. Based on the plant design, the emission control measures that will be employed as BACT, the experience of the plant staff, the inherent characteristics of the raw materials that will be used at the plant, and the demonstrated compliance of similarly designed and operating plants in Florida, there is reasonable assurance that the plant will not discharge, emit or cause pollution in contravention of Department standards or rules.

This request for a permit extension complies with all Department requirements and rules. The request was made in a timely manner and the requested time extension is reasonable considering the current construction schedule (attached), the tasks which must be completed in order to have a complete Title V Permit Application in the hands of the Department's Northeast District Office prior to the expiration of the construction permit and the evaluation of the tire derived fuel system. Furthermore, there is all reasonable assurance that the plant, once operating, will comply all permit requirements based on the installation and employment of pollution control measures established as BACT and on the demonstrated compliance of similar new dry process precalciner Portland cement plants operating in Florida.

If there should be additional information required or if there are questions regarding the information provided, please do not hesitate to contact me. Thank you in advance for your consideration of this request.

Very truly yours,

KOOGLER & ASSOCIATES



John B. Koogler, Ph.D., P.E.

JBK/jhm
Attachment

cc: Chris Kirts, FDEP, Jacksonville
Celso Martini, SAC
George Townsend, SAC

Activity ID	Activity Description	Early Start	Early Finish	2002												2003				
				APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	A
+ LIMESTONE STORAGE STRUCTURE		25JAN02A	18DEC02	[Gantt bar from Jan 25 to Dec 18]																
+ SAND TRUCK UNLOADING		20SEP02A	13DEC02																	
+ RW MTL FD BINS.CONVEYORS		25FEB02A	18DEC02	[Gantt bar from Feb 25 to Dec 18]																
+ ROLLER MILL		15APR02A	13DEC02	[Gantt bar from Apr 15 to Dec 13]																
+ NEUTRON ANALYZER		16SEP02A	20DEC02																	
+ BLENDING SILO		22OCT02A	13DEC02																	
+ PREHEATER AND KILN FEED SYSTEM		11DEC02	18DEC02																	
+ ROTARY KILN		03DEC02	17DEC02																	
+ KILN/MILL REVERSE AIR BAGHOUSE		15APR02A	13DEC02	[Gantt bar from Apr 15 to Dec 13]																
+ COAL MILL		24JUN02A	23DEC02																	
+ CLINKER COOLER		07JAN02A	17DEC02	[Gantt bar from Jan 7 to Dec 17]																
+ COAL & IRON ORE UNLOADING		13MAY02A	18DEC02	[Gantt bar from May 13 to Dec 18]																
+ #20 CLINKER COOLER ELECTROSTATIC PRECIPITATOR		14OCT02A	17DEC02																	
+ #26 GYPSUM STORAGE BUILDING		04DEC02	17DEC02																	

Start Date 18DEC00
 Finish Date 30JAN03
 Data Date 24NOV02
 Run Date 11DEC02 16:05

Early Bar
 Progress Bar
 Critical Activity

1208 Sheet 1 of 2
 SUWANNEE AMERICAN CEMENT
 WATKINS ENGINEERS & CONSTRUCTORS
 GROUP READINESS SUMMARY

Date	Revision	Checked	Approved

Activity ID	Activity Description	Early Start	Early Finish	2002												2003				
				APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	A
+ CLINKER STORAGE SILOS		14MAY02A	20DEC02	[Gantt Bar: May 14 to Dec 20, 2002]																
+ CLINKER TRANSPORT FROM STORAGE		29JUL02A	20DEC02	[Gantt Bar: Jul 29 to Dec 20, 2002]																
+ FINISH MILL		03DEC01A	23DEC02	[Gantt Bar: Dec 3, 2001 to Dec 23, 2002]																
+ CEMENT STORAGE SILOS & TRUCK LOADING W/SCALE		14MAR02A	23DEC02	[Gantt Bar: Mar 14, 2002 to Dec 23, 2002]																
+ LEACHFIELD & SANITARY SYSTEM		16SEP02A	13DEC02	[Gantt Bar: Sep 16, 2002 to Dec 13, 2002]																
SITEWORK BY SAC																				
PLANT SERVICES																				
02C11	SITEWORK INCL FINAL GRADING, PONDS, CONST ROADS	16MAR01A	30JAN03	[Gantt Bar: Mar 16, 2001 to Jan 30, 2003]												[Progress Bar]				
+ OFFICE AND CONTROL ROOM BUILDING		22JUL02A	13DEC02	[Gantt Bar: Jul 22, 2002 to Dec 13, 2002]																
GENERAL																				
GENERAL MILESTONES																				
02C15	INSTALL FIRE PROTECTION LOOP	20JUL01A	20DEC02	[Gantt Bar: Jul 20, 2001 to Dec 20, 2002]												[Progress Bar]				
02C85	SITEWIDE TOUCHUP PAINTING	23DEC02	15JAN03													[Progress Bar]				
02C125	PUNCHLIST/CHANGE REQUESTS	16JAN03	30JAN03													[Progress Bar]				
17C01	WEC MECHANICAL COMPLETION		30JAN03													[Progress Bar]				
+ PLANT SERVICES		27MAY02A	13DEC02	[Gantt Bar: May 27, 2002 to Dec 13, 2002]												[Progress Bar]				

Start Date 18DEC00
 Finish Date 30JAN03
 Data Date 24NOV02
 Run Date 11DEC02 16:05

[Pattern] Early Bar
 [Solid] Progress Bar
 [Outline] Critical Activity

1208

Sheet 2 of 2

SUWANNEE AMERICAN CEMENT
 WATKINS ENGINEERS & CONSTRUCTORS
 GROUP READINESS SUMMARY

Date	Revision	Checked	Approved

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

FILED

MAY 22 2000

DIVISION OF AIR
RESOURCES MANAGEMENT

from: OGC

FLORIDA CHAPTER OF THE SIERRA)
CLUB and SAVE OUR SUWANNEE, INC.,)
)
Petitioners,)
)
vs.)
)
SUWANNEE AMERICAN CEMENT)
COMPANY, INC. and DEPARTMENT OF)
ENVIRONMENTAL PROTECTION,)
)
Respondents.)
)
_____)

OGC CASE NO. 99-1116
DOAH CASE NO. 99-3096

FINAL ORDER

On April 5, 2000, an Administrative Law Judge with the Division of Administrative Hearings (hereafter "DOAH") submitted his Recommended Order to the Department of Environmental Protection, (hereafter "the Department"). The RO indicates that copies thereof were served upon counsels for Petitioners, Florida Chapter of the Sierra Club and Save Our Suwannee (hereafter "Petitioners"), and Co-Respondent, Suwannee American Cement Company, Inc. (hereafter "SAC"). A copy of the RO is attached as Exhibit A. Exceptions to the RO were filed with the Department on behalf of each of the parties and Responses to Exceptions were filed on behalf of the Department and SAC.

Petitioners also filed a Motion to Disqualify the Secretary of the Department, David B. Struhs, from ruling on their Exceptions and issuing the Final Order in this proceeding. Petitioners' Motion to Disqualify was denied in an order entered on May 5, 2000; it is entirely appropriate for the Secretary to resolve issues that cross program lines in a particular case, such as a case involving enforcement issues, permitting issues and land acquisition issues. However, in order to avoid even the appearance of

XC: CLAIR

Joe K

Pat C

from: Howard 5/24/00

impropriety, Secretary Struhs voluntarily withdrew from any participation or involvement in ruling on Petitioners' Exceptions and in preparing and signing the Final Order in this case. In a separate Notice of Voluntary Reassignment entered on May 5, 2000, Secretary Struhs assigned to Deputy Secretary Lisa Edgar the duty to rule on the parties' Exceptions to the RO and to prepare and sign the Final Order in this case. The matter is now before Deputy Secretary Edgar for final agency action.

BACKGROUND

On November 30, 1998, SAC filed its application with the Department for an air construction permit for a proposed dry process, preheater/precalciner type portland cement plant (the "Plant").¹ The proposed Plant would be located near Branford in Suwannee County, Florida. The Plant site covers over 800 acres of land located at the intersection of U.S. Highway 27 and County Road 49. The Plant site is located approximately four miles to the west of the Ichetucknee River, approximately three miles north of the Sante Fe River, and approximately 3.4 miles to the east of the Suwannee River (sometimes referred to collectively as the "Three Rivers"). All of the Three Rivers have been officially designated by the Department as "Outstanding Florida Waters."² See Rule 62-302.700, F.A.C.

The Department initially issued a Notice of Permit Denial for the Plant based on a reason other than a determination that the projected emissions from the Plant would not

¹ "Portland cement" is a dry powder product which is normally used to make concrete when mixed with water and other components. SAC's proposed Plant will have the capacity to produce over 1,000,000 tons per year of portland cement.

² An Outstanding Florida Water ("OFW") designation is made to recognize a water body worthy of special protection because of its natural attributes. See Section 403.061(27), Florida Statutes.

comply with the Department's air quality standards.³ SAC then filed a request for an administrative hearing to contest this initial action of the Department. Petitioners subsequently filed a joint petition seeking to modify the Department's Notice of Permit Denial to include a determination that emissions from the Plant would result in significant degradation of the Santa Fe River through the atmospheric deposition of mercury. The Department forwarded the petitions to DOAH for formal administrative hearings.

Administrative Law Judge Suzanne F. Hood was originally assigned to preside over the administrative proceedings. SAC then filed a Motion to Dismiss the petition filed by Petitioners. SAC contended that Petitioners' allegation of a potential significant degradation of the waters of the Santa Fe River through atmospheric deposition of mercury from the Plant was legally insufficient to support a modification of the Department's Notice of Permit Denial. Judge Hood subsequently held an evidentiary hearing on the issues raised in SAC's Motion to Dismiss. On October 21, 1999, Judge Hood entered a Recommended Order of Dismissal concluding that Petitioners' allegation of potential degradation of the Santa Fe River through atmospheric deposition of mercury from the Plant did not "state a cause of action cognizable under law". Judge Hood thus recommended that the Department enter a final order dismissing the Petition for Administrative Hearing in this case "with prejudice for lack of standing".

However, prior to the entry of a final order ruling on the merits of Judge Hood's

³ The initial Notice of Permit Denial was based solely on a review of the regulatory history of SAC and its related corporate entities at other installations. The Department's position was that SAC had failed to make reasonable assurances that it had the corporate will to comply with applicable standards. The Department's position was based solely on the negative regulatory history of SAC and its related corporate entities.

Recommended Order of Dismissal, the Department filed in this proceeding a "Notice of Settlement". Attached to the Notice of Settlement was a copy of a Settlement Agreement between the Department and SAC concerning the air construction permit application for the Plant. The Department agreed to issue the air construction permit to SAC, subject to SAC's compliance with certain terms and conditions set forth in the Settlement Agreement. The Settlement Agreement required, among other things, that SAC institute a training and compliance program to ensure that SAC would develop and maintain the corporate will to comply with the environmental laws. In other words, reasonable assurances were made by SAC, which removed the Department's sole basis for issuing its original intent to deny the permit.

Due to the Department's proposed issuance of the air construction permit for the Plant, an order was entered on November 30, 1999, remanding the case back to DOAH for further formal administrative proceedings. The Order of Remand requested that Petitioners be given an opportunity to present "material allegations and proof in response to the new action of the Department agreeing to issue the air construction permit for the Plant." For reasons not pertinent here, Judge Hood recused herself from further participation in this proceeding.

The case was reassigned to Administrative Law Judge Larry J. Sartin (hereafter the "ALJ"). A formal administrative hearing was conducted by the ALJ on February 14, 2000. Expert testimony and documentary evidence were presented by SAC and Petitioners at the formal hearing. The Department adopted the expert testimony of one of its employees who was called as a witness for SAC.

RECOMMENDED ORDER

On April 5, 2000, the ALJ entered his Recommended Order ("RO") now on agency review by the Department. The RO contains the crucial conclusions of the ALJ that the evidence presented at the DOAH hearing established that:

1. The amount of mercury emitted from the proposed Plant that will impact the waters of the State will "not be detectable."
2. Projected emissions from the proposed Plant will not "significantly degrade" any OFW.
3. The Plant will not cause or contribute to a new or existing violation of water quality standards applicable to the Three Rivers and will not reduce the quality of the Three Rivers below their Class III classification.
4. The Plant will not pose a serious danger to the public health, safety, or welfare.

The ALJ ultimately recommended that a final order be entered by the Department "granting SAC's application for an air construction permit subject to the terms of the Draft Permit, amended to reflect the applicant's agreement that mercury emissions from the proposed Plant will be limited to 97 pounds per consecutive 10-month period."⁴

RULING ON PETITIONERS' REQUEST FOR ORAL ARGUMENT

Petitioners' Exceptions to the RO also contain a request for oral argument before the Department. However, Petitioners do not cite any statutes or rules allowing a party to a formal administrative proceeding to present oral argument in connection with exceptions to a DOAH recommended order filed with the reviewing agency. The applicable statutes and rules only authorize the filing of written exceptions to a DOAH

⁴ The record reflects that the "10-month" period set forth on page 54 of the RO is an obvious clerical error as noted in the Exceptions filed by SAC and the Department. SAC's agreement made at the DOAH final hearing was to further limit the allowed mercury that may be introduced by raw mill feed and fuels into the proposed Plant's pyroprocessing system to 97 pounds per consecutive "12-month period."

recommended order and written responses to the exceptions. See § 120.57(1)(k), F.S., and Rule 28-106.217, F.A.C.

In any event, I conclude that the issues now before me for consideration are adequately set forth in the written Exceptions and Responses to Exceptions filed by the parties. Consequently, oral argument is not needed for purposes of clarification. Petitioners' request for oral argument is thus denied.

STANDARDS OF AGENCY REVIEW

As a preface to ruling on the various Exceptions to the RO filed by all three parties to this proceeding, it is appropriate to note the standards of review of DOAH recommended orders by agencies under the Florida Administrative Procedure Act. An agency reviewing a DOAH recommended order may not reject or modify the findings of fact of an administrative law judge (formerly "hearing officer"), "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence." See subsection 120.57(1)(l), F. S.

A reviewing agency may not reweigh the evidence presented at a DOAH formal hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. These evidentiary matters are within the province of the administrative law judges, as the triers of the facts. Belleau v. Dept. of Environmental Protection, 695 So.2d 1305, 1307 (Fla. 1st DCA 1997); Florida Dept. of Corrections v. Bradley, 510 So.2d 1122 (Fla. 1st DCA 1987); Heifetz v. Dept. of Business Regulation, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985). Furthermore, a reviewing agency is not free to modify the findings of fact in a DOAH recommended order by interpreting the evidence or drawing inferences

therefrom in a manner proposed by a party that is different from the reasonable interpretations made and inferences drawn by a hearing officer. Id. at 1281-1282.

A reviewing agency also has no authority to evaluate the quantity and quality of the evidence presented at a DOAH formal hearing, beyond making a determination that the evidence is competent and substantial. Brogan v. Carter, 671 So.2d 822, 823 (Fla. 1st DCA 1996). Thus, if the record in this case discloses any competent substantial evidence supporting a pure finding of fact in the RO, I am bound by such factual finding in preparing this Final Order. Bradley, supra, at 1123.

Pursuant to subsection 120.57(1)(l), F. S., an agency may reject or modify an administrative law judge's conclusions of law and interpretations of administrative rules over which the agency has substantive jurisdiction. However, when rejecting or modifying such conclusions of law or interpretations of administrative rules, the agency must state with particularity its reasons for such rejections or modifications. The agency must also make findings that its substituted conclusions of law or rule interpretations are as reasonable or more reasonable than those which were rejected or modified.

RULINGS ON SAC'S EXCEPTIONS

Exception No. 1

SAC's first Exception challenges the reference to the word "cement" in the last line of the ALJ's Finding of Fact No. 6. SAC correctly notes that the record establishes that cement and concrete are not the same, and that cement is one of the components of concrete. (Tr. Vol. 1, page 27) Thus, the correct term in the last line of the ALJ's Finding of Fact No. 6 should be "concrete," rather than cement. This Exception is granted.

Exception Nos. 2, 4, 5, 6, 10, 11, 12, 13, 14, 15, and 18

All of these miscellaneous Exceptions of SAC point out apparent clerical, grammatical, and typographical errors in the RO as follows:

Exception No. 2 - The sum of "\$1,000,000" set forth in the last line of Finding of Fact No. 9 appears to be a typographical error and should be replaced with the correct sum of "\$100,000,000." (Tr. Vol. 1, page 42)

Exception No. 4 - The word "power" on the first line of Finding of Fact No. 13 is a misspelling of the correct word "powder."

Exception No. 5 - The word "will" on the tenth line of Finding of Fact 25 is a clerical error and should be deleted.

Exception No. 6 - The word "concentrates" on the sixth line of Finding of Fact No. 26 appears to be a misspelling of the correct word "concentrations".

Exception No. 10 - The name "Ichetucknee" is misspelled in the last line of Finding of Fact No. 79.

Exception No. 11 - SAC correctly notes that only one of Petitioners' experts, Curtis Pollman, presented any testimony as to the projected deposition of mercury due to emissions from the Plant. Thus, the plural word "experts" on the fifth line of Finding of Fact No. 86 should be replaced with the singular word "expert".

Exception No. 12 - The word "issue" on the fifth line of Finding of Fact No. 92 is a clerical error and should be deleted.

Exception No. 13 - The word "liter" on the last line of Finding of Fact No. 103 is a clerical error and should be replaced with the correct word "kilogram".

Exception No. 14 - The word "liter" on the fifth line of Finding of Fact No. 105 is a clerical error and should be replaced with the correct word "kilogram".

Exception No. 15 - I agree with SAC's contention that there is no competent substantial evidence of record to support the finding in the last sentence of Finding of Fact No. 105 as presently worded. (Tr. Vol. 1, pages 225-226) The language stating "which is 2,500 to 3,000 times lower than the rate considered to be too high" appears to be the result of a syntax error. The quoted language in the last sentence should be transposed to the end of the first sentence of Finding of Fact No. 105.

Exception No. 18 - As previously discussed in footnote 4 of this Final Order, the term "10-month period" as set forth on the last line of the ALJ's Recommendation on page 54 of the RO appears to be a typographical error and should be replaced with the correct term "12-month period." See Finding of Fact No. 53.

These Exceptions of SAC appear to be well-taken and are granted.

Nevertheless, the designated clerical, grammatical, and typographical mistakes in the RO are deemed to be harmless "scrivener's" errors having no effect on the ultimate disposition of this proceeding.

Exception No. 3

SAC's third Exception takes issue with the second line of Finding of Fact No. 10 implying that "gypsum" is added to the limestone and sand prior to or at the time the raw materials enter the roller mill. I agree with SAC that the record establishes that gypsum is added to the mixture of feeder materials at a later stage of the process of producing portland cement. (TR. Vol. 1, page 39) Thus, there is no competent substantial

evidence to support this challenged factual finding as worded. SAC's Exception No. 3 is granted, but the ALJ's finding is deemed to be harmless error.

Exception No. 7

This Exception of SAC objects to the portion of the first sentence of Finding of Fact No. 29 consisting of an apparent quote by the ALJ from Rule 62-412.400, F.A.C. I agree with SAC that the ALJ has misquoted the subject portion of Rule 62-412.400, and that the correct quote is "construction or modification of air pollutant emitting facilities in those parts of the state in which the state ambient air quality standards are being met."⁵ SAC's Exception No. 7 is granted, but the ALJ's misquotation of a portion of Rule 62-412.400 is deemed to be harmless error.

Exception No. 8

This Exception of SAC objects to the last sentence of Finding of Fact No. 47. However, I agree with the Department's Response to SAC's Exceptions concluding that, when the last sentence is read *in para materia* with the remainder of Finding of Fact No. 47, the reading suggested by SAC is not evident. Consequently, Exception No. 8 is denied.

Exception No. 9

This Exception of SAC objects to the second and third sentences of Finding of Fact No. 65, "to the extent that they suggest that the only type of coal that SAC is authorized to burn is Appalachian coal." SAC correctly points out that the Department's Draft Permit does not limit the type of coal that may be used as a permitted fuel in the Plant, as suggested in the second sentence of Finding of Fact No. 47. (SAC's Ex. No.

⁵ A direct quote from an administrative rule is not a pure finding of fact. Rather, it is an application by the ALJ of the regulatory law to the facts.

6, pages 16-17 of 51) I thus find that there is no competent substantial evidence of record to support a finding that the only type of coal that may be used as an authorized fuel at the Plant is limited to "Appalachian" coal. However, there is substantial competent evidence of record supporting the portion of the third sentence of Finding of Fact 65 asserting that "Suwannee American has proposed to initially burn Appalachian coal." (Tr. Vol. 1, pages 43, 107) In view of the above, the word "Appalachian" is deleted from the third line of Finding of Fact No. 65, and SAC's Exception No. 9 is granted to that extent. Exception No. 9 is denied as to the last sentence of Finding of Fact No. 65.

Exception No. 16

SAC's Exception No. 16 takes exception to the second sentence of the ALJ's Conclusion of Law 117 concluding that Petitioner, Save our Suwannee, "has standing to participate in this matter." SAC disagrees with the ALJ's related conclusion that Save our Suwannee's standing in this permit proceeding is based on the provisions of § 403.412(5), F.S.⁶ SAC relies on Greene v. Dept. of Natural Resources, 414 So.2d 251 (Fla. 1st DCA 1982), as purported authority for its contention that § 403.412(5) does not authorize Save our Suwannee to file a petition for administrative hearing to challenge the Department's notice of intent to issue the air construction permit for the Plant. SAC's reliance on the Greene decision is misplaced.

⁶ Section 403.412(5), F.S., authorizes a citizen of the state to intervene in a permit proceeding by the "filing a verified petition asserting that the activity . . . sought to be permitted has or will have the effect of impairing, polluting, or otherwise injuring the air, water, or other natural resources of the state." It is undisputed in this proceeding that Save our Suwannee is a corporate citizen of the state and has filed a verified petition alleging that emissions from the proposed Plant will pollute and cause injury to the waters of the Three Rivers and their natural resources.

In the later case of Manasota-88, Inc. v. Dept. of Environmental Regulation, 441 So.2d 1109 (Fla. 1st DCA 1983), the court expressly distinguished the Greene decision. In its Manasota-88 opinion, the court construed the Greene holding to be limited to situations where “there is no licensing or permitting proceedings involved” or where “there is an absence of the statutorily required allegations with respect to injury to the environment.” Id. at 1111. The court concluded in Manasota-88 that “[i]t does not follow that a citizen is precluded from initiating § 120.57 proceedings when the department does propose to proceed with the granting of . . . permits.” Id. at 1111.

SAC’s argument seems to be based on an assumption that a Department permitting matter does not become a “proceeding” for purposes of intervention under § 403.412(5) until DOAH acquires jurisdiction over the matter. However, the Manasota-88 court observed that permitting proceedings commence, for purposes of § 403.412(5), when DER “issues it notice of proposed action,” not when the matter is later referred to DOAH for a formal hearing. Id. at 1111. Thus, for purposes of § 403.412(5), this permit “proceeding” commenced on June 22, 1999, when the Department issued a Notice of permit Denial to SAC. Suwannee American could thereafter “intervene” in the permit proceeding by the filing of a verified pleading meeting the requirements of § 403.412(5).

In view of the above, SAC’s Exception No. 16 is denied.

Exception No. 17

SAC’s Exception No. 17 objects to Conclusion of Law No. 119 wherein the ALJ concluded that the Sierra Club has standing to participate in this formal administrative proceeding. SAC contends that mere “allegations” of potential adverse impacts on a substantial number of Sierra Club members due to the Plant’s purported pollution of the

waters of the Three Rivers used by its members for enjoyment and recreation are insufficient to confer standing upon the Sierra Club in this case. I find SAC's contention to be without merit and adopt the ALJ's conclusion that the Sierra Club has standing to participate in this administrative proceeding.

SAC's lack of standing argument seems to be based on the premise that it is the ultimate resolution of the merits of the Sierra Club's allegations that determines the issue of standing, rather than the sufficiency of the allegations set forth in the petition for administrative hearing. However, the case law of Florida holds that standing to participate in an administrative proceeding in which the "substantial interests of a party are determined" is to be demonstrated in the allegations in the petition for administrative hearing. See e.g., Florida Society of Ophthalmology v. Board of Optometry, 532 So.2d 1279, 1286 (Fla. 1st DCA 1988), rev. denied, 542 So.2d 1333 (Fla. 1989); Village Park Mobile Home Assn., Inc. v. State, Dept. of Business Regulation, 506 So.2d 426, 433 (Fla. 1st DCA 1987), rev. denied, 513 So.2d 1063 (Fla. 1987).

Agrico Chemical Co. v. Dept. of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981), is a landmark decision in this state on standing in administrative proceedings in which the "substantial interests of a party are determined." In its opinion in Village Park, 506 So.2d at 433, the court rendered a lengthy opinion discussing the holding in Agrico Chemical. The court concluded in the Village Park opinion that a petitioner can satisfy the "injury-in-fact" requirement set forth in Agrico Chemical by "demonstrating in his petition either: (1) that he had sustained actual injury in fact at the time of filing his petition; or (2) that he is immediately in danger of sustaining some direct injury as a result of the challenged agency's action." Village Park, 506 So.2d at

433 (emphasis supplied); see also Town of Palm Beach v. Dept of Natural Resources, 577 So.2d 1383, 1388 (Fla. 4th DCA 1991) (concluding that allegations of adverse impact to appellants' properties and the nearby dune system were sufficient to meet the "injury in fact" standing test of Agrico Chemical).

Thus, it is the sufficiency of the allegations in the petition that determine "substantial interests" standing in administrative proceedings, not the ultimate sufficiency of the evidence presented at the formal hearing. See also Sun States Utilities v. Destin Water Users, 696 So.2d 944, 945 n.1 (Fla. 1st DCA) (concluding that when considering standing, the court must accept all material allegations as true); and St. Martin's Episcopal Church v. Prudential-Bache Securities, 613 So.2d 108, 109 n.4 (Fla. 4th DCA 1993) (concluding that the concept of standing should not be confused with the merits of the claim). I would also note the court's ruling in Hamilton County Commissioners v. Dept. of Environmental Regulation, 587 So.2d 1378, 1383 (Fla. 1st DCA 1991), that "since the issues were fully litigated in the proceedings below, the standing issue is moot." Based on the above, SAC's Exception No. 17 is denied.

RULINGS ON THE DEPARTMENT'S EXCEPTIONS

Exception No. 1

The Department's first Exception takes issue with the last sentence of Finding of Fact No. 17 stating that the "Department did not review the application for compliance with water quality impacts." The Department cites to the testimony at the final hearing of Joe Kahn ("Kahn"), who was accepted by the ALJ as an expert in air pollution permitting regulations. Kahn, who is a permitting engineer in the Department's Division of Air Resource Management, stated that he handled the Department's review of SAC's

application for the air construction permit. Kahn rendered opinions at the final hearing that the Plant's projected emissions would meet the applicable ambient air quality standards, prevention of significant deterioration increment requirements, and the best available control technology requirements.

Kahn also testified that he considered the proposed Plant's compliance with the Department's Outstanding Florida Water ("OFW") Rule [62-4.242]. (Tr. Vol. 1, pages 155, 163, 165-66.) Mr. Kahn stated that he did "evaluate the project's impacts for mercury on all media including air, soils, the ambient air, and water." (Tr. Vol. 1, page 166.) Mr. Kahn further testified that his water quality review was limited to determining whether the Department's numerical mercury standard for Class III Waters would be exceeded by the deposition of mercury into the Three Rivers from the projected emissions from the Plant. (Tr. Vol. 1, page 166.) My review of the entire record of the DOAH proceeding indicates that this testimony of Kahn was not contradicted.

Kahn acknowledged, however, that his consideration of the OFW Rule and related water quality impacts did not take place until December of 1999 or January of 2000. (Tr. Vol. 1, pages 155, 163.) This consideration by Kahn of the OFW Rule and related water quality impacts thus took place after the Department's Draft Permit for the Plant was issued. This testimony of Kahn is alluded to in the ALJ's Conclusion of Law 151. Thus, when viewed in conjunction with Conclusion of Law 151, I read the last sentence of Finding of Fact 17 to be a finding that the Department did not review SAC's permit application for compliance with water quality impacts during the review process leading up to issuance of the Draft Permit.

Nevertheless, there is nothing improper about a permit application undergoing additional scrutiny by the Department when a notice of intent to issue a permit is challenged and a formal administrative proceeding ensues. A formal administrative proceeding is not merely a review of prior preliminary agency action, but is a *de novo* proceeding intended to formulate final agency action. See, e.g., Hamilton County Commissioners v. State Dept. of Environmental Regulation, 587 So. 2d 1378, 1387 (Fla. 1st DCA 1991); McDonald v. Dept. of Banking and Finance, 346 So. 2d 569, 584 (Fla. 1st DCA 1977).

The primary focus at a *de novo* DOAH hearing is not whether the Department correctly evaluated the original application, but whether the evidence presented at the hearing provides reasonable assurance at that time that the proposed project will comply with applicable permitting standards. Clarke v. Melton, 12 F.A.L.R. 4946, 4949 (Fla. DER 1990). Any relevant additional information necessary to provide reasonable assurance that a project will comply with permitting standards may be presented at this *de novo* hearing, and the ALJ "may consider changes and other circumstances external to the application." Hamilton County Commissioners, 587 So. 2d at 1387-88.

I thus find that there is no competent substantial evidence of record to support the ALJ's factual finding in the last sentence of Finding of Fact No. 17. Consequently, the Department's Exception No. 1 is granted. However, this challenged factual finding of the ALJ is deemed to be harmless error in light of the ALJ's subsequent findings and rulings on the water quality issues raised by Petitioners.

Exception No. 2

The Department's second Exception takes issue with Finding of Fact No. 25, to the extent that it "suggests that the three criteria listed in the last sentence . . . are the sole criteria to be considered." The Department states its position that "relevant provisions of Chapter 62-4, F.A.C., also must be applied." For the reasons set forth in the subsequent rulings on the Department's Exceptions 3 through 13, this Exception to Finding of Fact No. 25 is denied as being extraneous and not germane to the final disposition of this case.

Exceptions Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13

All of these related Exceptions deal with the same basic contention raised by the Department. This contention is that the ALJ erred in concluding that SAC was not required to comply with any of the Department's rules dealing with water quality standards in order to be entitled to issuance of the air construction permit for the Plant. The ALJ's conclusion on this issue, however, is not an essential portion of his RO, since he went on to find that the emissions from the proposed plant would not significantly degrade an OFW. Accordingly, I need not reach the issue raised by the Department. The Department's Exceptions are therefore denied, as further explained below.

Notably, the parties in this case filed a Prehearing Stipulation with the ALJ containing a stipulated issue of law that "**Petitioners do not contest that SAC has provided reasonable assurance that the proposed facility will comply with all applicable air quality rules, except as to those requirements related to water quality standards.**" (See Conclusion of Law 149) Thus, whether projected emissions from the Plant would comply with the Department's air quality standards, *per se*, was

not a disputed issue before the ALJ at the DOAH final hearing. The only issue before the ALJ at the hearing was Petitioners' claim that emissions of mercury from the Plant would violate the statutes and rules dealing with the prevention of "significant degradation" of Outstanding Florida Waters, maintenance of designated use of surface waters, and certain minimum criteria for surface waters.

This is not a case where a party challenging the issuance of an air construction permit has been allowed to present evidence at a DOAH final hearing of purported water quality violations over the objections of the permit applicant. The DOAH record before me does not contain a Motion *In Limine* filed by SAC seeking to exclude any evidence at the final hearing relating to alleged significant degradation of the waters of the Three Rivers due to emissions of mercury from the Plant.

On the contrary, SAC's attorneys did not object, on grounds of immateriality or irrelevancy, to any testimony being presented at the final hearing concerning the impacts of mercury emissions from the Plant on the water quality of the Three Rivers. The DOAH record before me is replete with expert testimony and documentary evidence concerning the predicted impacts of mercury emissions from the Plant on the water quality of the Three Rivers. This "water quality" evidence admitted without objection is now a part of the record in this case and is required to be considered along with any other record evidence. See Florida Power & Light v. State of Florida Siting Board, 693 So.2d 1025, 1028 (Fla. 1st DCA 1997) (Benton, J. concurring); Tri-State Systems, Inc. v. Dept. of Transportation, 500 So.2d 212, 213 (Fla. 1st DCA 1985), rev. denied, 506 So.2d 1041 (Fla. 1987).

Moreover, SAC's attorneys "opened the door" in their case-in-chief to the water quality evidence being presented at the DOAH hearing. A substantial portion of the expert testimony of SAC's own witnesses, John Koogler, Donald Elias, and Christopher Teaf deals with the issue of the projected impacts of mercury emissions from the Plant on the water quality of the Three Rivers. In fact, the ALJ's Findings of Fact 98 through 108, dealing with the impacts of mercury emissions from the Plant on the Three Rivers, contain repeated references to the testimony of SAC's expert witness, Dr. Teaf.

Despite the ALJ's arguably erroneous conclusion that SAC was not required to comply with the OFW rules and applicable water quality standards, the ALJ wisely continued his analysis. The RO on review contains at least 25 separately numbered Findings of Fact and at least 20 separately numbered Conclusions of Law dealing with the projected impacts of mercury emissions from the Plant on the water quality of the Three Rivers. Consequently, the RO addresses all of Petitioners' water quality concerns over mercury emissions from the proposed Plant.

In view of the above, I conclude that the ALJ's Conclusions of Law 138 through 141, 144 through 146, 150 through 153, and the portion of Conclusion of Law 154 stating that "[b]ased upon the conclusion that Suwannee American is only required to comply with the rules governing air quality standards," are dicta in this case. This dicta does not have any bearing on the ALJ's crucial Conclusions of Law 157-175 concluding that the emissions of mercury from the Plant will not "significantly degrade" any OFW and will not violate any related water quality rule or standard of the Department. Accordingly, the Department's Exceptions Nos. 3 through 13 are denied as being extraneous and not germane to the final disposition of this case.

Exception No. 14

The Department's last Exception deals with an apparent clerical error in the last line of the ALJ's Recommendation on page 54 of the RO. This Exception is granted for the same reason set forth in the prior ruling granting SAC's Exception No. 18.

RULINGS ON PETITIONERS' EXCEPTIONS

Exception No. 1

Petitioners' first Exception objects to the last sentence of the ALJ's Finding of Fact No. 17. This Exception of Petitioners is substantially the same as the Department's first Exception. For the reasons specified in the above ruling on the Department's Exception No. 1, Petitioners' Exception No. 1 is also granted.

Exception Nos. 2-8, 10-11

These Exceptions of Petitioners take issue with Findings of Fact Nos. 47, 64, 70, 71, 84, 85, 96 and 97. In all of these Exceptions, Petitioners disagree with the ALJ's interpretations of, and inference drawn from, the expert testimony presented at the DOAH final hearing. Petitioners essentially reject the testimony of SAC's expert witnesses and repeatedly cite to the testimony of their expert witnesses. Petitioners' Exceptions also are based on their own interpretations of, and inferences from, the evidence of record that are most favorable to their contentions.

As noted in the Standards of Agency Review above, a reviewing agency has no authority to reweigh the evidence presented at a DOAH formal hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. These evidentiary matters are within the province of the ALJ, as the trier of the facts. Also, a reviewing agency is not free to modify the findings of fact in a DOAH recommended order by interpreting the

evidence or drawing inferences therefrom in a manner proposed by a party that is different from the reasonable interpretations made and inferences drawn by a hearing officer. Heifitz, 475 So.2d at 1281-82. I conclude that the ALJ's findings of fact challenged in these Exceptions appear to be reasonable interpretations of, and inferences drawn from, the expert testimony of Dr. John Koogler, Joseph Kahn, Donald Elias, Dr. Christopher Teaf, and Thomas Atkeson. These factual findings of the ALJ are thus adopted.

One of Petitioners' primary contentions in these Exceptions is that the ALJ erred by finding that the deposition of mercury emissions from the Plant would result in a ten percent (10%) or less increase of mercury in the "natural background," and that such increase would "not be detectable." These findings, however, were supported by competent substantial evidence, as detailed below. Furthermore, even assuming for the sake of argument that these findings were not supported by competent substantial evidence, Petitioners' contention that a purported 10.8% increase in natural background mercury from Plant emissions would be detectable still does not warrant findings of similar percentage increases in mercury concentrations in the waters, sediments, and fish of the Three Rivers. The expert testimony of Dr. Teaf relied upon by the ALJ and summarized hereafter in this Final Order indicates to the contrary. (Tr. Vol. 2, pages 214-232.) In view of the above, Petitioners' Exception Nos. 2-8 and 10-11 are denied.

Exception No. 9

This Exception of Petitioner correctly notes a typographical error in the fifth line of the ALJ's Finding of Fact No. 92. This matter has already been resolved in the above

ruling granting SAC's Exception No. 12. Petitioners' Exception No. 9 is thus granted to the extent of the deletion of the word "issue" from the fifth line of Finding of Fact No. 92. Exception Nos. 12-16, 18-23, 25, 27

These related Exceptions of Petitioners objects to the ALJ's Findings of Fact Nos. 98, 100, 103, 105-106, 108, 110, and the last sentence of 107. The Exceptions also challenge the ALJ's Conclusions of Law Nos. 114-115, 157, 161, 164, 167, 169-170, 172 and 175. The challenged factual findings and legal conclusions of the ALJ deal with the characteristics and results of air quality dispersion modeling performed on behalf of SAC to predict the concentrations of mercury deposited in the surrounding environment from Plant emissions. These challenged findings and related conclusions are based primarily on the interpretative expert testimony of SAC's witnesses, John Koogler, Donald Elias, and Christopher Teaf.

John Koogler received a doctoral degree in engineering, with a specialty in environmental engineering, in the year 1966. Dr. Koogler has specialized in the air pollution control permitting process during his 30-year plus professional career, and has assisted prior applicants in the environmental permitting of other portland cement plants in Florida. Dr. Koogler, a licensed professional engineer in Florida, was accepted by the ALJ as an expert in air quality analysis, air quality dispersion modeling, and best available control technology review. Dr. Koogler's firm, Koogler and Associates, was retained by SAC to prepare the air construction permit being challenged in this proceeding. Dr. Koogler's firm also conducted an ambient air quality impact analysis of emissions from the Plant for SAC. (Tr. Vol. 1, pages 55-97)

Donald Elias has a master's degree in environmental engineering, with a specialty in chemical engineering and air pollution. Mr. Elias' prior experience includes the performance of air quality dispersion modeling, and he has participated in the preparation and review of other cement plant applications in Florida. Mr. Elias, who performed an analysis of the projected air emissions from the Plant, was accepted by the ALJ as an expert in ambient air quality analysis and air quality dispersion modeling. (Tr. Vol. 1, pages 168-185.)

Christopher Teaf has a Ph.D. in toxicology and has been Associate Director of the Center for Biomedical and Toxicological Research at Florida State University since 1983. Dr. Teaf is also President and Director of Toxicology at Hazardous Substance and Waste Management, Research, Inc. located in Tallahassee. Dr. Teaf has testified as an expert in various administrative and judicial proceedings and was accepted by the ALJ as an expert in toxicology, environmental chemistry, and environmental risk assessment. Dr. Teaf evaluated the potential effects of the estimated deposition rates of mercury into the Three Rivers from Plant emissions. (Tr. Vol. 2, pages 207-233)

Based on the air modeling data and corresponding expert testimony presented by SAC, the ALJ repeatedly found that the estimated concentrations of mercury from Plant emissions that will be deposited through atmospheric deposition into the Three Rivers over the life of the Plant are so nominal that they "will not be detectable or measurable." (RO, paragraphs 102, 104, 107, 108, 172, 175) In his "Ultimate Finding of Fact 110," the ALJ thus determined that SAC has provided reasonable assurances that the Plant emissions "will not violate any water quality standards, will not significantly degrade any OFWs, [will not] impair the designated use of the Three Rivers, or pose a

serious danger to the public health, safety, or welfare." These reasonable assurance determinations are repeated in Conclusions of Law Nos. 157, 164, and 167-175.

I agree with Petitioners' observation that the ALJ's determinations in "Ultimate Finding of Fact 110" that SAC has provided the necessary "reasonable assurances" in this case are not pure findings of fact.⁷ Whether "reasonable assurance" has been provided in a particular permit proceeding that a proposed project will comply with applicable environmental standards is actually a mixed determination of fact and law which, in the final analysis, must ultimately be made by the Department.⁸ See, e.g., Miccosukee Tribe of Indians v. South Florida Water Management District, ER FALR 98:119, p.5 (Fla. DEP 1998), *affirmed*, 721 So.2d 389 (Fla. 3d DCA 1998); Save our Suwanee v. Piechocki, 18 FALR 1467, 1471 (Fla. DEP 1996); Barringer v. E. Speer and Associates, 14 FALR 3660, 3667 n.8 (Fla. DER 1992). Nevertheless, for the following reasons, I concur with the ALJ's determinations that the necessary reasonable assurances have been provided by SAC that the proposed Plant will not "significantly degrade" any OFW or violate any related surface water quality standards:

1. The ALJ's key factual findings that the estimated concentrations of mercury that will be introduced into the Three Rivers from Plant emissions will be so slight that they "will not be detectable or measurable" is supported by the cumulative expert testimony of Donald Elias and Dr. Christopher Teaf and is adopted. Mr. Elias testified

⁷ A reviewing agency or court is not bound by the labels affixed to "findings of facts" and "conclusions of law" in a DOAH recommended order. If a finding of fact or conclusion of law is improperly labeled by an administrative law judge, the label is disregarded and the item is treated as though it were properly labeled. Battaglia Properties v. Land and Water Ad. Commission, 629 So.2d 161, 168 (Fla. 5th DCA 1994).

⁸ This "reasonable assurance" standard has been judicially defined to require a permit applicant to establish "a substantial likelihood that the project will be successfully implemented." Metro Dade County v. Coscan Florida, Inc., 609 So.2d 644, 648 (Fla. 3d DCA 1992).

that the low level of deposition of mercury from the Plant would be “undetectable by current monitoring methods.” (Tr. Vol. 1, page 181) Dr. Teaf testified that the predicted total surface water concentrations of mercury in the Three Rivers attributable to deposition from emissions over the life of the Plant would be “between 50,000 and 100,000 times below a number that could be measured in water, given present analytical capabilities.” (Tr. Vol. 2, page 221-222) Dr. Teaf also testified that predicted total mercury concentrations in the sediments of the Three Rivers attributable to deposition from emissions over the life of the Plant would be “between 10,000 to 100,000 times lower than the detection limit for sediment concentration.” (Tr. Vol. 2, page 224) Dr. Teaf referred to this detection limit as the “practical quantization limit” when samples are submitted to a laboratory in Florida.

2. Petitioners also make an alternative argument that, even assuming the atmospheric deposition of the Plant’s mercury emissions into the Three Rivers “will not be detectable”, SAC still has not provided reasonable assurance that the waters of the Three Rivers will not be significantly degraded. A similar argument was rejected by the Department in Sunset Acres Property Owners Assn. v. Dept. of Environmental Protection, 18 FALR 4472 (Fla. DEP 1996). The Final Order in Sunset Acres concluded that negative effects “which are so slight as not to be detectable or measurable with sophisticated instrumentation are insufficient to support a conclusion of law that the proposed dredge and fill activities will ‘significantly degrade’ the waters of Florida Bay [an OFW] under Rule 62-4.242(2), Florida Administrative Code.” Id. at 4483. Accord Hoffert v. St. Joe Paper Company, 12 FALR 4972, 4987 (Fla. DER 1990) (reasonable assurance does not require permit applicant to address impacts on water quality that

“could not be detected or measured in real life”); Florida Keys Citizens Coalition v. 1800 Atlantic Developers, 8 FALR 5564, 5587 (Fla. DER 1986), *rev'd on other grounds*, 552 So.2d 946 (Fla. 1st DCA 1989) (adverse impact of proposed project in an OFW on fish and wildlife habitat must be “quantifiable” and not merely “*de minimis*”).

3. Petitioners further contend that SAC did not provide reasonable assurance in this case because it failed to establish the existing ambient water quality of the Three Rivers pursuant to Rules 62-4.242(2)(a)2.b and 62-4.242(2)(c), F.A.C. However, in order for the ambient water quality provisions of Rules 62-4.242(2)(a)2 and 62-4.242(2)(c) to apply, there must first be a determination that there is either a “proposed activity or discharge within an OFW” or that the proposed activity “significantly degrades, either alone or in combination with other stationary installations, any OFW.” See Save Our Suwanne v. Piechocki, 18 FALR 1467 (Fla. DEP 1996).

4. It is undisputed in this case that the Plant will be located approximately three miles from the nearest of the Three Rivers and is thus not a “proposed activity or discharge within an OFW.” (emphasis supplied) Moreover, this Final Order concurs with the ALJ’s conclusions that emissions of mercury from the Plant into the air do not constitute “discharges” into the waters of the Three Rivers and there will be no significant degradation of the water quality of the Three Rivers from any “activity” at the Plant. In addition, there is no evidence of record in this case of any other stationary air installations which would contribute to significant degradation of the Three Rivers. Petitioners’ reliance on Save Anna Maria v. Dept. of Transportation, 700 So.2d 113 (Fla. 2d DCA 1997), is misplaced. Save Anna Maria dealt with a proposed bridge to be constructed within the boundaries of an OFW and is thus factually distinguishable from

this case, which does not involve an activity within an OFW. This contention of Petitioners is rejected.

5. In his Finding of Fact No. 83, the ALJ found that air quality dispersion modeling tests performed by SAC's experts to estimate the impacts of Plant mercury emissions on the surrounding environment were "reasonable and professionally performed" and thus "reliable". In Finding of Fact No. 86, the ALJ also found that SAC's air modeling results were "supported by the weight of the evidence in this case." The ALJ further found that Petitioners' experts performed no modeling to refute this evidence presented by SAC, and concluded that "Petitioner's experts to the contrary were not persuasive." None of these significant factual findings of the ALJ were challenged in Petitioners' Exceptions and must be accepted on agency review as correct. See Couch v. Commission on Ethics, 617 So.2d 1119, 1124 (Fla. 5th DCA 1993); Bradley, supra, at 510 So.2d 1124 (parties to formal administrative proceedings must alert reviewing agencies to any perceived defects in the findings of fact in DOAH recommended orders by filing exceptions).

6. Petitioners' repeated citations to the testimony of their expert witness, Dr. Curtis Pollman, is not persuasive. The decision of an administrative law judge to accept one expert's testimony over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of competent substantial evidence of record from which the finding could be reasonably inferred. See Collier Medical Center v. State, Dept. of HRS, 462 So. 2d 83, 85 (Fla. 1st DCA 1985); Florida Chapter of Sierra Club v. Orlando Utilities Commission, 436 So. 2d 383, 389 (Fla. 5th DCA 1983). I have already concluded herein that the testimony of SAC's expert

witnesses, Dr. Koogler, Joseph Kahn, Donald Elias, and Dr. Teaf constitutes competent substantial evidence in support of the ALJ's findings and conclusion challenged in these Exceptions.

7. The opposing testimony of Petitioners' expert witness, Dr. Pollman, does not invalidate the ALJ's findings and conclusions based on the testimony of SAC's expert witnesses. The Florida case law holds that, if there is competent substantial evidence to support the findings of fact of an administrative law judge (formerly "hearing officer"), it is irrelevant that there may also be competent substantial evidence to support contrary findings. Arand Construction Co. v. Dyer, 592 So.2d 276, 280 (Fla. 1st DCA 1991); Conshor, Inc. v. Roberts, 498 So.2d 622, 623 (Fla. 1st DCA 1986).

8. In these Exceptions, Petitioners essentially disagree with the weight given by the ALJ to SAC's air modeling test results and the corresponding opinion testimony of SAC's expert witnesses. However, as previously noted herein, an agency reviewing a DOAH recommended order may not reweigh the evidence, resolve conflicts therein, or judge the credibility of witnesses. I thus decline to substitute my judgment for that of the ALJ on these evidentiary matters.

9. The ALJ found that SAC's initial estimate of 184 pounds per year of mercury emission from the Plant was based on a "worst case scenario." (Finding of Fact No. 51) This factual finding was not challenged in Petitioners' Exceptions and is adopted. SAC's initial estimate of 184 pounds per year of mercury emissions was used by the Department in its Draft Permit as the maximum amount of mercury that could be introduced into the Plant's processing system through feed materials and fuels in a "consecutive 12-month period." (SAC's Exhibit No. 6, page 19 of 51) Thus, the Draft

Permit annual mercury limitation was based on a "worst case scenario," notwithstanding the administrative case law holding that a permit applicant is only required to deal with "reasonably foreseeable contingencies," rather than "worst case scenarios." See e.g., Save our Suwannee, *supra*, 18 FALR at 1472; Florida Audubon Society v. South Florida Water Management District, 14 FALR. 5518, 5524 (Fla. SFWMD 1992); Rudloe v. Dickerson Bayshore, Inc., 10 FALR. 3426, 3440-41 (Fla. DER 1988).⁹

10. The ALJ's unchallenged Finding of Fact No. 53 finds that SAC agreed at the DOAH final hearing to a further limitation on the maximum amount of mercury allowed to be introduced into the Plant's processing system through feed material and fuel to "97 pounds per consecutive 12-month period." This stipulation of SAC is incorporated into this Final Order as a modification of Emission Limitations and Performance Standard No. 13 found on page 19 of the Draft Permit. Thus, during the course of this *de novo* proceeding, SAC has stipulated to a reduction of over fifty percent (50%) as to the annual total amount of mercury compounds allowed to be introduced into the Plant's processing system. The ALJ further found in Finding of Fact No. 55 that SAC "proved that its estimate of the amount of mercury of 97 pounds per year that will be emitted from the Proposed Plant is reasonable."¹⁰ This significant factual finding was also not challenged in Petitioners' Exceptions and is adopted. Petitioners' Exception Nos. 12-16, and 18-23, 25, and 27 are thus denied.

⁹ Petitioners' suggestion in Exception No. 16 that a permit applicant "must establish its entitlement to the requested permit under 'worst-case' conditions" is thus rejected.

¹⁰ In his Finding of Fact No. 63, the ALJ further found that "[b]y limiting the amount of mercury that goes into the manufacturing process to the amount of mercury allowed by the Draft Permit, the amount of mercury emitted from the Proposed Plant should not exceed the amount of mercury emissions projected by Suwannee American." This crucial factual finding was also not challenged in Petitioners' Exceptions and is adopted.

Exception No. 17

This Exception of Petitioners objects to Conclusions of Law Nos. 138-140, 144, 146, and 150-154. In these paragraphs of the RO, the ALJ essentially concluded that SAC was not required to comply with any water quality rules and standards in order to be entitled to issuance of the air construction permit for the Plant. For the reasons set forth in the above ruling denying the Department's Exceptions Nos. 3-13, Petitioners' Exception No. 17 is also denied as being extraneous and not germane to the final disposition of this case.

Exception Nos. 24 and 26

Exception No. 24 objects to the ALJ's Conclusion of Law 171 concluding that there will be no "discharge" from the Plant into the waters of the Three Rivers within the purview of water quality Rule 62-302.300(16), F.A.C.¹¹ Exception No. 26 also contends that mercury emissions from the Plant will constitute "discharges" into the waters of the Three Rivers under the related provisions of water quality Rule 62-302.300(17). Petitioners' Exceptions do not cite any legal authority arguably supporting their "indirect discharge" rationale. However, in support of its position that mercury emissions into the air from the Plant do not constitute "discharges" into surrounding surface waters, the Department's Response cites the federal case of Chemical Weapons Working Group, Inc. v. United States Dept. of the Army, 111 F. 3d 1485 (10th Cir. 1997).

In the Chemical Weapons case, the question before the court was whether atmospheric deposition into navigable waters from emissions of a proposed chemical

¹¹ The term "discharge" is not defined in Chapter 373 or 403, F.S., or in Chapter 62-302, F.A.C., prescribing the Department's surface water quality standards. Furthermore, there appears to be no Florida case law construing this term within the purview of the water quality permitting statutes and rules.

warfare incineration facility would fall within the purview of § 301(f) of the Clean Water Act prohibiting the “discharge of any radiological, chemical, or biological warfare agents . . . into navigable waters.” In its Chemical Weapons decision, the federal appellate court affirmed the trial court’s decision dismissing the environmental group’s claim under § 301(f) of the Clean Water Act. The court concluded in its Chemical Weapons opinion that:

“We . . . reject Plaintiffs’ construction of § 301(f) of the Clean Water Act because it would lead to irrational results. Because Clean Water Act § 301(a) regulates the discharge of any pollutant into navigable waters . . . , Plaintiffs’ broad construction of the phrase “discharge . . . into the navigable waters” under § 301(f) would necessarily result in regulation under § 301(a) of any air emission that might possible result in atmospheric deposition into navigable waters. While Plaintiffs argue that the Environmental Protection Agency could issue a nationwide permit for “for sources of water pollution such as cars and chimneys” to the extent § 301(a) would apply, the very thought of regulating car emissions under the Clean Water Act exposes the absurdity of their position. Tellingly, Plaintiffs also fail to cite a single instance in which stack emissions are regulated under the Clean Water Act. We therefore conclude that under the facts of this case, they are not. Although Plaintiffs may be correct in arguing that an object may fly through the air and still be “discharged . . . into the navigable waters” under the Clean Water Act, common sense dictates that Tooele’s stack emissions constitute discharges into the air-not water-and are therefore beyond § 301(f)’s reach.” (footnote omitted)

Id. at 1490. This analysis by the court in Chemical Weapons of the provisions of the federal Clean Water Act appears to be germane to Petitioners’ similar “indirect discharge” theory advanced in this case under Florida’s water quality rules and standards.

An “indirect discharge” argument raised by a permit challenger under Florida’s Everglades Forever Act was also rejected by the Department in Miccosukee Tribe of

Indians, supra, ER FALR 98:119, p.6.¹² Accord Stop the Outfall Pipe v. Massachusetts Water Resources Authority, 642 N.E. 568, 573 (Mass. 1994) (a proposed wastewater discharge pipe terminating over two miles from a state ocean sanctuary did not discharge "into" the sanctuary). I would also note that Petitioners' "indirect discharge" rationale is expressly rejected in Rule 62-620.200(12), F.A.C. This Department wastewater permitting rule excepts from the "discharge of a pollutant" definition an addition of pollutants [to waters] by any indirect discharger. (emphasis added) I thus conclude that, under the facts presented in this case, the emissions of mercury into the air from the proposed Plant would not constitute "discharges" into the waters of the Three Rivers for purposes of Rules 62-302.300(16) and 62-302.300(17), F.A.C.

CONCLUSION

This case has arrived on agency review in a rather unusual posture. Petitioners challenged the issuance of an air construction permit to SAC, but stipulated in the DOAH proceeding that SAC has provided reasonable assurance that the proposed cement Plant will comply with the Department's air quality rules and standards. (RO, paragraph 149) Therefore, the only matters before the ALJ for consideration at the DOAH final hearing were "water quality" issues. The ALJ heard expert testimony and received exhibits related to Petitioners' claims that emissions of mercury from the Plant would violate the statutes and rules dealing with the prevention of "significant degradation" of Outstanding Florida Waters and related surface water quality standards.

¹² In the Miccosukee Tribe of Indians case, the Petitioners contended that the phrase "discharge into" as set forth in § 373.4592(9)(k), F.S., should be broadly construed to include additional structures discharging "indirectly" into the Everglades Protection Area. This "indirect discharge" argument was rejected in the Department's Final Order, which was subsequently affirmed on appeal.

One of the expert witnesses testifying at the DOAH final hearing was Dr. Teaf, who has been Associate Director of the Center for Biomedical and Toxicological Research at Florida State University for over 15 years. Dr. Teaf testified that the predicted concentrations of mercury in the Three Rivers attributable to deposition of emissions over the life of the Plant would be between 50,000 to 100,000 times below a number that could be detected or measured in water, given present analytical capabilities.

Based on this and related findings, Dr. Teaf was of the opinion that mercury deposition into the Three Rivers from emissions over the lifetime of the Plant would not "significantly degrade" these Outstanding Florida Waters. Petitioners' suggestion that predicted mercury concentrations in the waters of the Three Rivers at least 50,000 times below a number that are detectable in a scientific laboratory would still result in a "significant degradation" of the Three Rivers is not supported by law or reason.

This contention of Petitioners, if adopted, would effectively convert the judicially approved "reasonable assurance" standard to one of "absolute guarantees." However, an "absolute guarantee" burden of proof on permit applicants has been repeatedly rejected in the administrative and judicial case law of this state. See, e.g., Florida Dept. of Transportation v. J.W.C. Company, Inc., 396 So.2d 778, 788-89 (Fla. 1st DCA 1981); Ginnie Springs, Inc. v. Craig Watson, 21 FALR 4072, 4080 (Fla. DEP 1999); Save our Suwannee, Inc., v. Piechocki, 18 FALR 1467, 1472 (Fla. DEP 1996); Manasota-88, Inc., v. Agrico Chemical Company, 12 FALR 1319, 1325 (Fla. DER 1990).

It is therefore ORDERED:

A. The RO is modified to reflect the corrections of the clerical and typographical errors designated in the above Rulings on SAC's Exceptions.

B. The ALJ's Conclusions of Law 138-141, 144-146, 150-153, and the portion of 154 stating that "[b]ased upon the conclusion that Suwannee American is only required to comply with the rules governing air quality standards," are deemed to be dicta and are not incorporated into this Final Order.

C. As modified and limited in paragraphs A and B above, the RO is otherwise adopted and incorporated by reference herein.

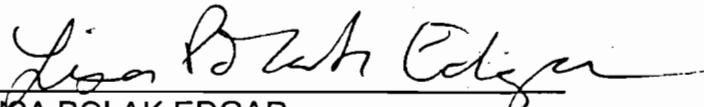
D. The air construction permit for the Plant bearing "DEP File No. 1210465-001-AC, PSD-FL-259" is ISSUED to SAC, subject to the Draft Permit conditions which are incorporated by reference herein. However, Emission Limitations and Performance Standard No. 13 of the Draft Permit pertaining to mercury is modified by substituting the number "97" for the existing number "184" on the second line.

E. The issuance of this permit is also subject to the final disposition of another pending administrative challenge to the issuance of the Plant permit in Woodhouse v. Suwannee American Cement Company, Inc., DOAH Case No. 00-0702.

Any party hereto has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Department's clerk in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, FL 32399-3000; and by filing a copy of the Notice of Appeal with the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the Department's clerk.

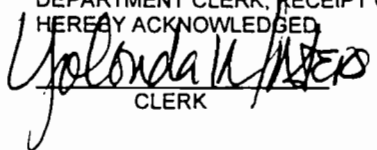
DONE AND ORDERED this 19th day of May, 2000, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


LISA POLAK EDGAR
Deputy Secretary

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.


CLERK

5/19/00
DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order has been sent by United States Postal Service to:

Patrice Boyes, Esquire
Boyes & Associates, P.A.
Post Office Box 1424
Gainesville, FL 32602-1424

W. Robert Vezina, II, Esquire
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George T. Reeves, Esquire
Suwannee American Cement
Company, Inc.
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Ann Cole, Clerk and
Larry J. Sartin, Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550

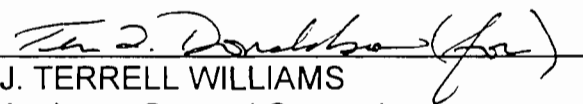
Lawrence E. Sellers, Jr., Esquire
Lawrence N. Curtin, Esquire
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Tallahassee, FL 32302-0810

and by hand delivery to:

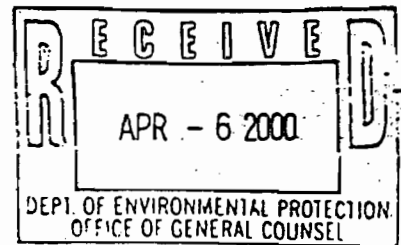
Jack B. Chisolm, Esquire
Department of Environmental Protection
3900 Commonwealth Blvd., M.S. 35
Tallahassee, FL 32399-3000

this 19th day of May, 2000.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


J. TERRELL WILLIAMS
Assistant General Counsel
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Tallahassee, Florida 32399-3000
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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS



FLORIDA CHAPTER OF THE SIERRA)
CLUB and SAVE OUR SUWANNEE,)
INC.,)
)
Petitioners,)
)
vs.) Case No. 99-3096
)
SUWANNEE AMERICAN CEMENT)
COMPANY, INC. and DEPARTMENT)
OF ENVIRONMENTAL PROTECTION,)
)
Respondents.)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case before Larry J. Sartin, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, in Gainesville, Florida, on February 14, 2000.

APPEARANCES

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and

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STATEMENT OF THE ISSUE

The issue in this case is whether Respondent, Suwannee American Cement Company, Inc., should be issued an air construction permit for the construction of a portland cement manufacturing plant.

PRELIMINARY STATEMENT

On November 30, 1998, Suwannee American Cement Company, Inc., submitted an application to the Department of Environmental Protection for an air construction permit authorizing the construction and operation of a portland cement manufacturing plant to be located near Branford, Suwannee County, Florida. Additional information to support the application was requested by the Department of Environmental Protection and was provided by Suwannee American Cement Company, Inc.

On June 22, 1999, the Department of Environmental Protection issued a Notice of Permit Denial indicating its intent to deny the permit sought by Suwannee American Cement Company, Inc. The permit application was denied because of a determination that Suwannee American Cement Company, Inc., had failed to provide

assurances that it would comply with all applicable regulations as evidenced by the alleged compliance history of companies related to Suwannee American Cement Company, Inc.

Suwannee American Cement Company, Inc., filed a Petition challenging the proposed denial of its permit application. On July 6, 1999, Petitioners in this case filed a Petition suggesting additional grounds for denying the permit application.

The Petitions were filed with the Division of Administrative Hearings on or about July 21, 1999. Respondent Suwannee American Cement Company, Inc.'s Petition was designated Case No. 99-3095. Petitioners' Petition was designated Case No. 99-3096. Both cases were assigned to Administrative Law Judge Suzanne F. Hood. Judge Hood entered an order consolidating the cases August 17, 1999. A third case was also consolidated with Case Nos. 99-3095 and 99-3096. That case was subsequently dismissed.

On October 21, 1999, Judge Hood entered a Recommended Order of Dismissal in this case. Judge Hood found that Petitioners' Petition failed to include allegations of any cognizable issues. Petitioners had alleged that the permit application should be denied because of rules designed to prevent pollution of Florida's waters. Judge Hood recommended that the Department of Environmental Protection dismiss the Petition because the water quality regulations upon which Petitioners had relied did not apply to the type of permit sought by Suwannee American Cement Company, Inc.

On November 18, 1999, Suwannee American Cement Company, Inc., and the Department of Environmental Protection entered into

a settlement agreement resolving the issues raised in Case No. 99-3095. As a result of this agreement, the Department of Environmental Protection caused notice of its intent to grant the permit to be published. The settlement agreement was filed with the Division of Administrative Hearings on November 19, 1999. Consequently, Case No. 99-3095 was closed.

On November 30, 1999, without ruling on the merits of Judge Hood's Recommended Order, the Department of Environmental Protection entered an Order remanding Case No. 99-3096 to the Division of Administrative Hearings. The Department of Environmental Protection remanded this case with directions to conduct a final hearing. By Order entered December 6, 1999, Judge Hood accepted the remand, reopened this case, and scheduled a final hearing for February 14 through 17, 2000.

On December 17, 1999, Judge Hood entered an Order Granting Motion to Disqualify, recusing herself from further participation in this case. The case was reassigned to the undersigned.

On January 17, 2000, Petitioners moved to amend their Petition. By Joint Prehearing Stipulation, Petitioners abandoned all but one allegation of their amended petition. The only issue raised by Petitioners in this case, therefore, is whether Suwannee American Cement Company, Inc., has failed to give reasonable assurances that its proposed portland cement manufacturing plant will not violate the applicable requirements of Florida Statutes and the rules of the Department of Environmental Protection as they relate to the prevention of significant degradation of Outstanding Florida Waters, the

maintenance of the designated use of surface waters, and certain minimum criteria for surface waters. In particular, Petitioners alleged that Suwannee American Cement Company, Inc., failed to give reasonable assurances concerning the impact on Florida waters from mercury emitted from the proposed plant.

The Joint Prehearing Stipulation filed by the parties contains undisputed findings of fact and undisputed conclusions of law which have been included in this Recommended Order to the extent relevant. The Joint Prehearing Stipulation also contains stipulated issues of fact and law which remain to be decided in this case.

At the final hearing Suwannee American Cement Company, Inc., presented the testimony of Fred W. Koester, John B. Koogler, Ph.D., Joseph H. Kahn, Donald F. Elias, and Christopher M. Teaf, Ph.D. Suwannee American Cement Company, Inc., also offered twenty exhibits. All were accepted into evidence.

The Department of Environmental Protection adopted the testimony of Mr. Kahn. No additional witnesses were called and no exhibits were offered by the Department of Environmental Protection.

Petitioners presented the testimony of Thomas D. Atkeson, Ph.D., and Curtis D. Pollman, Ph.D. Petitioners also offered Exhibits 1-5, 7-8, 10-13, 15 and 17. All were accepted into evidence.

At the conclusion of the hearing, public comment was heard.

A transcript of the hearing was ordered. The Transcript was filed February 21, 2000. Proposed orders were, therefore,

required to be filed on or before March 2, 2000. Proposed Recommended Orders were filed by Petitioners and both Respondents on March 2, 2000.

Petitioners filed a Motion For Leave to Exceed Page Number with its Proposed Recommended Order. It was represented in the Motion that Respondents have no objection to the Motion. The Motion is hereby granted.

The Proposed Recommended Orders filed by the parties have been fully considered in entering this Recommended Order.

FINDINGS OF FACT

A. The Parties.

1. Petitioner, Florida Chapter of the Sierra Club (hereinafter referred to as "Sierra Club"), is a California corporation. Sierra Club's corporate purposes include the exploration and enjoyment of wild places of the State of Florida and the protection and restoration of the quality of the natural and human environment.

2. A number of Sierra Club's members use the Sante Fe, Suwannee, and Ichetucknee Rivers for recreation and enjoyment. Activities include swimming, fishing, and boating.

3. Petitioner, Save Our Suwannee, Inc. (hereinafter referred to as "SOS"), is a Florida corporation. SOS is, therefore, a "citizen" of the State of Florida for purposes of Section 403.412(5), Florida Statutes. SOS timely filed a verified Petition for Administrative Hearing pursuant to Section 403.412(5), Florida Statutes, initiating this proceeding.

4. Respondent, Department of Environmental Protection (hereinafter referred to as the "Department"), is an agency of the State of Florida. The Department is charged with the authority to, among other things, issue air construction permits and provide protection of the waters of the State, including Outstanding Florida Waters (hereinafter referred to as "OFWs").

5. Respondent, Suwannee American Cement Company, Inc. (hereinafter referred to as "Suwannee American"), is a corporation which plans to construct and operate a portland cement manufacturing plant in Suwannee County, Florida.

B. Suwannee American's Proposed Project.

6. Suwannee American plans to build and operate a dry process preheater/precalciner type portland cement manufacturing plant (hereinafter referred to as the "Proposed Plant") on property located near Branford, Suwannee County, Florida. Portland cement is a dry powder product which is normally used to make cement when it is mixed with water and other components.

7. The Proposed Plant will be located on over 800 acres of land (hereinafter referred to as the "Proposed Site") located on U.S. Highway 27 at County Road 49. The Proposed Site is located approximately four miles to the west of the Ichetucknee River's intersection with U.S. Highway 27, approximately three miles north of the Sante Fe River, and approximately 3.4 miles to the east of the Suwannee River.

8. The Proposed Plant will have the capacity to produce 150 tons per hour and 1,191,360 tons per year of portland cement.

9. The Proposed Plant has been designed by Krupp Polysius, a world-wide designer and builder of cement plants. General engineering for the Proposed Plant will be provided by Agra Simons, a nationwide engineering firm. It is anticipated that the Proposed Plant will cost in excess of \$1,000,000.00 to build.

10. The primary components in portland cement are limestone and sand. A limerock quarry is located on the Proposed Site. The quarry has been operated since the 1930s. The quarry will be used as a source of limestone and sand for the Proposed Plant.

11. The limestone and sand are stored in bins located on the Proposed Site. Alumina, iron, and gypsum are added to the limestone and sand. The mixture, which is referred to as the "feeder material," is measured and placed on a roller mill where it is finely ground. The ground feeder material is transferred from the roller mill to a storage and homogenizing silo. From the silo the material is measured again and fed into a preheater/precalciner for processing (including heating) and then transferred to a rotary kiln. The material is heated further in the rotary kiln. The feeder material is ultimately burned at temperatures of 2700 to 2900 degrees Fahrenheit.

12. The burning of the material causes a chemical change in the feeder material. This chemical change results in the production of what is referred to as "clinker." The Proposed Plant will have a capacity to produce approximately 750,000 tons of clinker per year. After the clinker is produced it is dropped into an air quenching cooler and, after it is cooled, it is stored in silos at the Proposed Site.

13. The clinker is subsequently ground into a fine powder to produce the final product, portland cement. The cement is stored on site until it is shipped from the Proposed Site by truck.

14. More than one and a half tons of feeder material are required to produce one ton of clinker. Therefore, siting the Proposed Plant at a site with a quarry will reduce the cost of operating the Proposed Plant.

15. The process of producing the cement will cause the emission of pollutants into the atmosphere at two major points in the Proposed Plant: (a) the preheater and kiln; and (b) the cooler. A "baghouse" will be employed at the preheater and kiln to collect some of the pollutants in the emissions prior to release into the atmosphere. Mercury is not one of the pollutants which the baghouse is intended to reduce.

C. Suwannee American's Permit Application, the Department's Proposed Decision, and Challenges to the Department's Proposed Decision.

16. Because of the expected emissions of pollutants into the air from the Proposed Plant Suwannee American is required to obtain an air construction permit from the Department. Rule 62-212.400, Florida Administrative Code.

17. On November 30, 1998, Suwannee American filed an application for an air construction permit for the construction of the Proposed Plant. The application was subsequently reviewed by the Department for compliance with the rules governing the issuance of air construction permits. The Department did not review the application for compliance with water quality impacts.

18. On June 22, 1999, the Department issued a Notice of Intent indicating that Suwannee American's permit application was denied. The Notice was published on July 2, 1999.

19. Suwannee American timely filed a Petition for Administrative Hearing challenging the Department's decision to deny the permit application.

20. Sierra Club and SOS also timely filed a Petition for Administrative Hearing asserting additional grounds for denial of Suwannee American's permit application. Sierra Club and SOS asserted that discharges from the Proposed Plant would result in violations of Florida water quality standards.

21. On October 21, 1999, a Recommended Order of Dismissal was entered recommending that the Petition filed by Sierra Club and SOS be dismissed for failure to raise any cognizable issue.

22. On November 18, 1999, the Department and Suwannee American entered into a Settlement Agreement pursuant to which the Department agreed to issue an air construction permit to Suwannee American. A draft permit was attached as Exhibit B to the settlement agreement (hereinafter referred to as the "Draft Permit").

23. On December 1, 1999, without ruling on the substance of the Recommended Order of Dismissal, the Department remanded this case to the Division of Administrative Hearings with instructions to conduct a formal administrative hearing.

D. Emissions Expected from the Proposed Plant Requiring Compliance with Applicable "Prevention of Significant Deterioration" Permitting Program Standards.

24. The Department has established a "prevention of significant deterioration" or "PSD" permitting program in an effort to protect air quality in the State. The PSD program includes standards which must be met by applicants for air construction permits if the potential rate of expected emissions of certain designated air pollutants from a proposed facility meet or exceed certain levels. Rule 62-212.400, Florida Administrative Code.

25. The expected emissions from the Proposed Plant that are subject to PSD review relevant to this case include the following: (a) more than 100 tons per year of sulfur dioxide, nitrogen oxides, carbon monoxide, and particulate matter; and (b) in excess of 40 tons of volatile organic compounds per year. For each of these expected pollutants, PSD program compliance requires a determination of whether the Proposed Plant will: (a) meet "Best Available Control Technology" standards (hereinafter referred to as "BACT"), for the expected pollutants; (b) violate ambient air quality standards will for those expected pollutants; and (c) allow PSD increments for the expected pollutants to be exceeded.

26. Ambient air quality standards are the levels of air pollutants that the Environmental Protection Agency (hereinafter referred to as the "EPA") has determined will not cause adverse impacts to human health or the environment. These standards have

been adopted by the Department. Allowable PSD increments are the incremental increases in air pollutant concentrations that have been established as acceptable without being considered to significantly degraded air quality.

27. The parties stipulated, and the evidence demonstrated, that the Proposed Plant, as approved by the Department and limited by the Draft Permit, will achieve BACT, will not cause a violation of any ambient air quality standard, and will not exceed any applicable PSD increment.

28. The evidence also proved that impacts on air quality from the Proposed Plant on soils and vegetation will not be adverse, and that impacts on visibility will not be significant.

29. Based upon the foregoing, it is concluded that Suwannee American's Proposed Plant complies with the permitting requirements for the "construction or modification of any emissions unit or facility that would cause or contribute to a violation of any ambient air quality standard."

Rule 62-212.400(1)(a), Florida Administrative Code. Suwannee American is, therefore, entitled to the issuance of an air construction permit for the Proposed Plant unless it fails to meet water quality standards, to the extent determined applicable to Suwannee American's proposed project.

E. Atmospheric Mercury Emissions.

30. In addition to the emission of air pollutants from the Proposed Plant which triggered PSD review, the Proposed Plant will also emit mercury into the atmosphere. Mercury is a metal that occurs naturally in the environment. The levels of mercury

expected from the Proposed Plant are not, however, high enough to require PSD review with regard to the expected mercury emissions or to authorize the Department to deny an air construction permit based upon the levels of mercury determined by the Department and EPA to be permissible.

31. Mercury can pose a serious danger to the public health, safety, and welfare. Mercury, in the form of methyl mercury, acts as a neurotoxin when consumed. The consumption of fish containing mercury can result in human exposure to mercury which is potentially significant. An indicator of the potential harm to humans from mercury may, therefore, be determined through measuring the mercury level in fish. Measuring the amount of mercury within the water column is not, however, determinative of the potential harm to humans of mercury in the water.

32. Mercury is emitted into the air in an inorganic form. To constitute an immediate danger to humans, the mercury must be converted to methyl mercury, a form of organic mercury, and must be processed through the food chain. This process is referred to as biomagnification. The creation of methyl mercury and the process of biomagnification in water involves a complex interaction of physical, chemical, and biological factors. Numerous factors impact this process, including levels of nutrients, sulfates, dissolved organic carbon, dissolved oxygen, and chloride.

33. The conversion of inorganic mercury to methyl mercury typically begins with the consumption of the inorganic mercury by sulfate-reducing bacteria, the release of methyl mercury into the

water, and the ultimate bioaccumulation of the mercury in fish. Once consumed by single-cell organisms, the mercury moves up the food chain until it ultimately reaches predator fish, such as large-mouth bass, where the concentrations of mercury are ultimately highest. The predator fish are then consumed by humans.

34. Sulfate-reducing bacteria are found in areas with a dissolved organic carbon source to feed on. Wetlands are typically a high source of organic carbon.

35. Because of the complex chemical process involved in the production of methyl mercury, some water bodies are more sensitive to the effects of mercury deposition or the disposition of inorganic mercury from its production source. This finding is supported by the fact that, even though the deposition of atmospheric mercury over South Florida is generally constant, water bodies in the area have responded differently. For example, the Everglades has relatively high levels of mercury while Lake Okeechobee does not.

36. Among the significant factors that impact the conversion of mercury released from a high temperature combustion source to methyl mercury is the form in which mercury is released into the atmosphere.

37. Until approximately ten years ago it was believed that mercury emitted into the atmosphere from a high temperature combustion source was emitted in the form of elemental mercury. Elemental mercury has a longer residence time in the atmosphere.

As a result, elemental mercury has a much smaller impact in the area near the source of its release into the atmosphere and less impact on waters close to the source of the emission.

38. More recent research has proved that mercury is released into the atmosphere in various forms, including particulate mercury and reactive gaseous mercury. Particulate mercury and reactive gaseous mercury have a shorter residence time in the atmosphere than elemental mercury. Particulate mercury and reactive gaseous mercury will, therefore, tend to deposit closer to their source and can have a greater impact on water resources close to the source of the emission. The emission of mercury in different forms into the atmosphere is referred to as "speciation."

39. The precise speciation rate of mercury from a portland cement plant such as the Proposed Plant is not well understood. Suwannee American's experts relied upon speciation rates ranging from 10 to 20 percent particulate and reactive gaseous mercury.

40. Testing data from cement plants concerning the speciation of mercury has been limited. One cement plant was tested on three occasions in a study referred to as the South Florida Atmospheric Mercury Monitoring Study (hereinafter referred to as "SoFAMMS"). The SoFAMMS reported a speciation rate for non-elemental mercury of between 21 and 29 percent.

41. Mercury speciation was also considered in a 1997 EPA Mercury Study Report to Congress. According to the EPA Mercury Study Report, a speciation rate of 80 percent elemental mercury, 10 percent particulate, and 10 percent reactive gaseous mercury

was found. Little relevant evidence concerning the basis for these findings was provided at hearing.

42. Another significant factor in the conversion of mercury released from a high temperature combustion source to methyl mercury is the deposition of the mercury to land or water surfaces after it is released into the air.

43. The deposition of pollutants to land or water surfaces takes place by either dry deposition or wet deposition. Dry deposition takes place through the diffusion of the pollutant in the atmosphere until it contacts a surface to which it adheres. Wet deposition takes place when the pollutant is either incorporated into droplets as rain forms which then fall, or the pollutant gets washed out as droplets of rain falls through the atmosphere.

F. Suwannee American's Estimates of Mercury Emissions.

44. Mercury emitted from the Proposed Plant will come from feeder material and the fuel used to heat the feeder material during the operation of the Proposed Plant.

45. The amount of mercury created and emitted from the Proposed Plant, regardless of its speciation or deposition rates, based upon the laws of physics, will not exceed the amount of mercury going into the Proposed Plant through feeder materials and fuel used to heat the feeder material.

46. In its initial application Suwannee American estimated that mercury emissions from the Proposed Plant would be limited to 20 pounds per year. This estimate was based upon a document, "AP-42," issued by the EPA. AP-42 deals with cement plant

facilities utilizing baghouses for the control of emissions, which Suwannee American had proposed with its initial application.

47. AP-42 emission factors were not based upon site-specific data and no background information is contained in AP-42 concerning the characteristics of the sources from which the factors were derived. AP-42 does rate the reliability of the emission factors for various sources referenced in AP-42, including portland cement plants, taking into account the different types of air pollution control technology used by the sources. The emission factors are rated for reliability from "A" to "E," with "A" being the most reliable and "E" being the least reliable. The emission factors for the results of portland cement plants reported in AP-42 were rated "D." The emission rate of mercury from cement kilns with baghouses reported in AP-42 was 20 pounds per year.

48. After review of Suwannee American's initial application, the Department questioned Suwannee American's estimated mercury emission and requested additional information to support its projection.

49. In response to the Department's request for additional information, Suwannee American eliminated the proposed use of a baghouse and submitted new calculations concerning mercury emissions for its newly configured Proposed Plant. Suwannee American's new estimate was that mercury emissions would not exceed 184 pounds per year.

50. Suwannee American's projection was based upon estimates of mercury emissions determined by three different methods of calculating emissions used by Suwannee America's environmental consultant:

a. First, the mercury content of the feeder material and fuel to be used at the Proposed Plant was estimated. Based upon this estimate, it was concluded that mercury emissions would be approximately 120 pounds per year;

b. Secondly, emissions from 12 to 15 operating cement plant facilities in the United States were reviewed. The average mercury emission from these plants was calculated and applied to the estimated production rate of the Proposed Plant. Based upon this analysis, Suwannee American estimated that mercury emissions would be approximately 140 pounds per year; and

c. Finally, AP-42 emission factors for cement plants utilizing electrostatic precipitators were considered. Based upon this analysis, Suwannee American estimated that mercury emissions would be approximately 184 pounds per year. It was this estimate that was accepted by the Department and added as a limitation in the Draft Permit.

51. Suwannee American's estimate of mercury emissions was based upon a "worst case scenario."

G. The Draft Permit Limitation on Mercury Emissions.

52. The Department accepted Suwannee American's estimate of mercury emissions from the Proposed Plant. The Draft Permit expresses the limitation on the amount of mercury that may be emitted by limiting the amount of mercury that may be introduced

into processing at the Proposed Plant to 184 pounds per consecutive 12-month period. This limitation applies to the total combined amount of mercury introduced in the form of feed materials and fuel.

53. At the final hearing Suwannee American agreed to a further limitation on the amount of allowed mercury in Draft Permit condition 13 that may be introduced into processing at the Proposed Plant to 97 pounds per consecutive 12 month period. This estimate was based upon a more detailed analysis of expected mercury emissions performed by Suwannee American after Sierra Club and SOS questioned the impact of mercury emissions from the Proposed Plant.

54. The EPA recommended in a letter to the Department dated December 23, 1999, that mercury emissions from the Proposed Plant be limited to 20 pounds per year.

55. Suwannee American proved that its estimate of the amount of mercury of 97 pounds per year that will be emitted from the Proposed Plant is reasonable.

56. Although mercury is subject to PSD review, no PSD review of Suwannee American's mercury emissions was performed nor required because it has projected that its emission of mercury will not exceed 200 pounds per year.

H. Air Emissions Monitoring.

57. The Draft Permit requires continuous monitoring of stack emissions for a number of pollutants which are expected to be emitted from the Proposed Plant, including sulfur dioxide,

nitrogen dioxide, opacity, and volatile organic compounds. Stack gas flow rate is also required to be monitored continuously.

58. Continuous monitoring for mercury is not required.

Instead, the Draft Permit only requires an initial stack test for mercury to determine compliance with the limitation on the amount of mercury emissions from the Proposed Plant. This test will only determine the amount of mercury emitted during the limited period of the test.

59. Continuous monitoring of compliance with the limitation on mercury introduced into processing at the Proposed Plant is to be accomplished through testing of the "input" materials. For this purpose, "input" materials are deemed to consist of the feeder material and fuel used in the manufacturing process at the Proposed Plant.

60. A schedule for testing input materials is included in the Draft Permit in Specific Condition 27. The Draft Permit provides for the following schedule of testing:

a. During the first quarter of operation of the Proposed Plant, testing of input materials for mercury content is to be based upon daily samples of feed materials and fuel for each month. A sample from the composite of the daily samples for each of the months during the quarter is to be analyzed;

b. For the next three quarters of operation, daily samples for one month during each quarter are to be taken and a sample from the composite of the daily samples for that month is to be analyzed for mercury levels;

c. For each year after the first year of operation of the Proposed Plant, daily samples are to be taken during one month during the year and a sample from the composite of the daily samples for that month is to be analyzed for mercury levels, except as follows:

(1) If there is a change in feed material or fuels, the frequency of testing is to revert to b. for the next three quarters; or

(2) If the monthly composite shows a total monthly mercury throughput of greater than 7.7 pounds per month, the frequency of testing is to revert to b. for the next three quarters or until the monthly throughput is less than or equal to 7.7 pounds per month, whichever is longer.

61. The Draft Permit also provides that the Department may require special compliance tests if it has good reason to believe that emission standards are being violated.

62. No other monitoring of mercury emissions from the Proposed Plant is required by the Draft Permit to ensure that the limitation of the amount mercury in the feeder materials and fuel will be met. Nor is there any requirement in the Draft Permit to determine the speciation rate of mercury emitted from the Proposed Plant.

63. By limiting the amount of mercury that goes into the manufacturing process to the amount of mercury allowed by the Draft Permit, the amount of mercury emitted from the Proposed Plant should not exceed the amount of mercury emissions projected by Suwannee American.

64. The monitoring requirements of the Draft Permit are reasonable, effective, and enforceable.

I. Fuel Proposed for the Proposed Plant's Operation.

65. Fuel is required to heat the feeder material in the preheater/precalciner and the rotary kiln. Suwannee American has been authorized by the Department to burn Appalachian coal, petroleum-coke, natural gas, and up to 40 percent tires as fuel in its operation of the Proposed Plant. Suwannee American has proposed to initially burn Appalachian coal, which has been determined to be available in the quantities necessary to operate the Proposed Plant.

66. Mercury levels in coal can amount to a high percentage of mercury emissions from a portland cement plant. The type of coal used by Suwannee American, therefore, will play a significant role in determining whether the projected mercury emissions from the Proposed Plant can be achieved.

67. Suwannee American has estimated that coal used by it at the Proposed Plant will contain 143 parts per billion of mercury. This level of mercury in coal will result in approximately 35 pounds of mercury emissions per year from the Proposed Plant.

68. Mercury content of coal used as fuel in the Proposed Plant can vary widely. The average and median mercury content for all Appalachian coal is high: 466 parts per billion and 566 parts per billion, respectively.

69. Although Suwannee American had not entered into a contract or a letter of intent for the purchase of coal-containing levels of mercury consistent with its estimated

emissions at the time of the formal hearing of this case, coal which will meet those estimates is commercially available in amounts necessary to meet permit conditions concerning mercury emissions and Suwannee American is committed to acquiring coal of the necessary grade.

70. The evidence proved that Suwannee American can purchase coal necessary for the operation of the Proposed Plant which will ensure compliance with the conditions of the Draft Permit concerning mercury emissions.

71. The evidence also proved that the conditions of the Draft Permit concerning mercury emissions can be enforced regardless of the difficulty that may be encountered by Suwannee American in finding coal with low enough mercury content for use at the Proposed Plant.

J. Mercury Deposition.

72. Obviously, since the Proposed Plant is not yet operational, it is not possible to accurately determine where mercury emitted from the Proposed Plant will be deposited or the "deposition" of mercury emitted. Air quality dispersion modeling, however, can facilitate estimates of the expected impacts of the Proposed Plant on air quality and on the surrounding area.

73. Computer programs are used to facilitate air dispersion modeling. These programs simulate the behavior of pollutants released into the atmosphere. The programs take into consideration meteorological data, such as wind speed and

direction, and information concerning the amount of pollutant to be reduced and its rate of speciation.

74. A number of variables used in air dispersion modeling can affect modeling outcomes. The accuracy of assumptions concerning those variables can impact the reliability of the modeling outcomes. Significant variables include emission rates, speciation rates, and deposition. To the extent that any or all of these variables are uncertain, there will be an equivalent uncertainty in the modeling results concerning concentrations and ultimate deposition rates of pollutants released into the atmosphere.

75. At the request of the Department, Suwannee American performed modeling to determine the likely deposition of mercury emissions from the Proposed Plant. The modeling was performed to determine the impact of mercury emissions on Class I PSD areas, such as St. Marks and Bradwell Bay, and the area within five miles of the Proposed Plant. A five-mile radius takes into account the location of the Ichetucknee, Sante Fe, and Suwannee Rivers (hereinafter jointly referred to as the "Three Rivers").

76. Initial modeling was performed using the most conservative assumptions: (a) that 100 percent of the mercury emitted would be emitted in the form of particulate matter or reactive gaseous mercury; and (b) that approximately one-third of the mercury emitted would be deposited in the vicinity of the Proposed Plant.

77. Suwannee American's initial modeling resulted in an estimate that, based upon its preliminary estimate that 184

pounds of mercury would be emitted per year from the Proposed Plant, 20 to 50 micrograms per meter squared per year of mercury will be deposited near the confluence of the Sante Fe and Ichnetucknee Rivers.

78. Suwannee American's initial modeling estimates, based upon its estimate that 184 pounds of mercury would be emitted per year from the Proposed Plant, also indicated that one-third of the mercury emitted from the Proposed Plant would be deposited within the 1,384 square miles of the Sante Fe River basin. The amount of mercury deposited at the confluence of the Sante Fe and Ichetucknee Rivers was estimated to be 15 micrograms per square meter per year. The assumptions that went into this modeling were unreasonably conservative.

79. Subsequent to Suwannee American's initial modeling, additional modeling was performed by Suwannee America to determine the deposition rate of mercury in the area of the Three Rivers at the request of the Department. Based upon the additional modeling, Suwannee American developed "isopleths" or contour lines depicting where the maximum annual concentrations of mercury would be expected to be found. Isopleths were also developed to depict the quantity and location of maximum annual mercury deposition. Suwannee American's isopleths could be off by as much as a kilometer, underestimating the concentrations of mercury in the area of the Ichnetucknee and Sante Fe Rivers.

80. In its subsequent modeling Suwannee American made the same assumptions concerning the amount of mercury emitted and the speciation of the emitted mercury it made in its initial

modeling: (a) that 184 pounds of mercury would be emitted per year; and (b) that 100 percent of the mercury would be emitted in the form of particulate matter or reactive gaseous mercury.

81. A month before the formal hearing of this case, Suwannee American performed a third round of modeling of mercury deposition. The additional modeling was based upon the emission of 97 pounds of mercury per year and the following speciation rate: (a) 80 percent elemental mercury; (b) 10 percent particulate matter; and (c) 10 percent reactive gaseous mercury. Two modeling tests were performed for Suwannee American using these assumptions.

82. The first modeling test used the original dispersion modeling prepared for Suwannee American with a 10 percent correction for the emission rate. The second modeling test used dispersion parameters contained in an 1997 EPA Mercury Study Report to Congress.

83. The modeling performed by Suwannee American was reasonable and professionally performed. The results of the modeling are, therefore, reliable.

84. Suwannee American's modeling just prior to the formal hearing estimated, based upon the assumption that 97 pounds of mercury would be emitted per year from the Proposed Plant, a deposition rate of mercury in the vicinity of the Sante Fe River of 3.5 micrograms per square meter per year based upon the first modeling and 1.6 to 2.6 micrograms per square meter per year within a five-mile radius from the Proposed Plant based upon the second modeling. These projections indicate that mercury

emissions from the Proposed Plant will result in the deposition of less than 10 percent of the amount of mercury already existing in the natural background.

85. Background mercury, or mercury normally found in the natural background, is estimated to be 25 micrograms per square meter per year. A 10 percent increase in background mercury would not be detectable.

86. The estimated deposition of mercury from the Proposed Plant suggested by Suwannee American's modeling is supported by the weight of the evidence in this case. Petitioners performed no modeling to refute Suwannee American's estimates. The testimony of Petitioners' experts to the contrary was not persuasive and has been rejected.

K. The Current State of Mercury in the Three Rivers.

87. The Three Rivers have all been declared OFWs. Rule 62-302.700, Florida Administrative Code.

88. The Three Rivers have also been declared Class III waters and, therefore, have a designated use of recreation, and the propagation and maintenance of a healthy, well-balanced population of fish and wildlife. Rule 62-302.400, Florida Administrative Code.

89. An OFW designation is made to recognize exceptional recreational and/or ecological significance of a water body. See Section 403.061(27), Florida Statutes, and Rule 62-4.245, Florida Administrative Code.

90. After elevated levels of mercury were found in the tissue of fish taken from the Everglades of South Florida, the

State undertook testing of fish in fresh and coastal waters throughout the state. Based upon its findings, the State established two levels of advisories concerning mercury levels in fish tissue.

91. One level of mercury level advisory established by the States is a "limited consumption" advisory. This advisory is issued when the mercury levels in fish taken from a water body are found to range from 0.5 parts per million to 1.5 parts per million. "Limited consumption" advisories are issued by the State's Health Officer to protect public consumption of excessive amounts of mercury.

92. The second and highest level of advisory concerning mercury levels in fish tissue is a "no consumption" fish advisory. This advisory is issued when mercury levels are found to exceed 1.5 parts per million. When issued, the public is warned not to eat issue fish at all from waters to which the advisory applies. Only one "no consumption" fish advisory is currently in effect in Florida.

93. On May 19, 1989, the State issued a "limited consumption" advisory for the Suwannee River and its tributaries recommending the limited consumption of large mouth bass taken from the Three Rivers. This advisory has not been withdrawn.

94. The last testing of fish from the Sante Fe River was performed in 1989. The levels of mercury found from those tests ranged from 0.55 to 1.27 parts per million.

95. Sampling of fish from the Suwannee River has been performed annually, except during 1997, since 1989. In 1999, mercury levels ranged from 0.44 to 1.57 parts per million.

96. Mercury levels throughout the State indicate a slight declining trend in the amount of mercury found in fish.

97. Despite the advisory concerning the level of mercury in large mouth bass taken from the Three Rivers, mercury levels in the Three Rivers are within acceptable water quality standards for mercury established by the Department's rules. No Department rule prohibits the issuance of a permit which otherwise meets all the requirements concerning the levels of mercury emissions into the air or water specified in the Department's rules because of an outstanding mercury level in fish advisory.

L. The Impact of Mercury Emissions from the Proposed Plant on the Three Rivers.

98. No one disputes that some amount of mercury emitted from the Proposed Plant will find its way into the Three Rivers. At issue is whether the amount of mercury that makes its way into the Three Rivers will be adverse to the public health, safety, and welfare. Suwannee American has given reasonable assurances that it will not.

99. Using Suwannee American's projections concerning the amount of mercury to be emitted from the Proposed Plant (97 pounds per year), the speciation rate of the mercury (80, 10, 10), and the deposition of mercury from the Proposed Plant, Suwannee American caused the potential effects of mercury on the Three Rivers to be analyzed using modeling and algorithms or

equations contained in the Health Risk Assessment Protocol for Combustion Facilities prepared by the EPA. The impact of mercury on water quality, sediments, and the tissue of fish in the Three Rivers was projected by Suwannee American. The projections were made by Dr. Christopher Teaf.

100. The assumptions used by Dr. Teaf were conservative and reasonable.

101. Dr. Teaf predicted that surface water mercury concentrations from the Proposed Plant in the Three Rivers will be less than 0.0000000006 milligrams per liter over a 100 year period. Department surface water quality standards allow .000012 milligrams per liter of mercury. Therefore, the level of mercury allowed by the Department's rules is approximately 200,000 times higher than that expected from the Proposed Plant.

102. The projected surface water mercury concentrations for the Proposed Plant are between 50,000 and 100,000 times below detectable amounts of mercury in surface water samples.

103. Dr. Teaf also predicted that mercury concentrations in sediment of the Three Rivers as a result of operation of the Proposed Plant will be 0.0000003 milligrams per kilogram. This amounts to approximately 500,000 times less than the Department's Threshold Effects Level for mercury in sediment of 0.13 milligrams per liter.

104. Projected sediment concentrations of mercury are between 10,000 and 100,000 times less than a detectable or measurable quantity.

105. Finally, Dr. Teaf predicted that methyl mercury concentrations in fish tissue from the Three Rivers as a result of the Proposed Plant will be 0.0002 milligrams per kilogram. The level of mercury in fish tissue considered to cause concern is 0.5 milligrams per liter, which is 2,500 to 3,000 times lower than the rate considered to be too high.

106. The projected levels of mercury in fish tissue are 100 times lower than detectable limits for mercury in fish tissue and would have no impact on current health advisories.

107. Dr. Teaf's predicted mercury levels from the Proposed Plant may be somewhat low to the extent that they rely upon a speciation rate of 80 percent elemental mercury. Even if a 0 percent elemental mercury speciation rate is assumed to be more appropriate, however, the mercury which reasonably can be expected to be found in the water column, sediments, and the tissue of fish in the Three Rivers will still be below acceptable standards and detectable amounts.

108. Mercury in the Three Rivers attributable to the Proposed Plant will not be detectable or measurable. Therefore, Suwannee American has provided reasonable assurances that the Proposed Plant will have no impact on the Three Rivers or their use, will not pose a danger to the public health, safety, or welfare, and will comply with all applicable statutes and all Department rules.

M. Ultimate Findings of Fact.

109. Suwannee American has provided reasonable assurances that the construction and operation of the Proposed Plant will not violate any air pollution permitting requirements.

110. Suwannee American has also provided reasonable assurances that mercury emissions from the Proposed Plant will not violate any water quality standard, will not significantly degrade any OFWs, impair the designated use of the Three Rivers, or pose a serious danger to the public health, safety, or welfare.

CONCLUSIONS OF LAW

A. Jurisdiction.

111. The Division of Administrative Hearings has jurisdiction of the parties to, and the subject matter of, this proceeding. Section 120.57, Florida Statutes (1997).

B. Burden of Proof.

112. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the proceeding. Antel v. Department of Professional Regulation, 522 So. 2d 1056 (Fla. 5th DCA 1988); Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); and Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 249 (Fla. 1st DCA 1977).

113. In this proceeding, it is Suwannee American that is asserting the affirmative: that the Department should issue an air construction permit. Suwannee American, therefore, had the ultimate burden of proof. Suwannee American was required to meet

its burden by the preponderance of the evidence. J.W.C. Co.,
supra.

114. In order for Suwannee American to meet its burden of proof, it was required to present a prima facie showing of entitlement to the air construction permit taking into account the objections raised by Petitioners. Suwannee American met its burden.

115. Following the presentation of Suwannee American's prima facie case, Petitioners had the burden of proving the allegations of their Petition as modified by the stipulated issues of law contained in the Joint Prehearing Stipulation. The evidence presented by Petitioners in support of their Petition was required to be of at least equivalent quality to the evidence presented by Suwannee American. See Hoffert v. St. Joe Paper Company, 12 F.A.L.R. 4972 (Fla. Dept. of Env. Reg. 1990). Ultimately, Suwannee American was required to prove that it was entitled to the permit which it has applied for. Suwannee American met its burden.

C. Standing.

116. SOS has argued that it has standing to institute this proceeding pursuant to Section 403.412(5), Florida Statutes:

In any administrative . . . proceedings authorized by law for the protection of the air, water, or other natural resources of the state from pollution, impairment, or destruction . . . a citizen of the state shall have standing to intervene as a party on the filing of a verified pleading asserting that the activity, conduct, or product to be licensed or permitted has or will have the effect of impairing,

polluting, or otherwise injuring the air, water, or other natural resources of the state.

117. SOS is a citizen of the State and it filed a verified Petition in this matter. SOS, therefore, has standing to participate in this matter. Suwannee American's assertion that SOS's participation is limited to that of an Intervenor too narrowly construes Section 403.412(5), Florida Statutes.

118. Sierra Club is not a citizen of the State and, therefore, has not relied upon Section 403.412(5), Florida Statutes, to support its standing in this matter. Instead, Sierra Club has asserted that it is a "substantially affected" person as those terms are used in Section 120.57, Florida Statutes, and interpreted in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981).

119. The substantial effect alleged by Sierra Club is the impact on its members who use the Three Rivers for recreation and enjoyment, including swimming, fishing, and boating. The alleged adverse impacts are sufficient to support Sierra Club's standing to participate in this proceeding.

D. Petitioners' Challenge.

120. In the Joint Prehearing Stipulation filed by the parties, Petitioners stipulated to "Disputed Issues of Fact and Law" which must be addressed in this proceeding. The disputed issues of fact and law, other than issues concerning Petitioners' standing, agreed to by the parties are as follows:

1. Whether the Applicant must establish that certain surface water quality standards (listed below) will not be violated.

2. If the Applicant must establish in this proceeding that water quality standards will not be violated, whether the Applicant has provided reasonable assurances that the emissions of mercury from the proposed facility will not violate the following specific water quality standards related to Outstanding Florida Waters, the classification of surface waters and the minimum criteria for surface waters.

a. Rule 62-4.242(2)(a), Fla. Adm. Code, "Antidegradation Permitting Requirements; Outstanding Florida Waters" and rule 62-302.700, "Special Protections, Outstanding Florida Waters." Specifically, whether the emissions of mercury from the proposed facility will "significantly degrade" any of the following OFWs: the Sante Fe River, the Suwannee River, and the Ichetucknee River.

b. Rule 62-302.400(1), Fla. Adm. Code, "Classification of Surface Waters" (describing the designated use of Class III waters as "recreation, propagation and maintenance of a healthy, well-balanced population of fish and wildlife"). Specifically, Petitioners contend that emissions of mercury from the proposed facility will impair the designated use of the waters identified in Para 2.a. above as Class III waters and as otherwise prohibited in rules 62-302.300(14), (15), (16) and (17), Fla. Adm. Code.

c. Rule 62-302.500(1)(a)6, Fla. Adm. Code, "Surface Waters, Minimum Criteria".

* * *

121. These issues have all been addressed and disposed of in this Recommended Order. To the extent that Petitioners asserted any additional issues in their Proposed Recommended Order, those issues have been rejected. The Joint Prehearing

Stipulation signed by Petitioners defined the scope of the issues appropriately considered in this matter.

E. The Department's Broad Authority to Protect the Air and Waters of the State Through Permitting.

122. The Department has been charged with broad responsibilities and given broad powers to protect the air and waters of the State of Florida. Chapter 403, Florida Statutes, the "Florida Air and Water Pollution Control Act" (hereinafter referred to as the "Act").

123. The Department's broad powers and duties are generally described in Section 403.061 of the Act. Those powers and duties include, in part, the following:

The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(6) Exercise general supervision of the administration and enforcement of the laws, rules, and regulations pertaining to air and water pollution.

(7) Adopt, modify, and repeal rules and regulations to carry out the intent and purposes of this act.

* * *

(9) Adopt a comprehensive program for the prevention, control, and abatement of pollution of the air and waters of the state

(10) Develop a comprehensive program for the prevention, abatement, and control of the pollution of the waters of the state.

In order to effect this purpose, a grouping of the waters into classes may be made in accordance with the present and future most beneficial uses. . . .

(11) Establish ambient air quality and water quality standards for the state as a whole or any part thereof

* * *

(14) Establish a permit system whereby a permit may be required for the operation, construction, or expansion of any installation that may be a source of air or water pollution and provide for the issuance and revocation of such permits and for the posting of an appropriate bond to operate.

* * *

(27) Establish rules which provide for a special category of water bodies within the state, to be referred to as "Outstanding Florida Waters," which water bodies shall be worthy of special protection because of their natural attributes. Nothing in this subsection shall affect any existing rule of the department.

124. The Act includes specific guidance for the general issuance or denial of permits for any "stationary installation" that is reasonably expected to be a source of air or water pollution. Section 403.087 of the Act provides the following:

(1) A stationary installation that is reasonably expected to be a source of air or water pollution must not be operated, maintained, constructed, expanded, or modified without an appropriate and currently valid permit issued by the department, unless exempted by department rule. . . .

125. The term "installation" is defined in Section 403.031(4), of the Act as:

any structure, equipment, or facility, or appurtenances thereto, or operation which

may emit air or water containments in quantities prohibited by rules of the department.

See also Rule 62-4.020(6), Florida Administrative Code.

126. In order to qualify for issuance of a permit authorized by Section 403.087 of the Act the applicant for the permit must show, if its installation "may reasonably be expected to be a source of pollution," that the "installation is provided or equipped with pollution control facilities that will abate or prevent pollution to the degree that will comply with the standards or rules adopted by the department"

127. The Department is required to provide for the issuance, denial, modification, and revocation of permits required by Section 403.087(1) of the Act for stationary installations through duly promulgated rules. Section 403.087(2) of the Act. It is, therefore, reasonable for applicants for permits from the Department to assume that the rules of the Department contain all the requirements for the issuance of permits.

128. Section 403.087(5) of the Act provides, in part, the following concerning the issuance of permits:

(5) The department shall issue permits to construct, operate, maintain, expand, or modify an installation which may reasonably be expected to be a source of pollution only when it determines that the installation is provided or equipped with pollution control facilities that will abate or prevent pollution to the degree that will comply with the standards or rules adopted by the department"

Again, it is contemplated that rules adopted by the Department establish the standards with which an applicant must comply in order to obtain any permit required by the Act.

129. In addition to the broad responsibilities and powers concerning pollution of the air and waters given the Department pursuant to the Act, the Department is authorized to impose stricter permitting and enforcement provisions for OFWs. Section 403.061(34) of the Act. Those stricter permitting and enforcement provisions are, however, also required to be imposed by the adoption of rules by the Department.

130. The authority of the Department to protect the air and waters of the State is clearly broad enough to authorize the Department to control or prohibit the direct or indirect discharge of pollutants into the air or the waters of the state. The Act, however, just as clearly contemplates that the Department will exercise its authority and responsibility through the adoption of rules.

F. The Department's Rules.

131. The Department has in fact promulgated a broad array of rules governing the issuance of permits authorized by the Act:

a. Chapter 62-4, Florida Administrative Code, provides rules governing the issuance of permits generally;

b. Department rules beginning at Chapter 62-204, Florida Administrative Code, deal with air quality in the State; and

c. Department rules beginning at Chapter 62-301, Florida Administrative Code, govern the protection of the waters of the State.

132. The purpose and scope of Part I, Chapter 62-4, Florida Administrative Code, includes, in part, the following:

This Part sets forth procedures on how to obtain a permit from the State of Florida Department of Environmental Protection. This Part also provides requirements and procedures for the issuance, denial, renewal, extension, transfer, modification, suspension, and revocation of any permit required by the Department of Environmental Protection.

Rule 62-4.001, Florida Administrative Code.

133. Part I, Chapter 62-4, Florida Administrative Code, provides: definitions; exemptions from permitting; general procedures, including processing fees, applicable to all permits; procedures for processing permits once received by the Department; and other rules dealing with permitting in general.

134. The purpose and scope of Part II, Chapter 62-4, Florida Administrative Code, includes, in part, the following:

This Part sets forth additional requirements for Department permits, exemptions from permitting, requirements for mixing zones and zones of discharge, and related requirements.

Rule 62-4.200, Florida Administrative Code.

135. Part II, Chapter 62-4, Florida Administrative Code, provides general requirements for specific types of permits. Rules are provided for construction permits and operating permits.

136. Rule 62-4.210, Florida Administrative Code, provides guidance concerning permits to construct any installation or facility "which will reasonably be expected to be a source of air or water pollution" Rule 62-4.220, Florida

Administrative Code, provides guidance concerning operating permits.

137. Rule 62-4.242, Florida Administrative Code, provides "antidegradation permitting requirements" for OFWs. Rule 62-4.242(2), Florida Administrative Code, provides, in part:

(2) Standards Applying to Outstanding Florida Waters.

(a) No Department permit or water quality certification shall be issued for any proposed activity or discharge within an Outstanding Florida Waters, or which significantly degrades, either alone or in combination with other stationary installations, any Outstanding Florida Waters, unless the applicant affirmatively demonstrates that:

* * *

2. The proposed activity or discharge is clearly in the public interest, and either

a. A Department permit for the activity has been issued or an application for such permit was complete on the effective date of the Outstanding Water designation; or

b. The existing ambient water quality within Outstanding Florida Waters will not be lowered as a result of the proposed activity or discharge, except on a temporary basis during construction for a period of not to exceed thirty days; lowered water quality would occur only within a restricted mixing zone approved by the Department; and, water quality criteria would not be violated outside the restricted mixing zone.

* * *

(c) For the purpose of this section the term "existing ambient water quality" shall mean (based on the best scientific information available) the better water quality of either (1) that which could reasonably be expected to have existed for the baseline year of an Outstanding Florida Water designation or (2) that which existed

during the year prior to the date of a permit application. It shall include daily, seasonal, and other cyclic fluctuations, taking into consideration the effects of allowable discharges for which Department permits were issued or applications for such permits were filed and complete on the effective date of designation.

* * *

138. When considered in isolation, Rule 62-4.242, Florida Administrative Code, could be interpreted to support a conclusion that all permit applications, whether they be for permits involving the emission of pollutants into the atmosphere or the discharge of pollutants into OFWs or other activities within OFWs, must comply with the conditions for the issuance of a permit quoted in Conclusion of Law 137. Reading Rule 62-4.242, Florida Administrative Code, and the other chapters of rules found in Chapter 62, Florida Administrative Code, together, however, does not support such an interpretation.

139. Considering all of the Department's rules together, while Chapter 62-4, Florida Administrative Code, provides general requirements governing the application for, and the issuance of, all types of permits the Department has authority to issue, the specific requirements which must be complied with depend upon whether a permit is being sought for a proposed facility that will emit pollutants into the atmosphere or a proposed facility that will discharge pollutants into the waters of the State. Nothing in the Department's rules supports a conclusion that a facility seeking a permit for one activity must also comply with the requirements for another activity.

140. If the Department had intended that an applicant for a permit authorizing the emission of pollutants into the atmosphere must comply with the specific requirements for a permit authorizing a discharge of pollutants into the waters of the State, the Department could have easily provided in Chapter 62-4, Florida Administrative Code, that all applicants for permits must meet both the requirements for air emission permits and water discharge permits. The fact that the Department has not adopted such a rule supports a conclusion that there is no such requirement imposed on applicants.

G. The Rules Governing Permits to Emit Pollutants Into the Atmosphere.

141. The rules governing proposed facilities that will emit pollutants into the atmosphere begin at Chapter 62-204, Florida Administrative Code:

(1) This chapter establishes maximum allowable levels of pollutants in the ambient air, or ambient air quality standards, necessary to protect human health and public welfare. This chapter also establishes maximum allowable increases in ambient concentrations for subject pollutants to prevent significant deterioration of air quality in areas where ambient air quality standards are being met. It further specifies approved air quality monitoring and modeling methods.

Rule 62-204.100(1), Florida Administrative Code.

142. General requirements for stationary sources of air pollution are provided in Chapter 62-210, Florida Administrative Code:

The Department of Environmental Protection adopts this chapter to establish general requirements for stationary sources of air

pollutant emissions. This chapter provides criteria for determining the need to obtain an air construction or air operation permit. It establishes public notice requirements, reporting requirements, and requirements relating to estimating emission rates and using air quality models. This chapter also sets forth special provisions related to compliance monitoring, stack heights, circumvention of pollution control equipment, and excess emissions.

Rule 62-210.100, Florida Administrative Code.

143. Chapter 62-212, Florida Administrative Code, provides rules governing the preconstruction review of stationary sources of air pollution:

The Department of Environmental Protection adopts this chapter to establish the preconstruction review requirements for proposed new emissions units or facilities, and proposed modifications. The requirements of this chapter apply to those proposed pursuant to Chapter 62-210, F.A.C. This chapter includes general preconstruction review requirements and specific requirements for emissions units subject to prevention of significant deterioration (PSD) and nonattainment-area preconstruction review

Rule 62-212.100, Florida Administrative Code.

144. Reading the rules governing emission of pollutants into the air as a whole, it is clear that the Department did not intend to also require compliance of the rules governing discharges into the waters. This conclusion is consistent with the Department's review of the permit application in this case and the Department's prior practices in reviewing permit applications.

H. The Rules Governing Permits to Discharge Pollutants Into the Waters.

145. The rules governing the protection of Florida's waters begin at Chapter 62-301, Florida Administrative Code. Chapter 62-301, Florida Administrative Code, defines the "surface waters of the state." Chapter 62-302, Florida Statutes, establishes "surface water quality standards" that apply to the surface waters of the state. Those rules deal with facilities that will "discharge" pollutants into the waters of the state.

146. Reading the rules governing water quality as a whole, it is clear that the Department did not intend to apply the rules governing discharges into the waters of the state to facilities that will emit pollutants into the atmosphere which will eventually end up in the waters of the state. This conclusion is consistent with the Department's review of the permit application in this case and the Department's prior practices in reviewing permit applications.

I. The Permit Sought By Suwannee American; Suwannee American's Compliance with Air Emission Standards.

147. Suwannee American's Proposed Plant will emit pollutants into the atmosphere. Therefore, Suwannee American was required to obtain an air construction permit.

148. The issuance of air construction permits is governed by Rule 62-212.400, Florida Administrative Code, which provides, in part:

62-212.400 Prevention of Significant Deterioration (PSD).

The provisions of this rule generally apply to the construction or modification of air pollutant emitting facilities in those parts of the state in which the state ambient air quality standards are being met.

The provisions of this rule also establish various requirements for existing emissions units and facilities in such areas, including specific construction/operation permit requirements.

(1) General Prohibitions.

(a) Except as provided in Rule 62-212.500, F.A.C., the Department shall not permit the construction or modification any emissions unit or facility that would cause or contribute to a violation of any ambient air quality standard.

* * *

(2) Applicability. This subsection establishes the criteria for determining whether or not a proposed new facility or modification to a facility is subject to the preconstruction review requirements of this rule, either in whole or in part. The preconstruction review requirements of this rule include the applicable provisions of: Rules 62-212.400(4), F.A.C., General Provisions; 62-212.400(5), F.A.C., Preconstruction Review Requirements; 62-212.400(6), F.A.C., Best Available Control Technology (BACT); and 62-212.400(7), F.A.C., Construction/Operation Permit Requirements; all as modified by the applicable provisions of Rule 62-212.400(3), F.A.C., Exemptions and Exclusions. A proposed new facility or modification that is not subject to the preconstruction review requirements of this rule, either in whole or in part, may be subject to review requirements under other rules of this chapter.

* * *

149. The parties stipulated and the evidence in this case supported the following conclusion of law:

. . . [Suwannee American] has provided reasonable assurance that the proposed facility will comply with all applicable requirements including all applicable air quality rules, except as to those requirements related to water quality standards

J. Suwannee American was not Required to Comply with Rules Governing the Discharge of Pollutants into the Waters of the State.

150. In light of the specific direction of the Act that the Department adopt by rule all requirements which an applicant must meet in order to obtain a permit to pollute the air or waters of the State and, more importantly, the manner in which the Department has adopted and applied those rules, Suwannee American was not required to comply with any rule governing the pollution of the waters in this case.

151. While the Department may have the statutory authority to impose such a requirement, it must do so by rule or by a policy of the Department fully explained and supported at hearing. See Section 120.57(1)(e), Florida Statutes. The Department has done neither. When the Department initially reviewed Suwannee American's application in this case, the policy now argued by counsel for the Department was not followed. That policy was not even asserted as the position of the Department until raised by Petitioners in their challenge to the Department's proposed agency action. Therefore, rather than formulating agency policy and applying it in this case, the Department is asserting a policy which a citizen, the Petitioners, has insisted should be the policy of the Department.

152. The Department's rules, when read as a whole, indicate that an applicant for a permit to construct facilities which will emit pollutants into the atmosphere must only comply with those rules governing such emissions and any other provision of the Act or rules that specifically deal with such activities. The Departments' rules also indicate, when read as a whole, that an applicant for a permit to construct facilities which will discharge pollutants into the waters must only comply with those rules governing such discharges.

153. The Conclusions of Law reached by Judge Hood in the Recommended Order of Dismissal previously entered in this case and not ruled upon by the Department are hereby accepted and incorporated into this Recommended Order by reference.

154. Based upon the conclusion that Suwannee American is only required to comply with the rules governing air quality standards, Suwannee American has proved that it is entitled to the issuance of the air construction permit at issue in this case.

155. Despite the foregoing conclusion, in light of the position take by counsel for the Department in this proceeding, Petitioners' assertion that the Draft Permit should not be issued because mercury emissions from the Proposed Plant will violate water quality standards will be addressed. Petitioners' assertions will be addressed even though it may be within the authority of this forum to make the ultimate decision on this issue. See Section 120.57(1), Florida Statutes.

K. Impacts of Mercury Emissions on OFWs.

156. Petitioners have argued that the Proposed Plant will violate Rule 62-4.242(2)(a), Florida Administrative Code:

(a) No Department permit or water quality certification shall be issued for any proposed activity or discharge within an Outstanding Florida Waters, or which significantly degrades, either alone or in combination with other stationary installations, any Outstanding Florida Waters, unless the applicant affirmatively demonstrates that:

2. The proposed activity or discharge is clearly in the public interest, and either

a. A Department permit for the activity has been issued or an application for such permit was complete on the effective date of the Outstanding Water designation; or

b. The existing ambient water quality within Outstanding Florida Waters will not be lowered as a result of the proposed activity or discharge, except on a temporary basis during construction for a period of not to exceed thirty days; lowered water quality would occur only within a restricted mixing zone approved by the Department; and, water quality criteria would not be violated outside the restricted mixing zone. . . .

157. The evidence in this case proved that no permit to discharge within an OFW is being sought in this case and that projected emissions from the Proposed Plant will not "significantly degrade" any OFW. See Environmental Confederation of Southwest Florida v. Cape Cave Corp., DOAH Case No. 83-2567. Therefore, Rule 62-4.242(2)(a)2, Florida Administrative Code, does not apply to this matter even if Suwannee American is required to comply with the Department's water quality rules.

158. If the Department rejects the foregoing conclusion, then Suwannee American was required to prove that the operation of the Proposed Plant will be "clearly in the public interest . . . " and that its permit application is either grandfathered or "existing ambient water quality" within the Three Rivers will not be lowered. Rule 62-4.242(2)(a)2.a. and b., Florida Administrative Code.

159. Suwannee American's application is not grandfathered because it was not filed before the designation of the Three Rivers as OFWs.

160. Rule 62-4.232(2)(c), Florida Administrative Code, defines the terms "existing ambient water quality" as follows:

(c) For the purpose of this section the term "existing ambient water quality" shall mean (based on the best scientific information available) the better water quality of either (1) that which could reasonably be expected to have existed for the baseline year of an Outstanding Florida Water designation or (2) that which existed during the year prior to the date of a permit application. It shall include daily, seasonal, and other cyclic fluctuations, taking into consideration the effects of allowable discharges for which Department permits were issued or applications for such permits were filed and complete on the effective date of designation.

161. Suwannee American proved that its Proposed Plant will not lower the existing ambient water quality of the Three Rivers.

162. Suwannee American, however, failed to prove that the Proposed Plant will be clearly in the public interest.

163. Petitioners have also asserted that the Proposed Plant will violate Rule 62-302.700, Florida Administrative Code:

(1) It shall be the Department policy to afford the highest protection to Outstanding Florida Waters and Outstanding National Resource Waters. No degradation of water quality, other than that allowed in Rule 62-4.242(2) and (3), F.A.C., is to be permitted in Outstanding Florida Waters and Outstanding National Resource Waters, respectively, notwithstanding any other Department rules that allow water quality lowering.

164. As concluded, supra, the Proposed Plant will not violate Rule 62-4.242, Florida Administrative Code. Therefore, the Proposed Plant will not violate Rule 62-302.700, Florida Administrative Code.

L. Impacts of Mercury Emissions on the Designated Use of Class III Florida Waters.

165. The Three Rivers are classified as Class III waters. The designated use for Class III waters is established by Rule 62-302.400(1), Florida Administrative Code:

Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife.

See also Rule 62-302.400(10), Florida Administrative Code.

166. Rule 62-302.300(14), Florida Administrative Code, provides the following concerning the protection of water bodies:

(14) Existing uses and the level of water quality necessary to protect the existing uses shall be fully maintained and protected. Such uses may be different or more extensive than the designated use.

167. The evidence in this case proved that the existing uses of the Three Rivers and the level of water quality necessary to protect those uses will be maintained and protected even if the Proposed Plant is permitted.

168. Rule 62-302.300(15), Florida Administrative Code, provides the following concerning the protection of water bodies:

(15) Pollution which causes or contributes to new violations of water quality standards or to continuation of existing violations is harmful to the waters of this State and shall not be allowed. Waters having water quality below the criteria established for them shall be protected and enhanced. However, the Department shall not strive to abate natural conditions.

169. The evidence proved that the Proposed Plant will not cause or contribute to a new violation of water quality standards applicable to the Three Rivers. The evidence also proved that there is no existing violation of water quality standards applicable to the Three Rivers. Therefore, the Proposed Plant will not cause a continuation of an existing violation.

170. Rule 62-302.300(16), Florida Administrative Code, provides the following concerning the protection of water bodies:

(16) If the Department finds that a new or existing discharge will reduce the quality of the receiving waters below the classification established for them or violate any Department rule or standard, it shall refuse to permit the discharge.

171. The evidence proved that there will be no "discharge" from the Proposed Plant. Furthermore, the evidence proved that the Proposed Plant will do nothing to reduce the quality of the Three Rivers below their Class III classification.

172. The evidence in this case proved that the emissions of mercury from the Proposed Plant will not be detectable. As a consequence, Suwannee American has given reasonable assurance that the Proposed Plant will not violate the surface water classification of the Three Rivers.

M. Impacts of Mercury Emissions on Minimum Criteria for Surface Waters; Will Mercury Emissions Pose a Serious Danger to the Public Health, Safety, and Welfare.

173. The parties have stipulated that Suwannee American has provided "reasonable assurances that the proposed facility will not cause any violation of the numeric water quality standard for mercury in Rule 62-302.530(42), Fla. Admin. Code."

174. Petitioners have argued, however, that mercury emissions will violate Rule 62-302.500(1)(a)6, Florida Administrative Code, which provides:

(1) Minimum Criteria. All surface waters of the States shall at all places and at all times be free from:

(a) Domestic, industrial, agricultural, or other man-induced non-thermal components of discharges which, alone or in combination with other substances or in combination with other components of discharges (whether thermal or non-thermal):

6. Pose a serious danger to the public health, safety, or welfare.

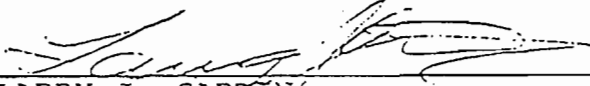
175. The evidence proved that the amount of mercury emitted from the Proposed Plant that will impact the waters of the State will not be detectable. Therefore, Suwannee American has given reasonable assurances that the Proposed Plant will not pose a serious danger to the public health, safety, or welfare.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered by the Department of Environmental Protection granting Suwannee American Cement Company, Inc.'s application for an air construction permit subject to the terms and conditions of the Draft Permit, amended to reflect the applicant's agreement that mercury emissions from the Proposed Plant will be limited to 97 pounds per consecutive 10-month period.

DONE AND ENTERED this 5th day of April, 2000, in Tallahassee, Leon County, Florida.


LARRY J. MARTIN
Administrative Law Judge
Division of Administrative Hearings
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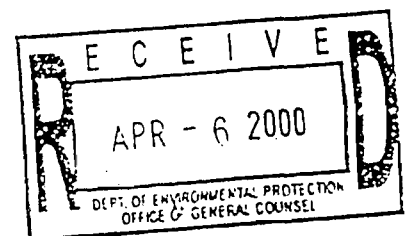
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.



STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RECEIVED

APR 07 2000

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

Petitioners,)

vs.)

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

Respondents.)

BUREAU OF AIR REGULATION

Case No. 99-3096

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case before Larry J. Sartin, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, in Gainesville, Florida, on February 14, 2000.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue in this case is whether Respondent, Suwannee American Cement Company, Inc., should be issued an air construction permit for the construction of a portland cement manufacturing plant.

PRELIMINARY STATEMENT

On November 30, 1998, Suwannee American Cement Company, Inc., submitted an application to the Department of Environmental Protection for an air construction permit authorizing the construction and operation of a portland cement manufacturing plant to be located near Branford, Suwannee County, Florida. Additional information to support the application was requested by the Department of Environmental Protection and was provided by Suwannee American Cement Company, Inc.

On June 22, 1999, the Department of Environmental Protection issued a Notice of Permit Denial indicating its intent to deny the permit sought by Suwannee American Cement Company, Inc. The permit application was denied because of a determination that Suwannee American Cement Company, Inc., had failed to provide

assurances that it would comply with all applicable regulations as evidenced by the alleged compliance history of companies related to Suwannee American Cement Company, Inc.

Suwannee American Cement Company, Inc., filed a Petition challenging the proposed denial of its permit application. On July 6, 1999, Petitioners in this case filed a Petition suggesting additional grounds for denying the permit application.

The Petitions were filed with the Division of Administrative Hearings on or about July 21, 1999. Respondent Suwannee American Cement Company, Inc.'s Petition was designated Case No. 99-3095. Petitioners' Petition was designated Case No. 99-3096. Both cases were assigned to Administrative Law Judge Suzanne F. Hood. Judge Hood entered an order consolidating the cases August 17, 1999. A third case was also consolidated with Case Nos. 99-3095 and 99-3096. That case was subsequently dismissed.

On October 21, 1999, Judge Hood entered a Recommended Order of Dismissal in this case. Judge Hood found that Petitioners' Petition failed to include allegations of any cognizable issues. Petitioners had alleged that the permit application should be denied because of rules designed to prevent pollution of Florida's waters. Judge Hood recommended that the Department of Environmental Protection dismiss the Petition because the water quality regulations upon which Petitioners had relied did not apply to the type of permit sought by Suwannee American Cement Company, Inc.

On November 18, 1999, Suwannee American Cement Company, Inc., and the Department of Environmental Protection entered into

a settlement agreement resolving the issues raised in Case No. 99-3095. As a result of this agreement, the Department of Environmental Protection caused notice of its intent to grant the permit to be published. The settlement agreement was filed with the Division of Administrative Hearings on November 19, 1999. Consequently, Case No. 99-3095 was closed.

On November 30, 1999, without ruling on the merits of Judge Hood's Recommended Order, the Department of Environmental Protection entered an Order remanding Case No. 99-3096 to the Division of Administrative Hearings. The Department of Environmental Protection remanded this case with directions to conduct a final hearing. By Order entered December 6, 1999, Judge Hood accepted the remand, reopened this case, and scheduled a final hearing for February 14 through 17, 2000.

On December 17, 1999, Judge Hood entered an Order Granting Motion to Disqualify, recusing herself from further participation in this case. The case was reassigned to the undersigned.

On January 17, 2000, Petitioners moved to amend their Petition. By Joint Prehearing Stipulation, Petitioners abandoned all but one allegation of their amended petition. The only issue raised by Petitioners in this case, therefore, is whether Suwannee American Cement Company, Inc., has failed to give reasonable assurances that its proposed portland cement manufacturing plant will not violate the applicable requirements of Florida Statutes and the rules of the Department of Environmental Protection as they relate to the prevention of significant degradation of Outstanding Florida Waters, the

maintenance of the designated use of surface waters, and certain minimum criteria for surface waters. In particular, Petitioners alleged that Suwannee American Cement Company, Inc., failed to give reasonable assurances concerning the impact on Florida waters from mercury emitted from the proposed plant.

The Joint Prehearing Stipulation filed by the parties contains undisputed findings of fact and undisputed conclusions of law which have been included in this Recommended Order to the extent relevant. The Joint Prehearing Stipulation also contains stipulated issues of fact and law which remain to be decided in this case.

At the final hearing Suwannee American Cement Company, Inc., presented the testimony of Fred W. Koester, John B. Koogler, Ph.D., Joseph H. Kahn, Donald F. Elias, and Christopher M. Teaf, Ph.D. Suwannee American Cement Company, Inc., also offered twenty exhibits. All were accepted into evidence.

The Department of Environmental Protection adopted the testimony of Mr. Kahn. No additional witnesses were called and no exhibits were offered by the Department of Environmental Protection.

Petitioners presented the testimony of Thomas D. Atkeson, Ph.D., and Curtis D. Pollman, Ph.D. Petitioners also offered Exhibits 1-5, 7-8, 10-13, 15 and 17. All were accepted into evidence.

At the conclusion of the hearing, public comment was heard.

A transcript of the hearing was ordered. The Transcript was filed February 21, 2000. Proposed orders were, therefore,

required to be filed on or before March 2, 2000. Proposed Recommended Orders were filed by Petitioners and both Respondents on March 2, 2000.

Petitioners filed a Motion For Leave to Exceed Page Number with its Proposed Recommended Order. It was represented in the Motion that Respondents have no objection to the Motion. The Motion is hereby granted.

The Proposed Recommended Orders filed by the parties have been fully considered in entering this Recommended Order.

FINDINGS OF FACT

A. The Parties.

1. Petitioner, Florida Chapter of the Sierra Club (hereinafter referred to as "Sierra Club"), is a California corporation. Sierra Club's corporate purposes include the exploration and enjoyment of wild places of the State of Florida and the protection and restoration of the quality of the natural and human environment.

2. A number of Sierra Club's members use the Sante Fe, Suwannee, and Ichetucknee Rivers for recreation and enjoyment. Activities include swimming, fishing, and boating.

3. Petitioner, Save Our Suwannee, Inc. (hereinafter referred to as "SOS"), is a Florida corporation. SOS is, therefore, a "citizen" of the State of Florida for purposes of Section 403.412(5), Florida Statutes. SOS timely filed a verified Petition for Administrative Hearing pursuant to Section 403.412(5), Florida Statutes, initiating this proceeding.

4. Respondent, Department of Environmental Protection (hereinafter referred to as the "Department"), is an agency of the State of Florida. The Department is charged with the authority to, among other things, issue air construction permits and provide protection of the waters of the State, including Outstanding Florida Waters (hereinafter referred to as "OFWs").

5. Respondent, Suwannee American Cement Company, Inc. (hereinafter referred to as "Suwannee American"), is a corporation which plans to construct and operate a portland cement manufacturing plant in Suwannee County, Florida.

B. Suwannee American's Proposed Project.

6. Suwannee American plans to build and operate a dry process preheater/precalciner type portland cement manufacturing plant (hereinafter referred to as the "Proposed Plant") on property located near Branford, Suwannee County, Florida. Portland cement is a dry powder product which is normally used to make cement when it is mixed with water and other components.

7. The Proposed Plant will be located on over 800 acres of land (hereinafter referred to as the "Proposed Site") located on U.S. Highway 27 at County Road 49. The Proposed Site is located approximately four miles to the west of the Ichetucknee River's intersection with U.S. Highway 27, approximately three miles north of the Sante Fe River, and approximately 3.4 miles to the east of the Suwannee River.

8. The Proposed Plant will have the capacity to produce 150 tons per hour and 1,191,360 tons per year of portland cement.

9. The Proposed Plant has been designed by Krupp Polysius, a world-wide designer and builder of cement plants. General engineering for the Proposed Plant will be provided by Agra Simons, a nationwide engineering firm. It is anticipated that the Proposed Plant will cost in excess of \$1,000,000.00 to build.

10. The primary components in portland cement are limestone and sand. A limerock quarry is located on the Proposed Site. The quarry has been operated since the 1930s. The quarry will be used as a source of limestone and sand for the Proposed Plant.

11. The limestone and sand are stored in bins located on the Proposed Site. Alumina, iron, and gypsum are added to the limestone and sand. The mixture, which is referred to as the "feeder material," is measured and placed on a roller mill where it is finely ground. The ground feeder material is transferred from the roller mill to a storage and homogenizing silo. From the silo the material is measured again and fed into a preheater/precalciner for processing (including heating) and then transferred to a rotary kiln. The material is heated further in the rotary kiln. The feeder material is ultimately burned at temperatures of 2700 to 2900 degrees Fahrenheit.

12. The burning of the material causes a chemical change in the feeder material. This chemical change results in the production of what is referred to as "clinker." The Proposed Plant will have a capacity to produce approximately 750,000 tons of clinker per year. After the clinker is produced it is dropped into an air quenching cooler and, after it is cooled, it is stored in silos at the Proposed Site.

13. The clinker is subsequently ground into a fine power to produce the final product, portland cement. The cement is stored on site until it is shipped from the Proposed Site by truck.

14. More than one and a half tons of feeder material are required to produce one ton of clinker. Therefore, siting the Proposed Plant at a site with a quarry will reduce the cost of operating the Proposed Plant.

15. The process of producing the cement will cause the emission of pollutants into the atmosphere at two major points in the Proposed Plant: (a) the preheater and kiln; and (b) the cooler. A "baghouse" will be employed at the preheater and kiln to collect some of the pollutants in the emissions prior to release into the atmosphere. Mercury is not one of the pollutants which the baghouse is intended to reduce.

C. Suwannee American's Permit Application, the Department's Proposed Decision, and Challenges to the Department's Proposed Decision.

16. Because of the expected emissions of pollutants into the air from the Proposed Plant Suwannee American is required to obtain an air construction permit from the Department. Rule 62-212.400, Florida Administrative Code.

17. On November 30, 1998, Suwannee American filed an application for an air construction permit for the construction of the Proposed Plant. The application was subsequently reviewed by the Department for compliance with the rules governing the issuance of air construction permits. The Department did not review the application for compliance with water quality impacts.

18. On June 22, 1999, the Department issued a Notice of Intent indicating that Suwannee American's permit application was denied. The Notice was published on July 2, 1999.

19. Suwannee American timely filed a Petition for Administrative Hearing challenging the Department's decision to deny the permit application.

20. Sierra Club and SOS also timely filed a Petition for Administrative Hearing asserting additional grounds for denial of Suwannee American's permit application. Sierra Club and SOS asserted that discharges from the Proposed Plant would result in violations of Florida water quality standards.

21. On October 21, 1999, a Recommended Order of Dismissal was entered recommending that the Petition filed by Sierra Club and SOS be dismissed for failure to raise any cognizable issue.

22. On November 18, 1999, the Department and Suwannee American entered into a Settlement Agreement pursuant to which the Department agreed to issue an air construction permit to Suwannee American. A draft permit was attached as Exhibit B to the settlement agreement (hereinafter referred to as the "Draft Permit").

23. On December 1, 1999, without ruling on the substance of the Recommended Order of Dismissal, the Department remanded this case to the Division of Administrative Hearings with instructions to conduct a formal administrative hearing.

D. Emissions Expected from the Proposed Plant Requiring Compliance with Applicable "Prevention of Significant Deterioration" Permitting Program Standards.

24. The Department has established a "prevention of significant deterioration" or "PSD" permitting program in an effort to protect air quality in the State. The PSD program includes standards which must be met by applicants for air construction permits if the potential rate of expected emissions of certain designated air pollutants from a proposed facility meet or exceed certain levels. Rule 62-212.400, Florida Administrative Code.

25. The expected emissions from the Proposed Plant that are subject to PSD review relevant to this case include the following: (a) more than 100 tons per year of sulfur dioxide, nitrogen oxides, carbon monoxide, and particulate matter; and (b) in excess of 40 tons of volatile organic compounds per year. For each of these expected pollutants, PSD program compliance requires a determination of whether the Proposed Plant will: (a) meet "Best Available Control Technology" standards (hereinafter referred to as "BACT"), for the expected pollutants; (b) violate ambient air quality standards will for those expected pollutants; and (c) allow PSD increments for the expected pollutants to be exceeded.

26. Ambient air quality standards are the levels of air pollutants that the Environmental Protection Agency (hereinafter referred to as the "EPA") has determined will not cause adverse impacts to human health or the environment. These standards have

been adopted by the Department. Allowable PSD increments are the incremental increases in air pollutant concentrations that have been established as acceptable without being considered to significantly degraded air quality.

27. The parties stipulated, and the evidence demonstrated, that the Proposed Plant, as approved by the Department and limited by the Draft Permit, will achieve BACT, will not cause a violation of any ambient air quality standard, and will not exceed any applicable PSD increment.

28. The evidence also proved that impacts on air quality from the Proposed Plant on soils and vegetation will not be adverse, and that impacts on visibility will not be significant.

29. Based upon the foregoing, it is concluded that Suwannee American's Proposed Plant complies with the permitting requirements for the "construction or modification of any emissions unit or facility that would cause or contribute to a violation of any ambient air quality standard."

Rule 62-212.400(1)(a), Florida Administrative Code. Suwannee American is, therefore, entitled to the issuance of an air construction permit for the Proposed Plant unless it fails to meet water quality standards, to the extent determined applicable to Suwannee American's proposed project.

E. Atmospheric Mercury Emissions.

30. In addition to the emission of air pollutants from the Proposed Plant which triggered PSD review, the Proposed Plant will also emit mercury into the atmosphere. Mercury is a metal that occurs naturally in the environment. The levels of mercury

expected from the Proposed Plant are not, however, high enough to require PSD review with regard to the expected mercury emissions or to authorize the Department to deny an air construction permit based upon the levels of mercury determined by the Department and EPA to be permissible.

31. Mercury can pose a serious danger to the public health, safety, and welfare. Mercury, in the form of methyl mercury, acts as a neurotoxin when consumed. The consumption of fish containing mercury can result in human exposure to mercury which is potentially significant. An indicator of the potential harm to humans from mercury may, therefore, be determined through measuring the mercury level in fish. Measuring the amount of mercury within the water column is not, however, determinative of the potential harm to humans of mercury in the water.

32. Mercury is emitted into the air in an inorganic form. To constitute an immediate danger to humans, the mercury must be converted to methyl mercury, a form of organic mercury, and must be processed through the food chain. This process is referred to as biomagnification. The creation of methyl mercury and the process of biomagnification in water involves a complex interaction of physical, chemical, and biological factors. Numerous factors impact this process, including levels of nutrients, sulfates, dissolved organic carbon, dissolved oxygen, and chloride.

33. The conversion of inorganic mercury to methyl mercury typically begins with the consumption of the inorganic mercury by sulfate-reducing bacteria, the release of methyl mercury into the

water, and the ultimate bioaccumulation of the mercury in fish. Once consumed by single-cell organisms, the mercury moves up the food chain until it ultimately reaches predator fish, such as large-mouth bass, where the concentrations of mercury are ultimately highest. The predator fish are then consumed by humans.

34. Sulfate-reducing bacteria are found in areas with a dissolved organic carbon source to feed on. Wetlands are typically a high source of organic carbon.

35. Because of the complex chemical process involved in the production of methyl mercury, some water bodies are more sensitive to the effects of mercury deposition or the disposition of inorganic mercury from its production source. This finding is supported by the fact that, even though the deposition of atmospheric mercury over South Florida is generally constant, water bodies in the area have responded differently. For example, the Everglades has relatively high levels of mercury while Lake Okeechobee does not.

36. Among the significant factors that impact the conversion of mercury released from a high temperature combustion source to methyl mercury is the form in which mercury is released into the atmosphere.

37. Until approximately ten years ago it was believed that mercury emitted into the atmosphere from a high temperature combustion source was emitted in the form of elemental mercury. Elemental mercury has a longer residence time in the atmosphere.

As a result, elemental mercury has a much smaller impact in the area near the source of its release into the atmosphere and less impact on waters close to the source of the emission.

38. More recent research has proved that mercury is released into the atmosphere in various forms, including particulate mercury and reactive gaseous mercury. Particulate mercury and reactive gaseous mercury have a shorter residence time in the atmosphere than elemental mercury. Particulate mercury and reactive gaseous mercury will, therefore, tend to deposit closer to their source and can have a greater impact on water resources close to the source of the emission. The emission of mercury in different forms into the atmosphere is referred to as "speciation."

39. The precise speciation rate of mercury from a portland cement plant such as the Proposed Plant is not well understood. Suwannee American's experts relied upon speciation rates ranging from 10 to 20 percent particulate and reactive gaseous mercury.

40. Testing data from cement plants concerning the speciation of mercury has been limited. One cement plant was tested on three occasions in a study referred to as the South Florida Atmospheric Mercury Monitoring Study (hereinafter referred to as "SoFAMMS"). The SoFAMMS reported a speciation rate for non-elemental mercury of between 21 and 29 percent.

41. Mercury speciation was also considered in a 1997 EPA Mercury Study Report to Congress. According to the EPA Mercury Study Report, a speciation rate of 80 percent elemental mercury, 10 percent particulate, and 10 percent reactive gaseous mercury

was found. Little relevant evidence concerning the basis for these findings was provided at hearing.

42. Another significant factor in the conversion of mercury released from a high temperature combustion source to methyl mercury is the deposition of the mercury to land or water surfaces after it is released into the air.

43. The deposition of pollutants to land or water surfaces takes place by either dry deposition or wet deposition. Dry deposition takes place through the diffusion of the pollutant in the atmosphere until it contacts a surface to which it adheres. Wet deposition takes place when the pollutant is either incorporated into droplets as rain forms which then fall, or the pollutant gets washed out as droplets of rain falls through the atmosphere.

F. Suwannee American's Estimates of Mercury Emissions.

44. Mercury emitted from the Proposed Plant will come from feeder material and the fuel used to heat the feeder material during the operation of the Proposed Plant.

45. The amount of mercury created and emitted from the Proposed Plant, regardless of its speciation or deposition rates, based upon the laws of physics, will not exceed the amount of mercury going into the Proposed Plant through feeder materials and fuel used to heat the feeder material.

46. In its initial application Suwannee American estimated that mercury emissions from the Proposed Plant would be limited to 20 pounds per year. This estimate was based upon a document, "AP-42," issued by the EPA. AP-42 deals with cement plant

facilities utilizing baghouses for the control of emissions, which Suwannee American had proposed with its initial application.

47. AP-42 emission factors were not based upon site-specific data and no background information is contained in AP-42 concerning the characteristics of the sources from which the factors were derived. AP-42 does rate the reliability of the emission factors for various sources referenced in AP-42, including portland cement plants, taking into account the different types of air pollution control technology used by the sources. The emission factors are rated for reliability from "A" to "E," with "A" being the most reliable and "E" being the least reliable. The emission factors for the results of portland cement plants reported in AP-42 were rated "D." The emission rate of mercury from cement kilns with baghouses reported in AP-42 was 20 pounds per year.

48. After review of Suwannee American's initial application, the Department questioned Suwannee American's estimated mercury emission and requested additional information to support its projection.

49. In response to the Department's request for additional information, Suwannee American eliminated the proposed use of a baghouse and submitted new calculations concerning mercury emissions for its newly configured Proposed Plant. Suwannee American's new estimate was that mercury emissions would not exceed 184 pounds per year.

50. Suwannee American's projection was based upon estimates of mercury emissions determined by three different methods of calculating emissions used by Suwannee America's environmental consultant:

a. First, the mercury content of the feeder material and fuel to be used at the Proposed Plant was estimated. Based upon this estimate, it was concluded that mercury emissions would be approximately 120 pounds per year;

b. Secondly, emissions from 12 to 15 operating cement plant facilities in the United States were reviewed. The average mercury emission from these plants was calculated and applied to the estimated production rate of the Proposed Plant. Based upon this analysis, Suwannee American estimated that mercury emissions would be approximately 140 pounds per year; and

c. Finally, AP-42 emission factors for cement plants utilizing electrostatic precipitators were considered. Based upon this analysis, Suwannee American estimated that mercury emissions would be approximately 184 pounds per year. It was this estimate that was accepted by the Department and added as a limitation in the Draft Permit.

51. Suwannee American's estimate of mercury emissions was based upon a "worst case scenario."

G. The Draft Permit Limitation on Mercury Emissions.

52. The Department accepted Suwannee American's estimate of mercury emissions from the Proposed Plant. The Draft Permit expresses the limitation on the amount of mercury that may be emitted by limiting the amount of mercury that may be introduced

into processing at the Proposed Plant to 184 pounds per consecutive 12-month period. This limitation applies to the total combined amount of mercury introduced in the form of feed materials and fuel.

53. At the final hearing Suwannee American agreed to a further limitation on the amount of allowed mercury in Draft Permit condition 13 that may be introduced into processing at the Proposed Plant to 97 pounds per consecutive 12 month period. This estimate was based upon a more detailed analysis of expected mercury emissions performed by Suwannee American after Sierra Club and SOS questioned the impact of mercury emissions from the Proposed Plant.

54. The EPA recommended in a letter to the Department dated December 23, 1999, that mercury emissions from the Proposed Plant be limited to 20 pounds per year.

55. Suwannee American proved that its estimate of the amount of mercury of 97 pounds per year that will be emitted from the Proposed Plant is reasonable.

56. Although mercury is subject to PSD review, no PSD review of Suwannee American's mercury emissions was performed nor required because it has projected that its emission of mercury will not exceed 200 pounds per year.

H. Air Emissions Monitoring.

57. The Draft Permit requires continuous monitoring of stack emissions for a number of pollutants which are expected to be emitted from the Proposed Plant, including sulfur dioxide,

nitrogen dioxide, opacity, and volatile organic compounds. Stack gas flow rate is also required to be monitored continuously.

58. Continuous monitoring for mercury is not required. Instead, the Draft Permit only requires an initial stack test for mercury to determine compliance with the limitation on the amount of mercury emissions from the Proposed Plant. This test will only determine the amount of mercury emitted during the limited period of the test.

59. Continuous monitoring of compliance with the limitation on mercury introduced into processing at the Proposed Plant is to be accomplished through testing of the "input" materials. For this purpose, "input" materials are deemed to consist of the feeder material and fuel used in the manufacturing process at the Proposed Plant.

60. A schedule for testing input materials is included in the Draft Permit in Specific Condition 27. The Draft Permit provides for the following schedule of testing:

a. During the first quarter of operation of the Proposed Plant, testing of input materials for mercury content is to be based upon daily samples of feed materials and fuel for each month. A sample from the composite of the daily samples for each of the months during the quarter is to be analyzed;

b. For the next three quarters of operation, daily samples for one month during each quarter are to be taken and a sample from the composite of the daily samples for that month is to be analyzed for mercury levels;

c. For each year after the first year of operation of the Proposed Plant, daily samples are to be taken during one month during the year and a sample from the composite of the daily samples for that month is to be analyzed for mercury levels, except as follows:

(1) If there is a change in feed material or fuels, the frequency of testing is to revert to b. for the next three quarters; or

(2) If the monthly composite shows a total monthly mercury throughput of greater than 7.7 pounds per month, the frequency of testing is to revert to b. for the next three quarters or until the monthly throughput is less than or equal to 7.7 pounds per month, whichever is longer.

61. The Draft Permit also provides that the Department may require special compliance tests if it has good reason to believe that emission standards are being violated.

62. No other monitoring of mercury emissions from the Proposed Plant is required by the Draft Permit to ensure that the limitation of the amount mercury in the feeder materials and fuel will be met. Nor is there any requirement in the Draft Permit to determine the speciation rate of mercury emitted from the Proposed Plant.

63. By limiting the amount of mercury that goes into the manufacturing process to the amount of mercury allowed by the Draft Permit, the amount of mercury emitted from the Proposed Plant should not exceed the amount of mercury emissions projected by Suwannee American.

64. The monitoring requirements of the Draft Permit are reasonable, effective, and enforceable.

I. Fuel Proposed for the Proposed Plant's Operation.

65. Fuel is required to heat the feeder material in the preheater/precalciner and the rotary kiln. Suwannee American has been authorized by the Department to burn Appalachian coal, petroleum-coke, natural gas, and up to 40 percent tires as fuel in its operation of the Proposed Plant. Suwannee American has proposed to initially burn Appalachian coal, which has been determined to be available in the quantities necessary to operate the Proposed Plant.

66. Mercury levels in coal can amount to a high percentage of mercury emissions from a portland cement plant. The type of coal used by Suwannee American, therefore, will play a significant role in determining whether the projected mercury emissions from the Proposed Plant can be achieved.

67. Suwannee American has estimated that coal used by it at the Proposed Plant will contain 143 parts per billion of mercury. This level of mercury in coal will result in approximately 35 pounds of mercury emissions per year from the Proposed Plant.

68. Mercury content of coal used as fuel in the Proposed Plant can vary widely. The average and median mercury content for all Appalachian coal is high: 466 parts per billion and 566 parts per billion, respectively.

69. Although Suwannee American had not entered into a contract or a letter of intent for the purchase of coal-containing levels of mercury consistent with its estimated

emissions at the time of the formal hearing of this case, coal which will meet those estimates is commercially available in amounts necessary to meet permit conditions concerning mercury emissions and Suwannee American is committed to acquiring coal of the necessary grade.

70. The evidence proved that Suwannee American can purchase coal necessary for the operation of the Proposed Plant which will ensure compliance with the conditions of the Draft Permit concerning mercury emissions.

71. The evidence also proved that the conditions of the Draft Permit concerning mercury emissions can be enforced regardless of the difficulty that may be encountered by Suwannee American in finding coal with low enough mercury content for use at the Proposed Plant.

J. Mercury Deposition.

72. Obviously, since the Proposed Plant is not yet operational, it is not possible to accurately determine where mercury emitted from the Proposed Plant will be deposited or the "deposition" of mercury emitted. Air quality dispersion modeling, however, can facilitate estimates of the expected impacts of the Proposed Plant on air quality and on the surrounding area.

73. Computer programs are used to facilitate air dispersion modeling. These programs simulate the behavior of pollutants released into the atmosphere. The programs take into consideration meteorological data, such as wind speed and

direction, and information concerning the amount of pollutant to be reduced and its rate of speciation.

74. A number of variables used in air dispersion modeling can affect modeling outcomes. The accuracy of assumptions concerning those variables can impact the reliability of the modeling outcomes. Significant variables include emission rates, speciation rates, and deposition. To the extent that any or all of these variables are uncertain, there will be an equivalent uncertainty in the modeling results concerning concentrations and ultimate deposition rates of pollutants released into the atmosphere.

75. At the request of the Department, Suwannee American performed modeling to determine the likely deposition of mercury emissions from the Proposed Plant. The modeling was performed to determine the impact of mercury emissions on Class I PSD areas, such as St. Marks and Bradwell Bay, and the area within five miles of the Proposed Plant. A five-mile radius takes into account the location of the Ichetucknee, Sante Fe, and Suwannee Rivers (hereinafter jointly referred to as the "Three Rivers").

76. Initial modeling was performed using the most conservative assumptions: (a) that 100 percent of the mercury emitted would be emitted in the form of particulate matter or reactive gaseous mercury; and (b) that approximately one-third of the mercury emitted would be deposited in the vicinity of the Proposed Plant.

77. Suwannee American's initial modeling resulted in an estimate that, based upon its preliminary estimate that 184

pounds of mercury would be emitted per year from the Proposed Plant, 20 to 50 micrograms per meter squared, per year of mercury will be deposited near the confluence of the Sante Fe and Ichnetucknee Rivers.

78. Suwannee American's initial modeling estimates, based upon its estimate that 184 pounds of mercury would be emitted per year from the Proposed Plant, also indicated that one-third of the mercury emitted from the Proposed Plant would be deposited within the 1,384 square miles of the Sante Fe River basin. The amount of mercury deposited at the confluence of the Sante Fe and Ichetucknee Rivers was estimated to be 15 micrograms per square meter per year. The assumptions that went into this modeling were unreasonably conservative.

79. Subsequent to Suwannee American's initial modeling, additional modeling was performed by Suwannee America to determine the deposition rate of mercury in the area of the Three Rivers at the request of the Department. Based upon the additional modeling, Suwannee American developed "isopleths" or contour lines depicting where the maximum annual concentrations of mercury would be expected to be found. Isopleths were also developed to depict the quantity and location of maximum annual mercury deposition. Suwannee American's isopleths could be off by as much as a kilometer, underestimating the concentrations of mercury in the area of the Ichthnetucknee and Sante Fe Rivers.

80. In its subsequent modeling Suwannee American made the same assumptions concerning the amount of mercury emitted and the speciation of the emitted mercury it made in its initial

modeling: (a) that 184 pounds of mercury would be emitted per year; and (b) that 100 percent of the mercury would be emitted in the form of particulate matter or reactive gaseous mercury.

81. A month before the formal hearing of this case, Suwannee American performed a third round of modeling of mercury deposition. The additional modeling was based upon the emission of 97 pounds of mercury per year and the following speciation rate: (a) 80 percent elemental mercury; (b) 10 percent particulate matter; and (c) 10 percent reactive gaseous mercury. Two modeling tests were performed for Suwannee American using these assumptions.

82. The first modeling test used the original dispersion modeling prepared for Suwannee American with a 10 percent correction for the emission rate. The second modeling test used dispersion parameters contained in an 1997 EPA Mercury Study Report to Congress.

83. The modeling performed by Suwannee American was reasonable and professionally performed. The results of the modeling are, therefore, reliable.

84. Suwannee American's modeling just prior to the formal hearing estimated, based upon the assumption that 97 pounds of mercury would be emitted per year from the Proposed Plant, a deposition rate of mercury in the vicinity of the Sante Fe River of 3.5 micrograms per square meter per year based upon the first modeling and 1.6 to 2.6 micrograms per square meter per year within a five-mile radius from the Proposed Plant based upon the second modeling. These projections indicate that mercury

emissions from the Proposed Plant will result in the deposition of less than 10 percent of the amount of mercury already existing in the natural background.

85. Background mercury, or mercury normally found in the natural background, is estimated to be 25 micrograms per square meter per year. A 10 percent increase in background mercury would not be detectable.

86. The estimated deposition of mercury from the Proposed Plant suggested by Suwannee American's modeling is supported by the weight of the evidence in this case. Petitioners performed no modeling to refute Suwannee American's estimates. The testimony of Petitioners' experts to the contrary was not persuasive and has been rejected.

K. The Current State of Mercury in the Three Rivers.

87. The Three Rivers have all been declared OFWs. Rule 62-302.700, Florida Administrative Code.

88. The Three Rivers have also been declared Class III waters and, therefore, have a designated use of recreation, and the propagation and maintenance of a healthy, well-balanced population of fish and wildlife. Rule 62-302.400, Florida Administrative Code.

89. An OFW designation is made to recognize exceptional recreational and/or ecological significance of a water body. See Section 403.061(27), Florida Statutes, and Rule 62-4.245, Florida Administrative Code.

90. After elevated levels of mercury were found in the tissue of fish taken from the Everglades of South Florida, the

State undertook testing of fish in fresh and coastal waters throughout the state. Based upon its findings, the State established two levels of advisories concerning mercury levels in fish tissue.

91. One level of mercury level advisory established by the States is a "limited consumption" advisory. This advisory is issued when the mercury levels in fish taken from a water body are found to range from 0.5 parts per million to 1.5 parts per million. "Limited consumption" advisories are issued by the State's Health Officer to protect public consumption of excessive amounts of mercury.

92. The second and highest level of advisory concerning mercury levels in fish tissue is a "no consumption" fish advisory. This advisory is issued when mercury levels are found to exceed 1.5 parts per million. When issued, the public is warned not to eat issue fish at all from waters to which the advisory applies. Only one "no consumption" fish advisory is currently in effect in Florida.

93. On May 19, 1989, the State issued a "limited consumption" advisory for the Suwannee River and its tributaries recommending the limited consumption of large mouth bass taken from the Three Rivers. This advisory has not been withdrawn.

94. The last testing of fish from the Sante Fe River was performed in 1989. The levels of mercury found from those tests ranged from 0.55 to 1.27 parts per million.

95. Sampling of fish from the Suwannee River has been performed annually, except during 1997, since 1989. In 1999, mercury levels ranged from 0.44 to 1.57 parts per million.

96. Mercury levels throughout the State indicate a slight declining trend in the amount of mercury found in fish.

97. Despite the advisory concerning the level of mercury in large mouth bass taken from the Three Rivers, mercury levels in the Three Rivers are within acceptable water quality standards for mercury established by the Department's rules. No Department rule prohibits the issuance of a permit which otherwise meets all the requirements concerning the levels of mercury emissions into the air or water specified in the Department's rules because of an outstanding mercury level in fish advisory.

L. The Impact of Mercury Emissions from the Proposed Plant on the Three Rivers.

98. No one disputes that some amount of mercury emitted from the Proposed Plant will find its way into the Three Rivers. At issue is whether the amount of mercury that makes its way into the Three Rivers will be adverse to the public health, safety, and welfare. Suwannee American has given reasonable assurances that it will not.

99. Using Suwannee American's projections concerning the amount of mercury to be emitted from the Proposed Plant (97 pounds per year), the speciation rate of the mercury (80, 10, 10), and the deposition of mercury from the Proposed Plant, Suwannee American caused the potential effects of mercury on the Three Rivers to be analyzed using modeling and algorithms or

equations contained in the Health Risk Assessment Protocol for Combustion Facilities prepared by the EPA. The impact of mercury on water quality, sediments, and the tissue of fish in the Three Rivers was projected by Suwannee American. The projections were made by Dr. Christopher Teaf.

100. The assumptions used by Dr. Teaf were conservative and reasonable.

101. Dr. Teaf predicted that surface water mercury concentrations from the Proposed Plant in the Three Rivers will be less than 0.0000000006 milligrams per liter over a 100 year period. Department surface water quality standards allow .000012 milligrams per liter of mercury. Therefore, the level of mercury allowed by the Department's rules is approximately 200,000 times higher than that expected from the Proposed Plant.

102. The projected surface water mercury concentrations for the Proposed Plant are between 50,000 and 100,000 times below detectable amounts of mercury in surface water samples.

103. Dr. Teaf also predicted that mercury concentrations in sediment of the Three Rivers as a result of operation of the Proposed Plant will be 0.0000003 milligrams per kilogram. This amounts to approximately 500,000 times less than the Department's Threshold Effects Level for mercury in sediment of 0.13 milligrams per liter.

104. Projected sediment concentrations of mercury are between 10,000 and 100,000 times less than a detectable or measurable quantity.

105. Finally, Dr. Teaf predicted that methyl mercury concentrations in fish tissue from the Three Rivers as a result of the Proposed Plant will be 0.0002 milligrams per kilogram. The level of mercury in fish tissue considered to cause concern is 0.5 milligrams per liter, which is 2,500 to 3,000 times lower than the rate considered to be too high.

106. The projected levels of mercury in fish tissue are 100 times lower than detectable limits for mercury in fish tissue and would have no impact on current health advisories.

107. Dr. Teaf's predicted mercury levels from the Proposed Plant may be somewhat low to the extent that they rely upon a speciation rate of 80 percent elemental mercury. Even if a 0 percent elemental mercury speciation rate is assumed to be more appropriate, however, the mercury which reasonably can be expected to be found in the water column, sediments, and the tissue of fish in the Three Rivers will still be below acceptable standards and detectable amounts.

108. Mercury in the Three Rivers attributable to the Proposed Plant will not be detectable or measurable. Therefore, Suwannee American has provided reasonable assurances that the Proposed Plant will have no impact on the Three Rivers or their use, will not pose a danger to the public health, safety, or welfare, and will comply with all applicable statutes and all Department rules.

M. Ultimate Findings of Fact.

109. Suwannee American has provided reasonable assurances that the construction and operation of the Proposed Plant will not violate any air pollution permitting requirements.

110. Suwannee American has also provided reasonable assurances that mercury emissions from the Proposed Plant will not violate any water quality standard, will not significantly degrade any OFWs, impair the designated use of the Three Rivers, or pose a serious danger to the public health, safety, or welfare.

CONCLUSIONS OF LAW

A. Jurisdiction.

111. The Division of Administrative Hearings has jurisdiction of the parties to, and the subject matter of, this proceeding. Section 120.57, Florida Statutes (1997).

B. Burden of Proof.

112. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the proceeding. Antel v. Department of Professional Regulation, 522 So. 2d 1056 (Fla. 5th DCA 1988); Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); and Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 249 (Fla. 1st DCA 1977).

113. In this proceeding, it is Suwannee American that is asserting the affirmative: that the Department should issue an air construction permit. Suwannee American, therefore, had the ultimate burden of proof. Suwannee American was required to meet

its burden by the preponderance of the evidence. J.W.C. Co.,
supra.

114. In order for Suwannee American to meet its burden of proof, it was required to present a prima facie showing of entitlement to the air construction permit taking into account the objections raised by Petitioners. Suwannee American met its burden.

115. Following the presentation of Suwannee American's prima facie case, Petitioners had the burden of proving the allegations of their Petition as modified by the stipulated issues of law contained in the Joint Prehearing Stipulation. The evidence presented by Petitioners in support of their Petition was required to be of at least equivalent quality to the evidence presented by Suwannee American. See Hoffert v. St. Joe Paper Company, 12 F.A.L.R. 4972 (Fla. Dept. of Env. Reg. 1990). Ultimately, Suwannee American was required to prove that it was entitled to the permit which it has applied for. Suwannee American met its burden.

C. Standing.

116. SOS has argued that it has standing to institute this proceeding pursuant to Section 403.412(5), Florida Statutes:

In any administrative . . . proceedings authorized by law for the protection of the air, water, or other natural resources of the state from pollution, impairment, or destruction . . . a citizen of the state shall have standing to intervene as a party on the filing of a verified pleading asserting that the activity, conduct, or product to be licensed or permitted has or will have the effect of impairing,

polluting, or otherwise injuring the air, water, or other natural resources of the state.

117. SOS is a citizen of the State and it filed a verified Petition in this matter. SOS, therefore, has standing to participate in this matter. Suwannee American's assertion that SOS's participation is limited to that of an Intervenor too narrowly construes Section 403.412(5), Florida Statutes.

118. Sierra Club is not a citizen of the State and, therefore, has not relied upon Section 403.412(5), Florida Statutes, to support its standing in this matter. Instead, Sierra Club has asserted that it is a "substantially affected" person as those terms are used in Section 120.57, Florida Statutes, and interpreted in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981).

119. The substantial effect alleged by Sierra Club is the impact on its members who use the Three Rivers for recreation and enjoyment, including swimming, fishing, and boating. The alleged adverse impacts are sufficient to support Sierra Club's standing to participate in this proceeding.

D. Petitioners' Challenge.

120. In the Joint Prehearing Stipulation filed by the parties, Petitioners stipulated to "Disputed Issues of Fact and Law" which must be addressed in this proceeding. The disputed issues of fact and law, other than issues concerning Petitioners' standing, agreed to by the parties are as follows:

1. Whether the Applicant must establish that certain surface water quality standards (listed below) will not be violated.

2. If the Applicant must establish in this proceeding that water quality standards will not be violated, whether the Applicant has provided reasonable assurances that the emissions of mercury from the proposed facility will not violate the following specific water quality standards related to Outstanding Florida Waters, the classification of surface waters and the minimum criteria for surface waters.

a. Rule 62-4.242(2)(a), Fla. Adm. Code, "Antidegradation Permitting Requirements; Outstanding Florida Waters" and rule 62-302.700, "Special Protections, Outstanding Florida Waters." Specifically, whether the emissions of mercury from the proposed facility will "significantly degrade" any of the following OFWs: the Sante Fe River, the Suwannee River, and the Ichetucknee River.

b. Rule 62-302.400(1), Fla. Adm. Code, "Classification of Surface Waters" (describing the designated use of Class III waters as "recreation, propagation and maintenance of a healthy, well-balanced population of fish and wildlife"). Specifically, Petitioners contend that emissions of mercury from the proposed facility will impair the designated use of the waters identified in Para 2.a. above as Class III waters and as otherwise prohibited in rules 62-302.300(14), (15), (16) and (17), Fla. Adm. Code.

c. Rule 62-302.500(1)(a)6, Fla. Adm. Code, "Surface Waters, Minimum Criteria".

* * *

121. These issues have all been addressed and disposed of in this Recommended Order. To the extent that Petitioners asserted any additional issues in their Proposed Recommended Order, those issues have been rejected. The Joint Prehearing

Stipulation signed by Petitioners defined the scope of the issues appropriately considered in this matter.

E. The Department's Broad Authority to Protect the Air and Waters of the State Through Permitting.

122. The Department has been charged with broad responsibilities and given broad powers to protect the air and waters of the State of Florida. Chapter 403, Florida Statutes, the "Florida Air and Water Pollution Control Act" (hereinafter referred to as the "Act").

123. The Department's broad powers and duties are generally described in Section 403.061 of the Act. Those powers and duties include, in part, the following:

The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

.....

(6) Exercise general supervision of the administration and enforcement of the laws, rules, and regulations pertaining to air and water pollution.

(7) Adopt, modify, and repeal rules and regulations to carry out the intent and purposes of this act.

* * *

(9) Adopt a comprehensive program for the prevention, control, and abatement of pollution of the air and waters of the state
.....

(10) Develop a comprehensive program for the prevention, abatement, and control of the pollution of the waters of the state.

In order to effect this purpose, a grouping of the waters into classes may be made in accordance with the present and future most beneficial uses. . . .

(11) Establish ambient air quality and water quality standards for the state as a whole or any part thereof

* * *

(14) Establish a permit system whereby a permit may be required for the operation, construction, or expansion of any installation that may be a source of air or water pollution and provide for the issuance and revocation of such permits and for the posting of an appropriate bond to operate.

* * *

(27) Establish rules which provide for a special category of water bodies within the state, to be referred to as "Outstanding Florida Waters," which water bodies shall be worthy of special protection because of their natural attributes. Nothing in this subsection shall affect any existing rule of the department.

124. The Act includes specific guidance for the general issuance or denial of permits for any "stationary installation" that is reasonably expected to be a source of air or water pollution. Section 403.087 of the Act provides the following:

(1) A stationary installation that is reasonably expected to be a source of air or water pollution must not be operated, maintained, constructed, expanded, or modified without an appropriate and currently valid permit issued by the department, unless exempted by department rule. . . .

125. The term "installation" is defined in Section 403.031(4), of the Act as:

any structure, equipment, or facility, or appurtenances thereto, or operation which

may emit air or water containments in quantities prohibited by rules of the department.

See also Rule 62-4.020(6), Florida Administrative Code.

126. In order to qualify for issuance of a permit authorized by Section 403.087 of the Act the applicant for the permit must show, if its installation "may reasonably be expected to be a source of pollution," that the "installation is provided or equipped with pollution control facilities that will abate or prevent pollution to the degree that will comply with the standards or rules adopted by the department"

127. The Department is required to provide for the issuance, denial, modification, and revocation of permits required by Section 403.087(1) of the Act for stationary installations through duly promulgated rules. Section 403.087(2) of the Act. It is, therefore, reasonable for applicants for permits from the Department to assume that the rules of the Department contain all the requirements for the issuance of permits.

128. Section 403.087(5) of the Act provides, in part, the following concerning the issuance of permits:

(5) The department shall issue permits to construct, operate, maintain, expand, or modify an installation which may reasonably be expected to be a source of pollution only when it determines that the installation is provided or equipped with pollution control facilities that will abate or prevent pollution to the degree that will comply with the standards or rules adopted by the department"

Again, it is contemplated that rules adopted by the Department establish the standards with which an applicant must comply in order to obtain any permit required by the Act.

129. In addition to the broad responsibilities and powers concerning pollution of the air and waters given the Department pursuant to the Act, the Department is authorized to impose stricter permitting and enforcement provisions for OFWs. Section 403.061(34) of the Act. Those stricter permitting and enforcement provisions are, however, also required to be imposed by the adoption of rules by the Department.

130. The authority of the Department to protect the air and waters of the State is clearly broad enough to authorize the Department to control or prohibit the direct or indirect discharge of pollutants into the air or the waters of the state. The Act, however, just as clearly contemplates that the Department will exercise its authority and responsibility through the adoption of rules.

F. The Department's Rules.

131. The Department has in fact promulgated a broad array of rules governing the issuance of permits authorized by the Act:

a. Chapter 62-4, Florida Administrative Code, provides rules governing the issuance of permits generally;

b. Department rules beginning at Chapter 62-204, Florida Administrative Code, deal with air quality in the State; and

c. Department rules beginning at Chapter 62-301, Florida Administrative Code, govern the protection of the waters of the State.

132. The purpose and scope of Part I, Chapter 62-4, Florida Administrative Code, includes, in part, the following:

This Part sets forth procedures on how to obtain a permit from the State of Florida Department of Environmental Protection. This Part also provides requirements and procedures for the issuance, denial, renewal, extension, transfer, modification, suspension, and revocation of any permit required by the Department of Environmental Protection. . . .

Rule 62-4.001, Florida Administrative Code.

133. Part I, Chapter 62-4, Florida Administrative Code, provides: definitions; exemptions from permitting; general procedures, including processing fees, applicable to all permits; procedures for processing permits once received by the Department; and other rules dealing with permitting in general.

134. The purpose and scope of Part II, Chapter 62-4, Florida Administrative Code, includes, in part, the following:

This Part sets forth additional requirements for Department permits, exemptions from permitting, requirements for mixing zones and zones of discharge, and related requirements. . . .

Rule 62-4.200, Florida Administrative Code.

135. Part II, Chapter 62-4, Florida Administrative Code, provides general requirements for specific types of permits. Rules are provided for construction permits and operating permits.

136. Rule 62-4.210, Florida Administrative Code, provides guidance concerning permits to construct any installation or facility "which will reasonably be expected to be a source or air or water pollution" Rule 62-4.220, Florida

Administrative Code, provides guidance concerning operating permits.

137. Rule 62-4.242, Florida Administrative Code, provides "antidegradation permitting requirements" for OFWs. Rule 62-4.242(2), Florida Administrative Code, provides, in part:

(2) Standards Applying to Outstanding Florida Waters.

(a) No Department permit or water quality certification shall be issued for any proposed activity or discharge within an Outstanding Florida Waters, or which significantly degrades, either alone or in combination with other stationary installations, any Outstanding Florida Waters, unless the applicant affirmatively demonstrates that:

* * *

2. The proposed activity or discharge is clearly in the public interest, and either

a. A Department permit for the activity has been issued or an application for such permit was complete on the effective date of the Outstanding Water designation; or

b. The existing ambient water quality within Outstanding Florida Waters will not be lowered as a result of the proposed activity or discharge, except on a temporary basis during construction for a period of not to exceed thirty days; lowered water quality would occur only within a restricted mixing zone approved by the Department; and, water quality criteria would not be violated outside the restricted mixing zone. . . .

* * *

(c) For the purpose of this section the term "existing ambient water quality" shall mean (based on the best scientific information available) the better water quality of either (1) that which could reasonably be expected to have existed for the baseline year of an Outstanding Florida Water designation or (2) that which existed

during the year prior to the date of a permit application. It shall include daily, seasonal, and other cyclic fluctuations, taking into consideration the effects of allowable discharges for which Department permits were issued or applications for such permits were filed and complete on the effective date of designation.

* * *

138. When considered in isolation, Rule 62-4.242, Florida Administrative Code, could be interpreted to support a conclusion that all permit applications, whether they be for permits involving the emission of pollutants into the atmosphere or the discharge of pollutants into OFWs or other activities within OFWs, must comply with the conditions for the issuance of a permit quoted in Conclusion of Law 137. Reading Rule 62-4.242, Florida Administrative Code, and the other chapters of rules found in Chapter 62, Florida Administrative Code, together, however, does not support such an interpretation.

139. Considering all of the Department's rules together, while Chapter 62-4, Florida Administrative Code, provides general requirements governing the application for, and the issuance of, all types of permits the Department has authority to issue, the specific requirements which must be complied with depend upon whether a permit is being sought for a proposed facility that will emit pollutants into the atmosphere or a proposed facility that will discharge pollutants into the waters of the State. Nothing in the Department's rules supports a conclusion that a facility seeking a permit for one activity must also comply with the requirements for another activity.

140. If the Department had intended that an applicant for a permit authorizing the emission of pollutants into the atmosphere must comply with the specific requirements for a permit authorizing a discharge of pollutants into the waters of the State, the Department could have easily provided in Chapter 62-4, Florida Administrative Code, that all applicants for permits must meet both the requirements for air emission permits and water discharge permits. The fact that the Department has not adopted such a rule supports a conclusion that there is no such requirement imposed on applicants.

G. The Rules Governing Permits to Emit Pollutants Into the Atmosphere.

141. The rules governing proposed facilities that will emit pollutants into the atmosphere begin at Chapter 62-204, Florida Administrative Code:

(1) This chapter establishes maximum allowable levels of pollutants in the ambient air, or ambient air quality standards, necessary to protect human health and public welfare. This chapter also establishes maximum allowable increases in ambient concentrations for subject pollutants to prevent significant deterioration of air quality in areas where ambient air quality standards are being met. It further specifies approved air quality monitoring and modeling methods.

Rule 62-204.100(1), Florida Administrative Code.

142. General requirements for stationary sources of air pollution are provided in Chapter 62-210, Florida Administrative Code:

The Department of Environmental Protection adopts this chapter to establish general requirements for stationary sources of air

pollutant emissions. This chapter provides criteria for determining the need to obtain an air construction or air operation permit. It establishes public notice requirements, reporting requirements, and requirements relating to estimating emission rates and using air quality models. This chapter also sets forth special provisions related to compliance monitoring, stack heights, circumvention of pollution control equipment, and excess emissions.

Rule 62-210.100, Florida Administrative Code.

143. Chapter 62-212, Florida Administrative Code, provides rules governing the preconstruction review of stationary sources of air pollution:

The Department of Environmental Protection adopts this chapter to establish the preconstruction review requirements for proposed new emissions units or facilities, and proposed modifications. The requirements of this chapter apply to those proposed pursuant to Chapter 62-210, F.A.C. This chapter includes general preconstruction review requirements and specific requirements for emissions units subject to prevention of significant deterioration (PSD) and nonattainment-area preconstruction review

Rule 62-212.100, Florida Administrative Code.

144. Reading the rules governing emission of pollutants into the air as a whole, it is clear that the Department did not intend to also require compliance of the rules governing discharges into the waters. This conclusion is consistent with the Department's review of the permit application in this case and the Department's prior practices in reviewing permit applications.

H. The Rules Governing Permits to Discharge Pollutants Into the Waters.

145. The rules governing the protection of Florida's waters begin at Chapter 62-301, Florida Administrative Code. Chapter 62-301, Florida Administrative Code, defines the "surface waters of the state." Chapter 62-302, Florida Statutes, establishes "surface water quality standards" that apply to the surface waters of the state. Those rules deal with facilities that will "discharge" pollutants into the waters of the state.

146. Reading the rules governing water quality as a whole, it is clear that the Department did not intend to apply the rules governing discharges into the waters of the state to facilities that will emit pollutants into the atmosphere which will eventually end up in the waters of the state. This conclusion is consistent with the Department's review of the permit application in this case and the Department's prior practices in reviewing permit applications.

I. The Permit Sought By Suwannee American; Suwannee American's Compliance with Air Emission Standards.

147. Suwannee American's Proposed Plant will emit pollutants into the atmosphere. Therefore, Suwannee American was required to obtain an air construction permit.

148. The issuance of air construction permits is governed by Rule 62-212.400, Florida Administrative Code, which provides, in part:

62-212.400 Prevention of Significant Deterioration (PSD).

The provisions of this rule generally apply to the construction or modification of air pollutant emitting facilities, in those parts of the state in which the state ambient air quality standards are being met.

The provisions of this rule also establish various requirements for existing emissions units and facilities in such areas, including specific construction/operation permit requirements.

(1) General Prohibitions.

(a) Except as provided in Rule 62-212.500, F.A.C., the Department shall not permit the construction or modification any emissions unit or facility that would cause or contribute to a violation of any ambient air quality standard.

* * *

(2) Applicability. This subsection establishes the criteria for determining whether or not a proposed new facility or modification to a facility is subject to the preconstruction review requirements of this rule, either in whole or in part. The preconstruction review requirements of this rule include the applicable provisions of: Rules 62-212.400(4), F.A.C., General Provisions; 62-212.400(5), F.A.C., Preconstruction Review Requirements; 62-212.400(6), F.A.C., Best Available Control Technology (BACT); and 62-212.400(7), F.A.C., Construction/Operation Permit Requirements; all as modified by the applicable provisions of Rule 62-212.400(3), F.A.C., Exemptions and Exclusions. A proposed new facility or modification that is not subject to the preconstruction review requirements of this rule, either in whole or in part, may be subject to review requirements under other rules of this chapter.

* * *

149. The parties stipulated and the evidence in this case supported the following conclusion of law:

. . . [Suwannee American] has provided reasonable assurance that the proposed facility will comply with all applicable requirements including all applicable air quality rules, except as to those requirements related to water quality standards

J. Suwannee American was not Required to Comply with Rules Governing the Discharge of Pollutants into the Waters of the State.

150. In light of the specific direction of the Act that the Department adopt by rule all requirements which an applicant must meet in order to obtain a permit to pollute the air or waters of the State and, more importantly, the manner in which the Department has adopted and applied those rules, Suwannee American was not required to comply with any rule governing the pollution of the waters in this case.

151. While the Department may have the statutory authority to impose such a requirement, it must do so by rule or by a policy of the Department fully explained and supported at hearing. See Section 120.57(1)(e), Florida Statutes. The Department has done neither. When the Department initially reviewed Suwannee American's application in this case, the policy now argued by counsel for the Department was not followed. That policy was not even asserted as the position of the Department until raised by Petitioners in their challenge to the Department's proposed agency action. Therefore, rather than formulating agency policy and applying it in this case, the Department is asserting a policy which a citizen, the Petitioners, has insisted should be the policy of the Department.

152. The Department's rules, when read as a whole, indicate that an applicant for a permit to construct facilities which will emit pollutants into the atmosphere must only comply with those rules governing such emissions and any other provision of the Act or rules that specifically deal with such activities. The Departments' rules also indicate, when read as a whole, that an applicant for a permit to construct facilities which will discharge pollutants into the waters must only comply with those rules governing such discharges.

153. The Conclusions of Law reached by Judge Hood in the Recommended Order of Dismissal previously entered in this case and not ruled upon by the Department are hereby accepted and incorporated into this Recommended Order by reference.

154. Based upon the conclusion that Suwannee American is only required to comply with the rules governing air quality standards, Suwannee American has proved that it is entitled to the issuance of the air construction permit at issue in this case.

155. Despite the foregoing conclusion, in light of the position take by counsel for the Department in this proceeding, Petitioners' assertion that the Draft Permit should not be issued because mercury emissions from the Proposed Plant will violate water quality standards will be addressed. Petitioners' assertions will be addressed even though it may be within the authority of this forum to make the ultimate decision on this issue. See Section 120.57(1), Florida Statutes.

K. Impacts of Mercury Emissions on OFWs.

156. Petitioners have argued that the Proposed Plant will violate Rule 62-4.242(2) (a), Florida Administrative Code:

(a) No Department permit or water quality certification shall be issued for any proposed activity or discharge within an Outstanding Florida Waters, or which significantly degrades, either alone or in combination with other stationary installations, any Outstanding Florida Waters, unless the applicant affirmatively demonstrates that:

2. The proposed activity or discharge is clearly in the public interest, and either

a. A Department permit for the activity has been issued or an application for such permit was complete on the effective date of the Outstanding Water designation; or

b. The existing ambient water quality within Outstanding Florida Waters will not be lowered as a result of the proposed activity or discharge, except on a temporary basis during construction for a period of not to exceed thirty days; lowered water quality would occur only within a restricted mixing zone approved by the Department; and, water quality criteria would not be violated outside the restricted mixing zone. . . .

157. The evidence in this case proved that no permit to discharge within an OFW is being sought in this case and that projected emissions from the Proposed Plant will not "significantly degrade" any OFW. See Environmental Confederation of Southwest Florida v. Cape Cave Corp., DOAH Case No. 83-2567. Therefore, Rule 62-4.242(2) (a)2, Florida Administrative Code, does not apply to this matter even if Suwannee American is required to comply with the Department's water quality rules.

158. If the Department rejects the foregoing conclusion, then Suwannee American was required to prove that the operation of the Proposed Plant will be "clearly in the public interest . . . " and that its permit application is either grandfathered or "existing ambient water quality" within the Three Rivers will not be lowered. Rule 62-4.242(2)(a)2.a. and b., Florida Administrative Code.

159. Suwannee American's application is not grandfathered because it was not filed before the designation of the Three Rivers as OFWs.

160. Rule 62-4.232(2)(c), Florida Administrative Code, defines the terms "existing ambient water quality" as follows:

(c) For the purpose of this section the term "existing ambient water quality" shall mean (based on the best scientific information available) the better water quality of either (1) that which could reasonably be expected to have existed for the baseline year of an Outstanding Florida Water designation or (2) that which existed during the year prior to the date of a permit application. It shall include daily, seasonal, and other cyclic fluctuations, taking into consideration the effects of allowable discharges for which Department permits were issued or applications for such permits were filed and complete on the effective date of designation.

161. Suwannee American proved that its Proposed Plant will not lower the existing ambient water quality of the Three Rivers.

162. Suwannee American, however, failed to prove that the Proposed Plant will be clearly in the public interest.

163. Petitioners have also asserted that the Proposed Plant will violate Rule 62-302.700, Florida Administrative Code:

(1) It shall be the Department policy to afford the highest protection to Outstanding Florida Waters and Outstanding National Resource Waters. No degradation of water quality, other than that allowed in Rule 62-4.242(2) and (3), F.A.C., is to be permitted in Outstanding Florida Waters and Outstanding National Resource Waters, respectively, notwithstanding any other Department rules that allow water quality lowering.

164. As concluded, supra, the Proposed Plant will not violate Rule 62-4.242, Florida Administrative Code. Therefore, the Proposed Plant will not violate Rule 62-302.700, Florida Administrative Code.

L. Impacts of Mercury Emissions on the Designated Use of Class III Florida Waters.

165. The Three Rivers are classified as Class III waters. The designated use for Class III waters is established by Rule 62-302.400(1), Florida Administrative Code:

Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife.

See also Rule 62-302.400(10), Florida Administrative Code.

166. Rule 62-302.300(14), Florida Administrative Code, provides the following concerning the protection of water bodies:

(14) Existing uses and the level of water quality necessary to protect the existing uses shall be fully maintained and protected. Such uses may be different or more extensive than the designated use.

167. The evidence in this case proved that the existing uses of the Three Rivers and the level of water quality necessary to protect those uses will be maintained and protected even if the Proposed Plant is permitted.

168. Rule 62-302.300(15), Florida Administrative Code, provides the following concerning the protection of water bodies:

(15) Pollution which causes or contributes to new violations of water quality standards or to continuation of existing violations is harmful to the waters of this State and shall not be allowed. Waters having water quality below the criteria established for them shall be protected and enhanced. However, the Department shall not strive to abate natural conditions.

169. The evidence proved that the Proposed Plant will not cause or contribute to a new violation of water quality standards applicable to the Three Rivers. The evidence also proved that there is no existing violation of water quality standards applicable to the Three Rivers. Therefore, the Proposed Plant will not cause a continuation of an existing violation.

170. Rule 62-302.300(16), Florida Administrative Code, provides the following concerning the protection of water bodies:

(16) If the Department finds that a new or existing discharge will reduce the quality of the receiving waters below the classification established for them or violate any Department rule or standard, it shall refuse to permit the discharge.

171. The evidence proved that there will be no "discharge" from the Proposed Plant. Furthermore, the evidence proved that the Proposed Plant will do nothing to reduce the quality of the Three Rivers below their Class III classification.

172. The evidence in this case proved that the emissions of mercury from the Proposed Plant will not be detectable. As a consequence, Suwannee American has given reasonable assurance that the Proposed Plant will not violate the surface water classification of the Three Rivers.

M. Impacts of Mercury Emissions on Minimum Criteria for Surface Waters; Will Mercury Emissions Pose a Serious Danger to the Public Health, Safety, and Welfare.

173. The parties have stipulated that Suwannee American has provided "reasonable assurances that the proposed facility will not cause any violation of the numeric water quality standard for mercury in Rule 62-302.530(42), Fla. Admin. Code."

174. Petitioners have argued, however, that mercury emissions will violate Rule 62-302.500(1)(a)6, Florida Administrative Code, which provides:

(1) Minimum Criteria. All surface waters of the States shall at all places and at all times be free from:

(a) Domestic, industrial, agricultural, or other man-induced non-thermal components of discharges which, alone or in combination with other substances or in combination with other components of discharges (whether thermal or non-thermal):

.
6. Pose a serious danger to the public health, safety, or welfare.


175. The evidence proved that the amount of mercury emitted from the Proposed Plant that will impact the waters of the State will not be detectable. Therefore, Suwannee American has given reasonable assurances that the Proposed Plant will not pose a serious danger to the public health, safety, or welfare.

RECOMMENDATION

Based on the foregoing Findings of Fact, and Conclusions of Law, it is

RECOMMENDED that a final order be entered by the Department of Environmental Protection granting Suwannee American Cement Company, Inc.'s application for an air construction permit subject to the terms and conditions of the Draft Permit, amended to reflect the applicant's agreement that mercury emissions from the Proposed Plant will be limited to 97 pounds per consecutive 10-month period.

DONE AND ENTERED this 5th day of April, 2000, in Tallahassee, Leon County, Florida.


LARRY J. MARTIN
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of April, 2000.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.

DIVISION OF ADMINISTRATIVE HEARINGS

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

Petitioners,

DOAH Case No. 99-3096
OGC Case No. 99-1116

vs.

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

Respondents.

**PETITIONERS' NOTICE OF TAKING DEPOSITION DUCES TECUM
OF JOSEPH KAHN, P.E.**

PLEASE TAKE NOTICE that the undersigned attorney will take the deposition of
JOSEPH KAHN, P.E. upon oral examination before a court reporter authorized by law to take
depositions at:

the offices of
Accurate Stenotype Reporters, Inc.
100 Salem Court
Tallahassee, Florida 32301
(850) 878-2221

on **Friday, February 4, 2000, at 3:00 p.m.** and continuing until completed. The deposition is
being taken for the purpose of discovery, for use at trial, or both of the foregoing, or for such
other purposes as authorized by law and the Florida Rules of Civil Procedure.

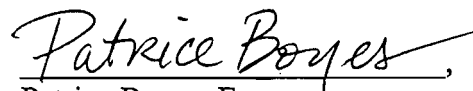
At the time that the deponent appears at the aforementioned date and time he shall have
with him the following:

1. Current resume or curriculum vitae, including a publication list.

2. All documents, memos, worksheets and maps relating to the analysis of possible mercury impacts from the proposed facility.
3. All documents, memos, worksheets, data and/or maps you have reviewed or relied upon since the November 1999 issuance of the Department's Notice of Intent to Issue an air permit to Suwannee American Cement Co., Inc.

Respectfully Submitted,

BOYES & ASSOCIATES, P.A.



Patrice Boyes, Esq.

Attorney for Petitioners

Fla. Bar No. 892520

P.O. Box 1424

Gainesville, Florida 32602-1424, or

602 S. Main Street

Gainesville, Florida 32601

Ph: (352) 372-2684

Fax: (352) 375-8306

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Notice of Taking Deposition Duces Tecum** was furnished by facsimile and U.S. Mail on this 28th day of January 2000, to:

W. Robert Vezina, III, Esq.,
Mary M. Piccard, Esq.
Vezina, Lawrence & Piscitelli, P.A.
318 North Calhoun Street
Tallahassee, Florida 32301

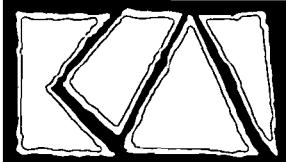
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GAINESVILLE, FLORIDA 32609
352/377-5822 ■ FAX/377-7158

KA 624-98-01

January 21, 2000

RECEIVED

JAN 24 2000

BUREAU OF AIR REGULATION

Mr. A. A. Linero
Florida Department of
Environmental Protection
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Subject: Suwannee American Cement Company, Inc.
Permit 1210465-001-AC, PSD-FL-259
Comment on EPA Letter Dated December 23, 1999

Dear Al:

For the record, I would like to comment on the letter you received from Doug Neeley of EPA, Region 4 dated December 23, 1999, related to mercury emissions from the Suwannee American Cement Company plant. In that letter, EPA comments on the condition in the referenced permit that limits the mass of mercury entering the cement plant pyroprocessing system to 184 pounds per year. The statement is made by EPA that this limit seems to be derived from an AP-42 emission factor for a kiln using an electrostatic precipitator for particulate matter control.

As you know, information we provided the Department on February 25, 1999, included three estimates of mercury emissions; one based on the estimated mercury contents of feed materials and fuel, one based on measured mercury emissions from 15 Portland cement plants, and one based on an AP-42 emission factor. The estimate based on the AP-42 factor resulted in the emission rate of 184 pounds of mercury per year; the higher of the three estimates. All three estimates however demonstrated that the mercury emissions from the Suwannee American plant would be less than 200 pounds per year, an emission rate that would not be significant (as defined by PSD regulations). As a result of that demonstration, the Department, by permit condition, limited the amount of mercury entering the pyroprocessing system to 184 pounds per year. This limit provided assurance that mercury emissions from the plant would not exceed 200

pounds per year, assuming all of the mercury entering the pyroprocessing system is emitted to the atmosphere.

As EPA surmised in their December 23, 1999, letter, the 184 pounds per year mercury estimate was based on the AP-42 emission factor for kilns with particulate matter controlled by an electrostatic precipitator. EPA goes on to state that since particulate matter emissions from the pyroprocessing system will now be controlled by baghouse, the permit should limit the mercury emissions from the plant to approximately 20 pounds per year; the emission rate calculated using the AP-42 mercury emission factor for kilns with particulate matter emissions controlled by baghouse.

A review of the references cited in AP-42 for the mercury emission factors for Portland cement plants indicates that the mercury emission factor for kilns with electrostatic precipitators is based on one test possibly covering two kilns at the same plant site and the mercury emission factor for kilns with fabric filters is based on tests at only two plant sites.

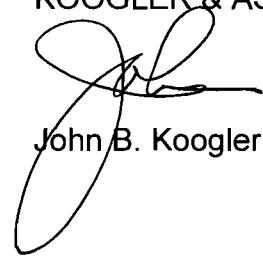
If one considers the chemistry of mercury in the pyroprocessing system of a modern preheater, precalciner cement plant (with no cement kiln dust waste), it is reasonable to expect that virtually all of the mercury that is input to the system will be discharged to the atmosphere. This holds true regardless of the particulate matter control device; i.e., an electrostatic precipitator or a fabric filter (baghouse). The fact that AP-42 shows such widely differing mercury emission factors for kilns with precipitators and baghouses is in all likelihood a function of the variability in the mercury input to the three or four kilns for which data were available and not a function of the control devices.

At present, Suwannee American has agreed to a permit condition that will limit mercury emissions (mercury input into the plant assuming all of the mercury is released to the atmosphere) to 184 pounds per year. Further, and as a permit condition, the company has agreed to a feed material and fuel monitoring plan to demonstrate that this limit will not be exceeded. To revise this limit based on only three or four comparative tests at plants of unknown design, with unknown operating conditions and with unknown feed and fuel characteristics is not warranted considering the chemistry of mercury in cement plant pyroprocessing systems, considering mercury emission data from a much broader base of plants and considering the fact that the mercury emissions are already less than significant in regulatory terms.

If there are any questions regarding these comments, please do not hesitate to contact me at 352-377-5822.

Very truly yours,

KOOGLER & ASSOCIATES



John B. Koogler, Ph.D., P.E.

JBK:wa

- C: Mr. Joe Kahn, FDEP ✓
Mr. Fred Koester, Suwannee American
Mr. Chuck Yagel, Suwannee American
Mr. Frank Darabi, Darabi & Associates
Mr. Larry Sellers, Holland & Knight

EPA
NPS
NED -
J. Chiselm, OGC



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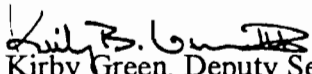
JAN 12 2000

BUREAU OF AIR REGULATION

January 3, 2000

Clair - FFI
Handed out @
staff meeting
Howard
1/10

TO: District / Division Directors

FROM: 
Kirby Green, Deputy Secretary

RE: Anderson Columbia's Environmental Management System

On January 3, 2000, the Department agreed to accept the Anderson Columbia proposal for their environmental management system. Their plan updated December 23, 1999, met the requirements that were set forth in our settlement agreement. Their plan has become effective and the Department shall consider its implementation plan as reasonable assurance that Anderson Columbia will uphold Department standards and rules.

We have received your comments regarding the proposal and have worked to incorporate some of the more obvious changes. Issues regarding employee training and education, housekeeping procedures, quarterly inspections, and environmental self-audits have been provided in more detail in their December 23 proposal. Most of the comments received cited the generality and vagueness of the proposal; specific requirements will be developed during the permit process, and site specific BMP's will be developed at each facility.

The department should view this document as a work in progress and it has been explained to Anderson Columbia that changes in their management system should be made as the need arises. If you or your staff should discover changes that are needed please bring it to my attention for discussion.

KBG/cf

INTEROFFICE MEMORANDUM

Sensitivity: COMPANY CONFIDENTIAL

Date: 03-Jan-2000 08:09am

From: Melissa Meeker WPB 561/681-666
MEEKER_M@a1.depwpb.dep.state.fl.us

Dept:

Tel No:

To: See Below

Subject: Comments on Anderson Columbia policy

The following summarizes our comments on the proposal from AC. If you have any questions, please call.

We agree with Mimi that this proposal is lacking in substance. It may be appropriate for a "company policy" but it does not address the execution of the program. Hopefully the following will clarify what else we feel is needed.

There are probably two levels of training required, an advanced training for key plant personnel who are responsible for specific operations and a basic training for other employees. Although cross training is important and should be considered, each employee's training should focus on BMPs and SOPs that directly relate to the specific task they perform and should include instructions on handling all situations that could occur during the operation of their task.

An org chart should be supplied that identifies the general environmental responsibility of each individuals and the main point of contact for emergencies. A contingency plan, similar to what exists for RCRA, would be a good idea.

Key employees should be trained on ALL regulatory requirements, not just what the permit requires. This would include requirements for notification of releases or discharges, appropriate spill response procedures, and safety requirements.

Documentation of the training sessions should be required and should include, as an appendix, the specific material used in the training.

It would be appropriate to have a Standard Operating Procedure for each task identified in the policy and one for document tracking. The SOP should be site specific to address the needs of each facility.

There doesn't seem to be a way to identify and correct individual instances of noncompliance. A Preventive/Corrective Action procedure should be developed so that identified problems get promptly reported to someone who can fix them (not get reported on a form to be looked at a month later). How are violations reported to DEP? There isn't a definition of the individuals responsible for reporting violations.

Employees should be educated as to their "Whistle Blower Act" rights as part of the overall training.

A copy of the permit with conditions should be kept in an easily accessible locations for all employees to view at all times.

Data Sheet comments:

- 1) Daily production form for asphalt plants - place to mark visible emissions (other than is allowed out of the stack), i.e., around the dryer/drum mixer or from cracks. Any of these would require corrective action.
- 2) Type and % of asphaltic product should be identified daily. Some types are more of a compliance problem than others.
- 3) Type of fuel(s) received and used should be identified on the appropriate forms (could modify form provided).

Depending on the controls required by the permit for the crusher, one or more of the above checks may be needed on the appropriate forms for these units.

Distribution:

To:	Kirby Green TAL	(GREEN_K@a1)
CC:	Bobbie Rednour TAL	(REDNOUR_B@a1)
CC:	Chris Flack TAL	(FLACK_C@a1)
CC:	John Moulton WPB	(MOULTON_J@a1.depwpb.dep.state.fl.us)
CC:	Mary C. Murphy WPB	(MURPHY_MC@a1.depwpb.dep.state.fl.us)
CC:	Isidore Goldman WPB	(GOLDMAN_I@a1.depwpb.dep.state.fl.us)
CC:	Jose Calas WPB	(CALAS_J@a1.depwpb.dep.state.fl.us)
CC:	Carolyn Ansay WPB	(ANSAY_C@a1.depwpb.dep.state.fl.us)
CC:	Gary Roderick PSL	(RODERICK_G@a1.depwpb.dep.state.fl.us)

INTEROFFICE MEMORANDUM

Date: 29-Dec-1999 09:20am
From: Richard Burns ORL 407/893-2353
BURNS_R@a1.depor1.dep.state.fl.us
Dept:
Tel No:

Subject: Anderson Columbia's Environmental Training and Management Plan

Anderson Columbia's (AC) proposal for employee training and environmental management falls far short of the mark. As written, the proposal lacks the details and specifics essential to a viable Environmental Management System (EMS)

A number of examples of excellent general and industry specific EMSs can be found on Environmental Websites (e.g. EPA Home Page and search for EMS). Additionally, TREEO et alia have expertise in the development and implementation of EMS plans. AC should review these references and/or hire a consultant to develop a comprehensive EMS, that would include employee environmental training modules. In conjunction with the implementation of an EMS, AC should be encouraged to pursue ISO 14000 certification.

Providing the Department pertinent audit information in accordance with DEP Directive 922 is a positive feature of the proposal that should be incorporated in an AC EMS, but should be expanded to include the sharing (with regulatory agencies) of all EMS or ISO 14000 Audit results.

INTEROFFICE MEMORANDUM

Sensitivity: COMPANY CONFIDENTIAL

Date: 29-Dec-1999 02:14pm
From: CeCe Featheringill TPA 813/744
FEATHERING_C@a1.deptpa.dep.state.fl.us

Dept:
Tel No:

To: Chris Flack TAL (FLACK_C@a1)
CC: Deborah Getzoff TPA (GETZOFF_D@a1.deptpa.dep.state.fl.us)
CC: James Cleary TPA (CLEARY_J@a1.deptpa.dep.state.fl.us)

Subject: Anderson Columbia Environmental Philosophy

The Southwest District has made an initial review of the documents you provided to us regarding Anderson Columbia's Internal Employee Education Program and Environmental Management System proposed plan. The plan appears minimal in content, at best, and is very vague regarding what their strategic issues and goals are. They have no real measurements of success and do not even mention Executive Management involvement regarding the implementation, reason for and need to adhere to this new environmental management system.

We are assuming that the quarterly inspection form that Anderson Columbia has proposed for use by their Environmental Coordinators will be reviewed by DEP field staff familiar with the facilities in question and address past noncompliance issues. The form seems too brief and generic.

EPA has some great information called Design for the Environment. DfE's goal is to assist businesses in incorporating environmental considerations into the creation of their products. The web address is <http://www.epa.gov/opptintr/dfe/>. In addition, if Anderson Columbia is committed to implementing these changes, it may be in their best interest to investigate the possibility of adopting ISO (International Organization for Standardization) practices. This could benefit Anderson Columbia from a business sense by providing safeguards for consumers regarding their products as well as providing the products in a more efficient, safer and cleaner manner. Information on ISO Standards can be found at <http://www.iso.ch/>. Perhaps this type of information would be helpful to Anderson Columbia in revising their plan.

Thanks for the opportunity to comment.

INTEROFFICE MEMORANDUM

Sensitivity: COMPANY CONFIDENTIAL

Date: 27-Dec-1999 03:26pm
From: Mimi Drew TAL 850/487-1855
DREW_M@a1.epic1.dep.state.fl.us
Dept:
Tel No:

To: See Below

Subject: Re: Anderson Columbia's Environmental Philosophy

My quick review of this proposal doesn't convince me that this is going to accomplish anything. If this is meant to be a serious training tool for staff, it is far too brief and general to accomplish anything. If it's meant to be more of a philosophy, the very first page should state the company's philosophy and explain that they take environmental issues seriously and discuss consequences if the guidelines aren't followed.

It's very important that the company develop specific management practices for the types of sites on which they work. It's not enough to just say that good management practices will be followed. And it's also important that the employees understand the practices and the reason why they are to be implemented.

I'm sure some company out there has a better model to use if Anderson can't come up with something more detailed. Or a consultant might help, for that matter.

Distribution:

To:	Chris Flack TAL 850/488-2916	(FLACK_C@a1)
To:	John Ruddell TAL	(RUDDLEL_J@a1.epic1.dep.state.fl.us)
To:	Howard Rhodes TAL	(RHODES_H@a1.epic1.dep.state.fl.us)
To:	Vivian Garfein ORL	(GARFEIN_V@a1.depor1.dep.state.fl.us)
To:	Ernest Frey JAX	(FREY_E@a1.depjax.dep.state.fl.us)
To:	Bobby A. Cooley PEN	(COOLEY_B@a1.deppns.dep.state.fl.us)
To:	Richard Cantrell FTM	(CANTRELL_R@a1.depftm.dep.state.fl.us)
To:	Deborah Getzoff TPA	(GETZOFF_D@a1.deptpa.dep.state.fl.us)
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CC:	Bobbie Rednour TAL	(REDNOUR_B@a1)
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CC:	Debbie Cobb TAL	(COBB_D@a1.epic1.dep.state.fl.us)
CC:	Stephanie Lalonde ORL	(LALONDE_S@a1.depor1.dep.state.fl.us)
CC:	Susan Brice PEN	(BRICE_S@a1.deppns.dep.state.fl.us)

INTEROFFICE MEMORANDUM

Sensitivity: COMPANY CONFIDENTIAL

Date: 27-Dec-1999 02:35pm
From: Jon Iglehart FTM 941/332-6975
Jon.Iglehart@dep.state.fl.us
Dept:
Tel No:

To: Chris Flack TAL (Chris.Flack@dep.state.fl.us)

Subject: Anderson Columbia's Environmental Philosophy

Chris,

Rick Cantrell is out for the week, so I will respond for the office.

Overall the general sense of responsibility and checks for same appear appropriate. Our comments on the document are as follows:

The document does not assign responsibility for actions conducted by non-permanent workers.

The disposition of the daily logs is not clear. Submittal to the Department could create a large file of little value.

Disposition of the quaterly reviews is not clear. These perhaps should be submitted with a summary of the daily logs.

A copy of the company's employee directives should be attached to ensure the repercussions for failure to follow the company's environmental philosophy can be implemented.

The term "Quarterly inspections" denotes a sense that these inspections would be scheduled. Bringing each facility into strict compliance every three months for an internal inspection is commendable. However, a truer picture of the status quo could be achieved by an additional two or three unscheduled inhouse inspections annually. This could help to avert misunderstandings if the company's regular inspections and an unscheduled Department inspection conflict.

Thank you for the opportunity to comment.

Jon

INTEROFFICE MEMORANDUM

Sensitivity: COMPANY CONFIDENTIAL

Date: 29-Dec-1999 01:48pm
From: Joseph Kahn TAL 850/921-9519
KAHN_J@a1.epic1.dep.state.fl.us
Dept:
Tel No:

To: Chris Flack TAL (FLACK_C@a1)
CC: Clair Fancy TAL (FANCY_C@a1.epic1.dep.state.fl.us)

Subject: Anderson Environmental Education Program

Chris,

Clair and I looked over the information that you faxed to him and he asked me to send you our comments. Overall, this is more than we have required of most other permittees, so it represents somewhat of a new approach.

We noted that the inspection forms titled "Monthly Inspection Form" are referred to as "Quarterly Inspection Forms" on the attachments page and text, so this is inconsistent. Also, the inspection forms do not have any specific reference to air pollution sources. Since many of Anderson's facilities have air permits, it would be appropriate for the environmental coordinators to note compliance with the air permit conditions at each facility during their inspections. At a minimum, the forms should have a section to verify if visible emissions are noted from emissions units and fugitive sources.

The forms would also not be sufficient for any but the most basic material handling processes at the proposed Suwannee American Cement plant. This isn't a significant problem but we wanted to point this out. The processes and air pollution control equipment for the cement plant are much more extensive and complex than at any other source operated by the Anderson companies. Also, the regulatory requirements for the cement plant will be very complex. I imagine that a specific environmental plan will have to be developed for the plant by the applicant's air pollution consultant and the plant manufacturer, and it would be typical for a cement plant operator to have one person at the site that is primarily responsible for environmental compliance. At any rate, if the environmental management program is intended to cover the proposed cement plant, it will not be sufficient for that operation.

Please reply or call me at 921-9519 if you have any questions.

-Joe Kahn

**INTERNAL EMPLOYEE EDUCATION PROGRAM
AND
ENVIRONMENTAL MANAGEMENT SYSTEM**

A. INTERNAL EMPLOYEE EDUCATION PROGRAM

1. Notification of Permit Requirements.

The Company's Environmental Coordinator informs all employees at each facility about specific permit requirements prior to operation of a new facility or the relocation and/or renewal of a permit for an existing facility. The Environmental Coordinator conducts quarterly visits to the facilities to ensure permit requirements are met and to emphasize the importance of environmental compliance.

2. Training/Continuing Education.

a. Training/Education for New Employees.

The facility or plant manager provides each new employee at a permitted facility a copy of the Environmental Management System at the time of hire. The Environmental Coordinator or his designate interviews each new employee within 30 days of beginning work to ensure familiarity with and understanding of the employees responsibilities under the Environmental Management System. Every employee is made aware of the consequences of not abiding by the conditions of the permit, both on a company level and individually.

b. Training/Education for Existing Employees.

All permanent employees receive site-specific environmental training at least quarterly while working at a facility. This training is conducted prior to field activities at new sites and quarterly at existing sites. The importance of compliance with fundamental environmental issues (e.g. keeping the job site clean, preventing spillage of hydrocarbons, job site storage of petroleum/chemicals) is reinforced by the plant operator during weekly safety meeting. If isolated areas are observed that fail to meet the objectives, individual training with those employees is pursued. A training attendance log is kept on-site for verification of training. Training includes the following:

- Requirements of the permits: All employees are instructed as to what is required from the Company and how we are to achieve these requirements. The Company has incorporated a bound record keeping system, which is filled out by the Plant Operator daily. Included in these records are the requirements within the permit. A copy of this record attached.
- Good housekeeping procedures: General good housekeeping practices are emphasized, including prompt cleanup of any spilled or leaked material, proper storage of material, and appropriate disposal of trash and waste around the facility. Housekeeping and spill incidences (see below) are logged on our quarterly reporting form. Areas of concern are noted and discussed with the facility manager and responsible employees. Corrective actions are

INTERNAL EMPLOYEE EDUCATION PROGRAM
ENVIRONMENTAL MANAGEMENT SYSTEM

Page 2

formulated with a timeframe for resolution. Depending on the magnitude of the corrective action, a follow-up inspection may be performed the next day or during the next inspection.

- Spill response procedures: Contingency measures are discussed to ensure against accidental discharge. Areas of potential spillage, such as the fuel truck off-loading area, are discussed with emphasis placed on response measures and the reporting requirements if such a spill does occur.
- Regulatory Issues: Identification of changes in permits and regulatory laws are communicated promptly.

B. ENVIRONMENTAL MANAGEMENT SYSTEM

1. Environmental Philosophy.

We are committed to conducting business in a manner conducive to promoting the welfare of the environment. This commitment is consistent with our corporate objectives and is essential to sustainable business success. Our goal is to produce products and perform projects in an environmentally responsible manner. To achieve this goal, we have established the following environmental philosophy. All management employees are required to support this philosophy in accordance with their roles and responsibilities in the organization and to ensure that all employees understand and adhere to the philosophy.

- We design our product manufacturing facilities to meet all air and water regulations and maximize the use of recycled products to the extent possible while maintaining environmental quality and compliance.
- We conduct our operations in a manner that prevents pollution, conserves resources and proactively addresses past environmental problems.
- We integrate environmental management into our business and decision-making processes, and regularly measure our performance.
- We ensure our operations comply with environmental regulations and requirements.
- We provide clear and candid environmental information about our operations to regulatory bodies.
- We inform suppliers of our environmental requirements and encourage them to adopt sound environmental management practices.
- We foster environmental responsibility among our employees.
- We contribute constructively to environmental public policy.

Effective Date: December 1999

2. Environmental Coordinators.

Environmental Coordinators have been designated to oversee compliance with the environmental philosophy, permit conditions and education requirements of the Environmental Management System. The Environmental Coordinators are duly qualified by education, training or experience in performing the responsibilities set forth herein. Resumes for the Environmental Coordinator and the Assistant Environmental Coordinator are attached.

3. Quarterly Environmental Inspections of Field Operations.

Quarterly inspections are used to identify any potential problems with facility equipment or site improvements and to ensure the effectiveness of the training. The Environmental Coordinators conduct these inspections while the facility is in operation. Each stationary facility has a set of site-specific Best Management Procedures (BMP's) based upon the site's geographic and environmental characteristics. Inspections verify that the BMP's are followed and generally address the following areas:

- Material handling areas
- Aboveground storage tanks
- Asphalt plant including hoppers and baghouse.
- Stormwater controls
- Record keeping

The Environmental Coordinators inspect facilities on a quarterly basis to ensure the requirements of the permit are met and to assess the effectiveness of the training. Any deficiencies are discussed with the plant manager. At the end of each inspection, corrective actions for noted problems are discussed. A copy of the inspection form is left on-site for the Plant Operator. The implementation of each corrective action is reviewed during the next inspection to ensure that the problem has been resolved. A copy of the inspection forms is attached. Significant compliance issues are discussed with the FDEP to provide reasonable assurance that corrective actions have, or will be implemented.

4. Environmental Audit Program.

We adhere to an environmental audit program that is consistent with DEP directive No. 922. Audits. The audits will be performed quarterly as described above. Environmentally sensitive areas may be checked on a bi-weekly to monthly basis. No prior notice is given to the site personnel as to the time of the audit. Most audits will have supporting photographic documentation. The audits will entail issues detailed in the permits for the site, housekeeping, stormwater, air, etc. The audit is reviewed with the site supervisor and his/her signature is required to verify that the compliance issues and their resolutions are understood. A time frame for the corrective actions is given. Significant compliance issues are discussed with the FDEP, as required in the general conditions of the permit. During the next audit, corrective actions are reviewed to confirm compliance.

INTERNAL EMPLOYEE EDUCATION PROGRAM
ENVIRONMENTAL MANAGEMENT SYSTEM

Page 4

5. Statement of Employee Responsibility for Implementing Environmental Philosophy.

The Environmental Coordinators familiarize the facility managers at each regulated site with the contents of all applicable permits. These facility managers are responsible on a daily basis for ensuring that the terms of permits are met. All employees receive site-specific environmental training while working at a facility. Employees are informed that the consequences of failing to comply with the Environmental Philosophy will result in disciplinary action including possible termination of employment.

Effective Date: December 1999

Best Management Practices Plan (Example)

This example plan has been prepared to show our BMP's at a typical asphalt plant for Anderson Columbia Co., Inc. When implemented, this plan shall become part of the daily routine of the plant manager, or their representative, to ensure that the plant operations are environmentally sound.

Responsible Persons:

The plant operator is responsible for the implementation of this plan. Plan review and oversight is conducted by the Environmental Manager or his designee.

Housekeeping:

Required good housekeeping practices to be followed include prompt cleanup of any spilled or leaked material, proper storage of material and disposal of trash and waste around the site. Listed below are areas of special concern.

- Dumpster/Trash Cans – A dumpster and/or covered trash cans are provided for the disposal of trash. Sites are kept free of litter at all times.
- Secondary Containment – Spilled material outside or inside the containment area is cleaned up immediately. Sorbent material is kept on-site for use as necessary. Used sorbent is drummed for proper off-site disposal.
- Fueling Areas – Areas are checked daily for drips from fueling activities. Sorbent material is kept at this location. Bioremediation media "bacteria" is kept on-site to spray on spill areas.
- Vehicle/Equipment Parking – Any stained soil in these areas is promptly cleaned up.
- Drum Storage – All drums are stored in a drum storage area. Drum leaks are cleaned up immediately and the drum disposed of properly.
- Asphalt Plant – Particular attention is paid to the small containment areas below the small diesel tank at the end of the liquid asphalt tank. Sorbent or sorbent pads are used to remove any drips collecting here.

Best Management Practices, (Example)

Preventive Maintenance:

Daily inspections are made by the plant manager, or his representative, and are performed to identify any potential problems with facility equipment. Maintenance of the batch plant is performed according to manufacturers recommendations.

Spill Response:

All site personnel receive training in spill response procedures. This training includes identification of materials of concern, properties of these materials from MSDS's, their location, the predicted flow direction, cleanup procedures and the location of response equipment.

Material Handling and Storage Areas:

Daily inspections are made to confirm that fugitive emissions (dust from site) are not leaving the site. If fugitive emissions are a problem, wet the problem areas with a water truck. Confirm that the material storage piles are kept at least 10 to 20 feet from the property boundary.

Management of Runoff/Sediment and Erosion Control:

During rainfall events, the property boundaries are checked to confirm that no on-site stormwater exits the site. Berms and stormwater controls are checked monthly to ensure they are in operational order.

Inspections:

At least quarterly inspections of the facility are performed by the Company's Environmental Manager to ensure the effectiveness of the BMP's and to identify conditions with the potential to contribute pollutants to the environment. These inspections are conducted while the facility is in operation and will include the following areas:

- Materials handling and storage areas.
- Aboveground storage tanks.
- Batch plant including hoppers, silos and baghouses.

Training:

All employees receive quarterly BMP training. Training includes the following:

- Goals and objectives of the BMP's.

Best Management Practices, (Example)

- Good housekeeping procedures.
- Materials handling procedures.
- Spill response procedures.

Recordkeeping and Reporting:

Copies of the Inspection Reports are kept on-site in the facility control room.

BEST MANAGEMENT PRACTICE IDENTIFICATION

Purpose: Describe General Best Management Practices for the facility. An overview for each BMP is discussed below that are incorporated into facility operations.

BMP's	Brief Description of Activities
Good Housekeeping	Train staff in proper disposal of waste materials, cleanup procedures and proper materials labeling and storage. Promptly cleanup any spills. Report any leaks or faulty equipment at the fueling or liquid asphalt storage areas. Patrol facility yard and pick up garbage.
Preventive Maintenance	Properly maintain all facility equipment and systems. Inspect diesel fuel and liquid asphalt storage tanks for faulty equipment. Promptly repair or replace and defective equipment. Document all repairs..
Visual Inspections	Visually inspect the facility daily (when operational) to identify conditions which may contribute, or have the potential to contribute, to the contamination of storm water runoff or groundwater.
Spill Response and Response	Identify areas where spills/leaks are most likely to occur. Familiarize yourself with proper spill response equipment. Know where spill response call numbers are kept.
Sediment and Erosion Control – Management of Runoff.	Check site weekly to ensure that stormwater features are in good condition. During significant rainfall events, check to confirm that no stormwater runoff from site leaves property.
Site –Specific BMP's	

BEST MANAGEMENT PRACTICE IMPLEMENTATIONS CORRECTIVE ACTION SCHEDULE

Instruction: Provide a brief description of the steps necessary to implement the Corrective Actions, a schedule for completing these steps, and the personnel responsible for implementation.

BMP's	Description of Corrective Actions	Schedule for Completion	Responsible Personnel	Notes
Good Housekeeping	1)			
	2)			
	3)			
	4)			
Preventive Maintenance	1)			
	2)			
	3)			
	4)			
Visual inspections	1)			
	2)			
	3)			
	4)			
Spill Prevention and Response	1)			
	2)			
	3)			
	4)			
Sediment and Erosion Control	1)			
	2)			
	3)			
	4)			
Management of Runoff	1)			
	2)			
	3)			
	4)			
Miscellaneous or Site-Specific BMP's	1)			
	2)			
	3)			
	4)			

LIST OF SIGNIFICANT SPILLS AND LEAKS

Instructions: Record below all significant spills and leaks of petroleum products that have occurred at the facility.

Definition: Significant spills include, but are not limited to, release of oil or hazardous substances in excess of reportable quantities.

Date	Spill Leak (Check one)		Location (Mark on site map if available)	Description			Response	
				Material Type	Quantity	Source/Reason	Amount Recovered	Preventative Measures Taken

January 3, 2000

Mr. Joe Anderson
Anderson Columbia Co., Inc.
Post Office Box 1829
Lake City, Florida 32056

Dear Mr. Anderson:

The Department of Environmental Protection has received a copy of Anderson Columbia's Internal Education Program and Environmental Management System and reviewed it for content. The plan submitted and dated to become effective December 1999, with additional changes submitted December 23, 1999, meets the requirements set forth in our settlement agreement.

The Department approves the proposal and considers implementation of the plan as reasonable assurance that your corporation will resolve to uphold Department standards and rules. The Department also views this plan as a change in your corporate philosophy, expecting that the protection of the environment and the health and safety of the public, are issues that will surface in your corporate decision making. The Department views this proposal as a working document and would anticipate changes being made as needed.

We look forward to working closely with you in the future, feel free to contact my office for any help or information that you may need.

Sincerely,

Kirby B. Green, III
Deputy Secretary

KBG/cfr



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

DEC 23 1999

RECEIVED

DEC 29 1999

BUREAU OF AIR REGULATION

4 APT-ARB

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

SUBJ: Preliminary Determination and Draft PSD Permit for Suwanee American Cement
Company located in Branford, Florida (PSD-FL-259)

Dear Mr. Linero:

Thank you for sending the preliminary determination and draft prevention of significant deterioration (PSD) permit for Suwanee American Cement Company dated November 18, 1999. The draft PSD permit is for the construction of a dry process preheater/precalciner type portland cement plant. Total emissions from the proposed project are above the thresholds requiring PSD review for nitrogen oxides (NO_x), carbon monoxide (CO), sulfur dioxide (SO₂), volatile organic compounds (VOC) and particulate matter (PM/PM₁₀).

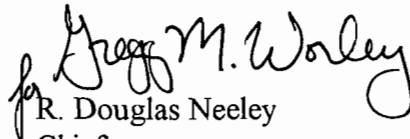
We have reviewed the preliminary determination and draft PSD permit for Suwanee American Cement and discussed the project with the Florida Department of Environmental Protection. Please consider the following comment as you develop a final permit for the project.

Section III, Condition 13 sets a limit on the mass of mercury compounds entering the system at 184 pounds per consecutive 12 months. This limit seems to be derived from the emission calculations in section 13 of the permit application addendum dated February 1999. The emission calculation used an AP-42 emission factor assuming the kiln would utilize an electrostatic precipitator. Since the kiln will now use a baghouse to control emissions, we suggest updating the emissions calculation to reflect the use of the correct emission factor. Our calculations estimate emissions at approximately 20 pounds of mercury per year. We suggest that Condition 13 be changed to reflect this reduction in mercury emissions and to impose an emission limit instead of a mass input limit.

3

Thank you for the opportunity to comment on the Suwanee American Cement Company's preliminary determination and draft PSD permit. If you have any questions regarding these comments, please direct them to either Katy Forney at 404-562-9130 or Jim Little at 404-562-9118.

Sincerely,



R. Douglas Neeley
Chief

Air and Radiation Technology Branch
Air, Pesticides and Toxics
Management Division

cc: F. Koester, SAC Co
Koester & Assoc
NPS
NED
J. Kahn, BAR

J. Chisolm, OGC
L. Sellers, HEK



facsimile TRANSMITTAL

Mississippi, Tennessee, Alabama, Georgia, Florida, Kentucky, South Carolina, North Carolina

To: Joe Kahn
FDEP

Fax #: 850-922-6979

Subject: Suwanee American Cement Co.

From: Kathy Freney
Date: 12-23-99

Phone#: 404-562-9130

Pages: 3, including this cover sheet.

COMMENTS:

EPA United States Environmental Protection Agency
Air & Radiation Technology Branch
U.S. Environmental Protection Agency
61 Forsyth Street, SW, 12th Floor
Atlanta, Georgia 30303
404-562-9105
Fax: 404-562-9086



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

DEC 23 1999

4 APT-ARB

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

SUBJ: Preliminary Determination and Draft PSD Permit for Suwanee American Cement Company located in Branford, Florida (PSD-FL-259)

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We have reviewed the preliminary determination and draft PSD permit for Suwanee American Cement and discussed the project with the Florida Department of Environmental Protection. Please consider the following comment as you develop a final permit for the project.

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Thank you for the opportunity to comment on the Suwanee American Cement Company's preliminary determination and draft PSD permit. If you have any questions regarding these comments, please direct them to either Katy Forney at 404-562-9130 or Jim Little at 404-562-9118.

Sincerely,


for R. Douglas Neeley

Chief

Air and Radiation Technology Branch

Air, Pesticides and Toxics

Management Division



Department of Environmental Protection

FILE

Jeb Bush
Governor

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

David B. Struhs
Secretary

November 18, 1999

Fred W. Koester, President
Suwannee American Cement Company, Inc.
PO Box 410
Branford, Florida 32008

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

Dear Mr. Koester:

Enclosed is one copy of the draft air construction permit for the Suwannee American Cement Company, Inc.'s Branford Plant located at US Highway 27 at County Road 49, Suwannee County. The Technical Evaluation and Preliminary Determination and the Public Notice of Intent to Issue Air Construction Permit are also included.

The Public Notice of Intent to Issue Air Construction Permit must be published one time only in each of the following newspapers: Branford News, Suwannee Democrat, and the Gainesville Sun. Proof of publication, i.e., newspaper affidavit, must be provided to the Department's Bureau of Air Regulation office within seven days of publication.

Please submit any written comments you wish to have considered concerning the Department's proposed action to Department's Office of the Ombudsman at 3900 Commonwealth Boulevard, Mail Station #49, Tallahassee, FL 32399-3000, phone 850/921-1222. Comments by electronic mail may be directed to the Office of Ombudsman by completing the form at the Department's Internet site at the following address: <http://www.dep.state.fl.us/officsec/ombud/comment.htm>.

Sincerely,

David B. Struhs
Secretary

DBS/jk

Enclosures

In the Matter of an Application for Permit by:
Fred W. Koester, President, Suwannee American Cement Company, Inc.
Branford Plant
DEP File No. 1210465-001-AC, PSD-FL-259
Page 2 of 2

CERTIFICATE OF SERVICE

The undersigned duly designated deputy agency clerk hereby certifies that this Public Notice of Intent to Issue Air Construction Permit was received at the Bureau of Air Regulation offices (by persons designated by *) and copies were mailed by U.S. Mail before the close of business on 11/19/99 to the person(s) listed:

Mr. Larry Sellers *
Mr. Fred W. Koester
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
Ms. December McSherry
Mr. Svenn Lindskold
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
Mr. Craig Pittman, St. Petersburg Times

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.

Mary L. Wilson 11-19-99
Deputy (Clerk) (Date)

PUBLIC NOTICE OF INTENT TO ISSUE AIR CONSTRUCTION PERMIT

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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

Suwannee American Cement Company, Inc.
Branford Plant
Suwannee County

The Department of Environmental Protection (Department) gives notice of its determination to change its litigation position in DOAH case number 99-3095 to propose an intent to issue an air construction permit pursuant to the Rules for the Prevention of Significant Deterioration of Air Quality (PSD) to Suwannee American Cement Company, Inc., to construct a new dry process, preheater/precalciner type portland cement plant located at US Highway 27 at County Road 49, Suwannee County. The applicant's mailing address is: PO Box 410, Branford, Florida 32008. A Best Available Control Technology (BACT) determination was required pursuant to Rule 62-212.400, F.A.C., for particulate matter (PM and PM₁₀), sulfur dioxide (SO₂), nitrogen oxides (NO_x), carbon monoxide (CO), and volatile organic compounds (VOC) pursuant to Rule 62-212.400, F.A.C., Prevention of Significant Deterioration (PSD). Emissions of mercury are limited by the permit. Dioxin emissions are limited by federal rule.

The Department intends to issue this air construction permit based on the belief that reasonable assurances have been provided to indicate that operation of these emission units will not adversely impact air quality, and the emission units will comply with all appropriate provisions of Chapters 62-4, 62-204, 62-210, 62-212, 62-296, and 62-297, F.A.C.

Particulate matter emissions from the in-line kiln/raw mill will be controlled by a baghouse and particulate matter emissions from the clinker cooler will be controlled by an electrostatic precipitator. Particulate matter emissions from other sources will be controlled by baghouses. Sulfur dioxide emissions are limited by process design and control. NO_x emissions will be controlled by multistage combustion. Carbon monoxide and VOC emissions will be limited by combustion process control. Fuels will be limited to natural gas, coal, petroleum coke, whole tires and tire derived fuel.

Total emissions of the following pollutants shall not exceed the following annual emission rates in tons per year: PM, 226.0; PM₁₀, 193.3; SO₂, 113.4; CO, 1511.1; and VOC, 50.4. Emissions of NO_x shall not exceed 1595.4 tons per year for the first year of operation and thereafter shall not exceed 1217.5 tons per year. Emissions of mercury shall not exceed 184 pounds per year. Emissions of dioxin shall not exceed 0.002 pounds per year.

An air quality impact analysis was conducted. Emissions from the facility will consume PSD increment but will not significantly contribute to or cause a violation of any state or federal ambient air quality standards. The project's impact was evaluated for the pollutants PM₁₀, SO₂ and NO_x for the following PSD Class I areas: Chassahowitzka, St. Marks, Bradwell Bay, and Okefenokee. No significant impacts from these pollutants were predicted for these areas. The project's impact was evaluated for the pollutants PM₁₀, SO₂ and NO_x in the PSD Class II area in the vicinity of the facility. No significant impact was predicted from SO₂ emissions. The maximum predicted PSD Class II PM₁₀, and NO_x increments consumed by all sources in the area, including this project, will be as follows:

NOTICE TO BE PUBLISHED IN THE NEWSPAPER

POLLUTANT	AVERAGING TIME	INCREMENT CONSUMED ($\mu\text{g}/\text{m}^3$)	ALLOWABLE INCREMENT ($\mu\text{g}/\text{m}^3$)	% INCREMENT CONSUMED
PM ₁₀	24-hour	26	30	87
PM ₁₀	Annual	8	17	47
NO _x	Annual	3	25	12

The Department will accept written comments and requests for public meeting concerning the proposed permit issuance action for a period of 30 (thirty) days from the date of publication of this Public Notice of Intent to Issue Air Construction Permit. Written comments and requests for a public meeting should be provided to the Department's Office of the Ombudsman at 3900 Commonwealth Boulevard, Mail Station #49, Tallahassee, FL 32399-3000, phone 850/921-1222. Comments by electronic mail may be directed to the Office of Ombudsman by completing the form at the Department's Internet site at the following address: <http://www.dep.state.fl.us/officsec/ombud/comment.htm>. Any written comments filed shall be made available for public inspection. If written comments received result in a significant change in the proposed agency action, the Department shall revise the proposed permit and require, if applicable, another Public Notice.

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, technical evaluation, draft permit, and the information submitted by the responsible official, exclusive of confidential records under Section 403.111, F.S. Persons interested in reviewing this information may contact the Administrator, New Source Review Section, at 111 South Magnolia Drive, Suite 4, Tallahassee, Florida 32301, or call 850/488-0114.

TECHNICAL EVALUATION
AND
PRELIMINARY DETERMINATION

Suwannee American Cement Company, Inc.
Branford Plant
Portland Cement Plant
Suwannee County

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

Department of Environmental Protection

November 16, 1999

TECHNICAL EVALUATION AND PRELIMINARY DETERMINATION

1. GENERAL INFORMATION

1.1 APPLICANT NAME AND ADDRESS

Suwannee American Cement Company, Inc.
Branford Plant
PO Box 410
Branford, Florida 32008

Authorized Representative: Fred W. Koester, President

1.2 REVIEWING AND PROCESS SCHEDULE

11/30/98	Received permit application, report and fee
12/22/98	Received comments from EPA dated 12/18/98 via e-mail
12/29/98	Department's request for additional information
1/4/99	Received technical review dated 12/15/98 from FWS
1/8/99	Department's request for additional information
2/10/99	Received comments from FWS and NPS via e-mail
2/16/99	Department's request for additional information
2/18/99	Received comments from FWS via fax
2/25/99	Received response from applicant's representatives to Department's requests for additional information
3/19/99	Received memorandum dated 3/19/99 authored by John Koogler via fax
3/25/99	Department held public meeting in Branford, 6:00 to 9:30 p.m.
3/26/99	Received comments from FWS via e-mail
3/26/99	Department's request for additional information
4/16/99	Received comments from FWS and NPS via e-mail
4/19/99	Department's request for additional information
4/21/99	Received response from applicant's representatives to Department's requests for additional information; applicant requested processing pursuant to Section 403.0876(2)(a), F.S.
4/22/99	Department letter to the applicant
5/4/99	Received letter from John Koogler dated 4/28/99
5/4/99	Telephone conversation between Joseph Kahn, P.E. and Ken Olen, Ph.D. regarding dry circulating scrubber
5/27/99	Received regional haze summary results from Steve Cullen
5/28/99	Received additional technical review dated 5/19/99 from FWS
5/28/99	Received ESP information from Steve Cullen via fax
6/22/99	Denial of permit by Department
7/7/99	Request for administrative hearing on denial by applicant
11/8/99	Received additional information and comments on the preliminary draft permit and related documents from Koogler & Associates dated November 8, 1999
11/11/99	Notice of administrative hearing published by applicant in the Branford News
11/11/99	Received revised permit application and modeling information from Koogler & Associates by electronic mail
11/12/99 & 11/15/99	Received revised application pages by mail and additional modeling information by facsimile and electronic mail

TECHNICAL EVALUATION AND PRELIMINARY DETERMINATION

2. FACILITY INFORMATION

2.1 FACILITY LOCATION

This permit authorizes Suwannee American Cement Company, Inc. to construct a dry process, preheater/precalciner type portland cement plant to be located at US Highway 27 at County Road 49, Suwannee County. The UTM coordinates are: Zone 17; 321.4 km E and 3315.9 km N. The nearest distance of this site from the Chassahowitzka, St. Marks, Bradwell Bay, and Okefenokee Class I PSD areas is 132, 106, 150 and 83 kilometers, respectively.

2.2 STANDARD INDUSTRIAL CLASSIFICATION CODES (SIC)

Industry Group No.	32	Stone, Clay, Glass, and Concrete Products
Industry No.	3241	Cement, Hydraulic

2.3 FACILITY CATEGORY

This facility will consist of a portland cement plant and associated quarry, and raw material and cement handling operations. The plant will combine raw materials and utilize a preheater/precalciner kiln with in-line raw mill to produce clinker. The clinker will be milled and combined with gypsum to produce portland cement, which will be stored in silos and shipped in bags or in bulk by truck. Raw materials other than limestone, and all fuels will be brought to the site by truck. Additional details may be found in the BACT determination.

3. PROJECT DESCRIPTION

This permitting action is to allow for the construction of a preheater/precalciner process portland cement plant. Emissions units addressed by this permit and a detailed description of this project are described in the BACT determination.

The applicant proposed to fire coal, petroleum coke, tires and tire derived fuel, and to use natural gas for startup and a small supplementary air heater for the raw mill. The applicant will not fire or introduce hazardous wastes, petroleum contaminated soil or materials, used oil, oil fuels, other solid fuels, or solid wastes other than tires and tire derived fuel. Tires and tire derived fuel may be fed into the kiln feed end at up to 10% of heat input, or may be fed into a tire gasification system at up to 40% of heat input. The tire gasification system will use hot air from the clinker cooler to decompose tires into gas, coke, and steel. The coke and steel will be introduced into material stream above the transition point of the precalciner to the kiln feed end, and the gas will be burned in the precalciner region.

Generally the entire process may be summarized as follows. Raw materials, predominantly limestone, but also including sand, clay, iron ore, and coal ash, will be crushed and then blended and milled in the raw mill. The resulting material will be conveyed to the pyroprocessing system in the top stage of the preheater. It will exit the preheater/precalciner and enter the kiln at the elevated end (feed end). The rotation of the kiln causes the solid materials to be slowly transported downward from the front end (discharge end). Fuel will be supplied to the precalciner combustion chamber, optionally at the feed end of the kiln, and at the lower or discharge end of the kiln. The hot, gaseous combustion products will move countercurrent to the material flow, thereby transferring heat to solids in the kiln and preheater/precalciner, and to the raw mill.

The clinker will enter the clinker cooler where it will be cooled by ambient air. This cooling or quenching serves to "freeze" the clinker, halting the formation chemistry. Hot air from the clinker cooler will be recovered and returned to the pyroprocessing system as combustion air and will also be supplied to the coal mill for drying the coal and petroleum coke. The cooled clinker will be stored in silos before

TECHNICAL EVALUATION AND PRELIMINARY DETERMINATION

being mixed with gypsum and limestone and ground in a ball mill in the finish milling operation to produce portland cement. The portland cement will be stored in silos and loaded in bulk into tanker trailers or in bags which will be palletized. The cement will be hauled by truck.

4. PROJECT EMISSIONS

The total annual air pollutant potential emissions are shown in the BACT determination.

5. RULE APPLICABILITY

The proposed project is subject to preconstruction review requirements under the provisions of Chapter 403, Florida Statutes, and Chapters 62-4, 62-204, 62-210, 62-212, 62-214, 62-296, and 62-297 of the Florida Administrative Code (F.A.C.). The proposed project is subject to the provisions of Rule 62-212.400, F.A.C., Prevention of Significant Deterioration (PSD), because it will be a new major facility. The project is subject to PSD review for PM, PM₁₀, SO₂, NO_x, CO and VOC. This project will emit less than significant emission rates of the other regulated pollutants of Table 62-212.400-2. Specific rule applicability is discussed in the BACT determination.

6. AIR POLLUTION CONTROL TECHNIQUES, COMPLIANCE PROCEDURES, EXCESS EMISSIONS

The applicant proposed to control air pollutant emissions through various methods which are described fully in the BACT determination. Compliance procedures are described in the BACT determination and detailed in the draft permit. Allowable excess emissions are detailed in the draft permit.

7. SOURCE IMPACT ANALYSIS

The proposed project will increase PM₁₀, SO₂, NO_x, CO and VOC emissions at levels in excess of PSD significant amounts. Therefore an air quality impact analyses was required by the PSD regulations.

Based on the required analyses, the Department has reasonable assurance that the proposed project, as described in this report and subject to the conditions of approval proposed herein, will not cause or significantly contribute to a violation of any AAQS or PSD increment. However, the following EPA-directed stack height language is included: "In approving this permit, the Department has determined that the application complies with the applicable provisions of the stack height regulations as revised by EPA on July 8, 1985 (50 FR 27892). Portions of the regulations have been remanded by a panel of the U.S. Court of Appeals for the D.C. Circuit in NRDC v. Thomas, 838 F. 2d 1224 (D.C. Cir. 1988). Consequently, this permit may be subject to modification if and when EPA revises the regulation in response to the court decision. This may result in revised emission limitations or may affect other actions taken by the source owners or operators." A summary of the required analyses follows.

7.1 MODELS AND METEOROLOGICAL DATA USED IN SIGNIFICANT IMPACT, PSD INCREMENT AND AAQS ANALYSES

The EPA-approved Industrial Source Complex Short-Term (ISCST3) dispersion model was used to evaluate the pollutant emissions from the proposed project and other existing major facilities.

Meteorological data used in the ISCST3 model consisted of a concurrent 5-year period of hourly surface weather observations and twice-daily upper air soundings from the National Weather Service (NWS) stations at Gainesville, Florida (surface data) and Waycross, Georgia (upper air data). The 5-year period of meteorological data was from 1989 through 1993. These NWS stations were selected for use in the study because they are the closest primary weather stations to the study area and are most representative of the project site.

TECHNICAL EVALUATION AND PRELIMINARY DETERMINATION

Because five years of data are used in ISCST3, the highest-second-high (HSH) short-term predicted concentrations were compared with the appropriate AAQS or PSD increments. For the annual averages, the highest predicted yearly average was compared with the standards. For determining the project's significant impact area in the vicinity of the facility, and for determining if there are significant impacts occur from the project on any PSD Class I area, both the highest short-term predicted concentrations and the highest predicted yearly averages were compared to their respective significant impact levels.

7.2 SIGNIFICANT IMPACT ANALYSIS

Preliminary modeling is conducted using only the proposed project's worst case emission scenario for each pollutant and applicable averaging time. In addition to Class II areas, receptors were placed in the Chassahowitzka, St. Marks, Bradwell Bay, and Okefenokee PSD Class I areas. For each pollutant subject to PSD and also subject to PSD increment and/or AAQS analyses, this modeling compares maximum predicted impacts due to the project with PSD significant impact levels to determine whether significant impacts due to the project were predicted in the vicinity of the facility or in the Class I areas. In the event that the maximum predicted impact of a proposed project is less than the appropriate significant impact level, a full impact analysis for that pollutant is not required. Full impact modeling is modeling that considers not only the impact of the project but also other major sources, including background concentrations, located within the vicinity of the project to determine whether all applicable AAQS or PSD increments are predicted to be met for that pollutant. Consequently, a preliminary modeling analysis which shows an insignificant impact is accepted as the required air quality analysis (AAQS and PSD increments) for that pollutant and no further modeling for comparison to the AAQS and PSD increments is required for that pollutant. The tables below show the results of this modeling. The radius of significant impact, if any, for each pollutant and applicable pollutant averaging time is also shown in the tables below.

MAXIMUM PROJECT AIR QUALITY IMPACTS FOR COMPARISON TO THE PSD CLASS II SIGNIFICANT IMPACT LEVELS IN THE VICINITY OF THE FACILITY					
Pollutant	Averaging Time	Maximum Predicted Impact ($\mu\text{g}/\text{m}^3$)	Significant Impact Level ($\mu\text{g}/\text{m}^3$)	Significant Impact (Yes/No)	Radius of Significant Impact (km)
SO ₂	Annual	0.09	1	No	None
	24-hr	1	5	No	None
	3-hr	4	25	No	None
PM ₁₀	Annual	7	1	Yes	1.5
	24-hr	23	5	Yes	3
CO	8-hr	30	500	No	None
	1-hr	86	2,000	No	None
NO ₂	Annual	1.3	1	Yes	3

TECHNICAL EVALUATION AND PRELIMINARY DETERMINATION

MAXIMUM PROJECT IMPACTS IN THE OKEFENOKEE, ST. MARKS, CHASSAHOWITKA AND BRADWELL BAY NWA'S FOR COMPARISON TO THE PSD CLASS I SIGNIFICANT IMPACT LEVELS				
Pollutant	Averaging Time	Maximum Predicted Impact ($\mu\text{g}/\text{m}^3$)	Significant Impact Level ($\mu\text{g}/\text{m}^3$)	Significant Impact (Yes/No)
SO ₂	Annual	0.004	0.1	No
	24-hr	0.08	0.2	No
	3-hr	0.3	1.0	No
PM ₁₀	Annual	0.006	0.2	No
	24-hr	0.2	0.3	No
NO ₂	Annual	0.04	0.1	No

7.3 PSD INCREMENT ANALYSIS

The PSD increment represents the amount that new sources in an area may increase ambient ground level concentrations of a pollutant. The results of the required PSD Class II increment analyses presented in the table below show that all of the maximum predicted impacts are less than the allowable Class II increments.

PSD CLASS II INCREMENT ANALYSIS				
Pollutant	Averaging Time	Maximum Predicted Impact ($\mu\text{g}/\text{m}^3$)	Impact Greater than Allowable Increment (Yes/No)	Allowable Increment ($\mu\text{g}/\text{m}^3$)
PM ₁₀	Annual	8	No	17
	24-hr	26	No	30
NO ₂	Annual	3	No	25

7.4 AAQS ANALYSIS

For pollutants subject to an AAQS review, the total impact on ambient air quality is obtained by adding a "background" concentration to the maximum modeled concentration. This "background" concentration takes into account all sources of a particular pollutant that are not explicitly modeled. The results of the AAQS analysis are summarized in the table below. As shown in this table, emissions from the proposed facility are not expected to cause or significantly contribute to a violation of any AAQS.

AMBIENT AIR QUALITY IMPACTS						
Pollutant	Averaging Time	Major Sources Impact ($\mu\text{g}/\text{m}^3$)	Background Concentration ($\mu\text{g}/\text{m}^3$)	Total Impact ($\mu\text{g}/\text{m}^3$)	Total Impact Greater than AAQS	Florida AAQS ($\mu\text{g}/\text{m}^3$)
PM ₁₀	Annual	8	21	29	No	50
	24-hr	26	44	70	No	150
NO ₂	Annual	3	27	30	No	100

TECHNICAL EVALUATION AND PRELIMINARY DETERMINATION

7.5 ADDITIONAL IMPACTS ANALYSIS

7.5.1 IMPACTS ON SOILS, VEGETATION, WILDLIFE, AND VISIBILITY

The maximum ground-level concentrations predicted to occur due to PM₁₀, SO₂, NO_x and CO emissions as a result of the proposed project, including all other nearby sources, will be below the associated AAQS. The AAQS are designed to protect both the public health and welfare. As such, this project is not expected to have a harmful impact on soils and vegetation in the PSD Class II area. An air quality related values (AQRV) analysis was done by the applicant for the Class I area. No significant impacts on this area are expected. Regional haze analyses were done for the Class I areas. These analyses showed no significant impact on visibility in this area.

7.5.2 GROWTH-RELATED AIR QUALITY IMPACTS

There will be no growth associated with this project.

8. ADDITIONAL REQUIREMENTS

The permit has additional requirements that provide reasonable assurance that Department rules can be met which are detailed in the draft permit. Some of these are conditions that:

- Limit fuels and materials to exclude hazardous wastes, contaminated materials and other fuels;
- Require a data retrieval system so the Department may retrieve CEM and COM system data remotely at one of the Department's offices;
- Require an independent annual audit of the maintenance records and physical condition of the plant process equipment and emission control equipment; and
- Require ambient monitoring for PM₁₀ at two offsite locations to be determined by the Department.

9. PUBLIC COMMENTS

The Department received public comments for this project prior to denial of the permit and petition of that denial by the applicant. In anticipation of receipt of further comments related to this action, the Department will defer discussion of all comments until final action.

10. CONCLUSION

Based on the foregoing technical evaluation of the application and additional information submitted by the applicant and other available information, the Department has made a preliminary determination that the proposed project will comply with all applicable state and federal air pollution regulations. The Department intends to issue an air construction permit to the applicant based on the belief that reasonable assurances have been provided to indicate that operation of these emission units will not adversely impact air quality, and the emission units will comply with all appropriate provisions of Chapters 62-4, 62-204, 62-210, 62-212, 62-296, and 62-297, F.A.C. The Department will therefore issue a draft permit to the applicant that allows the applicant to construct a dry process, preheater/precalciner type portland cement plant subject to the conditions of that permit.

PERMITTEE

Suwannee American Cement Company, Inc.
Branford Plant
PO Box 410
Branford, Florida 32008

Permit No.	1210465-001-AC, PSD-FL-259
Project	Portland Cement Plant
SIC No.	3241
Expires:	^DRAFT (3 years from final issuance)

Authorized Representative:

Fred W. Koester, President

PROJECT AND LOCATION

This permit authorizes Suwannee American Cement Company, Inc. to construct a dry process, preheater/precalciner type portland cement plant to be located at US Highway 27 at County Road 49, Suwannee County. The UTM coordinates are: Zone 17; 321.4 km E and 3315.9 km N.

STATEMENT OF BASIS

This construction permit is issued under the provisions of Chapter 403 of the Florida Statutes (F.S.), and the Florida Administrative Code (F.A.C.) Chapters 62-4, 62-204, 62-210, 62-212, 62-296, and 62-297. The above named permittee is authorized to construct the emissions units in accordance with the conditions of this permit and as described in the application, approved drawings, plans, and other documents on file with the Department of Environmental Protection (Department).

APPENDICES

The attached appendices are a part of this permit:

- Appendix A BACT Determination
- Appendix B NSPS General Provisions
- Figure 1 Summary Report--Gaseous and Opacity Excess Emission & Monitoring System Performance
- Appendix C NESHAP General Provisions
- Appendix GC General Permit Conditions

David B. Struhs
Secretary

SECTION I. FACILITY INFORMATION

FACILITY DESCRIPTION

This facility will consist of a portland cement plant and associated quarry, and raw material and cement handling operations. The plant will combine raw materials and utilize a preheater/precalciner kiln with in-line raw mill to produce clinker. The clinker will be milled and combined with gypsum to produce portland cement. The plant will have a capacity of 178 tons per hour of material fed to the preheater (dry basis), 105 tons per hour of clinker production, and 150 tons per hour of portland cement production. Annual production will be limited (on a rolling 12-month basis) to 1,427,880 tons per year of material fed to the preheater (dry basis), 839,500 tons per year of clinker production, and 1,191,360 tons per year of portland cement production. Fuels allowed to be used in the pyroprocessing system are natural gas, coal, petroleum coke, whole tires and tire derived fuel (TDF). The plant may include a tire gasification system that will utilize heat from the pyroprocessing system to reduce tires to gas, coke and wire which will be utilized in the kiln and pyroprocessing system in an enclosed process. The plant will also include a coal processing operation that will crush coal and petroleum coke and will have an annual processing capacity of 127,896 tons of coal and petroleum coke.

PROJECT DETAILS

This permitting action is to allow for the construction of a portland cement plant. Emissions units addressed by this permit are:

EMISSIONS UNIT NO.	EMISSIONS UNIT DESCRIPTION
001	1000 TPH primary crusher and associated unenclosed belt conveyors to raw material storage – fugitive emissions
002	Raw material processing operations controlled by baghouses
003	Raw material processing – unenclosed conveyor transfer points – D conveyors
004	In line kiln/raw mill controlled by baghouse – main stack
005	Clinker cooler controlled by ESP
006	Clinker and cement processing operations controlled by baghouses
007	Clinker and cement processing – unenclosed conveyor transfer points – M conveyors
008	Coal mill and coal transfer system controlled by baghouses
009	Unenclosed coal conveying equipment – S conveyors
010	Natural gas fired emergency generator set ¹

¹ Emissions unit 010 is exempt from permitting (exempt emissions unit) pursuant to Rule 62-210.300(3)(a)20, F.A.C., provided that total fuel consumption by the generator is limited to 4.4 million cubic feet per year of natural gas. The owner or operator should maintain records of annual fuel consumption of the generator to verify that this emissions unit remains exempt. This emissions unit is subject to the facility-wide specific conditions of section II of this permit. Estimated maximum potential emissions from the generator set are: NO_x, 8.5 lb/hr, CO 4.1 lb/hr, and VOC 0.5 lb/hr.

REGULATORY CLASSIFICATION

This facility is classified as a Major or Title V Source of air pollution because emissions of at least one regulated air pollutant, such as particulate matter (PM/PM₁₀), sulfur dioxide (SO₂), nitrogen oxides (NO_x), carbon monoxide (CO), or volatile organic compounds (VOC) exceeds 100 tons per year (TPY).

SECTION I. FACILITY INFORMATION

This facility is within an industry included in the list of the 28 Major Facility Categories per Table 62-212.400-1, F.A.C. Because emissions are greater than 100 TPY for at least one criteria pollutant, the facility is also a Major Facility with respect to Rule 62-212.400, Prevention of Significant Deterioration (PSD).

The proposed project is subject to the provisions of Rule 62-212.400, F.A.C., Prevention of Significant Deterioration (PSD), because it is a new major facility.

The applicant stated that this facility is a major source of hazardous air pollutants (HAPs), because the plant may be a major source of hydrochloric acid. As provided by the federal requirements, the applicant may perform stack testing to confirm whether the facility is or is not a major source of hydrochloric acid.

The emissions units included in this project are subject to regulation under the New Source Performance Standards, 40 CFR 60 Subpart A, General Provisions, Subpart F, Standards of Performance for Portland Cement Plants, Subpart Y Standards of Performance for Coal Preparation Plants, and Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants (all revised as of July 1, 1997). Some of these emissions units are also subject to 40 CFR 63 Subpart LLL, National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry (40 CFR 63.1340 – 63.1359), revised as of May 14, 1999 and 40 CFR 63 Subpart A, revised as of February 12, 1999. These emissions units are also subject to the requirements of the state rules as indicated in this permit, particularly Rule 62-212.400, F.A.C., Prevention of Significant Deterioration, effective February 5, 1998. Some emissions units are subject to Rule 62-296.701, F.A.C., Portland Cement Plants, effective March 2, 1999.

RELEVANT DOCUMENTS

The documents listed below are the basis of the permit. They are specifically related to this permitting action. These documents are on file with the Department.

- Permit application and report
- Department's requests for additional information of December 29, 1998, January 8th, February 16th, March 26th and April 19, 1999, and Department's letter to the applicant of April 22, 1999
- Applicant's additional information received February 25th, March 19th, April 21st, May 4th, May 27th and May 28, 1999.
- EPA's comments received December 22, 1998
- FWS and NPS comments and technical reviews received January 4th, February 10th, February 18th, March 26th, April 16th and May 28, 1999
- Denial of permit by Department on June 22, 1999 (applicant requested administrative hearing on denial on July 7, 1999)
- Additional information and comments on the preliminary draft permit and related documents from Koogler & Associates dated November 8, 1999
- Revised permit application and modeling information received from Koogler & Associates by electronic mail on November 11th, by mail and electronic mail November 12th, and by facsimile on November 15, 1999
- Department's Technical Evaluation and Preliminary Determination, and BACT Determination
- Department's Notice of Intent to Issue mailed ^DRAFT
- Public Notice of Intent to Issue published in ^DRAFT

SECTION II. FACILITY-WIDE SPECIFIC CONDITIONS

The following specific conditions apply to all emissions units at this facility addressed by this permit.

ADMINISTRATIVE

1. Regulating Agencies: All documents related to applications for permits to modify this PSD permit should be submitted to the Bureau of Air Regulation (BAR), Florida Department of Environmental Protection at Mail Station #5505, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, phone number 850/488-0114. All applications for operation permits, and documents related to reports, tests, minor modifications and notifications shall be submitted to the Department's Northeast District office at 7825 Baymeadows Way, Suite 200B, Jacksonville, Florida 32256-7590, and phone number 904-448-4300.-
2. General Conditions: The owner and operator is subject to and shall operate under the attached General Permit Conditions G.1 through G.15 listed in Appendix GC of this permit. General Permit Conditions are binding and enforceable pursuant to Chapter 403 of the Florida Statutes. [Rule 62-4.160, F.A.C.]
3. Terminology: The terms used in this permit have specific meanings as defined in the corresponding chapters of the Florida Administrative Code.
4. Applicable Regulations, Forms and Application Procedures: Unless otherwise indicated in this permit, the construction and operation of the subject emissions unit shall be in accordance with the capacities and specifications stated in the application. The facility is subject to all applicable provisions of Chapter 403, F.S. and Florida Administrative Code Chapters 62-4, 62-110, 62-204, 62-212, 62-213, 62-296, 62-297 and the Code of Federal Regulations Title 40, Part 60 and Part 63, adopted by reference in the Florida Administrative Code (F.A.C.) regulations. The permittee shall use the applicable forms listed in Rule 62-210.900, F.A.C. and follow the application procedures in Chapter 62-4, F.A.C. Issuance of this permit does not relieve the facility owner or operator from compliance with any applicable federal, state, or local permitting or regulations. [Rules 62-204.800, 62-210.300 and 62-210.900, F.A.C.]
5. New or Additional Conditions: Pursuant to Rule 62-4.080, F.A.C., for good cause shown and after notice and an administrative hearing, if requested, the Department may require the permittee to conform to new or additional conditions. The Department shall allow the permittee a reasonable time to conform to the new or additional conditions, and on application of the permittee, the Department may grant additional time. [Rule 62-4.080, F.A.C.]
6. Expiration: This air construction permit shall expire on ^DRAFT (3 years from date of final issuance). The permittee, for good cause, may request that this construction and PSD permit be extended. Such a request shall be submitted to the Department's Bureau of Air Regulation prior to 60 days before the expiration of the permit. [Rules 62-210.300(1), 62-4.070(4), 62-4.080, and 62-4.210, F.A.C.]

PSD Expiration: Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, or if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Department may extend the 18-month period upon a satisfactory showing that an extension is justified. [40 CFR 52.21(r)(2)]

SECTION II. FACILITY-WIDE SPECIFIC CONDITIONS

BACT Determination: In conjunction with extension of the 18 month periods to commence or continue construction, or extension of the permit expiration date, the permittee may be required to demonstrate the adequacy of any previous determination of Best Available Control Technology (BACT) for the source. [40 CFR 52.21(j)(4)]

7. Modifications: No emissions unit or facility subject to this permit shall be constructed or modified without obtaining an air construction permit from the Department. Such permit must be obtained prior to the beginning of construction or modification. [Rules 62-210.300(1) and 62-212.300(1)(a), F.A.C.]
8. Title V Operation Permit Required: This permit authorizes construction and/or installation of the permitted emissions units and initial operation to determine compliance with Department rules. A Title V operation permit is required for regular operation of the permitted emissions units. The owner or operator shall apply for a Title V operation permit at least ninety days prior to expiration of this permit, but no later than 180 days after commencing operation. To apply for a Title V operation permit, the applicant shall submit the appropriate application form, compliance test results, and such additional information as the Department may by law require. The application shall be submitted to the Department's Northeast District office. [Rules 62-4.030, 62-4.050, 62-4.220, and 62-213.420, F.A.C.]

EMISSION LIMITING STANDARDS

9. General Visible Emissions Standard: Except for emissions units that are subject to a particulate matter or opacity limit set forth or established by rule and reflected by conditions in this permit, no person shall cause, let, permit, suffer, or allow to be discharged into the atmosphere the emissions of air pollutants from any activity, the density of which is equal to or greater than that designated as Number 1 on the Ringelmann Chart (20% opacity). The test method for visible emissions shall be EPA Method 9, incorporated and adopted by reference in Chapter 62-297, F.A.C. Test procedures shall meet all applicable requirements of Chapter 62-297, F.A.C. [Rule 62-296.320(4)(b)1, F.A.C.]
10. Unconfined Emissions of Particulate Matter: [Rule 62-296.320(4)(c), F.A.C. and BACT]
 - (a) No person shall cause, let, permit, suffer or allow the emissions of unconfined particulate matter from any activity, including vehicular movement; transportation of materials; construction, alteration, demolition or wrecking; or industrially related activities such as loading, unloading, storing or handling, without taking reasonable precautions to prevent such emissions.
 - (b) Any permit issued to a facility with emissions of unconfined particulate matter shall specify the reasonable precautions to be taken by that facility to control the emissions of unconfined particulate matter.
 - (c) Reasonable precautions include the following:
 - Paving and maintenance of roads, parking areas and yards.
 - Application of water or chemicals to control emissions from such activities as demolition of buildings, grading roads, construction, and land clearing.
 - Application of asphalt, water, chemicals or other dust suppressants to unpaved roads, yards, open stock piles and similar activities.

SECTION II. FACILITY-WIDE SPECIFIC CONDITIONS

- Removal of particulate matter from roads and other paved areas under the control of the owner or operator of the facility to prevent reentrainment, and from buildings or work areas to prevent particulate from becoming airborne.
- Landscaping or planting of vegetation.
- Use of hoods, fans, filters, and similar equipment to contain, capture and/or vent particulate matter.
- Confining abrasive blasting where possible.
- Enclosure or covering of conveyor systems.

Additional reasonable precautions applicable to this facility are:

- All materials, coal and petroleum coke at the plant shall be stored under roof on compacted clay or concrete, or in enclosed vessels.
 - Water supply lines, hoses and sprinklers shall be located near all materials, coal and petroleum coke stockpiles.
 - All plant operators shall be trained in basic environmental compliance and shall perform visual inspections of materials, coal and petroleum coke regularly and before handling. If the visual inspections indicate a lack of surface moisture, the materials, coal and petroleum coke shall be wetted with sprinklers. Such wetting shall continue until the potential for unconfined particulate matter emissions are minimized.
 - Water spray bars shall be located at each unenclosed material and fuel conveyor, and the spray bars shall be used to wet the materials and fuel if inherent moisture and moisture from wetting the storage piles are not sufficient to prevent unconfined particulate matter emissions.
 - The manufacturing area and the access roadways for the facility shall be paved with asphalt or concrete.
 - Bulk transport trucks leaving the plant shall travel through a tire wash, designed to remove particulate matter from vehicle tires, before traveling on the facility's access roadways.
- (d) In determining what constitutes reasonable precautions for a particular source, the Department shall consider the cost of the control technique or work practice, the environmental impacts of the technique or practice, and the degree of reduction of emissions expected from a particular technique or practice.

11. General Pollutant Emission Limiting Standards: [Rule 62-296.320(1)(a)&(2), F.A.C.]

- (a) No person shall store, pump, handle, process, load, unload or use in any process or installation, volatile organic compounds or organic solvents without applying known and existing vapor emission control devices or systems deemed necessary and ordered by the Department.
- (b) No person shall cause, suffer, allow or permit the discharge of air pollutants which cause or contribute to an objectionable odor.

[Note: An objectionable odor is defined in Rule 62-210.200(203), F.A.C., as any odor present in the outdoor atmosphere which by itself or in combination with other odors, is or may be harmful or injurious to human health or welfare, which unreasonably interferes with the comfortable use and enjoyment of life or property, or which creates a nuisance.]

SECTION II. FACILITY-WIDE SPECIFIC CONDITIONS

OPERATIONAL REQUIREMENTS

12. Plant Operation - Problems: If temporarily unable to comply with any of the conditions of the permit due to breakdown of equipment or destruction by hazard of fire, wind or by other cause, the permittee shall immediately notify the Department's district office. The notification shall include pertinent information as to the cause of the problem, and what steps are being taken to correct the problem and to prevent its recurrence, and where applicable, the owner's intent toward reconstruction of destroyed facilities. Such notification does not release the permittee from any liability for failure to comply with Department rules. [Rule 62-4.130, F.A.C.]
13. Circumvention: No person shall circumvent any air pollution control device or allow the emission of air pollutants without the applicable air pollution control device operating properly. [Rule 62-210.650, F.A.C.]
14. Excess Emissions: The following excess emissions provisions can not be used to vary any NSPS or NESHAP requirements from any subpart of 40 CFR 60 or 40 CFR 63.

Excess emissions resulting from malfunction of the emissions units of this permit shall be permitted providing (1) best operational practices to minimize emissions are adhered to and (2) the duration of excess emissions shall be minimized but in no case exceed one hour in any 24 hour period. The emission limits established pursuant to the State Implementation Plan, including those limits established as BACT, shall apply at all other times including startup and shutdown. The averages determined by the CEM and COM systems shall include all emissions including those measured during periods of startup, shutdown and malfunction. [Rules 62-4.070(3) and 62-210.700(1) and (5), F.A.C.]

Excess emissions which are caused entirely or in part by poor maintenance, poor operation, or any other equipment or process failure which may reasonably be prevented during start-up, shutdown, or malfunction shall be prohibited. [Rule 62-210.700(4), F.A.C.]

[Note: Malfunction is defined at Rule 62-210.200(179), F.A.C., to mean "any unavoidable mechanical and/or electrical failure of air pollution control equipment or process equipment or of a process resulting in operation in an abnormal or unusual manner." Allowable excess emissions for NOx from emissions unit 004 (limited by BACT) are specified in specific condition 15 of subsection B of section III of this permit.]

COMPLIANCE MONITORING AND TESTING REQUIREMENTS

15. Required Number of Test Runs: For mass emission limitations, a compliance test shall consist of three complete and separate determinations of the total air pollutant emission rate through the test section of the stack or duct and three complete and separate determinations of any applicable process variables corresponding to the three distinct time periods during which the stack emission rate was measured; provided, however, that three complete and separate determinations shall not be required if the process variables are not subject to variation during a compliance test, or if three determinations are not necessary in order to calculate the unit's emission rate. The three required test runs shall be completed within one consecutive five-day period. [Rule 62-297.310(1), F.A.C.]
16. Operating Rate During Testing: Unless otherwise stated in the applicable emission limiting standard rule, testing of emissions shall be conducted with the emissions unit operation at permitted capacity.

SECTION II. FACILITY-WIDE SPECIFIC CONDITIONS

Permitted capacity is defined as 90 to 100 percent of the maximum operation rate allowed by the permit. If it is impractical to test at permitted capacity, an emissions unit may be tested at less than the minimum permitted capacity; in this case, subsequent emissions unit operation is limited to 110 percent of the test load until a new test is conducted. Once the unit is so limited, operation at higher capacities is allowed for no more than 15 consecutive days for the purpose of additional compliance testing to regain the authority to operate at the permitted capacity. [Rule 62-297.310(2), F.A.C.]

17. Calculation of Emission Rate: The indicated emission rate or concentration shall be the arithmetic average of the emission rate or concentration determined by each of the three separate test runs unless otherwise specified in a particular test method or applicable rule. [Rule 62-297.310(3), F.A.C.]
18. Test Procedures shall meet all applicable requirements of Rule 62-297.310(4), F.A.C. [Rule 62-297.310(4), F.A.C.]
19. Determination of Process Variables: [Rule 62-297.310(5), F.A.C.]
 - (a) Required Equipment. The owner or operator of an emissions unit for which compliance tests are required shall install, operate, and maintain equipment or instruments necessary to determine process variables, such as process weight input or heat input, when such data are needed in conjunction with emissions data to determine the compliance of the emissions unit with applicable emission limiting standards.
 - (b) Accuracy of Equipment. Equipment or instruments used to directly or indirectly determine process variables, including devices such as belt scales, weight hoppers, flow meters, and tank scales, shall be calibrated and adjusted to indicate the true value of the parameter being measured with sufficient accuracy to allow the applicable process variable to be determined within 10% of its true value.
20. Required Stack Sampling Facilities: Sampling facilities include sampling ports, work platforms, access to work platforms, electrical power, and sampling equipment support. All stack sampling facilities must meet any Occupational Safety and Health Administration (OSHA) Safety and Health Standards described in 29 CFR Part 1910, Subparts D and E. Sampling facilities shall also conform to the requirements of Rule 62-297.310(6), F.A.C. [Rule 62-297.310(6), F.A.C.]
21. Test Notification: The owner or operator shall notify the Department's district office at least 15 days prior to the date on which each formal compliance test is to begin. Notification shall include the date, time, and place of each such test, and the test contact person who will be responsible for coordinating and having such test conducted for the owner or operator. [Rule 62-297.310(7)(a)9., F.A.C. and 40 CFR 60.8]

[Note: The federal requirements of 40 CFR 60.8 require 30 days notice of the initial test and any tests required under section 114 of the Clean Air Act, but the Department rules require 15 days notice for the annual compliance tests. Unless otherwise advised by the Department, provide 15 days notice prior to conducting annual tests, except for the initial test when 30 days notice is required.]
22. Special Compliance Tests: When the Department, after investigation, has good reason (such as complaints, increased visible emissions or questionable maintenance of control equipment) to believe that any applicable emission standard contained in a Department rule or in a permit issued

SECTION II. FACILITY-WIDE SPECIFIC CONDITIONS

pursuant to those rules is being violated, it shall require the owner or operator of the facility to conduct compliance tests which identify the nature and quantity of pollutant emissions from the emissions units and to provide a report on the results of said tests to the Department. [Rule 62-297.310(7)(b), F.A.C.]

REPORTING AND RECORD KEEPING REQUIREMENTS

23. Duration of Record Keeping: Upon request, the permittee shall furnish all records and plans required under Department rules. During enforcement actions, the retention period for all records will be extended automatically unless otherwise stipulated by the Department. The permittee shall hold at the facility or other location designated by this permit records of all monitoring information (including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation) required by the permit, copies of all reports required by this permit, and records of all data used to complete the application for this permit. These materials shall be retained at least five years from the date of the sample, measurement, report, or application unless otherwise specified by Department rule. [Rules 62-4.160(14)(a)&(b) and 62-213.440(1)(b)2.b., F.A.C.]
24. Test Reports: The owner or operator of an emissions unit for which a compliance test is required shall file a report with the Department on the results of each such test. The required test report shall be filed with the Department as soon as practical but no later than 45 days after the last sampling run of each test is completed. The test report shall provide sufficient detail on the emissions unit tested and the test procedures used to allow the Department to determine if the test was properly conducted and the test results properly computed. As a minimum, the test report, other than for an EPA or DEP Method 9 test, shall provide the applicable information listed in Rule 62-297.310(8)(c), F.A.C. [Rule 62-297.310(8), F.A.C.]
25. Excess Emissions Report: If excess emissions occur, the owner or operator shall notify the Department within one working day of: the nature, extent, and duration of the excess emissions; the cause of the excess emissions; and the actions taken to correct the problem. In addition, the Department may request a written summary report of the incident. Pursuant to the New Source Performance Standards, excess emissions shall also be reported in accordance with 40 CFR-60.7, Subpart A. [Rule 62-4.130, F.A.C.]
26. Excess Emissions Report - Malfunctions: In case of excess emissions resulting from malfunctions, each owner or operator shall notify the Department in accordance with Rule 62-4.130, F.A.C. A full written report on the malfunctions shall be submitted in a quarterly report. [Rule 62-210.700(6), F.A.C.]
- [Note: A quarterly written report is hereby requested by the Department for every quarter that the facility is in operation. If no malfunctions occurred during a quarter, a written report stating that no malfunctions occurred shall be submitted.]
27. Annual Operating Report for Air Pollutant Emitting Facility: The Annual Operating Report for Air Pollutant Emitting Facility shall be completed each year and shall be submitted to the Department's Northeast District office by March 1 of the following year. [Rule 62-210.370(3), F.A.C.]

SECTION II. FACILITY-WIDE SPECIFIC CONDITIONS

AMBIENT MONITORING AND MODELING REQUIREMENTS

28. Ambient Monitoring Required: The owner or operator shall install and operate two ambient monitoring devices for suspended particulate matter less than 10 microns (PM₁₀) at offsite locations (sites) to be determined by the Department. The devices shall be installed and operational within 120 days of final issuance of this permit. These devices shall operate continuously with access to the instrument provided to the Ambient Monitoring Section (AMS) of the Department's Bureau of Ambient Monitoring and Mobile Sources (BAMMS) by means of telephone. The monitoring devices shall be located as designated by the Department. The monitoring devices shall be of those designated as an EPA equivalent method and must be year 2000 compliant. The monitoring equipment shall be operated as long as required by the Department, however the owner or operator may petition the Department to review the monitoring requirements after five years of operation, and every five years thereafter. Requests for review shall be directed to the AMS.

Ambient monitoring activities required by this permit for PM₁₀ shall be conducted in such a manner so as to meet the Department's minimum quality assurance requirements as delineated in 40 CFR Parts 50 and 58.14; Part 58, Appendices A, C, D and E; and the Department's *State-Wide Quality Assurance Air Program Plan (Plan)*. Changes to the *Plan* will be distributed by the BAMMS to the owner or operator. The owner or operator shall comply with *Plan* changes as soon as practicable, but no later than upon renewal of this permit.

The owner or operator shall, within 90 days of the effective permit date, submit to the Department for review and approval standard operating procedures for each monitor, calibrator and ancillary piece of equipment utilized in the production of the required ambient air quality data.

The owner or operator shall submit the verified monitoring data and quality assurance results to BAMMS within ninety (90) days after the end of each calendar quarter in an electronic medium and format: either Aerometric Information Retrieval System (AIRS) or other EPA acceptable electronic format for the monitoring data, and the Precision and Accuracy Data (PAData) or other EPA acceptable electronic format for the quality assurance data, as specified by the Department.

The owner or operator shall allow Department auditors, with a minimum of seven (7) days prior notification, access to the monitoring locations for the purpose of the performance of accuracy audits which may be completed in lieu of, or in addition to, the owner or operator's quarterly accuracy audits as specified in 40 CFR, Part 58, Appendix A, 3.2 and 3.4. The owner or operator shall also submit to an annual systems audit as specified in 40 CFR Part 58, Appendix A, 2.5. The systems audit, which reviews the quality assurance and monitoring effort for the preceding year, shall be conducted between February and June of the year following the year in which the audited data were produced. In addition, the Department staff shall be allowed access to the monitoring locations, with a minimum of seven (7) days prior notification, on an annual basis, for the purpose of determining compliance with the siting requirements as specified in 40 CFR Part 58, Appendix E.

[Rule 62-212.400(5)(g), F.A.C.]

29. Property Fencing: The owner or operator shall fence the entire property perimeter to conform to the boundaries used for modeling the fenceline receptors shown in the applicant's submittal to the Department received by electronic mail November 11, 1999. Such fencing shall be sufficient to prevent access onto the facility property from the general public. Gates may be installed at entry and

SECTION II. FACILITY-WIDE SPECIFIC CONDITIONS

exit points as long as the owner or operator controls entry onto the facility from the general public at these points. [Rules 62-4.070(3) and 62-212.400(5)(d), F.A.C.]

ADDITIONAL OPERATIONAL REQUIREMENTS

30. Experience of Facility Personnel: The owner shall staff the facility with trained and experienced managers, supervisors and operators. Trained supervisors and operators shall be on duty at the plant at all times. The plant manager shall have at least 10 years of cement industry experience and shall also have experience as a cement plant manager. [Rule 62-4.070(3), F.A.C.]
31. Third Party Audit: The owner or operator shall contract with an independent third party, acceptable to the Department, knowledgeable in the processes and control equipment used at this plant, to perform an audit of the maintenance records and physical condition of the plant process equipment and emission control equipment. This audit will be conducted once each year for a minimum of five years from the start of operation of the plant. The auditor shall make a report to the owner or operator on the condition of the process and emission control equipment, and the adequacy of the owner or operator's maintenance program and activities. One copy of the annual report shall be forwarded to the Department's Northeast District office for review, within 45 days of completion of each audit. After five years of reports that show the process and emission control equipment is being properly maintained, the Department shall evaluate the need to continue this requirement. [Rule 62-4.070(3), F.A.C.]

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SECTION III. EMISSIONS UNITS SPECIFIC CONDITIONS

SUBSECTION A.

The following specific conditions apply to the following emissions units after construction

EMISSIONS UNIT NO.	EMISSIONS UNIT DESCRIPTION
001	1000 TPH primary crusher and associated unenclosed belt conveyors to raw material storage – fugitive emissions

[Note: Emissions unit 001 is subject to 40 CFR 60 Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants (40 CFR 60.670 – 60.676) and 40 CFR 60 Subpart A, revised as of July 1, 1997. This emissions unit is also subject to the requirements of the state rules as indicated in this permit.

The numbering of the original rules in the following conditions has been preserved for ease of reference to the rules. Inapplicable paragraphs have been omitted for clarity and brevity. The term "Administrator" when used in 40 CFR 60 shall mean the Secretary or the Secretary's designee.]

STATE REQUIREMENTS

OPERATIONAL REQUIREMENTS

1. Hours of Operation: This emissions unit may operate continuously, i.e., 8,760 hours per year. [Rule 62-210.200, F.A.C., Definitions -- potential to emit (PTE)]
2. Process Rate Limitation: The crusher shall not process more than 139,917 tons of raw material in any month. [Rule 62-210.200, F.A.C., Definitions -- potential to emit (PTE)]

[Note: This process rate is based on an estimated moisture content of raw material of 15% and includes the weight of this moisture. This monthly limit corresponds to an annual limit of 1,679,000 tons per year. The applicant has estimated that the potential to emit from crushing, transfer and unloading operations is: PM₁₀ 0.8, and PM_{2.5} 0.7 tons per year.]

COMPLIANCE MONITORING AND TESTING REQUIREMENTS

3. Visible Emission Tests Required: The owner or operator shall demonstrate compliance with the visible emission limits of specific condition 6 of this subsection annually, using the methods specified in this subsection. [Rule 62-297.310(7)(a)4.a., F.A.C.]

REPORTING AND RECORD KEEPING REQUIREMENTS

4. Records: The owner or operator shall make and maintain records showing the monthly processing rate of the crusher. Records of the processing rate for each month shall be made no later than 10 days following the end of the month. [Rule 62-4.070(3), F.A.C.]

SECTION III. EMISSIONS UNITS SPECIFIC CONDITIONS

FEDERAL NSPS REQUIREMENTS

APPLICABILITY AND DEFINITIONS

5. Pursuant to 40 CFR 60.670 Applicability and Designation of Affected Facility:

(a)(1) The provisions of 40 CFR 60 Subpart OOO are applicable to the following affected facilities in fixed or portable nonmetallic mineral processing plants: each crusher or belt conveyor.
[40 CFR 60.670]

Belt conveyor and crusher are defined at 40 CFR 60.671. The definitions are applicable to this project but have been omitted for brevity. See the Code of Federal Regulations for the text of this section.

EMISSION LIMITATIONS AND PERFORMANCE STANDARDS

6. Pursuant to 40 CFR 60.672 Standard for Particulate Matter:

(b) On and after the sixtieth day after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup as required under 40 CFR 60.11, no owner or operator shall cause to be discharged into the atmosphere from any transfer point on belt conveyors or from any other affected facility any fugitive emissions which exhibit greater than 10 percent opacity, except as provided in paragraph (c) and (d) of this section.

(c) On and after the sixtieth day after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup as required under 40 CFR 60.11, no owner or operator shall cause to be discharged into the atmosphere from any crusher, at which a capture system is not used, fugitive emissions which exhibit greater than 15 percent opacity.

(d) Truck dumping of nonmetallic minerals into any screening operation, feed hopper, or crusher is exempt from the requirements of this section.

[40 CFR 60.672 (b), (c) & (d)]

COMPLIANCE MONITORING AND TESTING REQUIREMENTS

7. Pursuant to 40 CFR 60.675 Test Methods and Procedures:

(a) In conducting the performance tests required in 40 CFR 60.8, the owner or operator shall use as reference methods and procedures the test methods in 40 CFR 60 Appendix A or other methods and procedures as specified in this section, except as provided in 40 CFR 60.8(b). Acceptable alternative methods and procedures are given in paragraph (e) of this section.

(c)(1) In determining compliance with the particulate matter standards in 40 CFR 60.672 (b) and (c), the owner or operator shall use Method 9 and the procedures in 40 CFR 60.11, with the following additions:

(i) The minimum distance between the observer and the emissions source shall be 4.57 meters (15 feet).

SECTION III. EMISSIONS UNITS SPECIFIC CONDITIONS

- (ii) The observer shall, when possible, select a position that minimizes interference from other fugitive emissions units (e.g., road dust). The required observer position relative to the sun (Method 9, Section 2.1) must be followed.
 - (iii) For affected emissions units using wet dust suppression for particulate matter control, a visible mist is sometimes generated by the spray. The water mist must not be confused with particulate matter emissions and is not to be considered a visible emission. When a water mist of this nature is present, the observation of emissions is to be made at a point in the plume where the mist is no longer visible.
 - (3) When determining compliance with the fugitive emissions standard for any affected facility described under Section 60.672(b) of this subpart, the duration of the Method 9 observations may be reduced from 3 hours (thirty 6-minute averages) to 1 hour (ten 6-minute averages) only if the following conditions apply:
 - (i) There are no individual readings greater than 10 percent opacity; and
 - (ii) There are no more than 3 readings of 10 percent for the 1-hour period.
 - (4) When determining compliance with the fugitive emissions standard for any crusher at which a capture system is not used as described under Section 60.672(c) of this subpart, the duration of the Method 9 observations may be reduced from 3 hours (thirty 6-minute averages) to 1 hour (ten 6-minute averages) only if the following conditions apply:
 - (i) There are no individual readings greater than 15 percent opacity; and
 - (ii) There are no more than 3 readings of 15 percent for the 1-hour period.
 - (e) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:
 - (1) For the method and procedure of 40 CFR 60.675(c), if emissions from two or more facilities continuously interfere so that the opacity of fugitive emissions from an individual affected facility cannot be read, either of the following procedures may be used:
 - (i) Use for the combined emission stream the highest fugitive opacity standard applicable to any of the individual affected facilities contributing to the emissions stream.
 - (ii) Separate the emissions so that the opacity of emissions from each affected facility can be read.
 - (g) If, after 30 days notice for an initially scheduled performance test, there is a delay (due to operation problems, etc.) in conducting any rescheduled performance test required in this section, the owner or operator of an affected facility shall submit a notice to the Administrator at least 7 days prior to any rescheduled performance test.
- [40 CFR 60.675(a), (c)(1), (3) and (4); (e)(1); and (g)]

REPORTING AND RECORD KEEPING REQUIREMENTS

8. Pursuant to 40 CFR 60.676 Reporting and Recordkeeping:

- (f) The owner or operator of any affected facility shall submit written reports of the results of all performance tests conducted to demonstrate compliance with the standards set forth in 40 CFR

SECTION III. EMISSIONS UNITS SPECIFIC CONDITIONS

60.672, including reports of opacity observations made using Method 9 to demonstrate compliance with 40 CFR 60.672(b) and (c).

- (h) The subpart A requirement under 40 CFR 60.7(a)(2) for notification of the anticipated date of initial startup of an affected facility shall be waived for owners or operators of affected facilities regulated under this subpart.
- (i) A notification of the actual date of initial startup of each affected facility shall be submitted to the Administrator.
- (1) For a combination of affected facilities in a production line that begin actual initial startup on the same day, a single notification of startup may be submitted by the owner or operator to the Administrator. The notification shall be postmarked within 15 days after such date and shall include a description of each affected facility, equipment manufacturer, and serial number of the equipment, if available.

[40 CFR 60.676(f), (h), and (i)]

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SECTION III. EMISSIONS UNITS SPECIFIC CONDITIONS

SUBSECTION B.

The following specific conditions apply to the following emissions units after construction

EMISSIONS UNIT NO.	EMISSIONS UNIT DESCRIPTION
002	Raw material processing operations controlled by baghouses
003	Raw material processing – unenclosed conveyor transfer points – D conveyors
004	In line kiln/raw mill controlled by baghouse – main stack
005	Clinker cooler controlled by ESP
006	Clinker and cement processing operations controlled by baghouses
007	Clinker and cement processing – unenclosed conveyor transfer points – M conveyors

[Note: Emissions units 002, 003, 004, 005, 006, and 007 are subject to 40 CFR 60 Subpart F, Standards of Performance for Portland Cement Plants (40 CFR 60.60 – 60.66) and 40 CFR 60 Subpart A, revised as of July 1, 1997. These emissions units are also subject to 40 CFR 63 Subpart LLL, National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry (40 CFR 63.1340 – 63.1359), revised as of May 14, 1999 and 40 CFR 63 Subpart A, revised as of February 12, 1999. These emissions units are also subject to the requirements of the state rules as indicated in this permit, particularly Rule 62-212.400, F.A.C., Prevention of Significant Deterioration, effective February 5, 1998. Emissions units 004 and 005 are subject to Rule 62-296.701, F.A.C., Portland Cement Plants, effective March 2, 1999.

The Department adopted the provisions of 40 CFR 63 Subpart LLL by reference into Rule 62-204.800, F.A.C., effective October 1, 1999. The provisions are included in this permit.

The numbering of the original rules in the following conditions has been preserved for ease of reference to the rules. Inapplicable paragraphs have been omitted for clarity and brevity. The term "Administrator" when used in 40 CFR 60 shall mean the Secretary or the Secretary's designee.]

STATE REQUIREMENTS

OPERATIONAL REQUIREMENTS

1. **Hours of Operation:** This emissions unit may operate continuously, i.e., 8,760 hours per year. [Rule 62-210.200, F.A.C., Definitions -- potential to emit (PTE)]
2. **Fuels:** Fuels fired in the pyroprocessing system (kiln and calciner) shall not exceed a total maximum heat input of 364 million Btu per hour (mmBtu/hr) and shall consist only of natural gas, coal, petroleum coke, whole tires and tire derived fuel. Usage of tires and tire derived fuel shall be in compliance with the following limits and conditions:
 - a. Whole tires and tire derived fuel may be fired directly in the pyroprocessing system at a rate not to exceed a maximum heat input of 10% of the total pyroprocessing heat input, not to exceed 36.4 mmBtu/hr at any time. The remaining 90% of the total pyroprocessing heat input shall be derived from firing natural gas, coal or petroleum coke. Tires and tire derived fuel fired in this manner shall be fed into the kiln system at the transition section between the base of the precalciner and the point where gases exit the kiln. The tire feeder mechanism shall be designed with a double airlock.

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b. Whole tires and tire derived fuel may be fed into the tire gasification system at a rate not to exceed a maximum heat input of 40% of the total pyroprocessing heat input, not to exceed 145.6 mmBtu/hr at any time. The remaining 60% of the total pyroprocessing heat input shall be derived from firing natural gas, coal or petroleum coke. The tire feeder mechanism for the tire gasification system shall have an airlock. The tire gasification system shall convey solid byproducts into the pyroprocessing system via a ram system.

c. Tires and tire derived fuel shall be fired in either manner a. or b. above, but not both at any given time.

[Rules 62-4.070(3) and 62-210.200, F.A.C., Definitions -- potential to emit (PTE), F.A.C.]

3. Fuels and Materials Not Allowed: The owner or operator shall not introduce hazardous wastes, petroleum contaminated soil or materials, used oil, oil fuels, solid fuels other than those allowed by this permit, or solid wastes other than tires and tire derived fuel into any part of the process or emission control equipment. [Rule 62-4.070(3), F.A.C.]

4. Process Rate Limitations: The kiln shall not process more than 178 tons of dry preheater feed per hour and shall not produce more than 105 tons of clinker per hour. The facility shall not produce more than 150 tons of cement per hour. Process and production rates shall be further limited to 1,427,880 tons of dry preheater feed in any consecutive 12-month period, 839,500 tons of clinker in any consecutive 12-month period, and 1,191,360 tons of portland cement in any consecutive 12-month period. [Rule 62-210.200, F.A.C., Definitions -- potential to emit (PTE)]

5. Air Heater: The permittee may install an air heater associated with the raw mill, fired only with natural gas, with a maximum rated heat input capacity of 32 mmBtu/hr. [Rule 62-4.070(3), F.A.C.]

[Note: Emissions from the air heater are included in the emission limitations of emissions unit 004, specified in specific condition 15 of this subsection. Estimated maximum potential emissions from the air heater alone are: NO_x 3.12 lb/hr, CO 2.62 lb/hr, SO₂ 0.02 lb/hr, and VOC 0.08 lb/hr.]

6. Final Construction Schedule: The permittee shall provide to the Department a final construction schedule after selection of the contractor and before commencement of construction. [Rule 62-212.400(5)(h)2., F.A.C.]

7. Cement Kiln Dust: Cement kiln dust shall be recirculated in the process and shall not be directly discharged from process or emission control equipment. Cement kiln dust removed from process equipment during maintenance and repair shall be confined and controlled at all times and shall be managed in accordance with the applicable provisions of 40 CFR 261. [Rule 62-4.070(3), F.A.C.]

[Note: 40 CFR 261 has been omitted for brevity. See the Code of Federal Regulations for the text of this section.]

8. Tires and TDF Management: Tires and tire derived fuel shall be stored, handled and managed in accordance with the provisions of Rule 62-711, F.A.C. [Rule 62-4.070(3), F.A.C.]

[Note: Rule 62-711, F.A.C., has been omitted for brevity. See the Florida Administrative Code for the text of this rule.]

9. Continuous Monitor Data Retrieval System: The owner or operator, at its sole expense, shall provide to the Department, at the Department's chosen site, one personal computer equipped with a modem

SECTION III. EMISSIONS UNITS SPECIFIC CONDITIONS

and software, and corresponding hardware at the owner's facility, to enable the Department at any time to connect to the CEM system and allow the Department access to data from the continuous monitors for SO₂, NO_x and VOC expressed in terms of the units of the emission limiting standards of this permit, data from the continuous opacity monitor systems, and data from the monitor for the temperature at the inlet to the in-line kiln/raw mill particulate matter control device. The computer and software shall provide the Department with a numerical and graphical display of these data in real time pursuant to the averaging requirements of this permit, and shall allow the Department to electronically store and retrieve such data, and print such data as the Department may select. The software shall also allow the Department to review the exception log for any previous period of time accessible through the CEMS data management system. The owner or operator shall also, at its sole expense, provide for 24 months after initiating plant operation software development support at the Department's chosen site to allow the Department to specify and receive timely programming of the data retrieval software to allow the Department to change the format and provide additional formats of the reports it receives. The owner or operator shall also at its sole expense, if technically feasible, post the above data to an Internet site accessible to the Department and public at any time via standard Internet browser software. [Rule 62-4.070(3), F.A.C.]

10. O&M Plan for Baghouses and ESP: The owner or operator shall prepare an operation and maintenance plan (O&M plan) to address operation and regular, routine inspection and maintenance of the electrostatic precipitator for the clinker cooler (emissions unit 005), and the baghouses for emissions units 002, 004 and 006. The O&M plan shall address the schedule for inspection of this equipment and required preventive maintenance and shall require records of the condition of the equipment upon each inspection and any maintenance activities performed. The O&M plan shall be submitted to the Department's Northeast District office prior to expiration of this permit. [Rule 62-4.070(3), F.A.C.]

COMBUSTION AND PROCESS CONTROL TECHNOLOGY

- II. Combustion and Process Control Technology: The owner or operator shall install and operate multistage combustion, with a separate line combustion chamber at the precalciner, for control of NO_x emissions. The owner or operator shall control emissions of CO and VOC through control of the combustion process. The owner or operator shall control emissions of SO₂ through design and control of the clinker production process. [Rules 62-4.070(3) and 62-212.400, F.A.C., and BACT]

EMISSION LIMITATIONS AND PERFORMANCE STANDARDS

[Note: The emission limits for particulate matter and visible emissions imposed by Rule 62-212.400 and BACT are as stringent or more stringent than the limits imposed by the applicable NSPS or NESHAP rules. However, the BACT requirements do not waive or vary any monitoring or record keeping requirements of the NSPS and NESHAP rules.]

12. Emissions Limited and Subject to Revision for SO₂ and NO_x: Emissions from the facility shall not exceed the limitations specified in this permit. Based on results of compliance tests and continuous monitoring data, the Department may revise the emission limits for sulfur dioxide and nitrogen oxides downward to make these limits more stringent provided that overall control attained for all air pollutants including SO₂, NO_x, VOC and CO is optimized. Such revision shall be based on data that represents a full range of operating conditions and a representative period of time. Such revision, if

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POLLUTANT	EMISSION LIMIT		AVERAGING TIME	BASIS
PM	0.13 lb/ton of dry preheater feed	23.1 lb/hour	3 hours ³	BACT
PM ₁₀	0.11 lb/ton of dry preheater feed	19.6 lb/hour	3 hours ³	BACT
SO ₂	0.27 lb/ton of clinker	28.4 lb/hour	3 hours ⁴	BACT
NO _x	2.9 lb/ton of clinker ¹	304.5 lb/hour ¹	24 hours ⁴	BACT
CO	3.6 lb/ton of clinker	378.0 lb/hour	3 hours ⁵	BACT
VOC	0.12 lb/ton of clinker ²	12.6 lb/hour ²	30 days ⁶	BACT
VE	10% opacity		6 minutes ⁷	BACT

¹ NO_x emissions shall not exceed 3.8 lb/ton of clinker and 399.0 lb/hour during the first 12 months after initial startup. After 12 months after initial plant startup, emissions of NO_x shall not exceed the limits shown in the table. Emissions of NO_x up to 600 lb/hr for up to one hour in duration shall be allowed for each startup of the pyroprocessing system which occurs when there is no material in the kiln.

² VOC emissions shall be expressed as propane.

³ The averaging times for PM and PM₁₀ correspond to the required length of sampling for the initial and subsequent emission tests.

⁴ The averaging time for NO_x shall be a rolling average that shall be recomputed every hour from the individual hourly averages for the current hour and the preceding 23 hours. The averaging time for SO₂ shall be a rolling average that shall be recomputed every hour from the individual hourly averages for the current hour and the preceding two hours. Each hourly average shall be computed from a minimum of one measurement every minute.

⁵ The averaging time for CO corresponds to the required length of sampling for the initial and subsequent emission tests.

⁶ The averaging time for VOC shall be a 30-day block average that shall be computed from a minimum of one measurement every minute.

⁷ The averaging time for visible emissions shall be a 6-minute block average that shall be computed from a minimum of one measurement every 15 seconds. The 6 minute block averages shall start at the beginning of each hour.

[Note: These emission limits, along with annual production limits, effectively limit annual emissions to: PM, 92.8; PM₁₀, 78.4; SO₂, 113.4; NO_x, 1217.5; CO, 1511.1; and VOC, 50.4 tons per year. First year NO_x emissions are effectively limited to 1595.4 tons per year. NO_x emissions are estimated assuming that two startups as specified occur per year, each resulting in maximum allowable excess emissions. Mercury introduced into the pyroprocessing system is limited pursuant to specific condition 13 of this subsection of this permit; annual emissions of mercury are effectively limited by this condition to 184 pounds per year.]

[Rules 62-4.070(3) and 62-212.400, F.A.C., and BACT]

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SECTION III. EMISSIONS UNITS SPECIFIC CONDITIONS

No owner or operator of a Portland Cement kiln shall cause, permit, or allow the emission of particulate matter in excess of 0.50 pounds per ton to the kiln (dry basis, excluding fuel), or visible emissions the density of which is greater than 20 percent opacity. [Rule 62-296.701(2)(a), F.A.C.]

[Note: The BACT emission limits of this permit (table above) are more stringent than the limits imposed by this rule.]

16. Emissions Unit 005: Emissions unit 005 shall have one emission point, the stack of the clinker cooler, designated by the applicant as K-15. Particulate matter emissions from this emissions unit shall be controlled by an electrostatic precipitator.

Emissions from emissions unit 005, the clinker cooler, shall not exceed the following limits for the following pollutants:

POLLUTANT	EMISSION LIMIT		AVERAGING TIME	BASIS
PM	0.07 lb/ton of dry preheater feed	12.5 lb/hour	3 hours ¹	BACT
PM ₁₀	0.06 lb/ton of dry preheater feed	10.7 lb/hour	3 hours ¹	BACT
VE	10% opacity		6 minutes ²	BACT

¹ The averaging times for PM and PM₁₀ correspond to the required length of sampling for the initial and subsequent emission tests.

² The averaging time for visible emissions shall be a 6-minute block average computed from a minimum of one measurement every 15 seconds. The 6 minute block averages shall start at the beginning of each hour.

[Note: These emission limits, along with annual production limits, effectively limit annual emissions to: PM, 49.9 and PM₁₀, 42.9 tons per year.]

[Rules 62-4.070(3), 62-210.700(5) and 62-212.400, F.A.C., and BACT]

No owner or operator of a Portland Cement clinker cooler shall cause, permit, or allow the emission of particulate matter in excess of 0.25 pounds per ton of feed to the kiln (dry basis, excluding fuel), or visible emissions the density of which is greater than 20 percent opacity. [Rule 62-296.701(2)(b), F.A.C.]

[Note: The BACT emission limits of this permit (table above) are more stringent than the limits imposed by this rule.]

17. Emissions Unit 006: Emissions unit 006 shall have the following emission points:

EMISSION POINT	DESCRIPTION
L-03	Dust collector for clinker transport system
L-06	Dust collector for clinker storage system
M-08	Dust collector for clinker transport system
N-09	Dust collector for finish mill air separator
N-12	Dust collector for finish mill vent

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(Table continued below)

EMISSION POINT	DESCRIPTION
N-91	Dust collector for clinker grinding (finish mill)
Q-14	Dust collector for cement loading system
Q-17	Dust collector for cement loading system
Q-25	Dust collector for cement storage silo
Q-26	Dust collector for cement storage silo
R-12	Dust collector for cement packing operation

Particulate matter (PM) emissions from each emission point of emissions unit 006 shall not exceed 0.01 grains/dscf, and PM₁₀ emissions shall not exceed 0.0085 grains/dscf. Particulate matter emissions from each emission point of this emissions unit shall be controlled by a baghouse. Visible emissions from each emission point of this emissions unit shall not exceed 5% opacity.

For emission points N-09 and N-12, after initial testing that demonstrates compliance with the PM limit of this condition is completed, subsequent compliance testing for PM emissions from these emission points is waived, and an alternative standard of 5% opacity is imposed, pursuant to Rule 62-297.620(4), F.A.C. For the other emission points of emissions unit 006, initial and annual compliance testing for PM emissions from these emission points is waived, and an alternative standard of 5% opacity is imposed, pursuant to Rule 62-297.620(4), F.A.C. If the Department has reason to believe that the particulate weight emission standard is not being met, it shall require that compliance be demonstrated using EPA Method 5, as described in 40 CFR 60 Appendix A (1997 version).

[Note: These emission limits effectively limit annual emissions of PM for all emission points in this emission unit to 68.4 tons per year. PM₁₀ emissions are estimated to equal 85% of PM emissions, or 58.1 tons per year. The particulate weight emission standard and the visible emissions limit of 5% opacity are BACT.]

[Rules 62-4.070(3), 62-210.700(5), 62-212.400 and 62-297.620(4), F.A.C., BACT and applicant request]

COMPLIANCE MONITORING AND TESTING REQUIREMENTS

18. Continuous Emission Monitoring Systems: The owner or operator shall install, calibrate, maintain, and operate a continuous emission monitoring (CEM) system in the in-line kiln/raw mill stack to measure and record the emissions of NO_x, SO₂, and VOC from the in-line kiln/raw mill, in a manner sufficient to demonstrate compliance with the emission limits of this permit. Compliance with the emission limit for NO_x shall be based on a 24-hour rolling average that shall be recomputed every hour from the individual hourly averages for the current hour and the preceding 23 hours, and compliance with the emission limit for SO₂ shall be based on a rolling three-hour average that shall be recomputed every hour from the individual hourly averages for the current hour and the preceding two hours; each hourly average shall be computed from a minimum of one measurement every minute. Compliance with the emission limit for VOC shall be based on a 30 day block average that shall be computed from a minimum of one measurement every minute. The CEM system shall express the results in units of pounds per ton of clinker produced, and pounds per hour. [Rule 62-4.070(3), F.A.C., and BACT]

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[Note: Continuous opacity monitor (COM) systems shall be installed, operated, and maintained at the kiln/raw mill baghouse stack and the outlet of the clinker cooler ESP pursuant to 40 CFR 60.63. A continuous emission monitor for emissions of total hydrocarbon is required pursuant to 40 CFR 63.1349 and 63.1450. A continuous monitor for the temperature at the inlet to the in-line kiln/raw mill baghouse is required pursuant to 40 CFR 63.1349 and 63.1450.]

19. CEM System Requirements: The selection, installation, calibration, maintenance, operation, record keeping, and reporting of the CEM system shall comply with the requirements of 40 CFR 60.7 and 60.13, and 40 CFR 60 Appendix B, Performance Specifications, and Appendix F, Quality Assurance Procedures. [Rules 62-4.070(3), 62-210.800 and 62-297.520, F.A.C., and BACT]

[Note: 40 CFR 60 Appendix B and Appendix F have been omitted for brevity. See the Code of Federal Regulations for the text of these sections.]

20. Emission Tests Required – Emissions Units 002 and 006: The owner or operator shall demonstrate compliance with the visible emissions standard for emissions units 002 and 006 annually using EPA Method 9, as described in 40 CFR 60 Appendix A (1997 version). The owner or operator shall demonstrate compliance with the particulate matter (PM) limits of this permit for emissions units 002 and 006, as required by this permit, using EPA Method 5, as described in 40 CFR 60 Appendix A (1997 version). Testing emissions units 002 and 006 for PM₁₀ is not required if the particulate matter test(s) demonstrate compliance with the PM limits. Should PM₁₀ testing be required, compliance shall be demonstrated using EPA Method 201 of 40 CFR 51, Appendix M (1997 version). [Rules 62-297.310 and 62-297.620(4), F.A.C., and BACT]

21. Visible Emission Tests Required – Emissions Units 003 and 007: The owner or operator shall, for emissions units 003 and 007, demonstrate compliance with the visible emission limits of specific conditions 29(c) and 39 of this subsection annually, using the methods specified in this subsection. [Rule 62-297.310(7)(a)4.a., F.A.C.]

22. Emission Tests Required – Emissions Units 004 and 005: In addition to the continuous monitoring requirements of this permit, the owner or operator shall demonstrate compliance with the emission limits of this permit for emissions units 004 and 005 initially and annually using the test methods of 40 CFR 60 Appendix A and 40 CFR 61 Appendix B (1997 versions) specified below. The tests conducted annually for the relative accuracy test audit (RATA) for the CEM system may be used to satisfy this requirement provided the owner or operator satisfies the prior notification requirements and emission testing requirements of this permit for performance and compliance tests.

POLLUTANT	TEST METHOD
PM	Method 5 ¹
PM ₁₀	Method 5, assuming all PM measured is PM ₁₀
SO ₂	Method 6 or 6C
NO _x	Method 7 or 7E ²
VE	Method 9
CO	Method 10
VOC	Method 25 or 25A

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¹ The minimum sample volume shall be 30 dry standard cubic feet.

² NOx emissions testing shall be conducted with the air heater in operating at the highest heat input possible during the test.

Each test shall be conducted while all continuous monitoring systems are functioning properly, and with all process units operating at their permitted capacity.

Separate emission tests of emissions unit 004 shall be conducted for the above pollutants upon initial operation under the following fuel firing scenarios:

PRIMARY FUEL	SECONDARY FUEL
Coal	Tires and tire derived fuel directly into the pyroprocessing system
Coal	Tires and tire derived fuel into the tire gasification system
Petroleum Coke	Tires and tire derived fuel directly into the pyroprocessing system
Petroleum Coke	Tires and tire derived fuel into the tire gasification system

Subsequent annual testing under these fuel firing scenarios is not required for any firing scenario that is used for less than 400 hours in the previous year, as documented by fuel firing records.

An initial test of emissions unit 004 shall be conducted for mercury using either Method 29 or Method 101A. No subsequent emissions testing for mercury is required. If Method 29 is utilized, the owner or operator is not required to report results for other metals.

[Rules 62-4.070(3), 62-296.701(4)(a), (c) and (d), and 62-297.310(7), F.A.C. and BACT]

[Note: 40 CFR 60 Appendix A has been omitted for brevity. See the Code of Federal Regulations for the text of this section.]

- 23. CO Process Monitors: The owner or operator shall install and maintain one or more process monitors for carbon monoxide that will continuously monitor carbon monoxide content in the process gases to enable the operator to properly operate the pyroprocessing system while minimizing emissions of CO, VOC and NOx. The data from the process monitors shall be available at the facility for Department inspection. The owner or operator shall, upon request of the Department during inspection, provide the Department with sufficient process information to allow the Department to estimate emissions of CO from the process monitor data, in units of pounds of CO per ton of clinker and pounds per hour. [Rule 62-4.070(3), F.A.C.]

REPORTING AND RECORD KEEPING REQUIREMENTS

- 24. Records of Process and Production Rates: The owner or operator shall make and maintain records of the process rate of dry preheater feed in units of tons per hour and tons per consecutive 12-month period, and the production rate of clinker and cement in units of tons per hour and tons per consecutive 12-month period. The clinker production rate shall be directly measured independent of preheater feed. The owner or operator shall make and maintain records of the production of portland cement in units of tons per consecutive 12-month period. Records in units of tons per hour shall be based on either hourly averages or daily averages and shall be completed no later than the day following the day of the record. Records in units of tons per consecutive 12-month period shall be made from monthly records of process and production rates for the past 12 months, and shall be completed no later than the 10th day of each month. [Rule 62-4.070(3), F.A.C. and BACT]

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25. Records of Fuels and Heat Input: The owner or operator shall record the fuel firing rate continuously. The owner or operator shall maintain records of the quantity and representative analysis of fuels purchased, and such records shall include the sulfur content, heat content and, for coal and petroleum coke, the proximate and ultimate analyses.

The owner or operator shall make and maintain records of heat input to the pyroprocessing system on a block-hour basis, starting at the beginning of each hour, by multiplying the hourly average fuel firing rate by the heating value representative of that fuel from the records of fuel analysis. Such records shall be completed for each block-hour, within 15 minutes of the end of each block-hour.

[Rule 62-4.070(3), F.A.C.]

26. Records of Startup, Shutdown and Malfunction: The owner or operator shall make and maintain records of periods of startup, shutdown and malfunction. These records shall show the dates, times and duration of these episodes and shall document suspected cause of each episode, corrective actions taken by the owner or operator and actions taken to reduce excess emissions. [Rule 62-4.070(3), F.A.C.]

27. Material Balance Records of Mercury: The owner or operator shall demonstrate compliance with the mercury throughput limitation by material balance and making and maintaining records of monthly and rolling 12-month mercury throughput. The owner or operator shall, for each month of sampling required by this condition, perform daily sampling of the preheater feed material from the blend silo, coal, petroleum coke, tires and tire derived fuel, and shall composite the daily samples each month, and shall analyze the monthly composite sample to determine mercury content of these materials for the month. The owner or operator shall determine the mass of mercury introduced into the pyroprocessing system (in units of pounds per month) from the total of the product of the mercury content from the monthly composite analysis and the mass of each material or fuel used during the month. The consecutive 12-month record shall be determined from the individual monthly records for the current month and the preceding eleven months and shall be expressed in units of pounds of mercury per consecutive 12-month period. Such records shall be completed no later than 25 days following the month of the records. To determine the mercury content of the feed material and fuels to be used in the monthly calculation, sampling and analysis shall be performed in accordance with the following schedule:

- i. For the first quarter of the operation of the plant, sample for each month of the quarter and analyze each month's composite sample.
- ii. For the next three quarters, sample for one month of each quarter and analyze that month's composite sample.
- iii. For each year thereafter, sample for one month of each year and analyze that month's composite sample, except as follows.
 - a. If there is a change in feed material or fuels utilized from those previously sampled and analyzed, the frequency shall revert to ii, above, for the next three quarters.
 - b. If the monthly composite analysis shows a total monthly mercury throughput of greater than 7.7 pounds per month of mercury introduced into the pyroprocessing system, the

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frequency shall revert to ii, above, for the next three quarters or until the monthly throughput is less than or equal to 7.7 pounds per month, whichever is longer.

[Rule 62-4.070(3), F.A.C.]

FEDERAL NSPS REQUIREMENTS

APPLICABILITY AND DEFINITIONS

28. Pursuant to 40 CFR 60.60 Applicability and Designation of Affected Facility:

- (a) The provisions of 40 CFR 60 Subpart F are applicable to the following affected facilities in portland cement plants: Kiln, clinker cooler, raw mill system, finish mill system, raw mill dryer, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems.

[40 CFR 60.60]

These terms are defined at 40 CFR 60.61. The definitions are applicable to this project but have been omitted for brevity. See the Code of Federal Regulations for the text of this section.

EMISSION LIMITATIONS AND PERFORMANCE STANDARDS

29. Pursuant to 40 CFR 60.62 Standard for Particulate Matter:

- (a) On and after the date on which the performance test required to be conducted by 40 CFR 60.8 is completed, no owner or operator shall cause to be discharged into the atmosphere from any kiln any gases which:
- (1) Contain particulate matter in excess of 0.15 kg per metric ton of feed (dry basis) to the kiln (0.30 lb per ton).
 - (2) Exhibit greater than 20 percent opacity.
- (b) On and after the date on which the performance test required to be conducted by 40 CFR 60.8 is completed, no owner or operator shall cause to be discharged into the atmosphere from any clinker cooler any gases which:
- (1) Contain particulate matter in excess of 0.050 kg per metric ton of feed (dry basis) to the kiln (0.10 lb per ton).
 - (2) Exhibit 10 percent opacity, or greater.
- (c) On and after the date on which the performance test required to be conducted by 40 CFR 60.8 is completed, no owner or operator shall cause to be discharged into the atmosphere from any affected facility other than the kiln and clinker cooler any gases which exhibit 10 percent opacity, or greater.

[40 CFR 60.62(a), (b) and (c)]

[Note: Emissions units 002, 003, 006 and 007 are subject to the visible emissions limit of paragraph (c) of this condition. The BACT emission limits of this permit for emissions units 002 and 006 are as stringent or are more stringent than the emission limits imposed by this rule.]

SECTION III. EMISSIONS UNITS SPECIFIC CONDITIONS

COMPLIANCE MONITORING AND TESTING REQUIREMENTS

30. Pursuant to 40 CFR 60.63 Monitoring of Operations:

- (a) The owner or operator shall record the daily production rates and kiln feed rates.
- (b) Each owner or operator shall install, calibrate, maintain, and operate in accordance with 40 CFR 60.13 a continuous opacity monitoring system to measure the opacity of emissions discharged into the atmosphere from any kiln or clinker cooler.
- (d) For the purpose of reports under 40 CFR 60.65, periods of excess emissions that shall be reported are defined as all 6-minute periods during which the average opacity exceeds that allowed by 40 CFR 60.62(a)(2) or 40 CFR 60.62(b)(2).

[40 CFR 60.63 (a), (b) and (d)]

31. Pursuant to 40 CFR 60.64 Test Methods and Procedures:

- (a) In conducting the performance tests required in 40 CFR 60.8, the owner or operator shall use as reference methods and procedures the test methods in appendix A of this part or other methods and procedures as specified in this section, except as provided in 40 CFR 60.8(b).

- (b) The owner or operator shall determine compliance with the particulate matter standard in 40 CFR 60.62 as follows:

- (1) The emission rate (E) of particulate matter shall be computed for each run using the following equation:

$$E = (c_s Q_{sd}) / (P K)$$

where:

E = emission rate of particulate matter, kg/metric ton (lb/ton) of kiln feed.

c_s = concentration of particulate matter, g/dscm (g/dscf).

Q_{sd} = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

P = total kiln feed (dry basis) rate, metric ton/hr (ton/hr).

K = conversion factor, 1000 g/kg (453.6 g/lb).

- (2) Method 5 shall be used to determine the particulate matter concentration (c_s) and the volumetric flow rate (Q_{sd}) of the effluent gas. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30.0 dscf) for the kiln and at least 60 minutes and 1.15 dscm (40.6 dscf) for the clinker cooler.

- (3) Suitable methods shall be used to determine the kiln feed rate (P), except fuels, for each run. Material balance over the production system shall be used to confirm the feed rate.

- (4) Method 9 and the procedures in 40 CFR 60.11 shall be used to determine opacity.

[40 CFR 60.64(a) and (b)]

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REPORTING AND RECORD KEEPING REQUIREMENTS

32. Pursuant to 40 CFR 60.65 Recordkeeping and Reporting:

- (a) Each owner or operator required to install a continuous opacity monitoring system under 40 CFR 60.63(b) shall submit reports of excess emissions as defined in 40 CFR 60.63(d). The content of these reports must comply with the requirements in 40 CFR 60.7(c). Notwithstanding the provisions of 40 CFR 60.7(c), such reports shall be submitted semiannually.
- (b) Each owner or operator monitoring visible emissions under 40 CFR 60.63(c) shall submit semi-annual reports of observed excess emissions as defined in 40 CFR 60.63(d).
- (c) Each owner or operator of facilities subject to the provisions of 40 CFR 60.63(c) shall submit semi-annual reports of the malfunction information required to be recorded by 40 CFR 60.7(b). These reports shall include the frequency, duration, and cause of any incident resulting in deenergization of any device controlling kiln emissions or in the venting of emissions directly to the atmosphere.

[40 CFR 60.65(a), (b) and (c)]

FEDERAL NESHAP REQUIREMENTS

GENERAL

33. Pursuant to 40 CFR 63.1340 Applicability and Designation of Affected Sources:

- (a) Except as specified in paragraphs (b) and (c) of this section, the provisions of this subpart apply to each new portland cement plant which is a major source or an area source as defined in 40 CFR 63.2.
- (b) The affected sources subject to this subpart are:
 - (1) Each in-line kiln/raw mill at any major or area source;
 - (2) Each clinker cooler at any portland cement plant which is a major source;
 - (4) Each finish mill at any portland cement plant which is a major source;
 - (6) Each raw material, clinker, or finished product storage bin at any portland cement plant which is a major source;
 - (7) Each conveying system transfer point at any portland cement plant which is a major source;
 - (8) Each bagging system at any portland cement plant which is a major source; and
 - (9) Each bulk loading or unloading system at any portland cement plant which is a major source.

[Note: This part of the permit was drafted with the assumption that the portland cement plant will be a major source, not an area source. Should the owner or operator determine pursuant to 40 CFR 63.1352 that this portland cement plant is not a major source as defined in 40 CFR 63.2, the provisions of 40 CFR 63 Subpart LLL shall not apply to any source except for the in-line kiln/raw mill as provided by 40 CFR 63.1340, and the conditions of this permit that are pursuant to 40 CFR 63 Subpart LLL shall not apply to any source except for the in-line kiln/raw mill. Except for the in-

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line kiln/raw mill, the emission limits for the clinker cooler and other sources pursuant to 40 CFR 63 Subpart LLL are as equal to those of 40 CFR 60 Subpart F.]

- (c) For portland cement plants with on-site nonmetallic mineral processing facilities, the first affected source in the sequence of materials handling operations subject to this subpart is the raw material storage, which is just prior to the raw mill. The primary and secondary crushers and any other equipment of the on-site nonmetallic mineral processing plant which precedes the raw material storage are not subject to this subpart. Furthermore, the first conveyor transfer point subject to this subpart is the transfer point associated with the conveyor transferring material from the raw material storage to the raw mill.
- (d) The owner or operator of any affected source subject to the provisions of this subpart is subject to title V permitting requirements.

The terms used in this rule are defined at 40 CFR 63.1341 Definitions, the text of which is reproduced below.

All terms used in this subpart that are not defined below have the meaning given to them in the CAA and in subpart A of this part.

Bagging system means the equipment which fills bags with portland cement.

Clinker cooler means equipment into which clinker product leaving the kiln is placed to be cooled by air supplied by a forced draft or natural draft supply system.

Continuous monitor means a device which continuously samples the regulated parameter specified in 40 CFR 63.1350 of this subpart without interruption, evaluates the detector response at least once every 15 seconds, and computes and records the average value at least every 60 seconds, except during allowable periods of calibration and except as defined otherwise by the continuous emission monitoring system performance specifications in appendix B to part 60 of this chapter.

Conveying system means a device for transporting materials from one piece of equipment or location to another location within a facility. Conveying systems include but are not limited to the following: feeders, belt conveyors, bucket elevators and pneumatic systems.

Conveying system-transfer point means a point where any material including but not limited to feed material, fuel, clinker or product, is transferred to or from a conveying system, or between separate parts of a conveying system.

Dioxins and furans (D/F) means tetra-, penta-, hexa-, hepta-, and octa- chlorinated dibenzo dioxins and furans.

Facility means all contiguous or adjoining property that is under common ownership or control, including properties that are separated only by a road or other public right-of-way.

Feed means the prepared and mixed materials, which include but are not limited to materials such as limestone, clay, shale, sand, iron ore, mill scale, cement kiln dust and flyash, that are fed to the kiln. Feed does not include the fuels used in the kiln to produce heat to form the clinker product.

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Finish mill means a roll crusher, ball and tube mill or other size reduction equipment used to grind clinker to a fine powder. Gypsum and other materials may be added to and blended with clinker in a finish mill. The finish mill also includes the air separator associated with the finish mill.

In-line kiln/raw mill means a system in a portland cement production process where a dry kiln system is integrated with the raw mill so that all or a portion of the kiln exhaust gases are used to perform the drying operation of the raw mill, with no auxiliary heat source used. In this system the kiln is capable of operating without the raw mill operating, but the raw mill cannot operate without the kiln gases, and consequently, the raw mill does not generate a separate exhaust gas stream.

Kiln means a device, including any associated preheater or precalciner devices, that produces clinker by heating limestone and other materials for subsequent production of portland cement.

One-minute average means the average of thermocouple or other sensor responses calculated at least every 60 seconds from responses obtained at least once during each consecutive 15 second period.

Portland cement plant means any facility manufacturing portland cement.

Raw material dryer means an impact dryer, drum dryer, paddle-equipped rapid dryer, air separator, or other equipment used to reduce the moisture content of feed materials.

Raw mill means a ball and tube mill, vertical roller mill or other size reduction equipment, that is not part of an in-line kiln/raw mill, used to grind feed to the appropriate size. Moisture may be added or removed from the feed during the grinding operation. If the raw mill is used to remove moisture from feed materials, it is also, by definition, a raw material dryer. The raw mill also includes the air separator associated with the raw mill.

Rolling average means the average of all one-minute averages over the averaging period.

Run average means the average of the one-minute parameter values for a run.

TEQ means the international method of expressing toxicity equivalents for dioxins and furans as defined in U.S. EPA, Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-dioxins and dibenzofurans (CDDs and CDFs) and 1989 Update, March 1989.

[40 CFR 63.1340 and 63.1341]

EMISSION STANDARDS AND OPERATING LIMITS

34. Pursuant to 40 CFR 63.1342 Standards, General:

- (a) [Note: Table 1 of this subpart has not been reproduced in this permit for brevity. Refer to the Code of Federal Regulations for this table. See 40 CFR 63 Subpart A, General Provisions, indicating the applicability of the general provisions requirements to subpart LLL. This subpart is attached to this permit as Appendix B.]
- (b) Table 1 of this section provides a summary of emission limits and operating limits of this subpart.

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Table 1 to 40 CFR 63.1342. Emission Limits and Operating Limits.

AFFECTED SOURCE	POLLUTANT OR OPACITY	EMISSION AND OPERATING LIMIT
All in-line kiln/raw mills	PM	0.15 kg/Mg of feed (dry basis)
	Opacity	20 percent
All in-line kiln/raw mills	D/F	0.20 ng TEQ/dscm or 0.40 ng TEQ/dscm when the average of the performance test run average particulate matter control device (PMCD) inlet temperatures is 204° C or less. [Corrected to 7 percent oxygen] Operate such that the three-hour rolling average PMCD inlet temperature is no greater than the temperature established at performance test.
In-line kiln/raw mills	THC	50 ppmvd, as propane, corrected to 7 percent oxygen
Clinker coolers	PM	0.050 kg/Mg of feed (dry basis)
	Opacity	10 percent
Finish mills	Opacity	10 percent
All material handling points	Opacity	10 percent

[Note: Emissions units 002, 003, 006 and 007 are subject to the visible emissions limit for material handling points. The BACT emission limits of this permit for emissions unit 004 are as stringent or are more stringent than the emission limits imposed by this rule for PM, opacity and THC. The BACT emission limits of this permit for emissions unit 005 are as stringent or are more stringent than the emission limits imposed by this rule. The BACT emission limits of this permit for emissions unit 002 and 006 are as stringent or are more stringent than the emission limits imposed by this rule.]

[40 CFR 63.1342]

35. Pursuant to 40 CFR 63.1343 Standards for Kilns and In-line Kiln/raw Mills:

(a) *General.* The provisions in this section apply to each in-line kiln/raw mill.

(c) No owner or operator of an inline kiln/raw mill shall cause to be discharged into the atmosphere from these affected sources any gases which:

(1) Contain particulate matter in excess of 0.15 kg per Mg (0.30 lb per ton) of feed (dry basis) to the kiln.

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(2) Exhibit opacity greater than 20 percent.

(3) Contain D/F in excess of:

(i) 0.20 ng per dscm (8.7×10^{-11} gr per dscf)(TEQ) corrected to seven percent oxygen; or

(ii) 0.40 ng per dscm (1.7×10^{-10} gr per dscf)(TEQ) corrected to seven percent oxygen, when the average of the performance test run average temperatures at the inlet to the particulate matter control device is 204° C (400° F) or less.

(4) Contain total hydrocarbon (THC), from the main exhaust of the in-line kiln/raw mill, in excess of 50 ppmvd as propane, corrected to seven percent oxygen.

[40 CFR 63.1343]

[Note: The BACT emission limits of this permit for emissions unit 004 are as stringent or are more stringent than the emission limit imposed by this rule for PM, opacity and THC.]

36. Pursuant to 40 CFR 63.1344 Operating Limits for Kilns and In-line kiln/raw Mills:

(a) The owner or operator of an in-line kiln/raw mill subject to a D/F emission limitation under 40 CFR 63.1343 must operate the in-line kiln/raw mill, such that,

(1) When the raw mill of the in-line kiln/raw mill is operating, the applicable temperature limit for the main in-line kiln/raw mill exhaust, specified in paragraph (b) of this section and established during the performance test when the raw mill was operating is not exceeded.

(2) When the raw mill of the in-line kiln/raw mill is not operating, the applicable temperature limit for the main in-line kiln/raw mill exhaust, specified in paragraph (b) of this section and established during the performance test when the raw mill was not operating, is not exceeded.

(b) The temperature limit for affected sources meeting the limits of paragraph (a) of this section or paragraphs (a)(1) through (a)(3) of this section is determined in accordance with 40 CFR 63.1349(b)(3)(iv).

[40 CFR 63.1344]

37. Pursuant to 40 CFR 63.1345 Standards for Clinker Coolers:

(a) No owner or operator of clinker cooler shall cause to be discharged into the atmosphere from the clinker cooler any gases which:

(1) Contain particulate matter in excess of 0.050 kg per Mg (0.10 lb per ton) of feed (dry basis) to the kiln.

(2) Exhibit opacity greater than ten percent.

(b) [Reserved]

[40 CFR 63.1345]

[Note: The BACT emission limits of this permit for emissions units 005 are as stringent or are more stringent than the emission limit imposed by this rule.]

[Note: 40 CFR 63.1346 is not applicable to this project.]

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38. Pursuant to 40 CFR 63.1347 Standards for Raw and Finish Mills:

The owner or operator of each raw mill or finish mill shall not cause to be discharged from the mill sweep or air separator air pollution control devices of these affected sources any gases which exhibit opacity in excess of ten percent. [40 CFR 63.1347]

[Note: The BACT emission limits of this permit for emissions unit 006 are as stringent or are more stringent than the emission limit of this condition.]

39. Pursuant to 40 CFR 63.1348 Standards for Affected Sources Other Than Kilns; In-Line Kiln/Raw Mills; Clinker Coolers; New and Reconstructed Raw Material Dryers; and Raw and Finish Mills:

The owner or operator of each new or existing raw material, clinker, or finished product storage bin; conveying system transfer point; bagging system; and bulk loading or unloading system; shall not cause to be discharged any gases from these affected sources which exhibit opacity in excess of ten percent. [40 CFR 63.1348]

[Note: Emissions units 002, 003, 006 and 007 are subject to the visible emissions limit of this condition. The BACT emission limits of this permit for emissions units 002 and 006 are as stringent or are more stringent than the emission limit of this condition.]

MONITORING AND COMPLIANCE PROVISIONS

40. Pursuant to 40 CFR 63.1349 Performance Testing Requirements:

(a) The owner or operator of an affected source subject to this subpart shall demonstrate initial compliance with the emission limits of 40 CFR 63.1343 and 40 CFR 63.1345 through 63.1348 using the test methods and procedures in paragraph (b) of this section and 40 CFR 63.7. Performance test results shall be documented in complete test reports that contain the information required by paragraphs (a)(1) through (a)(10) of this section, as well as all other relevant information. The plan to be followed during testing shall be made available to the Administrator prior to testing, if requested.

- (1) A brief description of the process and the air pollution control system;
- (2) Sampling location description(s);
- (3) A description of sampling and analytical procedures and any modifications to standard procedures;
- (4) Test results;
- (5) Quality assurance procedures and results;
- (6) Records of operating conditions during the test, preparation of standards, and calibration procedures;
- (7) Raw data sheets for field sampling and field and laboratory analyses;
- (8) Documentation of calculations;
- (9) All data recorded and used to establish parameters for compliance monitoring; and
- (10) Any other information required by the test method.

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- (b) Performance tests to demonstrate initial compliance with this subpart shall be conducted as specified in paragraphs (b)(1) through (b)(4) of this section.
- (1) The owner or operator of an in-line kiln/raw mill subject to limitations on particulate matter emissions shall demonstrate initial compliance by conducting separate performance tests as specified in paragraphs (b)(1)(i) through (b)(1)(iv) of this section while the raw mill of the in-line kiln/raw mill is under normal operating conditions and while the raw mill of the in-line kiln/raw mill is not operating. The owner or operator of a clinker cooler subject to limitations on particulate matter emissions shall demonstrate initial compliance by conducting a performance test as specified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section. The opacity exhibited during the period of the Method 5 of Appendix A to part 60 of this chapter performance tests required by paragraph (b)(1)(i) of this section shall be determined as required in paragraph (b)(1)(v) of this section.
- (i) EPA Method 5 of appendix A to part 60 of this chapter shall be used to determine PM emissions. Each performance test shall consist of three separate runs under the conditions that exist when the affected source is operating at the highest load or capacity level reasonably expected to occur. Each run shall be conducted for at least one hour, and the minimum sample volume shall be 0.85 dscm (30 dscf). The average of the three runs shall be used to determine compliance. A determination of the particulate matter collected in the impingers ("back half") of the Method 5 particulate sampling train is not required to demonstrate initial compliance with the PM standards of this subpart. However this shall not preclude the permitting authority from requiring a determination of the "back half" for other purposes.
- (ii) Suitable methods shall be used to determine the in-line kiln/raw mill feed rate, except for fuels, for each run.
- (iii) The emission rate, E, of PM shall be computed for each run using equation 1:
- $$E = (c_s Q_{sd}) / P \quad (\text{Eq 1})$$
- Where: E = emission rate of particulate matter, kg/Mg of kiln feed.
 c_s = concentration of PM, kg/dscm.
 Q_{sd} = volumetric flow rate of effluent gas, dscm/hr.
 P = total kiln feed (dry basis), Mg/hr.
- (v) The opacity exhibited during the period of the Method 5 performance tests required by paragraph (b)(1)(i) of this section shall be determined through the use of a continuous opacity monitor (COM). The maximum six-minute average opacity during the three Method 5 test runs shall be determined during each Method 5 test run, and used to demonstrate initial compliance with the applicable opacity limits of 40 CFR 63.1343(b)(2), 40 CFR 63.1343(c)(2), or 40 CFR 63.1345(a)(2).
- (2) The owner or operator of any affected source subject to limitations on opacity under this subpart that is not subject to paragraph (b)(1) of this section shall demonstrate initial compliance with the affected source opacity limit by conducting a test in accordance with Method 9 of appendix A to part 60 of this chapter. The performance test shall be conducted under the conditions that

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exist when the affected source is operating at the highest load or capacity level reasonably expected to occur. The maximum six-minute average opacity exhibited during the test period shall be used to determine whether the affected source is in initial compliance with the standard. The duration of the Method 9 performance test shall be 3-hours (30 6-minute averages), except that the duration of the Method 9 performance test may be reduced to 1-hour if the conditions of paragraphs (b)(2)(i) through (ii) of the section apply:

- (i) There are no individual readings greater than 10 percent opacity;
 - (ii) There are no more than three readings of 10 percent for the first 1-hour period.
- (3) The owner or operator of an affected source subject to limitations on D/F emissions shall demonstrate initial compliance with the D/F emission limit by conducting a performance test using Method 23 of appendix A to part 60 of this chapter. The owner or operator of an in-line kiln/raw mill shall demonstrate initial compliance by conducting separate performance tests while the raw mill of the in-line kiln/raw mill is under normal operating conditions and while the raw mill of the in-line kiln/raw mill is not operating.
- (i) Each performance test shall consist of three separate runs; each run shall be conducted under the conditions that exist when the affected source is operating at the highest load or capacity level reasonably expected to occur. The duration of each run shall be at least three hours and the sample volume for each run shall be at least 2.5 dscm (90 dscf). The concentration shall be determined for each run and the arithmetic average of the concentrations measured for the three runs shall be calculated and used to determine compliance.
 - (ii) The temperature at the inlet to the in-line kiln/raw mill PMCD must be continuously recorded during the period of the Method 23 test, and the continuous temperature record(s) must be included in the performance test report.
 - (iii) One-minute average temperatures must be calculated for each minute of each run of the test.
 - (iv) The run average temperature must be calculated for each run, and the average of the run average temperatures must be determined and included in the performance test report and will determine the applicable temperature limit in accordance with 40 CFR 63.1344(b).
- (4) The owner or operator of an affected source subject to limitations on emissions of THC shall demonstrate initial compliance with the THC limit by operating a continuous emission monitor in accordance with Performance Specification 8A of appendix B to part 60 of this chapter. The duration of the performance test shall be three hours, and the average THC concentration (as calculated from the one-minute averages) during the three hour performance test shall be calculated. The owner or operator of an in-line kiln/raw mill shall demonstrate initial compliance by conducting separate performance tests while the raw mill of the in-line kiln/raw mill is under normal operating conditions and while the raw mill of the in-line kiln/raw mill is not operating.
- (c) Except as provided in paragraph (e) of this section, performance tests required under paragraphs (b)(1) and (b)(2) of this section shall be repeated every five years, except that the owner or operator of an in-line kiln/raw mill or clinker cooler is not required to repeat the initial performance test of opacity for the in-line kiln/raw mill or clinker cooler.

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(d) Performance tests required under paragraph (b)(3) of this section shall be repeated every 30 months.

(e) The owner or operator is required to repeat the performance tests for kilns or in-line kiln/raw mills as specified in paragraphs (b)(1) and (b)(3) of this section within 90 days of initiating any significant change in the feed or fuel from that used in the previous performance test.

(f) Table 1 of this section provides a summary of the performance test requirements of this subpart. [40 CFR 63.1345]

Table 1 to 40 CFR 63.1349. Summary of Performance Test Requirements.

AFFECTED SOURCE AND POLLUTANT	PERFORMANCE TEST
In-line kiln/raw mill ^{b, c} PM	EPA Method 5 ^a
In-line kiln/raw mill ^{b, c} Opacity	COM if feasible ^{d, c}
In-line kiln/raw mill ^{b, c, f, g} D/F	EPA Method 23 ^h
In-line kiln/raw mill ^c THC	THC CEM (EPA PS-8A) ⁱ
Clinker cooler PM	EPA Method 5 ^a
Clinker cooler opacity	COM ^{d, j}
Raw and finish mill opacity	EPA Method 9 ^{a, j}
Materials handling processes (raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging, and bulk loading and unloading systems) opacity	EPA Method 9 ^{a, j}

^a Required initially and every 5 years thereafter.

^b Includes main exhaust.

^c In-line kiln/raw mill to be tested with and without raw mill in operation.

^d Must meet COM performance specification criteria.

^e Opacity limit is 20 percent.

^f [This note is not applicable to this facility.]

^g Temperature determined separately with and without the raw mill operating.

^h Required initially and every 30 months thereafter.

ⁱ EPA Performance Specification (PS)-8A of appendix B to 40 CFR part 60.

^j Opacity limit is 10 percent.

[40 CFR 63.1349]

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41. Pursuant to 40 CFR 63.1350 Monitoring Requirements:

- (a) The owner or operator of each portland cement plant shall prepare for each affected source subject to the provisions of this subpart, a written operations and maintenance plan. The plan shall be submitted to the Administrator for review and approval as part of the application for a part 70 permit and shall include the following information:
- (1) Procedures for proper operation and maintenance of the affected source and air pollution control devices in order to meet the emission limits and operating limits of 40 CFR 40 CFR 63.1343 through 63.1348;
 - (2) Corrective actions to be taken when required by paragraph (e) of this section;
 - (3) Procedures to be used during an inspection of the components of the combustion system of each in-line kiln raw mill located at the facility at least once per year; and
 - (4) Procedures to be used to periodically monitor affected sources subject to opacity standards under 63.1348. Such procedures must include the provisions of paragraphs (a)(4)(i) through (a)(4)(iv) of this section.
- (i) The owner or operator must conduct a monthly 1-minute visible emissions test of each affected source in accordance with Method 22 of Appendix A to part 60 of this chapter. The test must be conducted while the affected source is in operation.
- (ii) If no visible emissions are observed in six consecutive monthly tests for any affected source, the owner or operator may decrease the frequency of testing from monthly to semi-annually for that affected source. If visible emissions are observed during any semi-annual test, the owner or operator must resume testing of that affected source on a monthly basis and maintain that schedule until no visible emissions are observed in six consecutive monthly tests.
- (iii) If no visible emissions are observed during the semi-annual test for any affected source, the owner or operator may decrease the frequency of testing from semi-annually to annually for that affected source. If visible emissions are observed during any annual test, the owner or operator must resume testing of that affected source on a monthly basis and maintain that schedule until no visible emissions are observed in six consecutive monthly tests.
- (iv) If visible emissions are observed during any Method 22 test, the owner or operator must conduct a 6-minute test of opacity in accordance with Method 9 of appendix A to part 60 of this chapter. The Method 9 test must begin within one hour of any observation of visible emissions.
- (b) Failure to comply with any provision of the operations and maintenance plan developed in accordance with paragraph (a) of this section shall be a violation of the standard.
- (c) The owner or operator of an in-line kiln/raw mill shall monitor opacity at each point where emissions are vented from these affected sources in accordance with paragraphs (c)(1) through (c)(3) of this section.
- (1) The owner or operator shall install, calibrate, maintain, and continuously operate a continuous opacity monitor (COM) located at the outlet of the PM control device to continuously monitor the opacity. The COM shall be installed, maintained, calibrated, and operated as required by

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subpart A, general provisions of this part, and according to PS-1 of appendix B to part 60 of this chapter.

- (3) To remain in compliance, the opacity must be maintained such that the 6-minute average opacity for any 6-minute block period does not exceed 20 percent. If the average opacity for any 6-minute block period exceeds 20 percent, this shall constitute a violation of the standard.
- (d) The owner or operator of a clinker cooler shall monitor opacity at each point where emissions are vented from the clinker cooler in accordance with paragraphs (d)(1) through (d)(3) of this section.
 - (1) The owner or operator shall install, calibrate, maintain, and continuously operate a COM located at the outlet of the clinker cooler PM control device to continuously monitor the opacity. The COM shall be installed, maintained, calibrated, and operated as required by subpart A, general provisions of this part, and according to PS-1 of appendix B to part 60 of this chapter.
 - (3) To remain in compliance, the opacity must be maintained such that the 6-minute average opacity for any 6-minute block period does not exceed 10 percent. If the average opacity for any 6-minute block period exceeds 10 percent, this shall constitute a violation of the standard.
- (e) The owner or operator of a finish mill shall monitor opacity by conducting daily visual emissions observations of the mill sweep and air separator PMCDs of these affected sources, in accordance with the procedures of Method 22 of appendix A of part 60 of this chapter. The Method 22 test shall be conducted while the affected source is operating at the highest load or capacity level reasonably expected to occur within the day. The duration of the Method 22 test shall be six minutes. If visible emissions are observed during any Method 22 visible emissions test, the owner or operator must:
 - (1) Initiate, within one-hour, the corrective actions specified in the site specific operating and maintenance plan developed in accordance with paragraphs (a)(1) and (a)(2) of this section; and
 - (2) Within 24 hours of the end of the Method 22 test in which visible emissions were observed, conduct a visual opacity test of each stack from which visible emissions were observed in accordance with Method 9 of appendix A of part 60 of this chapter. The duration of the Method 9 test shall be thirty minutes.
- (f) The owner or operator of an affected source subject to a limitation on D/F emissions shall monitor D/F emissions in accordance with paragraphs (f)(1) through (f)(6) of this section.
 - (1) The owner or operator shall install, calibrate, maintain, and continuously operate a continuous monitor to record the temperature of the exhaust gases from the in-line kiln/raw mill at the inlet to, or upstream of, the in-line kiln/raw mill PM control devices.
 - (i) The recorder response range must include zero and 1.5 times either of the average temperatures established according to the requirements in 40 CFR 63.1349(b)(3)(iv).
 - (ii) The reference method must be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system or alternate reference, subject to approval by the Administrator.

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- (2) The owner or operator shall monitor and continuously record the temperature of the exhaust gases from the in-line kiln/raw mill at the inlet to the in-line kiln/raw mill PMCD.
- (3) The three-hour rolling average temperature shall be calculated as the average of 180 successive one-minute average temperatures.
- (4) Periods of time when one-minute averages are not available shall be ignored when calculating three-hour rolling averages. When one-minute averages become available, the first one-minute average is added to the previous 179 values to calculate the three-hour rolling average.
- (5) When the operating status of the raw mill of the in-line kiln/raw mill is changed from off to on, or from on to off the calculation of the three-hour rolling average temperature must begin anew, without considering previous recordings.
- (6) The calibration of all thermocouples and other temperature sensors shall be verified at least once every three months.
- (h) The owner or operator of an affected source subject to a limitation on THC emissions under this subpart shall comply with the monitoring requirements of paragraphs (h)(1) through (h)(3) of this section to demonstrate continuous compliance with the THC emission standard:
 - (1) The owner or operator shall install, operate and maintain a THC continuous emission monitoring system in accordance with Performance Specification 8A, of appendix B to part 60 of this chapter and comply with all of the requirements for continuous monitoring systems found in the general provisions, subpart A of this part.
 - (2) The owner or operator is not required to calculate hourly rolling averages in accordance with section 4.9 of Performance Specification 8A.
 - (3) Any thirty-day block average THC concentration in any gas discharged from the main exhaust of an in-line kiln/raw mill, exceeding 50 ppmvd, reported as propane, corrected to seven percent oxygen, is a violation of the standard.
- (i) The owner or operator of any kiln or in-line kiln/raw mill subject to a D/F emission limit under this subpart shall conduct an inspection of the components of the combustion system of each kiln or in-line kiln/raw mill at least once per year.
- (j) The owner or operator of an affected source subject to a limitation on opacity 40 CFR 63.1348 shall monitor opacity in accordance with the operation and maintenance plan developed in accordance with paragraph (a) of this section.
- (k) The owner or operator of an affected source subject to a particulate matter standard under 40 CFR 63.1343 shall install, calibrate, maintain and operate a particulate matter continuous emission monitoring system (PM CEMS) to measure the particulate matter discharged to the atmosphere. The compliance deadline for installing the PM CEMS and all requirements relating to performance of the PM CEMS and implementation of the PM CEMS requirement is deferred pending further rulemaking.
- (l) An owner or operator may submit an application to the Administrator for approval of alternate monitoring requirements to demonstrate compliance with the emission standards of this subpart,

SECTION III. EMISSIONS UNITS SPECIFIC CONDITIONS

except for emission standards for THC, subject to the provisions of paragraphs (l)(1) through (l)(6) of this section.

- (1) The Administrator will not approve averaging periods other than those specified in this section, unless the owner or operator documents, using data or information, that the longer averaging period will ensure that emissions do not exceed levels achieved during the performance test over any increment of time equivalent to the time required to conduct three runs of the performance test.
- (2) If the application to use an alternate monitoring requirement is approved, the owner or operator must continue to use the original monitoring requirement until approval is received to use another monitoring requirement.
- (3) The owner or operator shall submit the application for approval of alternate monitoring requirements no later than the notification of performance test. The application must contain the information specified in paragraphs (l)(3)(i) through (l)(3)(iii) of this section:
 - (i) Data or information justifying the request, such as the technical or economic infeasibility, or the impracticality of using the required approach;
 - (ii) A description of the proposed alternative monitoring requirement, including the operating parameter to be monitored, the monitoring approach and technique, the averaging period for the limit, and how the limit is to be calculated; and
 - (iii) Data or information documenting that the alternative monitoring requirement would provide equivalent or better assurance of compliance with the relevant emission standard.
- (4) The Administrator will notify the owner or operator of the approval or denial of the application within 90 calendar days after receipt of the original request, or within 60 calendar days of the receipt of any supplementary information, whichever is later. The Administrator will not approve an alternate monitoring application unless it would provide equivalent or better assurance of compliance with the relevant emission standard. Before disapproving any alternate monitoring application, the Administrator will provide:
 - (i) Notice of the information and findings upon which the intended disapproval is based; and
 - (ii) Notice of opportunity for the owner or operator to present additional supporting information before final action is taken on the application. This notice will specify how much additional time is allowed for the owner or operator to provide additional supporting information.
- (5) The owner or operator is responsible for submitting any supporting information in a timely manner to enable the Administrator to consider the application prior to the performance test. Neither submittal of an application, nor the Administrator's failure to approve or disapprove the application relieves the owner or operator of the responsibility to comply with any provision of this subpart.
- (6) The Administrator may decide at any time, on a case-by-case basis that additional or alternative operating limits, or alternative approaches to establishing operating limits, are necessary to demonstrate compliance with the emission standards of this subpart.
- (m) A summary of the monitoring requirements of this subpart is given in Table 1 to this section.

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Table 1 to 40 CFR 63.1350. Monitoring Requirements.

AFFECTED SOURCE/POLLUTANT OR OPACITY	MONITOR TYPE/ OPERATION/PROCESS	MONITORING REQUIREMENTS
All affected sources	Operations and maintenance plan	Prepare written plan for all affected sources and control devices
All in-line kiln raw mills/opacity	Continuous opacity monitor, if applicable	Install, calibrate, maintain and operate in accordance with general provisions and with PS-1
	Method 9 opacity test, if applicable	Daily test of at least 30-minutes, while kiln is at highest load or capacity level
In-line kiln raw mills/particulate matter	Particulate matter continuous emission monitoring system	Deferred
In-line kiln raw mills/ D/F	Combustion system inspection	Conduct annual inspection of components of combustion system
	Continuous temperature monitoring at PMCD inlet	Install, operate, calibrate and maintain continuous temperature monitoring and recording system; calculate three-hour rolling averages; verify temperature sensor calibration at least quarterly
In-line kiln raw mills/THC	Total hydrocarbon continuous emission monitor	Install, operate, and maintain THC CEM in accordance with PS-8A; calculate 30-day block average THC concentration
Clinker coolers/opacity	Continuous opacity monitor, if applicable	Install, calibrate, maintain and operate in accordance with general provisions and with PS-1
	Method 9 opacity test, if applicable	Daily test of at least 30-minutes, while kiln is at highest load or capacity level.
Finish mills at major sources/opacity	Method 22 visible emissions test	Conduct daily 6-minute Method 22 visible emissions test while mill is operating at highest load or capacity level; if visible emissions are observed, initiate corrective action within one hour and conduct 30-minute Method 9 test within 24 hours

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AFFECTED SOURCE/POLLUTANT OR OPACITY	MONITOR TYPE/ OPERATION/PROCESS	MONITORING REQUIREMENTS
Raw material, clinker, finished product storage bins; conveying system transfer points; bagging systems; and bulk loading and unloading systems at major sources/opacity	Method 22 visible emissions test	As specified in operation and maintenance plan

[40 CFR 63.1350]

42. Pursuant to 40 CFR 63.1351 Compliance Dates:

(b) The compliance date for an owner or operator of an affected source subject to the provisions of this subpart that commences new construction or reconstruction after March 24, 1998 is June 14, 1999 or immediately upon startup of operations, whichever is later. [40 CFR 63.1351]

43. Pursuant to 63.1352 Additional Test Methods:

(a) Owners or operators conducting tests to determine the rates of emission of hydrogen chloride (HCl) from in-line kiln/raw mills at portland cement manufacturing facilities, for use in applicability determinations under 40 CFR 63.1340 are permitted to use Method 320 or Method 321 of appendix A of this part.

(b) Owners or operators conducting tests to determine the rates of emission of hydrogen chloride (HCl) from in-line kiln/raw mills at portland cement manufacturing facilities, for use in applicability determinations under 40 CFR 63.1340 are permitted to use Methods 26 or 26A of appendix A to part 60 of this chapter, except that the results of these tests shall not be used to establish status as an area source.

(c) Owners or operators conducting tests to determine the rates of emission of specific organic HAP from in-line kiln/raw mills at portland cement manufacturing facilities, for use in applicability determinations under 40 CFR 63.1340 of this subpart are permitted to use Method 320 of appendix A to this part, or Method 18 of appendix A to part 60 of this chapter.

[40 CFR 63.1352]

[Note: Because these tests are not required to be conducted by this permit, they have been omitted for brevity. See the appropriate sections of the Code of Federal Regulations for these test methods.]

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NOTIFICATION, REPORTING AND RECORDKEEPING

44. Pursuant to 40 CFR 63.1353 Notification Requirements:

- (a) The notification provisions of 40 CFR part 63, subpart A that apply and those that do not apply to owners and operators of affected sources subject to this subpart are listed in Table 1 of this subpart. If any State requires a notice that contains all of the information required in a notification listed in this section, the owner or operator may send the Administrator a copy of the notice sent to the State to satisfy the requirements of this section for that notification.
- (b) Each owner or operator subject to the requirements of this subpart shall comply with the notification requirements in 40 CFR 63.9 as follows:
 - (1) Initial notifications as required by 40 CFR 63.9(b) through (d). For the purposes of this subpart, a Title V or 40 CFR part 70 permit application may be used in lieu of the initial notification required under 40 CFR 63.9(b), provided the same information is contained in the permit application as required by 40 CFR 63.9(b), and the State to which the permit application has been submitted has an approved operating permit program under part 70 of this chapter and has received delegation of authority from the EPA. Permit applications shall be submitted by the same due dates as those specified for the initial notification.
 - (2) Notification of performance tests, as required by 40 CFR 40 CFR 63.7 and 63.9(e).
 - (3) Notification of opacity and visible emission observations required by 40 CFR 63.1349 in accordance with 40 CFR 40 CFR 63.6(h)(5) and 63.9(f).
 - (4) Notification, as required by 40 CFR 63.9(g), of the date that the continuous emission monitor performance evaluation required by 40 CFR 63.8(e) of this part is scheduled to begin.
 - (5) Notification of compliance status, as required by 40 CFR 63.9(h).
[40 CFR 63.1353]

45. Pursuant to 40 CFR 63.1354 Reporting Requirements:

- (a) The reporting provisions of subpart A of this part that apply and those that do not apply to owners or operators of affected sources subject to this subpart are listed in Table 1 of this subpart. If any State requires a report that contains all of the information required in a report listed in this section, the owner or operator may send the Administrator a copy of the report sent to the State to satisfy the requirements of this section for that report.

[Note: Table 1 of this subpart has not been reproduced in this permit for brevity. Refer to the Code of Federal Regulations for this table. See the attached provisions of 40 CFR 63 Subpart A General Provisions, attached to this permit as Appendix B, for the proper reporting provisions for this facility.]
- (b) The owner or operator of an affected source shall comply with the reporting requirements specified in 40 CFR 63.10 of the general provisions of this part 63, subpart A as follows:
 - (1) As required by 40 CFR 63.10(d)(2), the owner or operator shall report the results of performance tests as part of the notification of compliance status.

SECTION III. EMISSIONS UNITS SPECIFIC CONDITIONS

- (2) As required by 40 CFR 63.10(d)(3), the owner or operator of an affected source shall report the opacity results from tests required by 40 CFR 63.1349.
- (3) As required by 40 CFR 63.10(d)(4), the owner or operator of an affected source who is required to submit progress reports as a condition of receiving an extension of compliance under 40 CFR 63.6(i) shall submit such reports by the dates specified in the written extension of compliance.
- (4) As required by 40 CFR 63.10(d)(5), if actions taken by an owner or operator during a startup, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are consistent with the procedures specified in the source's startup, shutdown, and malfunction plan specified in 40 CFR 63.6(e)(3), the owner or operator shall state such information in a semiannual report. Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period. The startup, shutdown, and malfunction report may be submitted simultaneously with the excess emissions and continuous monitoring system performance reports; and
- (5) Any time an action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) is not consistent with the procedures in the startup, shutdown, and malfunction plan, the owner or operator shall make an immediate report of the actions taken for that event within 2 working days, by telephone call or facsimile (FAX) transmission. The immediate report shall be followed by a letter, certified by the owner or operator or other responsible official, explaining the circumstances of the event, the reasons for not following the startup, shutdown, and malfunction plan, and whether any excess emissions and/or parameter monitoring exceedances are believed to have occurred.
- (6) As required by 40 CFR 63.10(e)(2), the owner or operator shall submit a written report of the results of the performance evaluation for the continuous monitoring system required by 40 CFR 63.8(e). The owner or operator shall submit the report simultaneously with the results of the performance test.
- (7) As required by 40 CFR 63.10(e)(2), the owner or operator of an affected source using a continuous opacity monitoring system to determine opacity compliance during any performance test required under 40 CFR 63.7 and described in 40 CFR 63.6(d)(6) shall report the results of the continuous opacity monitoring system performance evaluation conducted under 40 CFR 63.8(e).
- (8) As required by 40 CFR 63.10(e)(3), the owner or operator of an affected source equipped with a continuous emission monitor shall submit an excess emissions and continuous monitoring system performance report for any event when the continuous monitoring system data indicate the source is not in compliance with the applicable emission limitation or operating parameter limit.
- (9) The owner or operator shall submit a summary report semiannually which contains the information specified in 40 CFR 63.10(e)(3)(vi). In addition, the summary report shall include:
 - (i) All exceedances of maximum control device inlet gas temperature limits specified in 40 CFR 63.1344(a) and (b);

SECTION III. EMISSIONS UNITS SPECIFIC CONDITIONS

(ii) All failures to calibrate thermocouples and other temperature sensors as required under 40 CFR 63.1350(f)(7) of this subpart; and

(iv) The results of any combustion system component inspections conducted within the reporting period as required under 40 CFR 63.1350(i).

(v) All failures to comply with any provision of the operation and maintenance plan developed in accordance with 40 CFR 63.1350(a).

(10) If the total continuous monitoring system downtime for any CEM or any continuous monitoring system (CMS) for the reporting period is ten percent or greater of the total operating time for the reporting period, the owner or operator shall submit an excess emissions and continuous monitoring system performance report along with the summary report.

[40 CFR 63.1354]

46. Pursuant to 40 CFR 63.1355 Recordkeeping Requirements:

(a) The owner or operator shall maintain files of all information (including all reports and notifications) required by this section recorded in a form suitable and readily available for inspection and review as required by 40 CFR 63.10(b)(1). The files shall be retained for at least five years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. At a minimum, the most recent two years of data shall be retained on site. The remaining three years of data may be retained off site. The files may be maintained on microfilm, on a computer, on floppy disks, on magnetic tape, or on microfiche.

(b) The owner or operator shall maintain records for each affected source as required by 40 CFR 63.10(b)(2) and (b)(3) of this part; and

(1) All documentation supporting initial notifications and notifications of compliance status under 40 CFR 63.9 of this part;

(2) All records of applicability determination, including supporting analyses; and

(3) If the owner or operator has been granted a waiver under 40 CFR 63.8(f)(6), any information demonstrating whether a source is meeting the requirements for a waiver of recordkeeping or reporting requirements.

(c) In addition to the recordkeeping requirements in paragraph (b) of this section, the owner or operator of an affected source equipped with a continuous monitoring system shall maintain all records required by 40 CFR 63.10(c).

[40 CFR 63.1355]

OTHER

47. Pursuant to 40 CFR 63.1356 Exemption from New Source Performance Standards:

(a) Except as provided in paragraph (a)(1) of this section, any affected source subject to the provisions of this subpart is exempted from any otherwise applicable new source performance standard contained in 40 CFR part 60, subpart F.

SECTION III. EMISSIONS UNITS SPECIFIC CONDITIONS

- (1) In-line kiln/raw mills, as applicable under 40 CFR 60.60(b), located at area sources are subject to PM and opacity limits and associated reporting and recordkeeping, under 40 CFR part 60, subpart F.

[40 CFR 63.1356]

48. Pursuant to 40 CFR 63.1357 Temporary, Conditioned Exemption from Particulate Matter and Opacity Standards:

- (a) Subject to the limitations of paragraphs (b) through (f) of this section, an owner or operator conducting PM CEMS correlation tests (that is, correlation with manual stack methods) is exempt from:

- (1) Any particulate matter and opacity standards of part 60 or part 63 of this chapter that are applicable to cement kilns and in-line kiln/raw mills.
- (2) Any permit or other emissions or operating parameter or other limitation on workplace practices that are applicable to cement kilns and in-line kiln raw mills to ensure compliance with any particulate matter and opacity standards of this part or part 60 of this chapter.

- (b) The owner or operator must develop a PM CEMS correlation test plan. The plan must be submitted to the Administrator for approval at least 90 days before the correlation test is scheduled to be conducted. The plan must include:

- (1) The number of test conditions and the number of runs for each test condition;
- (2) The target particulate matter emission level for each test condition;
- (3) How the operation of the affected source will be modified to attain the desired particulate matter emission rate; and
- (4) The anticipated normal particulate matter emission level.

- (c) The Administrator will review and approve or disapprove the correlation test plan in accordance with 40 CFR 63.7(c)(3)(i) and (iii). If the Administrator fails to approve or disapprove the correlation test plan within the time period specified in 40 CFR 63.7(c)(3)(iii), the plan shall be considered approved, unless the Administrator has requested additional information.

- (d) The stack sampling team must be on-site and prepared to perform correlation testing no later than 24 hours after operations are modified to attain the desired particulate matter emissions concentrations, unless the correlation test plan documents that a longer period is appropriate.

- (e) The particulate matter and opacity standards and associated operating limits and conditions will not be waived for more than 96 hours, in the aggregate, for a correlation test, including all runs and conditions.

- (f) The owner or operator must return the affected source to operating conditions indicative of compliance with the applicable particulate matter and opacity standards as soon as possible after correlation testing is completed.

[40 CFR 63.1357]

SECTION III. EMISSIONS UNITS SPECIFIC CONDITIONS

49. Pursuant to 40 CFR 63.1358 Delegation of Authority:

- (a) In delegating implementation and enforcement authority to a State under subpart E of this part, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.
- (b) Authority which will not be delegated to States:
 - (1) Approval of alternative non-opacity emission standards under 40 CFR 63.6(g).
 - (2) Approval of alternative opacity standards under 40 CFR 63.6(h)(9).
 - (3) Approval of major changes to test methods under 40 CFR 40 CFR 63.7(e)(2)(ii) and 63.7(f). A major change to a test method is a modification to a federally enforceable test method that uses unproven technology or procedures or is an entirely new method (sometimes necessary when the required test method is unsuitable).
 - (4) Approval of major changes to monitoring under 40 CFR 63.8(d). A major change to monitoring is a modification to federally enforceable monitoring that uses unproven technology or procedures, is an entirely new method (sometimes necessary when the required monitoring is unsuitable), or is a change in the averaging period.
 - (5) Waiver of recordkeeping under 40 CFR 63.10(f).
[40 CFR 63.1358]

DRAFT

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SECTION III. EMISSIONS UNITS SPECIFIC CONDITIONS

SUBSECTION C.

The following specific conditions apply to the following emissions units after construction:

EMISSIONS UNIT No.	EMISSIONS UNIT DESCRIPTION
008	Coal mill and coal transfer system controlled by baghouses
009	Unenclosed coal conveying equipment – S conveyors

[Note: Emissions units 009 and 008 are subject to 40 CFR 60 Subpart Y, Standards of Performance for Coal Preparation Plants (40 CFR 60.250 – 60.254) and 40 CFR 60 Subpart A, revised as of July 1, 1997. These emissions units are also subject to the requirements of the state rules as indicated in this permit, particularly the requirements of Rule 62-212.400, F.A.C., Prevention of Significant Deterioration, effective February 5, 1998.

The numbering of the original rules in the following conditions has been preserved for ease of reference to the rules. Inapplicable paragraphs have been omitted for clarity and brevity. The term "Administrator" when used in 40 CFR 60 shall mean the Secretary or the Secretary's designee.]

STATE REQUIREMENTS

OPERATIONAL REQUIREMENTS

1. Hours of Operation: This emissions unit may operate continuously, i.e., 8,760 hours per year. [Rule 62-210.200, F.A.C., Definitions -- potential to emit (PTE)]
2. Process Rate Limitation: The coal mill shall not crush more than 10,658 tons of coal and petroleum coke in any month. [Rule 62-210.200, F.A.C., Definitions -- potential to emit (PTE)]

[Note: This monthly limit corresponds to an annual limit of 127,896 tons per year.]

3. O&M Plan for Baghouses: The owner or operator shall prepare an operation and maintenance plan (O&M Plan) to address operation and regular, routine inspection and maintenance of the baghouses for emissions unit 008. The O&M plan shall address the schedule for inspection of this equipment and required preventive maintenance and shall require records of the condition of the equipment upon each inspection and any maintenance activities performed. The O&M plan shall be submitted to the Department's Northeast District office prior to expiration of this permit. [Rule 62-4.070(3), F.A.C.]

EMISSION LIMITATIONS AND PERFORMANCE STANDARDS

4. Emissions Unit 008: Emissions unit 008 shall have the following emission points:

EMISSION POINT	DESCRIPTION
S-17	Coal mill
S-21	Dust collector for coal transfer system.

Particulate matter emissions from all emission points in this emissions unit shall be controlled by baghouses.

Particulate matter (PM) emissions from each emission point of emissions unit 008 shall not exceed 0.01 grains/dscf, and PM₁₀ emissions shall not exceed 0.01 grains/dscf. Particulate matter emissions

SECTION III. EMISSIONS UNITS SPECIFIC CONDITIONS

from each emission point of this emissions unit shall be controlled by a baghouse. Visible emissions from each emission point of this emissions unit shall not exceed 5% opacity.

For emission point S-17, after initial testing that demonstrates compliance with the PM limit of this condition is completed, subsequent compliance testing for PM emissions from this emission point is waived, and an alternative standard of 5% opacity is imposed, pursuant to Rule 62-297.620(4), F.A.C. For the other emission point of emissions unit 008, initial and annual compliance testing for PM emissions from this emission point is waived, and an alternative standard of 5% opacity is imposed, pursuant to Rule 62-297.620(4), F.A.C. If the Department has reason to believe that the particulate weight emission standard is not being met, it shall require that compliance be demonstrated using EPA Method 5, as described in 40 CFR 60 Appendix A (1997 version).

[Note: These emission limits effectively limit annual emissions of PM for all emission points in this emission unit to 7.9 tons per year. PM_{10} emissions are estimated to equal PM emissions, or 7.9 tons per year. The particulate weight emission standard and the visible emissions limit of 5% opacity are BACT.]

[Rules 62-4.070(3), 62-210.700(5), 62-212.400 and 62-297.620(4), F.A.C., BACT and applicant request]

[Note: Emissions unit 009 is subject to the visible emissions limits of the NSPS described elsewhere in this subsection.]

COMPLIANCE MONITORING AND TESTING REQUIREMENTS

5. Emission Tests Required – Emissions Unit 008: The owner or operator shall demonstrate compliance with the visible emissions standard for emissions unit 008 annually using EPA Method 9, as described in 40 CFR 60 Appendix A (1997 version). The owner or operator shall demonstrate initial compliance with the particulate matter (PM) limits of this permit for emission point S-17 of emissions unit 008 using EPA Method 5, as described in 40 CFR 60 Appendix A (1997 version). Should subsequent particulate matter (PM) testing be required for either emission point of emissions unit 008, compliance shall be demonstrated using EPA Method 5. Testing for PM_{10} is not required, because all PM emissions shall be assumed to be PM_{10} .

[Rules 62-4.070(3), 62-297.310 and 62-297.620(4), F.A.C. and BACT]

6. Visible Emission Tests Required – Emissions Unit 009: The owner or operator shall, for emissions unit 009, demonstrate compliance with the visible emission limits of specific condition 9(c) of this subsection annually, using the methods specified in this subsection. [Rule 62-297.310(7)(a)4.a., F.A.C.]

REPORTING AND RECORD KEEPING REQUIREMENTS

7. Records of Process Rates: The owner or operator shall make and maintain records showing the monthly processing rate of coal and petroleum coke crushed in the coal mill. Records of the processing rate for each month shall be completed no later than 10 days following the end of the month. [Rule 62-4.070(3), F.A.C.]

SECTION III. EMISSIONS UNITS SPECIFIC CONDITIONS

FEDERAL NSPS REQUIREMENTS

APPLICABILITY AND DEFINITIONS

8. Pursuant to 40 CFR 60.250 Applicability and Designation of Affected Facility:

- (a) The provisions of this subpart are applicable to any of the following affected facilities in coal preparation plants which process more than 200 tons per day: Thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), and coal storage systems.

[40 CFR 60.250]

[Note: The coal mill, emission point S-17 of emissions unit 008, is subject to the requirements for thermal dryers. Emissions unit 009 is subject to the requirements for coal processing and conveying equipment. Both emission points of emissions unit 008 are also subject to the emission limits for coal processing and conveying equipment, but the BACT limits are as stringent or more stringent than the limits imposed by this rule.]

These terms are defined at 40 CFR 60.251. The definitions are applicable to this project but have been omitted for brevity. See the Code of Federal Regulations for the text of this section.

EMISSION LIMITATIONS AND PERFORMANCE STANDARDS

9. Pursuant to 40 CFR 60.252 Standards for particulate matter:

- (a) On and after the date on which the performance test required to be conducted by 40 CFR 60.8 is completed, an owner or operator shall not cause to be discharged into the atmosphere from any thermal dryer gases which:
- (1) Contain particulate matter in excess of 0.070 g/dscm (0.031 gr/dscf).
 - (2) Exhibit 20 percent opacity or greater.
- (c) On and after the date on which the performance test required to be conducted by 40 CFR 60.8 is completed, an owner or operator shall not cause to be discharged into the atmosphere from any coal processing and conveying equipment or coal storage system, gases which exhibit 20 percent opacity or greater.

[40 CFR 60.252(a) and (c)]

COMPLIANCE MONITORING AND TESTING REQUIREMENTS

10. Pursuant to 40 CFR 60.253 Monitoring of operations:

- (a) The owner or operator of any thermal dryer shall install, calibrate, maintain, and continuously operate monitoring devices as follows:
- (1) A monitoring device for the measurement of the temperature of the gas stream at the exit of the thermal dryer on a continuous basis. The monitoring device is to be certified by the manufacturer to be accurate within $\pm 3^\circ$ Fahrenheit.
- (b) All monitoring devices under paragraph (a) of this section are to be recalibrated annually in accordance with procedures under 40 CFR 60.13(b).

[40 CFR 60.253(a) and (b)]

SECTION III. EMISSIONS UNITS SPECIFIC CONDITIONS

11. Pursuant to 40 CFR 60.254 Test methods and procedures:

- (a) In conducting the performance tests required in 40 CFR 60.8, the owner or operator shall use as reference methods and procedures the test methods in appendix A of this part or other methods and procedures as specified in this section, except as provided in 40 CFR 60.8(b).
- (b) The owner or operator shall determine compliance with the particular matter standards in 40 CFR 60.252 as follows:
 - (1) Method 5 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf). Sampling shall begin no less than 30 minutes after startup and shall terminate before shutdown procedures begin.
 - (2) Method 9 and the procedures in 40 CFR 60.11 shall be used to determine opacity. [40 CFR 60.254(a) and (b)]

DRAFT

The BACT determination is attached to this permit following this page.

DRAFT

BEST AVAILABLE CONTROL TECHNOLOGY DETERMINATION (BACT)

Suwannee American Cement Company, Inc.
Branford Plant
PSD-FL-259 and 1210465-001-AC
Suwannee County

1. BACKGROUND

The Suwannee American Cement Company, Inc. plans to construct a dry process, preheater/precalciner type portland cement plant to be located at US Highway 27 at County Road 49, Suwannee County.

This facility will consist of a portland cement plant and associated quarry, and raw material and cement handling operations. The plant will combine raw materials and utilize a preheater/precalciner kiln with in-line raw mill to produce clinker. The clinker will be milled and combined with gypsum to produce portland cement. The plant will have a capacity of 178 tons per hour of material fed to the preheater (dry basis), 105 tons per hour of clinker production, and 150 tons per hour of portland cement production. Annual production will be limited (on a rolling 12-month basis) to 1,427,880 tons per year of material fed to the preheater (dry basis), 839,500 tons per year of clinker production, and 1,191,360 tons per year of portland cement production. Fuels allowed to be used in the pyroprocessing system are natural gas, coal, petroleum coke, whole tires and tire derived fuel (TDF). The plant may include a tire gasification system that will utilize heat from the pyroprocessing system to decompose tires to gas, coke and wire which will be utilized in the kiln and pyroprocessing system in an enclosed process. The plant will also include a coal processing operation that will crush coal and petroleum coke and will have an annual processing capacity of 127,896 tons of coal and petroleum coke. Fuel usage will be 14.6 tons per hour of coal, based on a heat content of 12,500 Btu per pound, or 13.0 tons per hour of petroleum coke, based on a heat content of 14,000 Btu per pound. At 40% of maximum heat input, usage of tires will be 5.2 tons per hour, based on a heat content of 14,000 Btu per pound.

Emissions units addressed by this permitting action are:

EMISSIONS UNIT NO.	EMISSIONS UNIT DESCRIPTION
001	1000 TPH primary crusher and associated unenclosed belt conveyors to raw material storage – fugitive emissions
002	Raw material processing – baghouses for transfer points
003	Raw material processing – unenclosed conveyor transfer points
004	In line kiln/raw mill – main stack controlled by baghouse
005	Clinker cooler controlled by ESP
006	Clinker and cement processing – baghouses for transfer points
007	Clinker and cement processing – unenclosed conveyor transfer points
008	Coal mill and coal transfer system baghouses
009	Unenclosed coal conveying equipment
010	Natural gas fired emergency generator set ¹

¹ Emissions unit 010 is exempt from permitting (exempt emissions unit) pursuant to Rule 62-210.300(3)(a)20, F.A.C., provided that total fuel consumption by the generator is limited to 4.4 million cubic feet per year of natural gas. Estimated maximum potential emissions from the generator set are: NO_x, 8.5 lb/hr, CO 4.1 lb/hr, and VOC 0.5 lb/hr.

This facility is classified as a Major or Title V Source of air pollution because emissions of at least one regulated air pollutant, such as particulate matter (PM/PM₁₀), sulfur dioxide (SO₂), nitrogen oxides (NO_x), carbon monoxide (CO), or volatile organic compounds (VOC) will exceed 100 tons per year (TPY).

BEST AVAILABLE CONTROL TECHNOLOGY DETERMINATION (BACT)

This facility is within an industry included in the list of the 28 Major Facility Categories per Table 62-212.400-1, F.A.C. Because emissions will be greater than 100 TPY for at least one criteria pollutant, the facility is also a Major Facility with respect to Rule 62-212.400, Prevention of Significant Deterioration (PSD).

The proposed project is subject to the provisions of Rule 62-212.400, F.A.C., Prevention of Significant Deterioration (PSD), because it will be a new major facility. This review consisted of a determination of Best Available Control Technology (BACT) and an analysis of the air quality impact of the increased emissions.

The proposed project is subject to preconstruction review requirements under the provisions of Chapter 403, Florida Statutes, and Chapters 62-4, 62-204, 62-210, 62-212, 62-214, 62-296, and 62-297 of the Florida Administrative Code (F.A.C.).

This facility is located in an area designated, in accordance with Rule 62-204.340, F.A.C., as attainment for the criteria pollutants ozone, carbon monoxide, sulfur dioxide, and nitrogen dioxide, and designated as unclassifiable for PM₁₀.

The applicant stated that this facility is a major source of hazardous air pollutants (HAPs), because the plant may be a major source of hydrochloric acid. As provided by the federal requirements, the applicant may perform stack testing to confirm whether the facility is or is not a major source of hydrochloric acid.

The emissions units included in this project are subject to regulation under the New Source Performance Standards, 40 CFR 60 Subpart A, General Provisions, Subpart F, Standards of Performance for Portland Cement Plants, Subpart Y Standards of Performance for Coal Preparation Plants, and Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants (all revised as of July 1, 1997). Some of these emissions units are also subject to 40 CFR 63 Subpart LLL, National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry (40 CFR 63.1340 – 63.1359), revised as of May 14, 1999 and 40 CFR 63 Subpart A, revised as of February 12, 1999. These emissions units are also subject to the requirements of the state rules as indicated in this permit, particularly Rule 62-212.400, F.A.C., Prevention of Significant Deterioration, effective February 5, 1998. Some emissions units are subject to Rule 62-296.701, F.A.C., Portland Cement Plants, effective March 2, 1999. Additionally the permit references the test methods of 40 CFR 60, Appendix A, Test Methods; 40 CFR 63, Appendix A, Test Methods; 40 CFR 51, Appendix M, Recommended Test Methods for State Implementation Plans; 40 CFR 61, Appendix B, Test Methods.

Particulate matter emissions from the in-line kiln/raw mill will be controlled by a baghouse and from the clinker cooler will be controlled by an electrostatic precipitator. Particulate matter emissions from other sources will be controlled by baghouses. Sulfur dioxide emissions are limited by the process. NOx emissions will be controlled by multistage combustion. Carbon monoxide and VOC emissions will be limited by process control.

The total annual air pollutant potential emissions in tons per year from the facility (not including the emergency generator set – emissions unit 010 – will be:

POLLUTANT	PSD SIGNIFICANCE LEVELS ¹	MAXIMUM EMISSIONS	SUBJECT TO PSD REVIEW?
PM	25	226.0	Yes
PM ₁₀	15	193.3	Yes
SO ₂	40	113.4	Yes
NOx	40	1217.5 ²	Yes
CO	100	1511.1	Yes
VOC	40	50.4	Yes

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¹ Florida Administrative Code 212.400-2.

2 Emissions of NO_x for the first year of operation will be 1595.4 tons per year. NO_x emissions shown in the table are emissions after the first year of operation. Excess emissions resulting from two startup procedures per year are included in these estimates.

Maximum emissions of mercury will be 184 pounds per year. Control of mercury emissions will result from limiting the mass of mercury introduced into the pyroprocessing system from the preheater feed and fuels. Maximum emissions of dioxin will be 0.002 pounds per year. Dioxin emissions will be controlled by limiting the temperature of the inlet of the baghouse for the in-line kiln/raw mill pursuant to federal NESHAP regulation. Mercury and dioxin are not subject to PSD review.

Emissions of PM and PM₁₀ from the unenclosed conveying equipment are expected to be insignificant because of inherent moisture and moisture applied to comply with the reasonable precautions for control of unconfined particulate matter emissions.

2. DATE OF RECEIPT OF A BACT APPLICATION

November 30, 1998

Additional information received February 25, 1999; March 19, 1999; April 21, 1999; May 4, 1999 May 27, 1999 and May 28, 1999.

Additional information and comments on the preliminary draft permit and related documents were received from Koogler & Associates dated November 8, 1999.

Revised permit application and modeling information were received from Koogler & Associates by electronic mail on November 11, 1999.

3. BACT DETERMINATION REQUESTED BY THE APPLICANT

The applicant proposed BACT for the PSD pollutants to be control equipment for particulate matter, process control for SO₂, multistage combustion with a separate line combustion chamber for NO_x, and combustion control for CO and VOC.

4. REVIEWER

Joseph Kahn, P.E., prepared BACT determination

5 DETAILED PROCESS DESCRIPTION

The project is a dry process preheater/precalciner type portland cement plant. Portland cement is a fine powder, usually gray in color, that consists of a mixture of dicalcium silicate, tricalcium silicate, tricalcium aluminate, and tetracalcium aluminoferrate, and small amounts of magnesium oxide, sodium, potassium and sulfur, to which one or more forms of calcium sulfate have been added. About 95% of the cement production in the U.S. is portland cement. Masonry cement represents the balance of the domestic cement production.

The proposed preheater/precalciner process is a dry manufacturing process in which thermal efficiency and production capacity have been improved by adding process vessels arranged vertically before the kiln, wherein the hot gases pass counter to the material flow, effecting heat transfer through the intimate contact between the two streams. The improved heat transfer allows the kiln length to be reduced. This arrangement also allows the hot gases from the preheater tower to be used to dry raw materials in the raw mill. In the preheater/precalciner process, fuel combustion is divided between the kiln and a preheater vessel below the preheater tower. This arrangement provides for greater thermal efficiency than the preheater process. A relatively new innovation is the use of a separate line combustion chamber for the preheater burner, so called because it is installed to the side (separate) of the material flow through the precalciner region. This device aids in the control of NO_x emissions. The applicant proposed to use the

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dry preheater/precalciner process, with a separate line combustion chamber for the calciner burner, in an in-line arrangement with the raw mill.

The process for this plant is discussed in more detail below.

Limestone will be mined primarily below the water table. The overburden, consisting of sand and clay, will be removed from the limestone surface and stockpiled in the vicinity of the crusher. The crusher will be portable, and will be relocated periodically in accordance with the mining plan. The overburden and the limestone will be fed into the crusher with front end loaders in the ratios dictated by the target chemical composition of the desired raw mix. The quarry mix will be delivered to a covered storage hall by a conveyor belt system. The quarry mix will have a moisture content of 10-20%. The storage hall will have space devoted to storage of the other raw materials: iron ore and coal ash, sand, and limestone. The other raw materials will be transported to the facility by truck.

Fugitive emissions from raw material handling and conveying will be minimized by inherent moisture and by the application of water for suppression of unconfined emissions of particulate matter. Unpaved roads will be sprayed by a water truck as required to prevent unconfined particulate matter emissions. Material stockpiles at the plant will be covered to limit particulate matter generated by wind erosion.

The quarry mix and other raw materials will be conveyed to the raw mill feed bin with a capacity of 90 short tons. Raw materials will be fed from the raw mill feed bin to the raw mill. The raw mill will grind and mix the raw materials, and dry the raw materials with the hot gases from the pyroprocessing system. Emissions from the raw mill (and in-line kiln) will be controlled by a baghouse. The baghouse is kept under slight negative pressure with an induced draft fan discharging into a stack. The baghouse catch (kiln dust) and the raw mill product will be conveyed to the homogenization silo of 8,000 tons capacity. (Because the baghouse catch is re-introduced to the process, this cement plant will not generate cement kiln dust (CKD) as a waste product.) Other enclosed emission sources will be controlled by baghouses (fabric filters).

The kiln feed from the homogenization silo will be conveyed to the preheater by means of an airlift. The feed will enter the top stage of the preheater or, during wet material conditions, drop into the next lower stage of the preheater to increase the gas temperature to the raw mill. Gases from the pyroprocessing system will flow counter to the material direction to the raw mill and the baghouse.

Coal and petroleum coke will be burned in the precalciner separate line combustion chamber near the inlet to the kiln as well as at the main burner at the discharge end of the kiln. Natural gas will be used as a startup and supplemental fuel and to fire a small supplementary air heater for the raw mill. The plant will also burn tires and tire derived fuel either directly at the transition from the preheater to the kiln feed end, or via a tire gasification system, as described previously. Combustion air for the precalciner will be provided through a tertiary air duct from the clinker cooler. Multi-stage combustion will control NO_x emissions.

The pyroprocessing system will transform the raw meal from the homogenization silo into clinker. The pyroprocessing system will produce 105 tons per hour of clinker, from 178 tons of dry preheater feed per hour. This amount of clinker will produce 150 tons of cement per hour. The plant will be limited by permit to an annual production rate of 839,500 tons of clinker and 1,191,360 tons of portland cement.

After discharge from the kiln, the clinker will be cooled with ambient air in a reciprocating grate cooler equipped with an electrostatic precipitator (ESP) and ID fan for particulate control. A portion of the clinker cooler gases will be ducted to the coal mill to dry the coal. These gases will then exhaust through the coal mill fabric filter into another stack. A portion of the clinker cooler gases will be ducted to the precalciner, the precalciner combustion chamber and the tire gasification system, if installed.

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The clinker will be conveyed to one of two clinker silos with a capacity of 25,000 short tons each. The clinker will be withdrawn from the silos by vibrating feeders, and discharged onto the finish mill feed belt. Enclosed clinker handling operations and storage silos will be controlled with baghouses.

Gypsum and limestone will be received by truck and stored under cover in stockpiles. Each material will be transferred by a front end loader to feed hoppers, and conveyed to the finish mill. The finish mill can produce up to 150 tons per hour of cement.

All enclosed sources associated with the finish milling operation will be controlled with baghouses. Fugitive emissions from gypsum and limestone handling and conveying associated with the finish milling operation will be minimized by inherent moisture and by the application of water for suppression of unconfined emissions of particulate matter.

Finished cement will be stored in five concrete silos. Cement will be withdrawn from the silos and loaded into tanker trailers for bulk shipment or into bags which will be cleaned and placed on pallets for shipment. All product will be transported by truck.

All enclosed sources associated with the cement handling operation will be controlled with baghouses.

Coal and petroleum coke will be received by truck. These will drop into a hopper and be conveyed to a bucket elevator at a rate of 200 TPH. The bucket elevator will discharge either into a covered storage facility or onto a belt and then to a bin. Coal and petroleum coke in covered storage will be reclaimed by a front end loader through unloading system. Coal and petroleum coke will be metered from the bin to a vertical mill, for milling and drying with hot gases from the clinker cooler. The milled fuels will be stored in a pulverized fuel storage bin for pneumatic conveyance to the main burner and precalciner burner.

All enclosed sources associated with the coal and petroleum coke handling and milling operation will be controlled with baghouses. Fugitive emissions from coal and petroleum coke handling and conveying will be minimized by inherent moisture and by the application of water for suppression of unconfined emissions of particulate matter.

6. BACT DETERMINATION PROCEDURE

In accordance with Chapter 62-212, F.A.C., this BACT determination is based on the maximum degree of reduction of each pollutant emitted which the Department of Environmental Protection (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 for control of each such pollutant. In addition, Rule 62-212.400(6)(a), F.A.C., states that in making the BACT determination, the Department shall give consideration to:

1. Any Environmental Protection Agency determination of BACT pursuant to Section 169 of the Clean Air Act, and any emission limitation contained in 40 CFR Part 60 (Standards of Performance for New Stationary Sources) or 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants).
2. All scientific, engineering, and technical material and other information available to the Department.
3. The emission limiting standards or BACT determination of any other state.
4. The social and economic impact of the application of such technology.

The EPA currently directs that BACT should be determined using the "top-down" approach. In this approach, available control technologies are ranked in order of control effectiveness for the emissions unit under review. The most stringent alternative is evaluated first. That alternative is selected as BACT unless the alternative is found to not be achievable based on technical considerations or energy, environmental or economic impacts. If this alternative is eliminated for these reasons, the next most stringent alternative is considered. This top-down approach is continued until BACT is determined. In general EPA has identified five key steps in the top-down BACT process: Identify alternative control

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technologies; eliminate technically infeasible options; rank remaining control technologies by control effectiveness; evaluate most effective controls; select BACT.

BACT evaluation should be performed for each emissions source and pollutant under consideration. All of the combustion emissions from the plant are associated with the in-line kiln/raw mill. BACT for particulate matter can be treated separately for the in-line kiln/raw mill, clinker cooler, the enclosed material handling processes and the unenclosed conveyors.

The Department will consider the control or reduction of "non-regulated" air pollutants when determining the BACT limit for regulated pollutants, and will weigh control of non-regulated air pollutants favorably when considering control technologies for regulated pollutants. The Department will also favorably consider control technologies that utilize pollution prevention strategies. These approaches are consistent with EPA's consideration of environmental impacts.

The EPA has determined that a BACT determination shall not result in a selection of a control technology which would not meet any applicable emission limitation under 40 CFR Part 60 (Standards of Performance for New Stationary Sources) or 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants). This project is subject to such standards as described above.

In addition to the information submitted by the applicant and that information mentioned above, the Department may rely upon other available information in making its BACT determination. For this project, the Department relied upon information from the EPA Publication: Alternative Control Techniques Document – NO_x Emissions from Cement Manufacturing, March 1994. The Department also relied upon recent BACT determinations it made for similar facilities and information in EPA's BACT/LAER Clearinghouse, and BACT guidelines for the California Air Resources Board, South Coast Air Quality Management District, and Bay Area Air Quality Management District.

7. BACT POLLUTANT ANALYSIS AND DEPARTMENT'S DETERMINATION

For this project the PSD pollutants of concern are PM, PM₁₀, SO₂, NO_x, CO and VOC. The applicant proposed control strategies for these pollutants for the emission sources at this facility. The applicant's proposal and the Department's BACT for each pollutant and source is discussed below.

Nitrogen Oxides (NO_x)

Emissions of NO_x from cement plants result from fuel combustion in the pyroprocessing system. Oxides of nitrogen (NO_x) are generated during fuel combustion by oxidation of chemically bound nitrogen in the fuel (fuel NO_x) and by oxidation of elemental nitrogen in the combustion air (thermal NO_x). The thermal NO_x reaction occurs in regions of high temperature associated with the combustion of fuel. As flame temperature increases, the amount of thermal NO_x increases. Fuel type affects the quantity and type of NO_x generated. Pipeline natural gas is low in nitrogen. However it causes higher flame temperatures and generates more thermal NO_x than coal, which has higher fuel nitrogen content, but exhibits lower flame temperatures.

The emissions of NO_x can potentially be reduced at cement plants by two methods: Minimizing the quantity of NO_x generated during combustion through combustion process controls and modifications; or reducing the quantity of NO_x in the flue gas stream through flue gas controls.

A review of the EPA's BACT/LAER Clearinghouse indicates that NO_x emissions at all operating facilities are minimized by combustion process control.

The applicant proposed that NO_x emissions at this facility will be controlled through multistage combustion with a separate line combustion chamber (MSC-CC). The applicant considered other possible control methods, and rejected Selective Catalytic Reduction and Low NO_x burners as not feasible for this project. The applicant performed a control cost analysis for Selective Non-catalytic

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Reduction (SNCR) and MSC-CC. MSC-CC is the more cost effective control technology at \$360 per ton of NO_x controlled, versus \$1251 for SNCR. The applicant did not reject SNCR based on cost alone, but further because MSC-CC will result in a higher level of control guaranteed by the plant manufacturer, because the plant will be more energy efficient using the MSC process, and because of concerns about handling the non-catalytic reactant. Possible reactants considered by the applicant were ammonia water and anhydrous ammonia, both of which present concerns over transport, handling and storage at the proposed location. Ammonia slip is another concern, and is a consideration of the Department. MSC-CC is also a pollution prevention technique. The Department also considered another SNCR reagent, cyanuric acid, that is listed as a control technology in the Bay Area BACT guideline. This reagent will decompose to isocyanic acid at 320°C, well below the required temperature for reaction. Cyanide compounds are classified as hazardous air pollutants pursuant to Department rule, and the Department rejects this reagent on this basis. Also, SNCR systems using this reagent are not likely to be less expensive than SNCR systems using ammonia.

MSC works by staging the introduction of fuel, combustion air, and raw meal in a manner to reduce NO_x formation and reduce NO_x to nitrogen. NO_x formed in the kiln's sintering zone is chemically reduced by maintaining a reducing atmosphere at the kiln feed end by firing fuel in this region. The reducing atmosphere is maintained in the calciner region by controlling combustion air such that the calcining fuel is first burned under reducing conditions to reduce NO_x, then under oxidizing conditions to complete the combustion reaction. Controlling the introduction of raw meal allows for control over temperature in the calciner. Through these mechanisms, both fuel NO_x and thermal NO_x are controlled. The combustion chamber allows for improved control over introduction of tertiary air in the calciner region, helping to promote the proper reducing environment for NO_x control.

One public commentor suggested combusting the fuels in the pyroprocessing system with pure oxygen, presumably to reduce the formation of thermal NO_x. The pure oxygen would be supplied from a liquid air fractionation plant which would be located at or near the facility. The Department considered this suggestion but rejected it for the following reasons. The facility will have large combustion air requirements and would require large volumes of pure oxygen to offset the air required, at a significant cost; this technology has not been demonstrated to be feasible for the production of cement or for similar pyroprocessing processes; oxygen actively supports combustion to the extent that it is explosive on contact with heat or oxidizable materials, thus presenting a safety hazard; and use of pure oxygen will do nothing to prevent the formation of fuel NO_x. This suggestion can best be characterized as speculative, and extensive redesign and pilot study of the entire pyroprocessing system would be required to accomplish pure oxygen firing, if it is possible at all; such a change would completely alter the mass and heat transfer characteristics of the plant. MSC-CC is an effective control technology that will reduce both thermal NO_x and fuel NO_x.

Except for emissions during startup of the kiln, the applicant has proposed a NO_x emission rate of 3.0 pounds per ton of clinker produced. The applicant advised that excess emissions of NO_x during a startup of the pyroprocessing system when there is no material in the kiln may be as high as 600 pounds per hour for up to an hour.

We note that no plant has been constructed in the U.S. with SNCR as a control technology. The Department's research of EPA's BACT/LAER Clearinghouse found one plant achieving a permitted limit less than 2.8 pounds per ton of clinker: A Lone Star facility in California that uses a preheater/precalciner design, and meets a limit of 2.5 lb/ton clinker. In its previous BACT determinations for Florida Rock Industries and Florida Crushed Stone, the Department determined that this value is equal to 2.8 lb/ton clinker when corrected for the additional heat requirement necessary to process the higher moisture limestone mined in Florida. The proposed plant will utilize rock with a higher moisture content than the Florida Rock Industries plant, so the applicant proposed a higher NO_x limit than the BACT limit of 2.8 lb/ton clinker imposed for Florida Rock Industries. The three factors most affecting NO_x emissions at

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portland cement plants are fuel volatility, burnability of the material mix and moisture content. The Department considered these factors in previous BACT determinations for cement plants, and in making its determination for this plant, and concluded that moisture content is the factor that warrants most consideration in setting BACT for NO_x for cement plants.

The dry process with preheater/precalciner proposed by the applicant is the most energy-efficient process for the production of portland cement. Therefore, one would expect the increased efficiency and consequent lower fuel consumption to result in the lowest possible emissions compared to wet process or other dry process operations, all else being equal. Additionally, the lower flame temperature realized when burning coal compared with burning natural gas, as well as documented NO_x reductions from tire burning (tires have a higher heat content and lower nitrogen content than coal), are further reasons to expect the lowest possible emission rate among kilns employing the preheater/precalciner design. MSC-CC is a pollution prevention technique that is integrated into the energy efficient design of the preheater/precalciner process.

The Department agrees with the applicant that MSC-CC is the most cost effective control technology and is BACT for NO_x for this project. However, considering the additional benefits that will be derived from the separate line combustion chamber, the Department has determined that the emission limit for this control technology at this facility shall be 2.9 pounds of NO_x per ton of clinker produced, and 304.5 pounds per hour. The Department has determined that the appropriate averaging time for this emission limit at this facility shall be a rolling 24 hour period.

The applicant requested a higher limit for NO_x for two years after startup, to allow time for adjustment of the plant controls to assure that compliance with the BACT limit will be attained. The Department commented to the applicant that although the temporary exemption language of Department rules provides for exemption from certain PSD requirements for emissions lasting up to two years, such time period for NO_x seems excessive given the plant manufacturer's experience with the startup of similar facilities, and the experience it will gain with the startup of the similar Florida Rock plant (which is scheduled to begin operation prior to completion of this facility). The applicant subsequently revised its request to a period of one year after startup, and the Department agrees that such a period is reasonable. During first year after startup, the kiln shall not exceed a NO_x limit of 3.8 lb/ton clinker, and 399.0 pounds per hour; the limit of 2.9 lb/ton clinker (304.5 lb/hr) shall be imposed thereafter. Emissions of NO_x up to 600 lb/hr for up to one hour in duration shall be allowed for startup of the pyroprocessing system when there is no material in the kiln. (Assuming that two of these startups occur per year, excess NO_x emissions will be 591 pounds per year greater than allowable.)

Sulfur Dioxide (SO₂)

Sulfur dioxide is generated from volatilization and subsequent oxidation of sulfur compounds in the raw materials within the preheater and precalciner regions, and by oxidation of sulfur compounds in the fuel during combustion. Sulfur dioxide at this facility will be generated through these mechanisms. The sulfur content of both raw materials and fuels varies based on the raw materials and fuels available at a given location, and consequently sulfur dioxide emissions vary with these factors. As is typical of conditions in Florida, the limestone, which is the principal raw material, will be low in sulfur compounds. Sulfur compounds present in the other raw materials such as the iron sources, which represent a small proportion of the total raw materials, will most significantly contribute to sulfur dioxide emissions.

Most of the sulfur dioxide formed subsequently reacts with alkaline compounds present in the pyroprocessing environment to form alkali sulfates, which become incorporated in the cement clinker. The amount of sulfur dioxide released in the flue gases will vary with the amount of excess alkali available for absorption. The pyroprocessing system is very alkaline, and will be quite effective at removing sulfur dioxide formed from fuel sulfur. A significant proportion of sulfur dioxide from sulfur in raw materials will be removed through intimate contact with the incoming alkaline raw materials which

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flow counter to the gas flow. Further contact is achieved in the raw mill where the flue gases are used to dry incoming material feed.

Control for sulfur dioxide applicable to the project are use of low sulfur raw materials; process control to assure a sufficiently alkaline environment is present for reaction with sulfur dioxide formed during pyroprocessing, and to assure intimate contact between flue gases and incoming materials; and flue gas controls – principally scrubbers.

The applicant proposes to limit sulfur dioxide emissions through process control. This will be accomplished by taking advantage of the alkaline environment in the kiln, preheater/precalciner, and raw mill to effect substantial removal of sulfur dioxide. Ultimately, the sulfur is incorporated into the clinker, thus minimizing the amount emitted to the atmosphere. The applicant proposed a sulfur dioxide limit of 0.28 pounds per ton of clinker produced.

Several cement plants in the U.S. use scrubbers for control of sulfur dioxide, ammonia and visible plumes that occur at some plants. Many more plants use process control for sulfur dioxide control. The Department investigated the applicability of a dry circulating scrubber for sulfur dioxide control for this project, and requested comments from the applicant. The applicant provided information regarding control cost for wet scrubbing, and discussed problems with installing the dry circulating bed system at this facility. The applicant demonstrated that wet scrubbing is not cost effective, having estimated a control cost for wet scrubbing of \$29,700 per ton. Despite the problems pointed out by the applicant, the Department estimated the control cost for the dry circulating scrubber, assuming, to simplify the cost estimate, the originally proposed ESP for the in-line kiln/raw mill could be used for reagent recovery. (The applicant has changed the design to use a baghouse for particulate control for the in-line kiln/raw mill.) Based on a capital cost estimate of \$8 million and 20 year depreciation period and estimated 90% efficiency, provided by Ken Olen, Ph.D., the control cost was estimated to be \$7,400 per ton. It is possible that an additional ESP would be required to effect proper operation of the dry circulating scrubber at this facility, raising this cost estimate substantially. The applicant's engineer commented by letter dated November 8, 1999 that he believes that such additional equipment is necessary. The Department agrees with the applicant that flue gas controls are not cost effective for this project, and are not required as BACT.

The Department believes that process control is the appropriate technology for control of sulfur dioxide emissions for this project and is BACT. The Department considered imposing limitations on the sulfur content of the fuels and the raw materials used, but determined that such limits are not required. Fuel sulfur is largely irrelevant because of the substantial exposure and contact between sulfur dioxide formed from fuel sulfur and the alkaline materials. Sulfur limits on the raw materials are not needed because the primary raw material, limestone, will be naturally low in sulfur. The other raw materials will be obtained by the applicant, which will acquire materials with regard to the alkali available in the process for control of sulfur dioxide formed from volatilization and oxidation of sulfur compounds in these materials. The Department will require a continuous emission monitor system for sulfur dioxide, which will offer a continuous demonstration of compliance with the emission limit, as well as process control data for the plant operators. The use of a CEM system ensures that process control will be effective, and eliminates the need for a limit on sulfur in raw materials.

The Department has determined that BACT for sulfur dioxide is process control. The BACT sulfur dioxide emission limit for this plant shall be 0.27 pounds/ton of clinker produced, and 28.4 pounds per hour, based on a rolling 3-hour averaging time. Process control will allow for sulfur dioxide emissions to be minimized by maintaining a sufficient alkaline environment in the pyroprocessing system and by intimate contact between raw materials and exhaust gases. The sulfur dioxide that would result from fuel sulfur, as well as that resulting from volatilization and oxidation of sulfur from raw materials, will be controlled in this manner.

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Particulate Matter (PM and PM₁₀)

Particulate matter results from the various physical and chemical processes at a cement manufacturing plant such as: quarrying and crushing, material transfer and storage, grinding and blending, clinker production, finish grinding, and packaging and loading. As is typical of cement plants, the largest emission source of particulate matter at this facility will be the pyroprocessing system that includes the in-line kiln/raw mill and clinker cooler. At this facility, all cement kiln dust (CKD) captured in the in-line kiln/raw mill baghouse will be returned to the pyroprocessing system as raw material. Emissions from enclosed fuel and material handling and storage operations represent another significant source of emissions at this facility. Unenclosed sources represent the smallest sources of emissions, given the use of proper controls. The limestone will primarily be mined below the water table and have an average moisture of 10-20%. The quarrying activities and associated crushing and transport will involve moist or wet raw materials with negligible unconfined emissions.

Common control devices for controlling emissions of particulate matter at cement plants are fabric filters (baghouses) and electrostatic precipitators (ESPs). Baghouses and ESPs are generally considered equivalent for particulate control. Both types of devices can achieve removal efficiencies of over 99%. ESPs and baghouses are used extensively as control devices at cement plants. ESPs are generally specified for kiln and clinker cooler exhaust gases because of their ability to operate effectively at varying temperatures, although baghouses are also used at some facilities for this purpose. Both types of control equipment provide for the recovery and recycling of CKD back into the process stream. ESPs offer the advantage of having no fabric filters that will wear and break and require routine replacement, while baghouses offer the advantage of providing for "passive" control in the event of an electrical power failure. A review of the BACT/LAER Clearinghouse shows that baghouses and ESPs are widely used to control particulate matter from process emission units at cement plants. Both offer an essentially equivalent level of control and are commonly accepted as BACT. Baghouses are also generally used to control particulate emissions from most other material processing operations at cement plants.

Common controls to limit particulate emissions from fugitive sources (such as roadways, stockpiles, and material processing and conveying equipment) include application of water for dust suppression, removal of dust, application of water and other dust suppressants, paving of roads and covering of stockpiles to reduce wind erosion. These methods of controlling fugitive particulate matter emissions are generally considered to be BACT for most material handling operations and unpaved roads.

The applicant proposed respective PM and PM₁₀ emission limits of 0.20 and 0.17 pounds per ton of dry preheater feed for the in-line kiln/raw mill, and 0.10 and 0.085 pounds per ton of dry preheater feed for the clinker cooler. After comment from the Department that lower limits are found in the BACT/LAER Clearinghouse, the applicant revised the PM₁₀ limits to 0.11 and 0.06 pounds per ton of dry preheater feed (equivalent to 19.6 and 10.7 lb/hr at maximum process rate) for the in-line kiln/raw mill and clinker cooler, respectively. The applicant originally proposed to achieve these limits using an ESP for the in-line kiln/raw mill and an ESP for the clinker cooler, with other enclosed sources controlled by baghouses. The applicant later revised its design to use a baghouse for the in-line kiln/raw mill.

The Department agrees with the applicant's proposal, but has instituted additional limits for PM of 0.13 and 0.07 pounds per ton of dry preheater feed (and 23.1 and 12.5 lb/hr) for the in-line kiln/raw mill and clinker cooler, respectively. BACT is the use of a baghouse to control particulate matter emissions from the in-line kiln/raw mill and an ESP to control particulate matter emissions from the clinker cooler to the PM and PM₁₀ limits noted above. Visible emissions from these sources shall not exceed 10 percent opacity. BACT for other enclosed emission sources will be control of particulate matter emissions using baghouses to meet respective PM and PM₁₀ emission limits of 0.01 and 0.0085 grains per dry standard cubic foot. Visible emissions from these sources shall not exceed 5 percent opacity.

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BACT for unenclosed sources is generally control of particulate matter emissions by inherent or applied moisture. Unpaved roads will be sprayed with water or dust suppressants to prevent unconfined particulate matter emissions. Material and fuel storage piles will be stored under roof or in enclosed vessels. Storage piles shall be shaped, compacted and oriented to minimize wind erosion. Storage piles shall be wetted with devices located near such piles when visual inspection determines wetting is needed. Water spray bars shall be located at each unenclosed conveyor and used for wetting of materials and fuel if inherent or previously-applied moisture is insufficient to prevent unconfined PM emissions. Paving of the manufacturing area and access roadways is required. Bulk transport trucks leaving the plant must travel through a tire wash prior to traveling on access roadways.

The Department believes that these controls and emission limits constitute BACT for particulate matter.

Carbon Monoxide (CO) and Volatile Organic Compounds (VOC)

Carbon monoxide is a pollutant formed by the incomplete combustion of carbon in the fuels fired during pyroprocessing. When insufficient oxygen is provided or poor combustion conditions occur, more CO and less CO₂ is formed than under ideal conditions. VOC is also a pollutant formed by the incomplete combustion of fuel.

Emissions of CO and VOC are controlled by utilization of proper combustion practices to maximize the oxidation of carbon to CO₂ instead of CO, and by flue gas controls. No add-on controls for CO or VOC have been demonstrated for cement plants. The high temperatures and control of excess air, process temperatures and fuel typically results in simultaneous optimization for control of CO, VOC and NO_x. CO and NO_x generally show an inverse relationship in cement plants as in many combustion processes, so reduction of NO_x results in higher CO emissions. The applicant proposed combustion control as BACT for CO and VOC from this plant, and proposed emission limits of 3.6 and 0.12 pounds per ton of clinker produced for CO and VOC, respectively.

The Department agrees with the applicant. BACT for CO and VOC shall be combustion control. The emission limit for CO shall be 3.6 pounds per ton of clinker produced, and 378.0 pounds per hour, based on a 3 hour average. The averaging time is that of the annual test. A CEM will not be required for CO. However, the facility will install process monitors for CO to provide for the use of CO as a short-term measure of the efficacy of combustion control. The emission limit for VOC shall be 0.12 pounds per ton of clinker produced, and 12.6 pounds per hour, based on a 30 day averaging time. This averaging time is consistent with the NESHAP requirements.

Based on the information provided by the applicant and the informed judgement of the Department, BACT for PM, PM₁₀, SO₂, NO_x, CO and VOC for the emission sources at this facility is determined to be the control technologies and emission limits discussed above.

8. COMPLIANCE

The compliance methods are briefly summarized here. Except for PM, PM₁₀ and CO, compliance with the emission and process limitations for the in-line kiln/raw mill shall be demonstrated on a regular basis through a variety of continuous monitoring systems, and by record keeping for some production parameters. Compliance with the visible emissions limitation for the clinker cooler shall be regularly demonstrated using COM system clinker cooler stack. Annual emission tests will be required for all emission-limited pollutants, including visible emissions, from the in-line kiln/raw mill and the clinker cooler. Tests conducted for the annual RATA can satisfy the annual test requirements for the in-line kiln/raw mill. Initial compliance testing to demonstrate compliance with the emission limits for the three largest process sources controlled by baghouses will be required; thereafter, no subsequent tests will be required if these sources meet a visible emissions limit of 5% opacity. Initial and annual tests for the other process sources controlled by baghouses is not required if these sources meet a visible emissions limit of 5% opacity. The opacity limit for the clinker cooler is 10%. Compliance with the mercury

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throughput limitation will be demonstrated via sampling and analysis of the materials and fuels. Compliance with the dioxin emissions limit of the NESHAP shall be demonstrated via testing, and continuous monitoring of the temperature at the inlet of the baghouse for the in-line kiln/raw mill, in accordance with that rule.

The Department will require that the data from continuous monitors for emissions be available to the Department via a data retrieval system to one of the Department's offices. This data will also be posted to an Internet site by the permittee, if technically feasible.

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[Note: The numbering of the original rules in the following conditions has been preserved for ease of reference to the rules. Inapplicable paragraphs have been omitted for clarity and brevity. The term "Administrator" when used in 40 CFR 60 shall mean the Secretary or the Secretary's designee.]

1. Pursuant to 40 CFR 60.1 Applicability:

- (a) Except as provided in 40 CFR 60 subparts B and C, the provisions of this part apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication in this part of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.
- (b) Any new or revised standard of performance promulgated pursuant to section 111(b) of the Act shall apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication in this part of such new or revised standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.
- (c) In addition to complying with the provisions of this part, the owner or operator of an affected facility may be required to obtain an operating permit issued to stationary sources by an authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to Title V of the Clean Air Act (CAA) as amended November 15, 1990 (42 U.S.C. 7661).

[40 CFR 60.1]

2. Pursuant to 40 CFR 60.2 Definitions:

The owner or operator shall comply with all applicable provisions of 40 CFR 60.2. The text of this section has been omitted from this permit for brevity. See the Code of Federal Regulations for the text of this section.

3. Pursuant to 40 CFR 60.3 Units and Abbreviations:

The owner or operator shall comply with all applicable provisions of 40 CFR 60.3. The text of this section has been omitted from this permit for brevity. See the Code of Federal Regulations for the text of this section.

4. Pursuant to 40 CFR 60.4 Address:

The owner or operator shall comply with all applicable provisions of 40 CFR 60.4. The text of this section has been omitted from this permit for brevity. See the Code of Federal Regulations for the text of this section.

[Note: The Department has not adopted the provisions of 40 CFR 60.4 pursuant to Rule 62-204.800(7)(d), F.A.C. They are included in this permit to advise the permittee of their applicability.]

5. Pursuant to 40 CFR 60.5 Determination of Construction or Modification:

The owner or operator shall comply with all applicable provisions of 40 CFR 60.4. The text of this section has been omitted from this permit for brevity. See the Code of Federal Regulations for the text of this section.

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6. Pursuant to 40 CFR 60.6 Review of Plans:

The owner or operator shall comply with all applicable provisions of 40 CFR 60.4. The text of this section has been omitted from this permit for brevity. See the Code of Federal Regulations for the text of this section.

7. Pursuant to 40 CFR 60.7 Notification and Recordkeeping:

(a) Any owner or operator subject to the provisions of 40 CFR 60 shall furnish the Administrator written notification as follows:

- (1) A notification of the date construction (or reconstruction as defined under 40 CFR 60.15) of an affected facility is commenced postmarked no later than 30 days after such date. This requirement shall not apply in the case of mass-produced facilities which are purchased in completed form.
 - (2) A notification of the anticipated date of initial startup of an affected facility postmarked not more than 60 days nor less than 30 days prior to such date.
 - (3) A notification of the actual date of initial startup of an affected facility postmarked within 15 days after such date.
 - (4) A notification of any physical or operational change to an existing facility which may increase the emission rate of any air pollutant to which a standard applies, unless that change is specifically exempted under an applicable subpart or in 40 CFR 60.14(e). This notice shall be postmarked 60 days or as soon as practicable before the change is commenced and shall include information describing the precise nature of the change, present and proposed emission control systems, productive capacity of the facility before and after the change, and the expected completion date of the change. The Administrator may request additional relevant information subsequent to this notice.
 - (5) A notification of the date upon which demonstration of the continuous monitoring system performance commences in accordance with 40 CFR 60.13(c). Notification shall be postmarked not less than 30 days prior to such date.
 - (6) A notification of the anticipated date for conducting the opacity observations required by 40 CFR 60.11(e)(1) of this part. The notification shall also include, if appropriate, a request for the Administrator to provide a visible emissions reader during a performance test. The notification shall be postmarked not less than 30 days prior to such date.
 - (7) A notification that continuous opacity monitoring system data results will be used to determine compliance with the applicable opacity standard during a performance test required by 40 CFR 60.8 in lieu of Method 9 observation data as allowed by 40 CFR 60.11(e)(5) of 40 CFR 60. This notification shall be postmarked not less than 30 days prior to the date of the performance test.
- (b) The owner or operator subject to the provisions of 40 CFR 60 shall maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

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- (c) The owner or operator required to install a continuous monitoring system (CMS) or monitoring device shall submit an excess emissions and monitoring systems performance report (excess emissions are defined in applicable subparts) and/or a summary report form (see 40 CFR 60.7(d)) to the Administrator semiannually, except when: more frequent reporting is specifically required by an applicable subpart; or the CMS data are to be used directly for compliance determination, in which case quarterly reports shall be submitted; or the Administrator, on a case-by-case basis, determines that more frequent reporting is necessary to accurately assess the compliance status of the source. All reports shall be postmarked by the 30th day following the end of each calendar half (or quarter, as appropriate). Written reports of excess emissions shall include the following information:
- (1) The magnitude of excess emissions computed in accordance with 40 CFR 60.13(h), any conversion factor(s) used, and the date and time of commencement and completion of each time period of excess emissions. The process operating time during the reporting period.
 - (2) Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected facility. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted.
 - (3) The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.
 - (4) When no excess emissions have occurred or the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be stated in the report.
- (d) The summary report form shall contain the information and be in the format shown in Figure 1 unless otherwise specified by the Administrator. One summary report form shall be submitted for each pollutant monitored at each affected facility.
- (1) If the total duration of excess emissions for the reporting period is less than 1 percent of the total operating time for the reporting period and CMS downtime for the reporting period is less than 5 percent of the total operating time for the reporting period, only the summary report form shall be submitted and the excess emission report described in 40 CFR 60.7(c) need not be submitted unless requested by the Administrator.
 - (2) If the total duration of excess emissions for the reporting period is 1 percent or greater of the total operating time for the reporting period or the total CMS downtime for the reporting period is 5 percent or greater of the total operating time for the reporting period, the summary report form and the excess emission report described in 40 CFR 60.7(c) shall both be submitted.
- [See Attached Figure 1-Summary Report-Gaseous and Opacity Excess Emission and Monitoring System Performance]*
- (e)(1) Notwithstanding the frequency of reporting requirements specified in paragraph (c) of this section, an owner or operator who is required by an applicable subpart to submit excess emissions and monitoring systems performance reports (and summary reports) on a quarterly (or more frequent) basis may reduce the frequency of reporting for that standard to semiannual if the following conditions are met:

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- (i) For one full year (e.g., four quarterly or twelve monthly reporting periods) the affected facility's excess emissions and monitoring systems reports submitted to comply with a standard under this part continually demonstrate that the facility is in compliance with the applicable standard;
- (ii) The owner or operator continues to comply with all recordkeeping and monitoring requirements specified in this subpart and the applicable standard; and
- (iii) The Administrator does not object to reduced frequency of reporting for the affected facility, as provided in paragraph (e)(2) of this section.
- (f) The owner or operator subject to the provisions of 40 CFR 60 shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and performance testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by 40 CFR 60 recorded in a permanent form suitable for inspection. The file shall be retained for at least three years following the date of such measurements, maintenance, reports, and records.
- (g) If notification substantially similar to that in 40 CFR 60.7(a) is required by any other State or local agency, sending the Administrator a copy of that notification will satisfy the requirements of 40 CFR 60.7(a).
- (h) Individual subparts of this part may include specific provisions which clarify or make inapplicable the provisions set forth in this section.
[40 CFR 60.7]

[Note: 40 CFR 60.670(f) and Table 1 note an exception to 40 CFR 60.7(a)(2) that the report of anticipated date of initial startup of is not required pursuant to 40 CFR 60.676(h).]

8. Pursuant to 40 CFR 60.8 Performance Tests:

- (a) Within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility and at such other times as may be required by the Administrator under section 114 of the Act, the owner or operator of such facility shall conduct performance test(s) and furnish the Administrator a written report of the results of such performance test(s).
- (b) Performance tests shall be conducted and data reduced in accordance with the test methods and procedures contained in each applicable subpart unless the Administrator (1) specifies or approves, in specific cases, the use of a reference method with minor changes in methodology, (2) approves the use of an equivalent method, (3) approves the use of an alternative method the results of which he has determined to be adequate for indicating whether a specific source is in compliance, (4) waives the requirement for performance tests because the owner or operator of a source has demonstrated by other means to the Administrator's satisfaction that the affected facility is in compliance with the standard, or (5) approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors. Nothing in this paragraph shall be construed to abrogate the Administrator's authority to require testing under section 114 of the Act.

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- (c) Performance tests shall be conducted under such conditions as the Administrator shall specify to the plant operator based on representative performance of the affected facility. The owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test nor shall emissions in excess of the level of the applicable emission limit during periods of startup, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard.
- (d) The owner or operator of an affected facility shall provide the Administrator at least 30 days prior notice of any performance test, except as specified under other subparts, to afford the Administrator the opportunity to have an observer present.
- (e) The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows: (1) Sampling ports adequate for test methods applicable to such facility. This includes (i) constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures and (ii) providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures. (2) Safe sampling platform(s). (3) Safe access to sampling platform(s). (4) Utilities for sampling and testing equipment.
- (f) Unless otherwise specified in the applicable subpart, each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances, beyond the owner or operator's control, compliance may, upon the Administrator's approval, be determined using the arithmetic mean of the results of the two other runs.
[40 CFR 60.8]

[Note: See the note for specific condition 21 of Section II of this permit regarding the proper advance notification of compliance tests.]

[Note: The Department has not adopted the provisions of 40 CFR 60.8(b)(2) and (3) pursuant to Rule 62-204.800(7)(d), F.A.C. They are included in this permit to advise the permittee of their applicability.]

[Note: 40 CFR 60.670(f) and Table 1 note an exception to 40 CFR 60.8(d) that after 30 days notice for an initially scheduled performance test, any rescheduled performance test requires 7 days notice, not 30 days pursuant to 40 CFR 60.675(g).]

9. Pursuant to 40 CFR 60.9 Availability of Information:

The owner or operator shall comply with all applicable provisions of 40 CFR 60.9. The text of this section has been omitted from this permit for brevity. See the Code of Federal Regulations for the text of this section.

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10. Pursuant to 40 CFR 60.10 State Authority:

The owner or operator shall comply with all applicable provisions of 40 CFR 60.10. The text of this section has been omitted from this permit for brevity. See the Code of Federal Regulations for the text of this section.

11. Pursuant to 40 CFR 60.11 Compliance with Standards and Maintenance Requirements:

- (a) Compliance with standards in 40 CFR 60, other than opacity standards, shall be determined only by performance tests established by 40 CFR 60.8, unless otherwise specified in the applicable standard.
- (b) Compliance with opacity standards in 40 CFR 60 shall be determined by conducting observations in accordance with Reference Method 9 in appendix A of 40 CFR 60, any alternative method that is approved by the Administrator, or as provided in 40 CFR 60.11(e)(5). For purposes of determining initial compliance, the minimum total time of observations shall be 3 hours (30 6-minute averages) for the performance test or other set of observations (meaning those fugitive-type emission sources subject only to an opacity standard).
- (c) The opacity standards set forth in 40 CFR 60 shall apply at all times except during periods of startup, shutdown, malfunction, and as otherwise provided in the applicable standard.
- (d) At all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.
- (e)(1) For the purpose of demonstrating initial compliance, opacity observations shall be conducted concurrently with the initial performance test required in 40 CFR 60.8 unless one of the following conditions apply. If no performance test under 40 CFR 60.8 is required, then opacity observations shall be conducted within 60 days after achieving the maximum production rate at which the affected facility will be operated but no later than 180 days after initial startup of the facility. If visibility or other conditions prevent the opacity observations from being conducted concurrently with the initial performance test required under 40 CFR 60.8, the source owner or operator shall reschedule the opacity observations as soon after the initial performance test as possible, but not later than 30 days thereafter, and shall advise the Administrator of the rescheduled date. In these cases, the 30-day prior notification to the Administrator required in 40 CFR 60.7(a)(6) shall be waived. The rescheduled opacity observations shall be conducted (to the extent possible) under the same operating conditions that existed during the initial performance test conducted under 40 CFR 60.8. The visible emissions observer shall determine whether visibility or other conditions prevent the opacity observations from being made concurrently with the initial performance test in accordance with procedures contained in Reference Method 9 of appendix B of this part. Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards. The owner or operator of an affected facility shall make available, upon request by

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the Administrator, such records as may be necessary to determine the conditions under which the visual observations were made and shall provide evidence indicating proof of current visible observer emission certification. Except as provided in 40 CFR 60.11(e)(5), the results of continuous monitoring by transmissometer which indicate that the opacity at the time visual observations were made was not in excess of the standard are probative but not conclusive evidence of the actual opacity of an emission, provided that the source shall meet the burden of proving that the instrument used meets (at the time of the alleged violation) Performance Specification 1 in appendix B of 40 CFR 60, has been properly maintained and (at the time of the alleged violation) that the resulting data have not been altered in any way.

- (2) Except as provided in 40 CFR 60.11(e)(3), the owner or operator of an affected facility to which an opacity standard in this part applies shall conduct opacity observations in accordance with 40 CFR 60.11(b), shall record the opacity of emissions, and shall report to the Administrator the opacity results along with the results of the initial performance test required under 40 CFR 60.8. The inability of an owner or operator to secure a visible emissions observer shall not be considered a reason for not conducting the opacity observations concurrent with the initial performance test.
- (3) The owner or operator of an affected facility to which an opacity standard in this part applies may request the Administrator to determine and to record the opacity of emissions from the affected facility during the initial performance test and at such times as may be required. The owner or operator of the affected facility shall report the opacity results. Any request to the Administrator to determine and to record the opacity of emissions from an affected facility shall be included in the notification required in 40 CFR 60.7(a)(6). If, for some reason, the Administrator cannot determine and record the opacity of emissions from the affected facility during the performance test, then the provisions of 40 CFR 60.7(e)(1) shall apply.
- (4) The owner or operator of an affected facility using a continuous opacity monitor (transmissometer) shall record the monitoring data produced during the initial performance test required by 40 CFR 60.8 and shall furnish the Administrator a written report of the monitoring results along with Method 9 and 40 CFR 60.8 performance test results.
- (5) The owner or operator of an affected facility subject to an opacity standard may submit, for compliance purposes, continuous opacity monitoring system (COMS) data results produced during any performance test required under 40 CFR 60.8 in lieu of Method 9 observation data. If an owner or operator elects to submit COMS data for compliance with the opacity standard, he shall notify the Administrator of that decision, in writing, at least 30 days before any performance test required under 40 CFR 60.8 is conducted. Once the owner or operator of an affected facility has notified the Administrator to that effect, the COMS data results will be used to determine opacity compliance during subsequent tests required under 40 CFR 60.8 until the owner or operator notifies the Administrator, in writing, to the contrary. For the purpose of determining compliance with the opacity standard during a performance test required under 40 CFR 60.8 using COMS data, the minimum total time of COMS data collection shall be averages of all 6-minute continuous periods within the duration of the mass emission performance test. Results of the COMS opacity determinations shall be submitted along with the results of the performance test required under 60.8. The owner or operator of an affected facility using a

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COMS for compliance purposes is responsible for demonstrating that the COMS meets the requirements specified in 40 CFR 60.13(c), that the COMS has been properly maintained and operated, and that the resulting data have not been altered in any way. If COMS data results are submitted for compliance with the opacity standard for a period of time during which Method 9 data indicates noncompliance, the Method 9 data will be used to determine opacity compliance.

- (6) Upon receipt from an owner or operator of the written reports of the results of the performance tests required by 40 CFR 60.8, the opacity observation results and observer certification required by 40 CFR 60.11(e)(1), and the COMS results, if applicable, the Administrator will make a finding concerning compliance with opacity and other applicable standards. If COMS data results are used to comply with an opacity standard, only those results are required to be submitted along with the performance test results required by 40 CFR 60.8. If the Administrator finds that an affected facility is in compliance with all applicable standards for which performance tests are conducted in accordance with 40 CFR 60.8 of this part but during the time such performance tests are being conducted fails to meet any applicable opacity standard, the shall notify the owner or operator and advise him that he may petition the Administrator within 10 days of receipt of notification to make appropriate adjustment to the opacity standard for the affected facility.
- (7) The Administrator will grant such a petition upon a demonstration by the owner or operator that the affected facility and associated air pollution control equipment was operated and maintained in a manner to minimize the opacity of emissions during the performance tests; that the performance tests were performed under the conditions established by the Administrator; and that the affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard.
- (8) The Administrator will establish an opacity standard for the affected facility meeting the above requirements at a level at which the source will be able, as indicated by the performance and opacity tests, to meet the opacity standard at all times during which the source is meeting the mass or concentration emission standard. The Administrator will promulgate the new opacity standard in the Federal Register.
- (f) Special provisions set forth under an applicable subpart of 40 CFR 60 shall supersede any conflicting provisions of paragraphs (a) through (e) of 40 CFR 60.11.
- (g) For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in 40 CFR 60, nothing in 40 CFR 60 shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.

[40 CFR 60.11]

[Note: The Department has not adopted the provisions of 40 CFR 60.11(e) pursuant to Rule 62-204.800(7)(d), F.A.C. They are included in this permit to advise the permittee of their applicability.]

[Note: 40 CFR 60.670(f) and Table 1 note an exception to 40 CFR 60.11(b) that under certain conditions Method 9 observation may be reduced from 3 hours to 1 hour pursuant to 40 CFR 60.675(c)(3) and (c)(4).]

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12. Pursuant to 40 CFR 60.12 Circumvention:

No owner or operator subject to the provisions of 40 CFR 60.12 shall build, erect, install, or use any article, machine, equipment or process, the use of which conceals an emission which would otherwise constitute a violation of an applicable standard. Such concealment includes, but is not limited to, the use of gaseous diluents to achieve compliance with an opacity standard or with a standard which is based on the concentration of a pollutant in the gases discharged to the atmosphere.

[40 CFR 60.12]

13. Pursuant to 40 CFR 60.13 Monitoring Requirements:

- (a) For the purposes of this section, all continuous monitoring systems required under applicable subparts shall be subject to the provisions of this section upon promulgation of performance specifications for continuous monitoring systems under appendix B of 40 CFR 60 and, if the continuous monitoring system is used to demonstrate compliance with emission limits on a continuous basis, appendix F to 40 CFR 60, unless otherwise specified in an applicable subpart or by the Administrator. Appendix F is applicable December 4, 1987.
- (b) All continuous monitoring systems and monitoring devices shall be installed and operational prior to conducting performance tests under 40 CFR 60.8. Verification of operational status shall, as a minimum, include completion of the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.
- (c) If the owner or operator of an affected facility elects to submit continuous opacity monitoring system (COMS) data for compliance with the opacity standard as provided under 40 CFR 60.11(e)(5), he/she shall conduct a performance evaluation of the COMS as specified in Performance Specification 1, appendix B, of 40 CFR 60 before the performance test required under 40 CFR 60.8 is conducted. Otherwise, the owner or operator of an affected facility shall conduct a performance evaluation of the COMS or continuous emission monitoring system (CEMS) during any performance test required under 40 CFR 60.8 or within 30 days thereafter in accordance with the applicable performance specification in appendix B of 40 CFR 60. The owner or operator of an affected facility shall conduct COMS or CEMS performance evaluations at such other times as may be required by the Administrator under section 114 of the Act.
- (1) The owner or operator of an affected facility using a COMS to determine opacity compliance during any performance test required under 40 CFR 60.8 and as described in 40 CFR 60.11(e)(5), shall furnish the Administrator two or, upon request, more copies of a written report of the results of the COMS performance evaluation described in 40 CFR 60.13(c) at least 10 days before the performance test required under 40 CFR 60.8 is conducted.
- (2) Except as provided in 40 CFR 60.13(c)(1), the owner or operator of an affected facility shall furnish the Administrator within 60 days of completion two or, upon request, more copies of a written report of the results of the performance evaluation.
- (d)(1) Owners and operators of all continuous emission monitoring systems installed in accordance with the provisions of this part shall check the zero (or low-level value between 0 and 20 percent of span value) and span (50 to 100 percent of span value) calibration drifts at least once daily in

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accordance with a written procedure. The zero and span shall, as a minimum, be adjusted whenever the 24-hour zero drift or 24-hour span drift exceeds two times the limits of the applicable performance specifications in appendix B. The system must allow the amount of excess zero and span drift measured at the 24-hour interval checks to be recorded and quantified, whenever specified. For continuous monitoring systems measuring opacity of emissions, the optical surfaces exposed to the effluent gases shall be cleaned prior to performing the zero and span drift adjustments except that for systems using automatic zero adjustments. The optical surfaces shall be cleaned when the cumulative automatic zero compensation exceeds 4 percent opacity.

- (2) Unless otherwise approved by the Administrator, the following procedures shall be followed for continuous monitoring systems measuring opacity of emissions. Minimum procedures shall include a method for producing a simulated zero opacity condition and an upscale (span) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. Such procedures shall provide a system check of the analyzer internal optical surfaces and all electronic circuitry including the lamp and photo detector assembly.
- (e) Except for system breakdowns, repairs, calibration checks, and zero and span adjustments required under 40 CFR 60.13(d), all continuous monitoring systems shall be in continuous operation and shall meet minimum frequency of operation requirements as follows:
- (1) All continuous monitoring systems referenced by 40 CFR 60.13(c) for measuring opacity of emissions shall complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.
 - (2) All continuous monitoring systems referenced by 40 CFR 60.13(c) for measuring emissions, except opacity, shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.
 - (f) All continuous monitoring systems or monitoring devices shall be installed such that representative measurements of emissions or process parameters from the affected facility are obtained. Additional procedures for location of continuous monitoring systems contained in the applicable Performance Specifications of appendix B of 40 CFR 60 shall be used.
 - (g) When the effluents from a single affected facility or two or more affected facilities subject to the same emission standards are combined before being released to the atmosphere, the owner or operator may install applicable continuous monitoring systems on each effluent or on the combined effluent. When the affected facilities are not subject to the same emission standards, separate continuous monitoring systems shall be installed on each effluent. When the effluent from one affected facility is released to the atmosphere through more than one point, the owner or operator shall install an applicable continuous monitoring system on each separate effluent unless the installation of fewer systems is approved by the Administrator. When more than one continuous monitoring system is used to measure the emissions from one affected facility (e.g., multiple breechings, multiple outlets), the owner or operator shall report the results as required from each continuous monitoring system.

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- (h) Owners or operators of all continuous monitoring systems for measurement of opacity shall reduce all data to 6-minute averages and for continuous monitoring systems other than opacity to 1-hour averages for time periods as defined in 40 CFR 60.2. Six-minute opacity averages shall be calculated from 36 or more data points equally spaced over each 6-minute period. For continuous monitoring systems other than opacity, 1-hour averages shall be computed from four or more data points equally spaced over each 1-hour period. Data recorder during periods of continuous monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments shall not be included in the data averages computed under this paragraph. An arithmetic or integrated average of all data may be used. The data may be recorded in reduced or non reduced form (e.g., ppm pollutant and percent O₂ or ng/J of pollutant). All excess emissions shall be converted into units of the standard using the applicable conversion procedures specified in subparts. After conversion into units of the standard, the data may be rounded to the same number of significant digits as used in the applicable subparts to specify the emission limit (e.g., rounded to the nearest 1 percent opacity).
- (i) After receipt and consideration of written application, the Administrator may approve alternatives to any monitoring procedures or requirements of this part including, but not limited to the following:
- (1) Alternative monitoring requirements when installation of a continuous monitoring system or monitoring device specified by this part would not provide accurate measurements due to liquid water or other interferences caused by substances with the effluent gases.
 - (2) Alternative monitoring requirements when the affected facility is infrequently operated.
 - (3) Alternative monitoring requirements to accommodate continuous monitoring systems that require additional measurements to correct for stack moisture conditions.
 - (4) Alternative locations for installing continuous monitoring systems or monitoring devices when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements.
 - (5) Alternative methods of converting pollutant concentration measurements to units of the standards.
 - (6) Alternative procedures for performing daily checks of zero and span drift that do not involve use of span gases or test cells.
 - (7) Alternatives to the A.S.T.M. test methods or sampling procedures specified by any subpart.
 - (8) Alternative continuous monitoring systems that do not meet the design or performance requirements in Performance Specification 1, appendix B, but adequately demonstrate a definite and consistent relationship between its measurements and the measurements of opacity by a system complying with the requirements in Performance Specification 1. The Administrator may require that such demonstration be performed for each affected facility.
 - (9) Alternative monitoring requirements when the effluent from a single affected facility or the combined effluent from two or more affected facilities are released to the atmosphere through more than one point.

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- (j) An alternative to the relative accuracy test specified in Performance Specification 2 of appendix B may be requested as follows:
- (1) An alternative to the reference method tests for determining relative accuracy is available for sources with emission rates demonstrated to be less than 50 percent of the applicable standard. A source owner or operator may petition the Administrator to waive the relative accuracy test in section 7 of Performance Specification 2 and substitute the procedures in section 10 if the results of a performance test conducted according to the requirements in 40 CFR 60.8 of this subpart or other tests performed following the criteria in 40 CFR 60.8 demonstrate that the emission rate of the pollutant of interest in the units of the applicable standard is less than 50 percent of the applicable standard. For sources subject to standards expressed as control efficiency levels, a source owner or operator may petition the Administrator to waive the relative accuracy test and substitute the procedures in section 10 of Performance Specification 2 if the control device exhaust emission rate is less than 50 percent of the level needed to meet the control efficiency requirement. The alternative procedures do not apply if the continuous emission monitoring system is used to determine compliance continuously with the applicable standard. The petition to waive the relative accuracy test shall include a detailed description of the procedures to be applied. Included shall be location and procedure for conducting the alternative, the concentration or response levels of the alternative RA materials, and the other equipment checks included in the alternative procedure. The Administrator will review the petition for completeness and applicability. The determination to grant a waiver will depend on the intended use of the CEMS data (e.g., data collection purposes other than NSPS) and may require specifications more stringent than in Performance Specification 2 (e.g., the applicable emission limit is more stringent than NSPS).
- (2) The waiver of a CEMS relative accuracy test will be reviewed and may be rescinded at such time following successful completion of the alternative RA procedure that the CEMS data indicate the source emissions approaching the level of the applicable standard. The criterion for reviewing the waiver is the collection of CEMS data showing that emissions have exceeded 70 percent of the applicable standard for seven consecutive averaging periods as specified by the applicable regulation(s). For sources subject to standards expressed as control efficiency levels, the criterion for reviewing the waiver is the collection of CEMS data showing that exhaust emissions have exceeded 70 percent of the level needed to meet the control efficiency requirement for seven consecutive averaging periods as specified by the applicable regulation(s) [e.g., 40 CFR 60.45(g)(2) and 40 CFR 60.45(g)(3), 40 CFR 60.73(e), and 40 CFR 60.84(e)]. It is the responsibility of the source operator to maintain records and determine the level of emissions relative to the criterion on the waiver of relative accuracy testing. If this criterion is exceeded, the owner or operator must notify the Administrator within 10 days of such occurrence and include a description of the nature and cause of the increasing emissions. The Administrator will review the notification and may rescind the waiver and require the owner or operator to conduct a relative accuracy test of the CEMS as specified in section 7 of Performance Specification 2.

[40 CFR 60.13]

14. Pursuant to 40 CFR 60.14 Modification:

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- (a) Except as provided under 40 CFR 60.14(e) and 40 CFR 60.14(f), any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning of section 111 of the Act. Upon modification, an existing facility shall become an affected facility for each pollutant to which a standard applies and for which there is an increase in the emission rate to the atmosphere.
- (b) Emission rate shall be expressed as kg/hr (lbs./hour) of any pollutant discharged into the atmosphere for which a standard is applicable. The Administrator shall use the following to determine emission rate:
- (1) Emission factors as specified in the latest issue of "Compilation of Air Pollutant Emission Factors", EPA Publication No. AP-42, or other emission factors determined by the Administrator to be superior to AP-42 emission factors, in cases where utilization of emission factors demonstrate that the emission level resulting from the physical or operational change will either clearly increase or clearly not increase.
 - (2) Material balances, continuous monitor data, or manual emission tests in cases where utilization of emission factors as referenced in 40 CFR 60.14(b)(1) does not demonstrate to the Administrator's satisfaction whether the emission level resulting from the physical or operational change will either clearly increase or clearly not increase, or where an owner or operator demonstrates to the Administrator's satisfaction that there are reasonable grounds to dispute the result obtained by the Administrator utilizing emission factors as referenced in 40 CFR 60.14(b)(1). When the emission rate is based on results from manual emission tests or continuous monitoring systems, the procedures specified in 40 CFR 60 appendix C of 40 CFR 60 shall be used to determine whether an increase in emission rate has occurred. Tests shall be conducted under such conditions as the Administrator shall specify to the owner or operator based on representative performance of the facility. At least three valid test runs must be conducted before and at least three after the physical or operational change. All operating parameters which may affect emissions must be held constant to the maximum feasible degree for all test runs.
- (c) The addition of an affected facility to a stationary source as an expansion to that source or as a replacement for an existing facility shall not by itself bring within the applicability of this part any other facility within that source.
- (d) [Reserved]
- (e) The following shall not, by themselves, be considered modifications under this part:
- (1) Maintenance, repair, and replacement which the Administrator determines to be routine for a source category, subject to the provisions of 40 CFR 60.14(c) and 40 CFR 60.15.
 - (2) An increase in production rate of an existing facility, if that increase can be accomplished without a capital expenditure on that facility.
 - (3) An increase in the hours of operation.
 - (4) Use of an alternative fuel or raw material if, prior to the date any standard under this part becomes applicable to that source type, as provided by 40 CFR 60.1, the existing facility was

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designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in section 111(a)(8) of the Act, shall not be considered a modification.

- (5) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the Administrator determines to be less environmentally beneficial.
- (6) The relocation or change in ownership of an existing facility.
- (f) Special provisions set forth under an applicable subpart of this part shall supersede any conflicting provisions of this section.
- (g) Within 180 days of the completion of any physical or operational change subject to the control measures specified in 40 CFR 60.14(a), compliance with all applicable standards must be achieved.
- (h) No physical change, or change in the method of operation, at an existing electric utility steam generating unit shall be treated as a modification for purposes of this section provided that such change does not increase the maximum hourly emissions of any pollutant regulated under this section above the maximum hourly emissions achievable at that unit during the five years prior to the change.

[40 CFR 60.14]

15. Pursuant to 40 CFR 60.15 Reconstruction:

- (a) An existing facility, upon reconstruction, becomes an affected facility, irrespective of any change in emission rate.
- (b) "Reconstruction" means the replacement of components of an existing facility to such an extent that:
 - (1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility, and
 - (2) It is technologically and economically feasible to meet the applicable standards set forth in this part.
- (c) "Fixed capital cost" means the capital needed to provide all the depreciable components.
- (d) If an owner or operator of an existing facility proposes to replace components, and the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility, he shall notify the Administrator of the proposed replacements. The notice must be postmarked 60 days (or as soon as practicable) before construction of the replacements is commenced and must include the following information:
 - (1) Name and address of the owner or operator.
 - (2) The location of the existing facility.

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- (3) A brief description of the existing facility and the components which are to be replaced.
 - (4) A description of the existing air pollution control equipment and the proposed air pollution control equipment.
 - (5) An estimate of the fixed capital cost of the replacements and of constructing a comparable entirely new facility.
 - (6) The estimated life of the existing facility after the replacements.
 - (7) A discussion of any economic or technical limitations the facility may have in complying with the applicable standards of performance after the proposed replacements.
 - (e) The Administrator will determine, within 30 days of the receipt of the notice required by 40 CFR 60.15(d) and any additional information he may reasonably require, whether the proposed replacement constitutes reconstruction.
 - (f) The Administrator's determination under 40 CFR 60.15(e) shall be based on:
 - (1) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;
 - (2) The estimated life of the facility after the replacements compared to the life of a comparable entirely new facility;
 - (3) The extent to which the components being replaced cause or contribute to the emissions from the facility; and
 - (4) Any economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.
 - (g) Individual subparts of this part may include specific provisions which refine and delimit the concept of reconstruction set forth in this section.
[40 CFR 60.15]
16. Pursuant to 40 CFR 60.16 Priority List:
The owner or operator shall comply with all applicable provisions of 40 CFR 60.16. The text of this section has been omitted from this permit for brevity. See the Code of Federal Regulations for the text of this section.
[Note: The Department has not adopted the provisions of 40 CFR 60.16 pursuant to Rule 62-204.800(7)(d), F.A.C. They are included in this permit to advise the permittee of their applicability.]
17. Pursuant to 40 CFR 60.17 Incorporations by Reference:
The owner or operator shall comply with all applicable provisions of 40 CFR 60.17. The text of this section has been omitted from this permit for brevity. See the Code of Federal Regulations for the text of this section.
[Note: The Department has not adopted the provisions of 40 CFR 60.17 pursuant to Rule 62-204.800(7)(d), F.A.C. They are included in this permit to advise the permittee of their applicability.]
18. Pursuant to 40 CFR 60.19 General notification and reporting requirements:

APPENDIX B. NSPS GENERAL PROVISIONS

- (a) For the purposes of 40 CFR 60, time periods specified in days shall be measured in calendar days, even if the word "calendar" is absent, unless otherwise specified in an applicable requirement.
- (b) For the purposes of 40 CFR 60, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification shall be delivered or postmarked on or before 15 days following the end of the event. The use of reliable non-Government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator, similar to the postmark provided by the U.S. Postal Service, or alternative means of delivery agreed to by the permitting authority, is acceptable.
- (c) Notwithstanding time periods or postmark deadlines specified in 40 CFR 60 for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.
- (d) If an owner or operator of an affected facility in a State with delegated authority is required to submit periodic reports under 40 CFR 60 to the State, and if the State has an established timeline for the submission of periodic reports that is consistent with the reporting frequency(ies) specified for such facility under 40 CFR 60, the owner or operator may change the dates by which periodic reports under 40 CFR 60 shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State. The allowance in the previous sentence applies in each State beginning 1 year after the affected facility is required to be in compliance with the applicable subpart in 40 CFR 60. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.
- (e) If an owner or operator supervises one or more stationary sources affected by standards set under this part and standards set under part 61, part 63, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State with an approved permit program) a common schedule on which periodic reports required by each applicable standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the stationary source is required to be in compliance with the applicable subpart in this part, or 1 year after the stationary source is required to be in compliance with the applicable 40 CFR part 61 or part 63 of this chapter standard, whichever is latest. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.
- (f)(1)(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (f)(2) and (f)(3) of this section, the owner or operator of an affected facility remains strictly subject to the requirements of 40 CFR 60.

APPENDIX B. NSPS GENERAL PROVISIONS

- (ii) An owner or operator shall request the adjustment provided for in paragraphs (f)(2) and (f)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in 40 CFR 60.
- (2) Notwithstanding time periods or postmark deadlines specified in 40 CFR 60 for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted.
- (3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.
- (4) If the Administrator is unable to meet a specified deadline, he or she will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule. [40 CFR 60.19]

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FIGURE 1--SUMMARY REPORT--GASEOUS AND OPACITY EXCESS EMISSION AND MONITORING SYSTEM PERFORMANCE

[Note: This form is referenced in 40 CFR 60.7, Subpart A-General Provisions]

Pollutant (*Circle One*): SO₂ NO_x TRS H₂S CO Opacity

Reporting period dates: From _____ to _____

Company: _____

Emission Limitation: _____

Address: _____

Monitor Manufacturer and Model No.: _____

Date of Latest CMS Certification or Audit: _____

Process Unit(s) Description: _____

Total source operating time in reporting period ¹: _____

Emission data summary ¹	CMS performance summary ¹
1. Duration of excess emissions in reporting period due to: a. Startup/shutdown b. Control equipment problems c. Process problems d. Other known causes e. Unknown causes	1. CMS downtime in reporting period due to: a. Monitor equipment malfunctions ... b. Non-Monitor equipment malfunctions .. c. Quality assurance calibration d. Other known causes e. Unknown causes
2. Total duration of excess emissions	2. Total CMS Downtime
3. [Total duration of excess emissions] x (100) / [Total source operating time] % ²	3. [Total CMS Downtime] x (100) / [Total source operating time] % ²

¹ For opacity, record all times in minutes. For gases, record all times in hours.

² For the reporting period: If the total duration of excess emissions is 1 percent or greater of the total operating time or the total CMS downtime is 5 percent or greater of the total operating time, both the summary report form and the excess emission report described in 40 CFR 60.7(c) shall be submitted.

Note: On a separate page, describe any changes since last quarter in CMS, process or controls.

I certify that the information contained in this report is true, accurate, and complete.

Name: _____

Signature: _____

Title: _____

Date: _____

APPENDIX C. NESHAP GENERAL PROVISIONS

1. Pursuant to 40 CFR 63 Subpart A:

The owner or operator shall comply with all applicable provisions of 40 CFR 63 Subpart A, which are attached to this permit following this page.

[Note: The numbering of the original rules this appendix has been preserved for ease of reference to the rules. Inapplicable paragraphs have been omitted for clarity and brevity. The term "Administrator" when used in 40 CFR 63 shall mean the Secretary or the Secretary's designee.]

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APPENDIX C. NESHAP GENERAL PROVISIONS

40 CFR 63.1 Applicability.

(a) *General.*

(1) Terms used throughout this part are defined in § 63.2 or in the Clean Air Act (Act) as amended in 1990, except that individual subparts of this part may include specific definitions in addition to or that supersede definitions in § 63.2.

(2) This part contains national emission standards for hazardous air pollutants (NESHAP) established pursuant to section 112 of the Act as amended November 15, 1990. These standards regulate specific categories of stationary sources that emit (or have the potential to emit) one or more hazardous air pollutants listed in this part pursuant to section 112(b) of the Act. This section explains the applicability of such standards to sources affected by them. The standards in this part are independent of NESHAP contained in 40 CFR part 61. The NESHAP in part 61 promulgated by signature of the Administrator before November 15, 1990 (i.e., the date of enactment of the Clean Air Act Amendments of 1990) remain in effect until they are amended, if appropriate, and added to this part.

(3) No emission standard or other requirement established under this part shall be interpreted, construed, or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established by the Administrator pursuant to other authority of the Act (including those requirements in part 60 of this chapter), or a standard issued under State authority.

(4) The provisions of this subpart (i.e., subpart A of this part) apply to owners or operators who are subject to subsequent subparts of this part, except when otherwise specified in a particular subpart or in a relevant standard. The general provisions in subpart A eliminate the repetition of requirements applicable to all owners or operators affected by this part. The general provisions in subpart A do not apply to regulations developed pursuant to section 112(r) of the amended Act, unless otherwise specified in those regulations.

(5) [Reserved]

(6) To obtain the most current list of categories of sources to be regulated under section 112 of the Act, or to obtain the most recent regulation promulgation schedule established pursuant to section 112(e) of the Act, contact the Office of the Director, Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA (MD-13), Research Triangle Park, North Carolina 27711.

(7) Subpart D of this part contains regulations that address procedures for an owner or operator to obtain an extension of compliance with a relevant standard through an early reduction of emissions of hazardous air pollutants pursuant to section 112(i)(5) of the Act.

(8) Subpart E of this part contains regulations that provide for the establishment of procedures consistent with section 112(l) of the Act for the approval of State rules or programs to implement and enforce applicable Federal rules promulgated under the authority of section 112. Subpart E also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities granted through a section 112(l) approval.

(9) [Reserved]

(10) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the word "calendar" is absent, unless otherwise specified in an applicable requirement.

(11) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, test plan, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification shall be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification shall be postmarked on or before 15 days following the end of the

APPENDIX C. NESHAP GENERAL PROVISIONS

event. The use of reliable non-Government mail carriers that provide indications of verifiable delivery of information required to be submitted to the Administrator, similar to the postmark provided by the U.S. Postal Service, or alternative means of delivery agreed to by the permitting authority, is acceptable.

(12) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in § 63.9(i).

(13) Special provisions set forth under an applicable subpart of this part or in a relevant standard established under this part shall supersede any conflicting provisions of this subpart.

(14) Any standards, limitations, prohibitions, or other federally enforceable requirements established pursuant to procedural regulations in this part [including, but not limited to, equivalent emission limitations established pursuant to section 112(g) of the Act] shall have the force and effect of requirements promulgated in this part and shall be subject to the provisions of this subpart, except when explicitly specified otherwise.

(b) Initial applicability determination for this part.

(1) **[Not applicable. 40 CFR 63.1340 of 40 CFR 63 Subpart LLL specifies applicability.]**

(2) In addition to complying with the provisions of this part, the owner or operator of any such source may be required to obtain an operating permit issued to stationary sources by an authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Act (42 U.S.C. 7661). For more information about obtaining an operating permit, see part 70 of this chapter.

(3) An owner or operator of a stationary source that emits (or has the potential to emit, without considering controls) one or more hazardous air pollutants who determines that the source is not subject to a relevant standard or other requirement established under this part, shall keep a record of the applicability determination as specified in § 63.10(b)(3) of this subpart.

(c) Applicability of this part after a relevant standard has been set under this part.

(1) If a relevant standard has been established under this part, the owner or operator of an affected source shall comply with the provisions of this subpart and the provisions of that standard, except as specified otherwise in this subpart or that standard.

(2) If a relevant standard has been established under this part, the owner or operator of an affected source may be required to obtain a title V permit from the permitting authority in the State in which the source is located. Emission standards promulgated in this part for area sources will specify whether -

(i) **[Not applicable];**

(ii) **[Not applicable];** or

(iii) Area sources affected by that emission standard are immediately subject to the requirement to apply for and obtain a title V permit in all States. If a standard fails to specify what the permitting requirements will be for area sources affected by that standard, then area sources that are subject to the standard will be subject to the requirement to obtain a title V permit without deferral. If the owner or operator is required to obtain a title V permit, he or she shall apply for such permit in accordance with part 70 of this chapter and applicable State regulations, or in accordance with the regulations contained in this chapter to implement the Federal title V permit program (42 U.S.C. 7661), whichever regulations are applicable.

(3) [Reserved]

APPENDIX C. NESHAP GENERAL PROVISIONS

(4) If the owner or operator of an existing source obtains an extension of compliance for such source in accordance with the provisions of subpart D of this part, the owner or operator shall comply with all requirements of this subpart except those requirements that are specifically overridden in the extension of compliance for that source.

(5) If an area source that otherwise would be subject to an emission standard or other requirement established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source that is subject to the emission standard or other requirement, such source also shall be subject to the notification requirements of this subpart.

(d) [Reserved]

(e) *Applicability of permit program before a relevant standard has been set under this part.* After the effective date of an approved permit program in the State in which a stationary source is (or would be) located, the owner or operator of such source may be required to obtain a title V permit from the permitting authority in that State (or revise such a permit if one has already been issued to the source) before a relevant standard is established under this part. If the owner or operator is required to obtain (or revise) a title V permit, he/she shall apply to obtain (or revise) such permit in accordance with the regulations contained in part 70 of this chapter and applicable State regulations, or the regulations codified in this chapter to implement the Federal title V permit program (42 U.S.C. 7661), whichever regulations are applicable.

40 CFR 63.2 Definitions. [Additional definitions in 40 CFR 63.1341 of 40 CFR 63 Subpart LLL.]

The terms used in this part are defined in the Act or in this section as follows:

Act means the Clean Air Act (42 U.S.C. 7401 et seq., as amended by Pub. L. 101-549, 104 Stat. 2399).

Actual emissions is defined in subpart D of this part for the purpose of granting a compliance extension for an early reduction of hazardous air pollutants.

Administrator means the Administrator of the United States Environmental Protection Agency or his or her authorized representative (e.g., a State that has been delegated the authority to implement the provisions of this part).

Affected source. For the purposes of this part, means the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to section 112 of the Act. Each relevant standard will define the "affected source" for the purposes of that standard. The term "affected source," as used in this part, is separate and distinct from any other use of that term in EPA regulations such as those implementing title IV of the Act. Sources regulated under part 60 or part 61 of this chapter are not affected sources for the purposes of part 63.

Alternative emission limitation means conditions established pursuant to sections 112(i)(5) or 112(i)(6) of the Act by the Administrator or by a State with an approved permit program.

Alternative emission standard means an alternative means of emission limitation that, after notice and opportunity for public comment, has been demonstrated by an owner or operator to the Administrator's satisfaction to achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such pollutant achieved under a relevant design, equipment, work practice,

APPENDIX C. NESHAP GENERAL PROVISIONS

or operational emission standard, or combination thereof, established under this part pursuant to section 112(h) of the Act.

Alternative test method means any method of sampling and analyzing for an air pollutant that is not a test method in this chapter and that has been demonstrated to the Administrator's satisfaction, using Method 301 in Appendix A of this part, to produce results adequate for the Administrator's determination that it may be used in place of a test method specified in this part.

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established in this chapter pursuant to title V of the Act (42 U.S.C. 7661).

Area source means any stationary source of hazardous air pollutants that is not a major source as defined in this part.

Commenced means, with respect to construction or reconstruction of a stationary source, that an owner or operator has undertaken a continuous program of construction or reconstruction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.

Compliance date means the date by which an affected source is required to be in compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established by the Administrator (or a State with an approved permit program) pursuant to section 112 of the Act.

Compliance plan means a plan that contains all of the following:

(1) A description of the compliance status of the affected source with respect to all applicable requirements established under this part;

(2) A description as follows:

(i) For applicable requirements for which the source is in compliance, a statement that the source will continue to comply with such requirements;

(ii) For applicable requirements that the source is required to comply with by a future date, a statement that the source will meet such requirements on a timely basis;

(iii) For applicable requirements for which the source is not in compliance, a narrative description of how the source will achieve compliance with such requirements on a timely basis;

(3) A compliance schedule, as defined in this section; and

(4) A schedule for the submission of certified progress reports no less frequently than every 6 months for affected sources required to have a schedule of compliance to remedy a violation.

Compliance schedule means

(1) In the case of an affected source that is in compliance with all applicable requirements established under this part, a statement that the source will continue to comply with such requirements; or

(2) In the case of an affected source that is required to comply with applicable requirements by a future date, a statement that the source will meet such requirements on a timely basis and, if required by an applicable requirement, a detailed schedule of the dates by which each step toward compliance will be reached; or

(3) In the case of an affected source not in compliance with all applicable requirements established under this part, a schedule of remedial measures, including an enforceable sequence of actions or operations with milestones and a schedule for the submission of certified progress reports, where applicable, leading to compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established pursuant to section 112 of the Act for which the affected source is not in compliance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of

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compliance shall be supplemental to, and shall not sanction non-compliance with, the applicable requirements on which it is based.

Construction means the on-site fabrication, erection, or installation of an affected source.

Continuous emission monitoring system (CEMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this part, used to sample, condition (if applicable), analyze, and provide a record of emissions.

Continuous monitoring system (CMS) is a comprehensive term that may include, but is not limited to, continuous emission monitoring systems, continuous opacity monitoring systems, continuous parameter monitoring systems, or other manual or automatic monitoring that is used for demonstrating compliance with an applicable regulation on a continuous basis as defined by the regulation.

Continuous opacity monitoring system (COMS) means a continuous monitoring system that measures the opacity of emissions.

Continuous parameter monitoring system means the total equipment that may be required to meet the data acquisition and availability requirements of this part, used to sample, condition (if applicable), analyze, and provide a record of process or control system parameters.

Effective date means:

(1) With regard to an emission standard established under this part, the date of promulgation in the FEDERAL REGISTER of such standard; or

(2) With regard to an alternative emission limitation or equivalent emission limitation determined by the Administrator (or a State with an approved permit program), the date that the alternative emission limitation or equivalent emission limitation becomes effective according to the provisions of this part. The effective date of a permit program established under title V of the Act (42 U.S.C. 7661) is determined according to the regulations in this chapter establishing such programs.

Emission standard means a national standard, limitation, prohibition, or other regulation promulgated in a subpart of this part pursuant to sections 112(d), 112(h), or 112(f) of the Act.

Emissions averaging is a way to comply with the emission limitations specified in a relevant standard, whereby an affected source, if allowed under a subpart of this part, may create emission credits by reducing emissions from specific points to a level below that required by the relevant standard, and those credits are used to offset emissions from points that are not controlled to the level required by the relevant standard.

EPA means the United States Environmental Protection Agency.

Equivalent emission limitation means the maximum achievable control technology emission limitation (MACT emission limitation) for hazardous air pollutants that the Administrator (or a State with an approved permit program) determines on a case-by-case basis, pursuant to section 112(g) or section 112(j) of the Act, to be equivalent to the emission standard that would apply to an affected source if such standard had been promulgated by the Administrator under this part pursuant to section 112(d) or section 112(h) of the Act.

Excess emissions and continuous monitoring system performance report is a report that must be submitted periodically by an affected source in order to provide data on its compliance with relevant emission limits, operating parameters, and the performance of its continuous parameter monitoring systems.

Existing source means any affected source that is not a new source.

Federally enforceable means all limitations and conditions that are enforceable by the Administrator and citizens under the Act or that are enforceable under other statutes administered by the Administrator. Examples of federally enforceable limitations and conditions include, but are not limited to:

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- (1) Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to section 112 of the Act as amended in 1990;
- (2) New source performance standards established pursuant to section 111 of the Act, and emission standards established pursuant to section 112 of the Act before it was amended in 1990;
- (3) All terms and conditions in a title V permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable;
- (4) Limitations and conditions that are part of an approved State Implementation Plan (SIP) or a Federal Implementation Plan (FIP);
- (5) Limitations and conditions that are part of a Federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by the EPA in accordance with 40 CFR part 51;
- (6) Limitations and conditions that are part of an operating permit issued pursuant to a program approved by the EPA into a SIP as meeting the EPA's minimum criteria for Federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability;
- (7) Limitations and conditions in a State rule or program that has been approved by the EPA under subpart E of this part for the purposes of implementing and enforcing section 112; and
- (8) Individual consent agreements that the EPA has legal authority to create.

Fixed capital cost means the capital needed to provide all the depreciable components of an existing source.

Fugitive emissions means those emissions from a stationary source that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Under section 112 of the Act, all fugitive emissions are to be considered in determining whether a stationary source is a major source.

Hazardous air pollutant means any air pollutant listed in or pursuant to section 112(b) of the Act.

Issuance of a part 70 permit will occur, if the State is the permitting authority, in accordance with the requirements of part 70 of this chapter and the applicable, approved State permit program. When the EPA is the permitting authority, issuance of a title V permit occurs immediately after the EPA takes final action on the final permit.

Lesser quantity means a quantity of a hazardous air pollutant that is or may be emitted by a stationary source that the Administrator establishes in order to define a major source under an applicable subpart of this part.

Major source means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

New source means any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard under this part.

One-hour period, unless otherwise defined in an applicable subpart, means any 60-minute period commencing on the hour.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. For continuous opacity monitoring systems, opacity means the fraction of incident light that is attenuated by an optical medium.

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Owner or operator means any person who owns, leases, operates, controls, or supervises a stationary source.

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

Performance audit means a procedure to analyze blind samples, the content of which is known by the Administrator, simultaneously with the analysis of performance test samples in order to provide a measure of test data quality.

Performance evaluation means the conduct of relative accuracy testing, calibration error testing, and other measurements used in validating the continuous monitoring system data.

Performance test means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a relevant emission standard as specified in the performance test section of the relevant standard.

Permit modification means a change to a title V permit as defined in regulations codified in this chapter to implement title V of the Act (42 U.S.C. 7661).

Permit program means a comprehensive State operating permit system established pursuant to title V of the Act (42 U.S.C. 7661) and regulations codified in part 70 of this chapter and applicable State regulations, or a comprehensive Federal operating permit system established pursuant to title V of the Act and regulations codified in this chapter.

Permit revision means any permit modification or administrative permit amendment to a title V permit as defined in regulations codified in this chapter to implement title V of the Act (42 U.S.C. 7661).

Permitting authority means:

(1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661).

Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

Reconstruction means the replacement of components of an affected or a previously unaffected stationary source to such an extent that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source; and

(2) It is technologically and economically feasible for the reconstructed source to meet the relevant standard(s) established by the Administrator (or a State) pursuant to section 112 of the Act. Upon reconstruction, an affected source, or a stationary source that becomes an affected source, is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

Regulation promulgation schedule means the schedule for the promulgation of emission standards under this part, established by the Administrator pursuant to section 112(e) of the Act and published in the FEDERAL REGISTER.

Relevant standard means:

(1) An emission standard;

(2) An alternative emission standard;

(3) An alternative emission limitation; or

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(4) An equivalent emission limitation established pursuant to section 112 of the Act that applies to the stationary source, the group of stationary sources, or the portion of a stationary source regulated by such standard or limitation. A relevant standard may include or consist of a design, equipment, work practice, or operational requirement, or other measure, process, method, system, or technique (including prohibition of emissions) that the Administrator (or a State) establishes for new or existing sources to which such standard or limitation applies. Every relevant standard established pursuant to section 112 of the Act includes subpart A of this part and all applicable appendices of this part or of other parts of this chapter that are referenced in that standard.

Responsible official means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities and either:

- (i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
- (ii) The delegation of authority to such representative is approved in advance by the Administrator.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA).

(4) For affected sources (as defined in this part) applying for or subject to a title V permit: "responsible official" shall have the same meaning as defined in part 70 of Federal title V regulations in this chapter (42 U.S.C. 7661), whichever is applicable.

Run means one of a series of emission or other measurements needed to determine emissions for a representative operating period or cycle as specified in this part.

Shutdown means the cessation of operation of an affected source for any purpose.

Six-minute period means, with respect to opacity determinations, any one of the 10 equal parts of a 1-hour period.

Standard conditions means a temperature of 293 °K (68° F) and a pressure of 101.3 kilopascals (29.92 in. Hg).

Startup means the setting in operation of an affected source for any purpose.

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement:

- (1) The provisions of this part and/or
- (2) the permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

Stationary source means any building, structure, facility, or installation which emits or may emit any air pollutant.

Test method means the validated procedure for sampling, preparing, and analyzing for an air pollutant specified in a relevant standard as the performance test procedure. The test method may include methods described in an appendix of this chapter, test methods incorporated by reference in this part, or methods validated for an application through procedures in Method 301 of appendix A of this part.

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Title V permit means any permit issued, renewed, or revised pursuant to Federal or State regulations established to implement title V of the Act (42 U.S.C. 7661). A title V permit issued by a State permitting authority is called a part 70 permit in this part.

Visible emission means the observation of an emission of opacity or optical density above the threshold of vision.

40 CFR 63.3 Units and abbreviations.

Used in this part are abbreviations and symbols of units of measure. These are defined as follows:

(a) System International (SI) units of measure:

A = ampere
g = gram
Hz = hertz
J = joule
°K = degree Kelvin
kg = kilogram
l = liter
m = meter
m³ = cubic meter
mg = milligram = 10⁻³ gram
ml = milliliter = 10⁻³ liter
mm = millimeter = 10⁻³ meter
Mg = megagram = 10⁶ gram = metric ton
MJ = megajoule
mol = mole
N = newton
ng = nanogram = 10⁻⁹ gram
nm = nanometer = 10⁻⁹ meter
Pa = pascal
s = second
V = volt
W = watt
Ω = ohm
μg = microgram = 10⁻⁶ gram
μl = microliter = 10⁻⁶ liter

(b) Other units of measure:

Btu = British thermal unit
°C = degree Celsius (centigrade)
cal = calorie
cfm = cubic feet per minute
cc = cubic centimeter
cu ft = cubic feet
d = day
dcf = dry cubic feet
dcm = dry cubic meter

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dscf = dry cubic feet at standard conditions
dscm = dry cubic meter at standard conditions
eq = equivalent
°F = degree Fahrenheit
ft = feet
ft² = square feet
ft³ = cubic feet
gal = gallon
gr = grain
g-eq = gram equivalent
g-mole = gram mole
hr = hour
in. = inch
in. H₂O = inches of water
K = 1,000
kcal = kilocalorie
lb = pound
lpm = liter per minute
meq = milliequivalent
min = minute
MW = molecular weight
oz = ounces
ppb = parts per billion
ppbw = parts per billion by weight
ppbv = parts per billion by volume
ppm = parts per million
ppmw = parts per million by weight
ppmv = parts per million by volume
psia = pounds per square inch absolute
psig = pounds per square inch gage
°R = degree Rankine
scf = cubic feet at standard conditions
scfh = cubic feet at standard conditions per hour
scm = cubic meter at standard conditions
sec = second
sq ft = square feet
std = at standard conditions
v/v = volume per volume
yd² = square yards
yr = year

(c) Miscellaneous:

act = actual
avg = average
I.D. = inside diameter
M = molar

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N = normal
O.D. = outside diameter
% = percent

40 CFR 63.4 Prohibited activities and circumvention.

(a) Prohibited activities.

(1) No owner or operator subject to the provisions of this part shall operate any affected source in violation of the requirements of this part except under-

- (i) An extension of compliance granted by the Administrator under this part; or
- (ii) An extension of compliance granted under this part by a State with an approved permit program; or
- (iii) An exemption from compliance granted by the President under section 112(i)(4) of the Act.

(2) No owner or operator subject to the provisions of this part shall fail to keep records, notify, report, or revise reports as required under this part.

(3) After the effective date of an approved permit program in a State, no owner or operator of an affected source in that State who is required under this part to obtain a title V permit shall operate such source except in compliance with the provisions of this part and the applicable requirements of the permit program in that State.

(4) [Reserved]

(5) An owner or operator of an affected source who is subject to an emission standard promulgated under this part shall comply with the requirements of that standard by the date(s) established in the applicable subpart(s) of this part (including this subpart) regardless of whether - (i) A title V permit has been issued to that source; or

(ii) If a title V permit has been issued to that source, whether such permit has been revised or modified to incorporate the emission standard.

(b) Circumvention. No owner or operator subject to the provisions of this part shall build, erect, install, or use any article, machine, equipment, or process to conceal an emission that would otherwise constitute noncompliance with a relevant standard. Such concealment includes, but is not limited to

- (1) The use of diluents to achieve compliance with a relevant standard based on the concentration of a pollutant in the effluent discharged to the atmosphere;
- (2) The use of gaseous diluents to achieve compliance with a relevant standard for visible emissions; and
- (3) The fragmentation of an operation such that the operation avoids regulation by a relevant standard.

(c) Severability. Notwithstanding any requirement incorporated into a title V permit obtained by an owner or operator subject to the provisions of this part, the provisions of this part are federally enforceable.

40 CFR 63.5 Construction and reconstruction.

(a) Applicability.

(1) This section implements the preconstruction review requirements of section 112(i)(1) for sources subject to a relevant emission standard that has been promulgated in this part. In addition, this

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section includes other requirements for constructed and reconstructed stationary sources that are or become subject to a relevant promulgated emission standard.

(2) After the effective date of a relevant standard promulgated under this part, the requirements in this section apply to owners or operators who construct a new source or reconstruct a source after the proposal date of that standard. New or reconstructed sources that start up before the standard's effective date are not subject to the preconstruction review requirements specified in paragraphs (b)(3), (d), and (e) of this section.

(b) *Requirements for existing, newly constructed, and reconstructed sources.*

(1) Upon construction an affected source is subject to relevant standards for new sources, including compliance dates. Upon reconstruction, an affected source is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

(2) [Reserved]

(3) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, no person may construct a new major affected source or reconstruct a major affected source subject to such standard, or reconstruct a major source such that the source becomes a major affected source subject to the standard, without obtaining written approval in advance, from the Administrator in accordance with the procedures specified in paragraphs (d) and (e) of this section.

(4) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, no person may construct a new affected source or reconstruct an affected source subject to such standard, or reconstruct a source such that the source becomes an affected source subject to the standard, without notifying the Administrator of the intended construction or reconstruction. The notification shall be submitted in accordance with the procedures in § 63.9(b) and shall include all the information required for an application for approval of construction or reconstruction as specified in paragraph (d) of this section. For major sources, the application for approval of construction or reconstruction may be used to fulfill the notification requirements of this paragraph.

(5) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is located, no person may operate such source without complying with the provisions of this subpart and the relevant standard unless that person has received an extension of compliance or an exemption from compliance under § 63.6(i) or § 63.6(j) of this subpart.

(6) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is located, equipment added (or a process change) to an affected source that is within the scope of the definition of affected source under the relevant standard shall be considered part of the affected source and subject to all provisions of the relevant standard established for that affected source. If a new affected source is added to the facility, the new affected source shall be subject to all the provisions of the relevant standard that are established for new sources including compliance dates.

(c) [Reserved]

(d) *Application for approval of construction or reconstruction.* The provisions of this paragraph implement section 112(i)(1) of the Act.

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(1) *General application requirements.*

(i) An owner or operator who is subject to the requirements of paragraph (b)(3) of this section shall submit to the Administrator an application for approval of the construction of a new major affected source, the reconstruction of a major affected source, or the reconstruction of a major source such that the source becomes a major affected source subject to the standard. The application shall be submitted as soon as practicable before the construction or reconstruction is planned to commence (but no sooner than the effective date of the relevant standard) if the construction or reconstruction commences after the effective date of a relevant standard promulgated in this part. The application shall be submitted as soon as practicable before startup but no later than 60 days after the effective date of a relevant standard promulgated in this part if the construction or reconstruction had commenced and initial startup had not occurred before the standard's effective date. The application for approval of construction or reconstruction may be used to fulfill the initial notification requirements of § 63.9(b)(5) of this subpart. The owner or operator may submit the application for approval well in advance of the date construction or reconstruction is planned to commence in order to ensure a timely review by the Administrator and that the planned commencement date will not be delayed.

(ii) A separate application shall be submitted for each construction or reconstruction. Each application for approval of construction or reconstruction shall include at a minimum:

- (A) The applicant's name and address;
- (B) A notification of intention to construct a new major affected source or make any physical or operational change to a major affected source that may meet or has been determined to meet the criteria for a reconstruction, as defined in § 63.2;
- (C) The address (i.e., physical location) or proposed address of the source;
- (D) An identification of the relevant standard that is the basis of the application;
- (E) The expected commencement date of the construction or reconstruction;
- (F) The expected completion date of the construction or reconstruction;
- (G) The anticipated date of (initial) startup of the source;
- (H) The type and quantity of hazardous air pollutants emitted by the source, reported in units and averaging times and in accordance with the test methods specified in the relevant standard, or if actual emissions data are not yet available, an estimate of the type and quantity of hazardous air pollutants expected to be emitted by the source reported in units and averaging times specified in the relevant standard. The owner or operator may submit percent reduction information if a relevant standard is established in terms of percent reduction.

However, operating parameters, such as flow rate, shall be included in the submission to the extent that they demonstrate performance and compliance; and

- (I) [Reserved]
- (J) Other information as specified in paragraphs (d)(2) and (d)(3) of this section.

(iii) An owner or operator who submits estimates or preliminary information in place of the actual emissions data and analysis required in paragraphs (d)(1)(ii)(H) and (d)(2) of this section shall submit the actual, measured emissions data and other correct information as soon as available but no later than with the notification of compliance status required in § 63.9(h) (see § 63.9(h)(5)).

(2) *Application for approval of construction.* Each application for approval of construction shall include, in addition to the information required in paragraph (d)(1)(ii) of this section, technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source, including an identification of each point of emission for each hazardous air pollutant that is emitted (or could be emitted) and a description of the planned air pollution control system

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(equipment or method) for each emission point. The description of the equipment to be used for the control of emissions shall include each control device for each hazardous air pollutant and the estimated control efficiency (percent) for each control device. The description of the method to be used for the control of emissions shall include an estimated control efficiency (percent) for that method. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations. An owner or operator who submits approximations of control efficiencies under this subparagraph shall submit the actual control efficiencies as specified in paragraph (d)(1)(iii) of this section.

(3) *Application for approval of reconstruction.* Each application for approval of reconstruction shall include, in addition to the information required in paragraph (d)(1)(ii) of this section - (i) A brief description of the affected source and the components that are to be replaced;

(ii) A description of present and proposed emission control systems (i.e., equipment or methods). The description of the equipment to be used for the control of emissions shall include each control device for each hazardous air pollutant and the estimated control efficiency (percent) for each control device. The description of the method to be used for the control of emissions shall include an estimated control efficiency (percent) for that method. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations;

(iii) An estimate of the fixed capital cost of the replacements and of constructing a comparable entirely new source;

(iv) The estimated life of the affected source after the replacements; and

(v) A discussion of any economic or technical limitations the source may have in complying with relevant standards or other requirements after the proposed replacements. The discussion shall be sufficiently detailed to demonstrate to the Administrator's satisfaction that the technical or economic limitations affect the source's ability to comply with the relevant standard and how they do so.

(vi) If in the application for approval of reconstruction the owner or operator designates the affected source as a reconstructed source and declares that there are no economic or technical limitations to prevent the source from complying with all relevant standards or other requirements, the owner or operator need not submit the information required in subparagraphs (d)(3) (iii) through (v) of this section, above.

(4) *Additional information.* The Administrator may request additional relevant information after the submittal of an application for approval of construction or reconstruction.

(e) Approval of construction or reconstruction.

(1) (i) If the Administrator determines that, if properly constructed, or reconstructed, and operated, a new or existing source for which an application under paragraph (d) of this section was submitted will not cause emissions in violation of the relevant standard(s) and any other federally enforceable requirements, the Administrator will approve the construction or reconstruction.

(ii) In addition, in the case of reconstruction, the Administrator's determination under this paragraph will be based on:

(A) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new source;

(B) The estimated life of the source after the re-placements compared to the life of a comparable entirely new source;

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(C) The extent to which the components being replaced cause or contribute to the emissions from the source; and

(D) Any economic or technical limitations on compliance with relevant standards that are inherent in the proposed replacements.

(2) (i) The Administrator will notify the owner or operator in writing of approval or intention to deny approval of construction or reconstruction within 60 calendar days after receipt of sufficient information to evaluate an application submitted under paragraph (d) of this section. The 60-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(3) Before denying any application for approval of construction or reconstruction, the Administrator will notify the applicant of the Administrator's intention to issue the denial together with

(i) Notice of the information and findings on which the intended denial is based; and

(ii) Notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator to enable further action on the application.

(4) A final determination to deny any application for approval will be in writing and will specify the grounds on which the denial is based. The final determination will be made within 60 calendar days of presentation of additional information or arguments (if the application is complete), or within 60 calendar days after the final date specified for presentation if no presentation is made.

(5) Neither the submission of an application for approval nor the Administrator's approval of construction or reconstruction shall

(i) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(ii) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(f) *Approval of construction or reconstruction based on prior State preconstruction review.*

(1) The Administrator may approve an application for construction or reconstruction specified in paragraphs (b)(3) and (d) of this section if the owner or operator of a new or reconstructed source who is subject to such requirement demonstrates to the Administrator's satisfaction that the following conditions have been (or will be) met:

(i) The owner or operator of the new or reconstructed source has undergone a preconstruction review and approval process in the State in which the source is (or would be) located before the promulgation date of the relevant standard and has received a federally enforceable construction permit that contains a finding that the source will meet the relevant emission standard as proposed, if the source is properly built and operated;

(ii) In making its finding, the State has considered factors substantially equivalent to those specified in paragraph (e)(1) of this section; and either

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(iii) The promulgated standard is no more stringent than the proposed standard in any relevant aspect that would affect the Administrator's decision to approve or disapprove an application for approval of construction or reconstruction under this section; or

(iv) The promulgated standard is more stringent than the proposed standard but the owner or operator will comply with the standard as proposed during the 3-year period immediately following the effective date of the standard as allowed for in § 63.6(b)(3) of this subpart.

(2) The owner or operator shall submit to the Administrator the request for approval of construction or reconstruction under this paragraph no later than the application deadline specified in paragraph (d)(1) of this section (see also § 63.9(b)(2) of this subpart). The owner or operator shall include in the request information sufficient for the Administrator's determination. The Administrator will evaluate the owner or operator's request in accordance with the procedures specified in paragraph (e) of this section. The Administrator may request additional relevant information after the submittal of a request for approval of construction or reconstruction under this paragraph.

40 CFR 63.6 Compliance with standards and maintenance requirements.

(a) Applicability.

(1) The requirements in this section apply to owners or operators of affected sources for which any relevant standard has been established pursuant to section 112 of the Act unless -

(i) The Administrator (or a State with an approved permit program) has granted an extension of compliance consistent with paragraph (i) of this section; or

(ii) The President has granted an exemption from compliance with any relevant standard in accordance with section 112(i)(4) of the Act.

(2) If an area source that otherwise would be subject to an emission standard or other requirement established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source, such source shall be subject to the relevant emission standard or other requirement.

(b) Compliance dates for new and reconstructed sources.

(1) Except as specified in paragraphs (b)(3) and (b)(4) of this section, the owner or operator of a new or reconstructed source that has an initial startup before the effective date of a relevant standard established under this part pursuant to section 112(d), 112(f), or 112(h) of the Act shall comply with such standard not later than the standard's effective date.

(2) Except as specified in paragraphs (b)(3) and (b)(4) of this section, the owner or operator of a new or reconstructed source that has an initial startup after the effective date of a relevant standard established under this part pursuant to section 112(d), 112(f), or 112(h) of the Act shall comply with such standard upon startup of the source.

(3) The owner or operator of an affected source for which construction or reconstruction is commenced after the proposal date of a relevant standard established under this part pursuant to section 112(d), 112(f), or 112(h) of the Act but before the effective date (that is, promulgation) of such standard shall comply with the relevant emission standard not later than the date 3 years after the effective date if:

(i) The promulgated standard (that is, the relevant standard) is more stringent than the proposed standard; and

(ii) The owner or operator complies with the standard as proposed during the 3-year period immediately after the effective date.

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(4) The owner or operator of an affected source for which construction or reconstruction is commenced after the proposal date of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of a relevant standard established pursuant to section 112(f) shall comply with the emission standard under section 112(f) not later than the date 10 years after the date construction or reconstruction is commenced, except that, if the section 112(f) standard is promulgated more than 10 years after construction or reconstruction is commenced, the owner or operator shall comply with the standard as provided in paragraphs (b)(1) and (b)(2) of this section.

(5) The owner or operator of a new source that is subject to the compliance requirements of paragraph (b)(3) or paragraph (b)(4) of this section shall notify the Administrator in accordance with § 63.9(d) of this subpart.

(6) [Reserved]

(7) After the effective date of an emission standard promulgated under this part, the owner or operator of an unaffected new area source (i.e., an area source for which construction or reconstruction was commenced after the proposal date of the standard) that increases its emissions of (or its potential to emit) hazardous air pollutants such that the source becomes a major source that is subject to the emission standard, shall comply with the relevant emission standard immediately upon becoming a major source. This compliance date shall apply to new area sources that become affected major sources regardless of whether the new area source previously was affected by that standard. The new affected major source shall comply with all requirements of that standard that affect new sources.

(c) *Compliance dates for existing sources.*

(1) After the effective date of a relevant standard established under this part pursuant to section 112(d) or 112(h) of the Act, the owner or operator of an existing source shall comply with such standard by the compliance date established by the Administrator in the applicable subpart(s) of this part. Except as otherwise provided for in section 112 of the Act, in no case will the compliance date established for an existing source in an applicable subpart of this part exceed 3 years after the effective date of such standard.

(2) After the effective date of a relevant standard established under this part pursuant to section 112(f) of the Act, the owner or operator of an existing source shall comply with such standard not later than 90 days after the standard's effective date unless the Administrator has granted an extension to the source under paragraph (i)(4)(ii) of this section.

(3)-(4) [Reserved]

(5) After the effective date of an emission standard promulgated under this part, the owner or operator of an unaffected existing area source that increases its emissions of (or its potential to emit) hazardous air pollutants such that the source becomes a major source that is subject to the emission standard shall comply by the date specified in the standard for existing area sources that become major sources. If no such compliance date is specified in the standard, the source shall have a period of time to comply with the relevant emission standard that is equivalent to the compliance period specified in that standard for other existing sources. This compliance period shall apply to existing area sources that become affected major sources regardless of whether the existing area source previously was affected by that standard. Notwithstanding the previous two sentences, however, if the existing area source becomes a major source by the addition of a new affected source or by reconstructing the portion of the existing facility that is a new affected source or a reconstructed source shall comply with all requirements of that standard that affect new sources, including the compliance date for new sources.

(d) [Reserved]

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(e) *Operation and maintenance requirements.*

(1) (i) At all times, including periods of startup, shutdown, and malfunction, owners or operators shall operate and maintain any affected source, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by all relevant standards.

(ii) Malfunctions shall be corrected as soon as practicable after their occurrence in accordance with the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section.

(iii) Operation and maintenance requirements established pursuant to section 112 of the Act are enforceable independent of emissions limitations or other requirements in relevant standards.

(2) Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section), review of operation and maintenance records, and inspection of the source.

(3) *Startup, shutdown, and malfunction plan.*

(i) The owner or operator of an affected source shall develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the relevant standard. As required under § 63.8(c)(1)(i), the plan shall identify all routine or otherwise predictable CMS malfunctions. This plan shall be developed by the owner or operator by the source's compliance date for that relevant standard. The plan shall be incorporated by reference into the source's title V permit. The purpose of the startup, shutdown, and malfunction plan is to -

(A) Ensure that, at all times, owners or operators operate and maintain affected sources, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by all relevant standards;

(B) Ensure that owners or operators are prepared to correct malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of hazardous air pollutants; and

(C) Reduce the reporting burden associated with periods of startup, shutdown, and malfunction (including corrective action taken to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation).

(ii) During periods of startup, shutdown, and malfunction, the owner or operator of an affected source shall operate and maintain such source (including associated air pollution control equipment) in accordance with the procedures specified in the startup, shutdown, and malfunction plan developed under paragraph (e)(3)(i) of this section.

(iii) When actions taken by the owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) are consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall keep records for that event that demonstrate that the procedures specified in the plan were followed. These records may take the form of a "checklist," or other effective form of recordkeeping, that confirms conformance with the startup, shutdown, and malfunction plan for that event. In addition, the owner or operator shall keep records of these events as specified in

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§ 63.10(b) (and elsewhere in this part), including records of the occurrence and duration of each startup, shutdown, or malfunction of operation and each malfunction of the air pollution control equipment. Furthermore, the owner or operator shall confirm that actions taken during the relevant reporting period during periods of startup, shutdown, and malfunction were consistent with the affected source's startup, shutdown and malfunction plan in the semiannual (or more frequent) startup, shutdown, and malfunction report required in § 63.10(d)(5).

(iv) If an action taken by the owner or operator during a startup, shutdown, or malfunction (including an action taken to correct a malfunction) is not consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall record the actions taken for that event and shall report such actions within 2 working days after commencing actions inconsistent with the plan, followed by a letter within 7 working days after the end of the event, in accordance with § 63.10(d)(5) (unless the owner or operator makes alternative reporting arrangements, in advance, with the Administrator (see § 63.10(d)(5)(ii))).

(v) The owner or operator shall keep the written startup, shutdown, and malfunction plan on record after it is developed to be made available for inspection, upon request, by the Administrator for the life of the affected source or until the affected source is no longer subject to the provisions of this part. In addition, if the startup, shutdown, and malfunction plan is revised, the owner or operator shall keep previous (i.e., superseded) versions of the startup, shutdown, and malfunction plan on record, to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan.

(vi) To satisfy the requirements of this section to develop a startup, shutdown, and malfunction plan, the owner or operator may use the affected source's standard operating procedures (SOP) manual, or an Occupational Safety and Health Administration (OSHA) or other plan, provided the alternative plans meet all the requirements of this section and are made available for inspection when requested by the Administrator.

(vii) Based on the results of a determination made under paragraph (e)(2) of this section, the Administrator may require that an owner or operator of an affected source make changes to the startup, shutdown, and malfunction plan for that source. The Administrator may require reasonable revisions to a startup, shutdown, and malfunction plan, if the Administrator finds that the plan:

(A) Does not address a startup, shutdown, or malfunction event that has occurred;

(B) Fails to provide for the operation of the source (including associated air pollution control equipment) during a startup, shutdown, or malfunction event in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by all relevant standards; or

(C) Does not provide adequate procedures for correcting malfunctioning process and/or air pollution control equipment as quickly as practicable.

(viii) If the startup, shutdown, and malfunction plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction but was not included in the startup, shutdown, and malfunction plan at the time the owner or operator developed the plan, the owner or operator shall revise the startup, shutdown, and malfunction plan within 45 days after the event to include detailed procedures for operating and maintaining the source during similar malfunction events and a program of corrective action for similar malfunctions of process or air pollution control equipment.

(f) *Compliance with nonopacity emission standards -*

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(1) *Applicability.* The nonopacity emission standards set forth in this part shall apply at all times except during periods of startup, shutdown, and malfunction, and as otherwise specified in an applicable subpart.

(2) *Methods for determining compliance.*

(i) The Administrator will determine compliance with nonopacity emission standards in this part based on the results of performance tests conducted according to the procedures in § 63.7, unless otherwise specified in an applicable subpart of this part.

(ii) The Administrator will determine compliance with nonopacity emission standards in this part by evaluation of an owner or operator's conformance with operation and maintenance requirements, including the evaluation of monitoring data, as specified in § 63.6(e) and applicable subparts of this part.

(iii) If an affected source conducts performance testing at startup to obtain an operating permit in the State in which the source is located, the results of such testing may be used to demonstrate compliance with a relevant standard if -

(A) The performance test was conducted within a reasonable amount of time before an initial performance test is required to be conducted under the relevant standard;

(B) The performance test was conducted under representative operating conditions for the source;

(C) The performance test was conducted and the resulting data were reduced using EPA-approved test methods and procedures, as specified in § 63.7(e) of this subpart; and

(D) The performance test was appropriately quality-assured, as specified in § 63.7(c) of this subpart.

(iv) The Administrator will determine compliance with design, equipment, work practice, or operational emission standards in this part by review of records, inspection of the source, and other procedures specified in applicable subparts of this part.

(v) The Administrator will determine compliance with design, equipment, work practice, or operational emission standards in this part by evaluation of an owner or operator's conformance with operation and maintenance requirements, as specified in paragraph (e) of this section and applicable subparts of this part.

(3) *Finding of compliance.* The Administrator will make a finding concerning an affected source's compliance with a nonopacity emission standard, as specified in paragraphs (f)(1) and (f)(2) of this section, upon obtaining all the compliance information required by the relevant standard (including the written reports of performance test results, monitoring results, and other information, if applicable) and any information available to the Administrator needed to determine whether proper operation and maintenance practices are being used.

(g) *Use of an alternative nonopacity emission standard.*

(1) If, in the Administrator's judgment, an owner or operator of an affected source has established that an alternative means of emission limitation will achieve a reduction in emissions of a hazardous air pollutant from an affected source at least equivalent to the reduction in emissions of that pollutant from that source achieved under any design, equipment, work practice, or operational emission standard, or combination thereof, established under this part pursuant to section 112(h) of the Act, the Administrator will publish in the FEDERAL REGISTER a notice permitting the use of the alternative emission standard for purposes of compliance with the promulgated standard. Any FEDERAL REGISTER notice under this paragraph shall be published only after the public is notified and given the opportunity to comment. Such notice will restrict the permission to the stationary source(s) or category(ies) of sources from which the

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alternative emission standard will achieve equivalent emission reductions. The Administrator will condition permission in such notice on requirements to assure the proper operation and maintenance of equipment and practices required for compliance with the alternative emission standard and other requirements, including appropriate quality assurance and quality control requirements, that are deemed necessary.

(2) An owner or operator requesting permission under this paragraph shall, unless otherwise specified in an applicable subpart, submit a proposed test plan or the results of testing and monitoring in accordance with § 63.7 and § 63.8, a description of the procedures followed in testing or monitoring, and a description of pertinent conditions during testing or monitoring. Any testing or monitoring conducted to request permission to use an alternative nonopacity emission standard shall be appropriately quality assured and quality controlled, as specified in § 63.7 and § 63.8.

(3) The Administrator may establish general procedures in an applicable subpart that accomplish the requirements of paragraphs (g)(1) and (g)(2) of this section.

(h) *Compliance with opacity and visible emission standards -*

(1) *Applicability.* The opacity and visible emission standards set forth in this part shall apply at all times except during periods of startup, shutdown, and malfunction, and as otherwise specified in an applicable subpart.

(2) *Methods for determining compliance.*

(i) The Administrator will determine compliance with opacity and visible emission standards in this part based on the results of the test method specified in an applicable subpart. Whenever a continuous opacity monitoring system (COMS) is required to be installed to determine compliance with numerical opacity emission standards in this part, compliance with opacity emission standards in this part shall be determined by using the results from the COMS. Whenever an opacity emission test method is not specified, compliance with opacity emission standards in this part shall be determined by conducting observations in accordance with Test Method 9 in appendix A of part 60 of this chapter or the method specified in paragraph (h)(7)(ii) of this section. Whenever a visible emission test method is not specified, compliance with visible emission standards in this part shall be determined by conducting observations in accordance with Test Method 22 in appendix A of part 60 of this chapter.

(ii) [Reserved]

(iii) If an affected source undergoes opacity or visible emission testing at startup to obtain an operating permit in the State in which the source is located, the results of such testing may be used to demonstrate compliance with a relevant standard if -

(A) The opacity or visible emission test was conducted within a reasonable amount of time before a performance test is required to be conducted under the relevant standard;

(B) The opacity or visible emission test was conducted under representative operating conditions for the source;

(C) The opacity or visible emission test was conducted and the resulting data were reduced using EPA-approved test methods and procedures, as specified in § 63.7(e) of this subpart; and

(D) The opacity or visible emission test was appropriately quality-assured, as specified in § 63.7(c) of this section.

(3) [Reserved]

(4) *Notification of opacity or visible emission observations.* The owner or operator of an affected source shall notify the Administrator in writing of the anticipated date for conducting opacity or visible

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emission observations in accordance with § 63.9(f), if such observations are required for the source by a relevant standard.

(5) *Conduct of opacity or visible emission observations.* When a relevant standard under this part includes an opacity or visible emission standard, the owner or operator of an affected source shall comply with the following:

(i) For the purpose of demonstrating initial compliance, opacity or visible emission observations shall be conducted concurrently with the initial performance test required in § 63.7 unless one of the following conditions applies:

(A) If no performance test under § 63.7 is required, opacity or visible emission observations shall be conducted within 60 days after achieving the maximum production rate at which a new or reconstructed source will be operated, but not later than 120 days after initial startup of the source, or within 120 days after the effective date of the relevant standard in the case of new sources that start up before the standard's effective date. If no performance test under § 63.7 is required, opacity or visible emission observations shall be conducted within 120 days after the compliance date for an existing or modified source; or

(B) If visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the initial performance test required under § 63.7, or within the time period specified in paragraph (h)(5)(i)(A) of this section, the source's owner or operator shall reschedule the opacity or visible emission observations as soon after the initial performance test, or time period, as possible, but not later than 30 days thereafter, and shall advise the Administrator of the rescheduled date. The rescheduled opacity or visible emission observations shall be conducted (to the extent possible) under the same operating conditions that existed during the initial performance test conducted under § 63.7. The visible emissions observer shall determine whether visibility or other conditions prevent the opacity or visible emission observations from being made concurrently with the initial performance test in accordance with procedures contained in Test Method 9 or Test Method 22 in appendix A of part 60 of this chapter.

(ii) [Test duration specified in 40 CFR 63 Subpart LLL].

(iii) [Test duration specified in 40 CFR 63 Subpart LLL].

(iv) [Reserved]

(v) Opacity readings of portions of plumes that contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity emission standards.

(6) *Availability of records.* The owner or operator of an affected source shall make available, upon request by the Administrator, such records that the Administrator deems necessary to determine the conditions under which the visual observations were made and shall provide evidence indicating proof of current visible observer emission certification.

(7) *Use of a continuous opacity monitoring system.*

(i) The owner or operator of an affected source required to use a continuous opacity monitoring system (COMS) shall record the monitoring data produced during a performance test required under § 63.7 and shall furnish the Administrator a written report of the monitoring results in accordance with the provisions of § 63.10(e)(4).

(ii) Whenever an opacity emission test method has not been specified in an applicable subpart, or an owner or operator of an affected source is required to conduct Test Method 9 observations (see appendix A of part 60 of this chapter), the owner or operator may submit, for compliance purposes, COMS data results produced during any performance test required under § 63.7 in lieu of Method 9 data. If the owner or operator elects to submit COMS data for compliance with the opacity emission standard, he or she shall notify the Administrator

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of that decision, in writing, simultaneously with the notification under § 63.7(b) of the date the performance test is scheduled to begin. Once the owner or operator of an affected source has notified the Administrator to that effect, the COMS data results will be used to determine opacity compliance during subsequent performance tests required under § 63.7, unless the owner or operator notifies the Administrator in writing to the contrary not later than with the notification under § 63.7(b) of the date the subsequent performance test is scheduled to begin.

(iii) For the purposes of determining compliance with the opacity emission standard during a performance test required under § 63.7 using COMS data, the COMS data shall be reduced to 6-minute averages over the duration of the mass emission performance test.

(iv) The owner or operator of an affected source using a COMS for compliance purposes is responsible for demonstrating that he/she has complied with the performance evaluation requirements of § 63.8(e), that the COMS has been properly maintained, operated, and data quality assured, as specified in § 63.8(c) and § 63.8(d), and that the resulting data have not been altered in any way.

(v) Except as provided in paragraph (h)(7)(ii) of this section, the results of continuous monitoring by a COMS that indicate that the opacity at the time visual observations were made was not in excess of the emission standard are probative but not conclusive evidence of the actual opacity of an emission, provided that the affected source proves that, at the time of the alleged violation, the instrument used was properly maintained, as specified in § 63.8(c), and met Performance Specification 1 in appendix B of part 60 of this chapter, and that the resulting data have not been altered in any way.

(8) *Finding of compliance.* The Administrator will make a finding concerning an affected source's compliance with an opacity or visible emission standard upon obtaining all the compliance information required by the relevant standard (including the written reports of the results of the performance tests required by § 63.7, the results of Test Method 9 or another required opacity or visible emission test method, the observer certification required by paragraph (h)(6) of this section, and the continuous opacity monitoring system results, whichever is/are applicable) and any information available to the Administrator needed to determine whether proper operation and maintenance practices are being used.

(9) *Adjustment to an opacity emission standard.*

(i) If the Administrator finds under paragraph (h)(8) of this section that an affected source is in compliance with all relevant standards for which initial performance tests were conducted under § 63.7, but during the time such performance tests were conducted fails to meet any relevant opacity emission standard, the owner or operator of such source may petition the Administrator to make appropriate adjustment to the opacity emission standard for the affected source. Until the Administrator notifies the owner or operator of the appropriate adjustment, the relevant opacity emission standard remains applicable.

(ii) The Administrator may grant such a petition upon a demonstration by the owner or operator that -

(A) The affected source and its associated air pollution control equipment were operated and maintained in a manner to minimize the opacity of emissions during the performance tests;

(B) The performance tests were performed under the conditions established by the Administrator; and

(C) The affected source and its associated air pollution control equipment were incapable of being adjusted or operated to meet the relevant opacity emission standard.

(iii) The Administrator will establish an adjusted opacity emission standard for the affected source meeting the above requirements at a level at which the source will be able, as indicated by the performance and opacity tests, to meet the opacity emission standard at all times during which the

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source is meeting the mass or concentration emission standard. The Administrator will promulgate the new opacity emission standard in the FEDERAL REGISTER.

(iv) After the Administrator promulgates an adjusted opacity emission standard for an affected source, the owner or operator of such source shall be subject to the new opacity emission standard, and the new opacity emission standard shall apply to such source during any subsequent performance tests.

(i) *Extension of compliance with emission standards.*

(1) Until an extension of compliance has been granted by the Administrator (or a State with an approved permit program) under this paragraph, the owner or operator of an affected source subject to the requirements of this section shall comply with all applicable requirements of this part.

(2) *Extension of compliance for early reductions and other reductions*

(i) *Early reductions.* Pursuant to section 112(i)(5) of the Act, if the owner or operator of an existing source demonstrates that the source has achieved a reduction in emissions of hazardous air pollutants in accordance with the provisions of subpart D of this part, the Administrator (or the State with an approved permit program) will grant the owner or operator an extension of compliance with specific requirements of this part, as specified in subpart D.

(ii) *Other reductions.* Pursuant to section 112(i)(6) of the Act, if the owner or operator of an existing source has installed best available control technology (BACT) (as defined in section 169(3) of the Act) or technology required to meet a lowest achievable emission rate (LAER) (as defined in section 171 of the Act) prior to the promulgation of an emission standard in this part applicable to such source and the same pollutant (or stream of pollutants) controlled pursuant to the BACT or LAER installation, the Administrator will grant the owner or operator an extension of compliance with such emission standard that will apply until the date 5 years after the date on which such installation was achieved, as determined by the Administrator.

(3) *Request for extension of compliance.* Paragraphs (i)(4) through (i)(7) of this section concern requests for an extension of compliance with a relevant standard under this part (except requests for an extension of compliance under paragraph (i)(2)(i) of this section will be handled through procedures specified in subpart D of this part).

(4) (i) (A) The owner or operator of an existing source who is unable to comply with a relevant standard established under this part pursuant to section 112(d) of the Act may request that the Administrator (or a State, when the State has an approved part 70 permit program and the source is required to obtain a part 70 permit under that program, or a State, when the State has been delegated the authority to implement and enforce the emission standard for that source) grant an extension allowing the source up to 1 additional year to comply with the standard, if such additional period is necessary for the installation of controls. An additional extension of up to 3 years may be added for mining waste operations, if the 1-year extension of compliance is insufficient to dry and cover mining waste in order to reduce emissions of any hazardous air pollutant. The owner or operator of an affected source who has requested an extension of compliance under this paragraph and who is otherwise required to obtain a title V permit shall apply for such permit or apply to have the source's title V permit revised to incorporate the conditions of the extension of compliance. The conditions of an extension of compliance granted under this paragraph will be incorporated into the affected source's title V permit according to the provisions of part 70 or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever are applicable.

(B) Any request under this paragraph for an extension of compliance with a relevant standard shall be submitted in writing to the appropriate authority not later than 12 months before the affected source's compliance date (as specified in paragraphs (b) and (c) of this section) for sources

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that are not including emission points in an emissions average, or not later than 18 months before the affected source's compliance date (as specified in paragraphs (b) and (c) of this section) for sources that are including emission points in an emissions average. Emission standards established under this part may specify alternative dates for the submittal of requests for an extension of compliance if alternatives are appropriate for the source categories affected by those standards, e.g., a compliance date specified by the standard is less than 12 (or 18) months after the standard's effective date.

(ii) The owner or operator of an existing source unable to comply with a relevant standard established under this part pursuant to section 112(f) of the Act may request that the Administrator grant an extension allowing the source up to 2 years after the standard's effective date to comply with the standard. The Administrator may grant such an extension if he/she finds that such additional period is necessary for the installation of controls and that steps will be taken during the period of the extension to assure that the health of persons will be protected from imminent endangerment. Any request for an extension of compliance with a relevant standard under this paragraph shall be submitted in writing to the Administrator not later than 15 calendar days after the effective date of the relevant standard.

(5) The owner or operator of an existing source that has installed BACT or technology required to meet LAER [as specified in paragraph (i)(2)(ii) of this section] prior to the promulgation of a relevant emission standard in this part may request that the Administrator grant an extension allowing the source 5 years from the date on which such installation was achieved, as determined by the Administrator, to comply with the standard. Any request for an extension of compliance with a relevant standard under this paragraph shall be submitted in writing to the Administrator not later than 120 days after the promulgation date of the standard. The Administrator may grant such an extension if he or she finds that the installation of BACT or technology to meet LAER controls the same pollutant (or stream of pollutants) that would be controlled at that source by the relevant emission standard.

(6) (i) The request for a compliance extension under paragraph (i)(4) of this section shall include the following information:

- (A) A description of the controls to be installed to comply with the standard;
- (B) A compliance schedule, including the date by which each step toward compliance will be reached. At a minimum, the list of dates shall include:
 - (1) The date by which contracts for emission control systems or process changes for emission control will be awarded, or the date by which orders will be issued for the purchase of component parts to accomplish emission control or process changes;
 - (2) The date by which on-site construction, installation of emission control equipment, or a process change is to be initiated;
 - (3) The date by which on-site construction, installation of emission control equipment, or a process change is to be completed; and
 - (4) The date by which final compliance is to be achieved;
- (C) A description of interim emission control steps that will be taken during the extension period, including milestones to assure proper operation and maintenance of emission control and process equipment, and
- (D) Whether the owner or operator is also requesting an extension of other applicable requirements (e.g., performance testing requirements).

(ii) The request for a compliance extension under paragraph (i)(5) of this section shall include all information needed to demonstrate to the Administrator's satisfaction that the installation of BACT or technology to meet LAER controls the same pollutant (or stream of pollutants) that would be controlled at that source by the relevant emission standard.

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(7) Advice on requesting an extension of compliance may be obtained from the Administrator (or the State with an approved permit program).

(8) *Approval of request for extension of compliance.* Paragraphs (i)(9) through (i)(14) of this section concern approval of an extension of compliance requested under paragraphs (i)(4) through (i)(6) of this section.

(9) Based on the information provided in any request made under paragraphs (i)(4) through (i)(6) of this section, or other information, the Administrator (or the State with an approved permit program) may grant an extension of compliance with an emission standard, as specified in paragraphs (i)(4) and (i)(5) of this section.

(10) The extension will be in writing and will -

- (i) Identify each affected source covered by the extension;
- (ii) Specify the termination date of the extension;
- (iii) Specify the dates by which steps toward compliance are to be taken, if appropriate;
- (iv) Specify other applicable requirements to which the compliance extension applies

(e.g., performance tests); and

(v) (A) Under paragraph (i)(4), specify any additional conditions that the Administrator (or the State) deems necessary to assure installation of the necessary controls and protection of the health of persons during the extension period; or

(B) Under paragraph (i)(5), specify any additional conditions that the Administrator deems necessary to assure the proper operation and maintenance of the installed controls during the extension period.

(11) The owner or operator of an existing source that has been granted an extension of compliance under paragraph (i)(10) of this section may be required to submit to the Administrator (or the State with an approved permit program) progress reports indicating whether the steps toward compliance outlined in the compliance schedule have been reached. The contents of the progress reports and the dates by which they shall be submitted will be specified in the written extension of compliance granted under paragraph (i)(10) of this section.

(12) (i) The Administrator (or the State with an approved permit program) will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days after receipt of sufficient information to evaluate a request submitted under paragraph (i)(4)(i) or (i)(5) of this section. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(iii) Before denying any request for an extension of compliance, the Administrator (or the State with an approved permit program) will notify the owner or operator in writing of the Administrator's (or the State's) intention to issue the denial, together with -

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(A) Notice of the information and findings on which the intended denial is based;
and

(B) Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator (or the State) before further action on the request.

(iv) The Administrator's final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 calendar days after presentation of additional information or argument (if the application is complete), or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(13) (i) The Administrator will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days after receipt of sufficient information to evaluate a request submitted under paragraph (i)(4)(ii) of this section. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 15 calendar days after receipt of the original application and within 15 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 15 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(iii) Before denying any request for an extension of compliance, the Administrator will notify the owner or operator in writing of the Administrator's intention to issue the denial, together with -
(A) Notice of the information and findings on which the intended denial is based;
and

(B) Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator before further action on the request.

(iv) A final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 calendar days after presentation of additional information or argument (if the application is complete), or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(14) The Administrator (or the State with an approved permit program) may terminate an extension of compliance at an earlier date than specified if any specification under paragraphs (i)(10)(iii) or (i)(10)(iv) of this section is not met.

(15) [Reserved]

(16) The granting of an extension under this section shall not abrogate the Administrator's authority under section 114 of the Act.

(j) *Exemption from compliance with emission standards.* The President may exempt any stationary source from compliance with any relevant standard established pursuant to section 112 of the Act for a period of not more than 2 years if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so. An exemption under this paragraph may be extended for 1 or more additional periods, each period not to exceed 2 years.

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40 CFR 63.7 Performance testing requirements.

(a) Applicability and performance test dates.

(1) Unless otherwise specified, this section applies to the owner or operator of an affected source required to do performance testing, or another form of compliance demonstration, under a relevant standard. **[40 CFR 63.1349 of 40 CFR 63 Subpart LLL has specific requirements.]**

(2) If required to do performance testing by a relevant standard, and unless a waiver of performance testing is obtained under this section or the conditions of paragraph (c)(3)(ii)(B) of this section apply, the owner or operator of the affected source shall perform such tests as follows -

(i) Within 180 days after the effective date of a relevant standard for a new source that has an initial startup date before the effective date; or

(ii) Within 180 days after initial startup for a new source that has an initial startup date after the effective date of a relevant standard; or

(iii) Within 180 days after the compliance date specified in an applicable subpart of this part for an existing source subject to an emission standard established pursuant to section 112(d) of the Act, or within 180 days after startup of an existing source if the source begins operation after the effective date of the relevant emission standard; or

(iv) Within 180 days after the compliance date for an existing source subject to an emission standard established pursuant to section 112(f) of the Act; or

(v) Within 180 days after the termination date of the source's extension of compliance for an existing source that obtains an extension of compliance under § 63.6(f); or

(vi) Within 180 days after the compliance date for a new source, subject to an emission standard established pursuant to section 112(f) of the Act, for which construction or reconstruction is commenced after the proposal date of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of the relevant standard established pursuant to section 112(f) [see § 63.6(b)(4)]; or

(vii) [Reserved]; or (viii) [Reserved]; or

(ix) When an emission standard promulgated under this part is more stringent than the standard proposed (see § 63.6(b)(3)), the owner or operator of a new or reconstructed source subject to that standard for which construction or reconstruction is commenced between the proposal and promulgation dates of the standard shall comply with performance testing requirements within 180 days after the standard's effective date, or within 180 days after startup of the source, whichever is later. If the promulgated standard is more stringent than the proposed standard, the owner or operator may choose to demonstrate compliance with either the proposed or the promulgated standard. If the owner or operator chooses to comply with the proposed standard initially, the owner or operator shall conduct a second performance test within 3 years and 180 days after the effective date of the standard, or after startup of the source, whichever is later, to demonstrate compliance with the promulgated standard.

(3) The Administrator may require an owner or operator to conduct performance tests at the affected source at any other time when the action is authorized by section 114 of the Act.

(b) Notification of performance test.

(1) The owner or operator of an affected source shall notify the Administrator in writing of his or her intention to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin to allow the Administrator, upon request, to review and approve the site-specific test plan required under paragraph (c) of this section and to have an observer present during the test. Observation of the performance test by the Administrator is optional.

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(2) In the event the owner or operator is unable to conduct the performance test on the date specified in the notification requirement specified in paragraph (b)(1) of this section, due to unforeseeable circumstances beyond his or her control, the owner or operator shall notify the Administrator within 5 days prior to the scheduled performance test date and specify the date when the performance test is rescheduled. This notification of delay in conducting the performance test shall not relieve the owner or operator of legal responsibility for compliance with any other applicable provisions of this part or with any other applicable Federal, State, or local requirement, nor will it prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(c) *Quality assurance program.*

(1) The results of the quality assurance program required in this paragraph will be considered by the Administrator when he/she determines the validity of a performance test.

(2) (i) *Submission of site-specific test plan.* Before conducting a required performance test, the owner or operator of an affected source shall develop and, if requested by the Administrator, shall submit a site-specific test plan to the Administrator for approval. The test plan shall include a test program summary, the test schedule, data quality objectives, and both an internal and external quality assurance (QA) program. Data quality objectives are the pretest expectations of precision, accuracy, and completeness of data.

(ii) The internal QA program shall include, at a minimum, the activities planned by routine operators and analysts to provide an assessment of test data precision; an example of internal QA is the sampling and analysis of replicate samples.

(iii) The external QA program shall include, at a minimum, application of plans for a test method performance audit (PA) during the performance test. The PA's consist of blind audit samples provided by the Administrator and analyzed during the performance test in order to provide a measure of test data bias. The external QA program may also include systems audits that include the opportunity for on-site evaluation by the Administrator of instrument calibration, data validation, sample logging, and documentation of quality control data and field maintenance activities.

(iv) The owner or operator of an affected source shall submit the site-specific test plan to the Administrator upon the Administrator's request at least 60 calendar days before the performance test is scheduled to take place, that is, simultaneously with the notification of intention to conduct a performance test required under paragraph (b) of this section, or on a mutually agreed upon date.

(v) The Administrator may request additional relevant information after the submittal of a site-specific test plan.

(3) *Approval of site-specific test plan.*

(i) The Administrator will notify the owner or operator of approval or intention to deny approval of the site-specific test plan (if review of the site-specific test plan is requested) within 30 calendar days after receipt of the original plan and within 30 calendar days after receipt of any supplementary information that is submitted under paragraph (c)(3)(i)(B) of this section. Before disapproving any site-specific test plan, the Administrator will notify the applicant of the Administrator's intention to disapprove the plan together with -

(A) Notice of the information and findings on which the intended disapproval is based; and

(B) Notice of opportunity for the owner or operator to present, within 30 calendar days after he/she is notified of the intended disapproval, additional information to the Administrator before final action on the plan.

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(ii) In the event that the Administrator fails to approve or disapprove the site-specific test plan within the time period specified in paragraph (c)(3)(i) of this section, the following conditions shall apply:

(A) If the owner or operator intends to demonstrate compliance using the test method(s) specified in the relevant standard, the owner or operator shall conduct the performance test within the time specified in this section using the specified method(s);

(B) If the owner or operator intends to demonstrate compliance by using an alternative to any test method specified in the relevant standard, the owner or operator shall refrain from conducting the performance test until the Administrator approves the use of the alternative method when the Administrator approves the site-specific test plan (if review of the site-specific test plan is requested) or until after the alternative method is approved (see paragraph (f) of this section). If the Administrator does not approve the site-specific test plan (if review is requested) or the use of the alternative method within 30 days before the test is scheduled to begin, the performance test dates specified in paragraph (a) of this section may be extended such that the owner or operator shall conduct the performance test within 60 calendar days after the Administrator approves the site-specific test plan or after use of the alternative method is approved. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance test as required in this section (without the Administrator's prior approval of the site-specific test plan) if he/she subsequently chooses to use the specified testing and monitoring methods instead of an alternative.

(iii) Neither the submission of a site-specific test plan for approval, nor the Administrator's approval or disapproval of a plan, nor the Administrator's failure to approve or disapprove a plan in a timely manner shall -

(A) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(B) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(4) (i) ~~Performance test method audit program.~~ The owner or operator shall analyze performance audit (PA) samples during each performance test. The owner or operator shall request performance audit materials 45 days prior to the test date. Cylinder audit gases may be obtained by contacting the Cylinder Audit Coordinator, Quality Assurance Division (MD-77B), Atmospheric Research and Exposure Assessment Laboratory (AREAL), U.S. EPA, Research Triangle Park, North Carolina 27711. All other audit materials may be obtained by contacting the Source Test Audit Coordinator, Quality Assurance Division (MD-77B), AREAL, U.S. EPA, Research Triangle Park, North Carolina 27711.

(ii) The Administrator will have sole discretion to require any subsequent remedial actions of the owner or operator based on the PA results.

(iii) If the Administrator fails to provide required PA materials to an owner or operator of an affected source in time to analyze the PA samples during a performance test, the requirement to conduct a PA under this paragraph shall be waived for such source for that performance test. Waiver under this paragraph of the requirement to conduct a PA for a particular performance test does not constitute a waiver of the requirement to conduct a PA for future required performance tests.

(d) *Performance testing facilities.* If required to do performance testing, the owner or operator of each new source and, at the request of the Administrator, the owner or operator of each existing source, shall provide performance testing facilities as follows:

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- (1) Sampling ports adequate for test methods applicable to such source. This includes:
 - (i) Constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures; and
 - (ii) Providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures;
- (2) Safe sampling platform(s);
- (3) Safe access to sampling platform(s);
- (4) Utilities for sampling and testing equipment; and
- (5) Any other facilities that the Administrator deems necessary for safe and adequate testing of a source.

(e) *Conduct of performance tests.*

(1) Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance (i.e., performance based on normal operating conditions) of the affected source. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test, nor shall emissions in excess of the level of the relevant standard during periods of startup, shutdown, and malfunction be considered a violation of the relevant standard unless otherwise specified in the relevant standard or a determination of noncompliance is made under § 63.6(e). Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(2) Performance tests shall be conducted and data shall be reduced in accordance with the test methods and procedures set forth in this section, in each relevant standard, and, if required, in applicable appendices of parts 51, 60, 61, and 63 of this chapter unless the Administrator-

- (i) Specifies or approves, in specific cases, the use of a test method with minor changes in methodology; or
- (ii) Approves the use of an alternative test method, the results of which the Administrator has determined to be adequate for indicating whether a specific affected source is in compliance; or
- (iii) Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors; or
- (iv) Waives the requirement for performance tests because the owner or operator of an affected source has demonstrated by other means to the Administrator's satisfaction that the affected source is in compliance with the relevant standard.

(3) Unless otherwise specified in a relevant standard or test method, each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the relevant standard. For the purpose of determining compliance with a relevant standard, the arithmetic mean of the results of the three runs shall apply. Upon receiving approval from the Administrator, results of a test run may be replaced with results of an additional test run in the event that

- (i) A sample is accidentally lost after the testing team leaves the site; or
- (ii) Conditions occur in which one of the three runs must be discontinued because of forced shutdown; or
- (iii) Extreme meteorological conditions occur; or
- (iv) Other circumstances occur that are beyond the owner or operator's control.

(4) Nothing in paragraphs (e)(1) through (e)(3) of this section shall be construed to abrogate the Administrator's authority to require testing under section 114 of the Act.

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(f) *Use of an alternative test method -*

(1) *General.* Until permission to use an alternative test method has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.

(2) The owner or operator of an affected source required to do performance testing by a relevant standard may use an alternative test method from that specified in the standard provided that the owner or operator -

(i) Notifies the Administrator of his or her intention to use an alternative test method not later than with the submittal of the site-specific test plan (if requested by the Administrator) or at least 60 days before the performance test is scheduled to begin if a site-specific test plan is not submitted;

(ii) Uses Method 301 in appendix A of this part to validate the alternative test method;
and

(iii) Submits the results of the Method 301 validation process along with the notification of intention and the justification for not using the specified test method. The owner or operator may submit the information required in this paragraph well in advance of the deadline specified in paragraph (f)(2)(i) of this section to ensure a timely review by the Administrator in order to meet the performance test date specified in this section or the relevant standard.

(3) The Administrator will determine whether the owner or operator's validation of the proposed alternative test method is adequate when the Administrator approves or disapproves the site-specific test plan required under paragraph (c) of this section. If the Administrator finds reasonable grounds to dispute the results obtained by the Method 301 validation process, the Administrator may require the use of a test method specified in a relevant standard.

(4) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative test method for the purposes of demonstrating compliance with a relevant standard, the Administrator may require the use of a test method specified in a relevant standard.

(5) If the owner or operator uses an alternative test method for an affected source during a required performance test, the owner or operator of such source shall continue to use the alternative test method for subsequent performance tests at that affected source until he or she receives approval from the Administrator to use another test method as allowed under § 63.7(f).

(6) Neither the validation and approval process nor the failure to validate an alternative test method shall abrogate the owner or operator's responsibility to comply with the requirements of this part.

(g) *Data analysis, recordkeeping, and reporting.*

(1) Unless otherwise specified in a relevant standard or test method, or as otherwise approved by the Administrator in writing, results of a performance test shall include the analysis of samples, determination of emissions, and raw data. A performance test is "completed" when field sample collection is terminated. The owner or operator of an affected source shall report the results of the performance test to the Administrator before the close of business on the 60th day following the completion of the performance test, unless specified otherwise in a relevant standard or as approved otherwise in writing by the Administrator (see § 63.9(i)). The results of the performance test shall be submitted as part of the notification of compliance status required under § 63.9(h). Before a title V permit has been issued to the owner or operator of an affected source, the owner or operator shall send the results of the performance test to the Administrator. After a title V permit has been issued to the owner or operator of an affected source, the owner or operator shall send the results of the performance test to the appropriate permitting authority.

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(2) [Reserved]

(3) For a minimum of 5 years after a performance test is conducted, the owner or operator shall retain and make available, upon request, for inspection by the Administrator the records or results of such performance test and other data needed to determine emissions from an affected source.

(h) *Waiver of performance tests.*

(1) Until a waiver of a performance testing requirement has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section.

(2) Individual performance tests may be waived upon written application to the Administrator if, in the Administrator's judgment, the source is meeting the relevant standard(s) on a continuous basis, or the source is being operated under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request.

(3) Request to waive a performance test.

(i) If a request is made for an extension of compliance under § 63.6(i), the application for a waiver of an initial performance test shall accompany the information required for the request for an extension of compliance. If no extension of compliance is requested or if the owner or operator has requested an extension of compliance and the Administrator is still considering that request, the application for a waiver of an initial performance test shall be submitted at least 60 days before the performance test if the site-specific test plan under paragraph (c) of this section is not submitted.

(ii) If an application for a waiver of a subsequent performance test is made, the application may accompany any required compliance progress report, compliance status report, or excess emissions and continuous monitoring system performance report [such as those required under § 63.6(I), § 63.9(h), and § 63.10(e) or specified in a relevant standard or in the source's title V permit], but it shall be submitted at least 60 days before the performance test if the site-specific test plan required under paragraph (c) of this section is not submitted.

(iii) Any application for a waiver of a performance test shall include information justifying the owner or operator's request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the affected source performing the required test.

(4) Approval of request to waive performance test. The Administrator will approve or deny a request for a waiver of a performance test made under paragraph (h)(3) of this section when he/she -

(i) Approves or denies an extension of compliance under § 63.6(i)(8); or

(ii) Approves or disapproves a site-specific test plan under § 63.7(c)(3); or

(iii) Makes a determination of compliance following the submission of a required compliance status report or excess emissions and continuous monitoring systems performance report; or

(iv) Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

(5) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.

40 CFR 63.8 Monitoring requirements.

(a) *Applicability.*

(1) (i) Unless otherwise specified in a relevant standard, this section applies to the owner or operator of an affected source required to do monitoring under that standard.

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(ii) Relevant standards established under this part will specify monitoring systems, methods, or procedures, monitoring frequency, and other pertinent requirements for source(s) regulated by those standards. This section specifies general monitoring requirements such as those governing the conduct of monitoring and requests to use alternative monitoring methods. In addition, this section specifies detailed requirements that apply to affected sources required to use continuous monitoring systems (CMS) under a relevant standard.

(2) **[Not applicable. 40 CFR 63.1350 of 40 CFR 63 Subpart LLL includes CEM requirements.]**

(3) [Reserved]

(4) **[Flares not applicable.]**

(b) *Conduct of monitoring.*

(1) Monitoring shall be conducted as set forth in this section and the relevant standard(s) unless the Administrator -

(i) Specifies or approves the use of minor changes in methodology for the specified monitoring requirements and procedures; or

(ii) Approves the use of alternatives to any monitoring requirements or procedures.

(iii) Owners or operators with flares subject to § 63.11(b) are not subject to the requirements of this section unless otherwise specified in the relevant standard.

(2) (i) When the effluents from a single affected source, or from two or more affected sources, are combined before being released to the atmosphere, the owner or operator shall install an applicable CMS on each effluent.

(ii) If the relevant standard is a mass emission standard and the effluent from one affected source is released to the atmosphere through more than one point, the owner or operator shall install an applicable CMS at each emission point unless the installation of fewer systems is -

(A) Approved by the Administrator; or

(B) Provided for in a relevant standard (e.g., instead of requiring that a CMS be installed at each emission point before the effluents from those points are channeled to a common control device, the standard specifies that only one CMS is required to be installed at the vent of the control device).

(3) When more than one CMS is used to measure the emissions from one affected source (e.g., multiple breechings, multiple outlets), the owner or operator shall report the results as required for each CMS. However, when one CMS is used as a backup to another CMS, the owner or operator shall report the results from the CMS used to meet the monitoring requirements of this part. If both such CMS are used during a particular reporting period to meet the monitoring requirements of this part, then the owner or operator shall report the results from each CMS for the relevant compliance period.

(c) *Operation and maintenance of continuous monitoring systems.*

[Performance specification supersedes requirements for THC CEM. Temperature and activated carbon injection monitoring data requirements given in 40 CFR 63 Subpart LLL.]

(1) The owner or operator of an affected source shall maintain and operate each CMS as specified in this section, or in a relevant standard, and in a manner consistent with good air pollution control practices.

(i) The owner or operator of an affected source shall ensure the immediate repair or replacement of CMS parts to correct "routine" or otherwise predictable CMS malfunctions as defined in the source's startup, shutdown, and malfunction plan required by § 63.6(e)(3). The owner or operator

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shall keep the necessary parts for routine repairs of the affected equipment readily available. If the plan is followed and the CMS repaired immediately, this action shall be reported in the semiannual startup, shutdown, and malfunction report required under § 63.10(d)(5)(i).

(ii) For those malfunctions or other events that affect the CMS and are not addressed by the startup, shutdown, and malfunction plan, the owner or operator shall report actions that are not consistent with the startup, shutdown, and malfunction plan within 24 hours after commencing actions inconsistent with the plan. The owner or operator shall send a followup report within 2 weeks after commencing actions inconsistent with the plan that either certifies that corrections have been made or includes a corrective action plan and schedule. The owner or operator shall provide proof that repair parts have been ordered or any other records that would indicate that the delay in making repairs is beyond his or her control.

(iii) The Administrator's determination of whether acceptable operation and maintenance procedures are being used will be based on information that may include, but is not limited to, review of operation and maintenance procedures, operation and maintenance records, manufacturing recommendations and specifications, and inspection of the CMS. Operation and maintenance procedures written by the CMS manufacturer and other guidance also can be used to maintain and operate each CMS.

(2) All CMS shall be installed such that representative measurements of emissions or process parameters from the affected source are obtained. In addition, CEMS shall be located according to procedures contained in the applicable performance specification(s).

(3) All CMS shall be installed, operational, and the data verified as specified in the relevant standard either prior to or in conjunction with conducting performance tests under § 63.7. Verification of operational status shall, at a minimum, include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system.

(4) Except for system breakdowns, out-of-control periods, repairs, maintenance periods, calibration checks, and zero (low-level) and high-level calibration drift adjustments, all CMS, including COMS and CEMS, shall be in continuous operation and shall meet minimum frequency of operation requirements as follows:

(i) All COMS shall complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(ii) All CEMS for measuring emissions other than opacity shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(5) Unless otherwise approved by the Administrator, minimum procedures for COMS shall include a method for producing a simulated zero opacity condition and an upscale (high-level) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. Such procedures shall provide a system check of all the analyzer's internal optical surfaces and all electronic circuitry, including the lamp and photodetector assembly normally used in the measurement of opacity.

(6) The owner or operator of a CMS installed in accordance with the provisions of this part and the applicable CMS performance specification(s) shall check the zero (low-level) and high-level calibration drifts at least once daily in accordance with the written procedure specified in the performance evaluation plan developed under paragraphs (e)(3)(i) and (e)(3)(ii) of this section. The zero (low-level) and high-level calibration drifts shall be adjusted, at a minimum, whenever the 24-hour zero (low-level) drift exceeds two times the limits of the applicable performance specification(s) specified in the relevant standard. The system must allow the amount of excess zero (low-level) and high-level drift measured at the 24-hour interval checks to be recorded and quantified, whenever specified. For COMS, all optical and

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instrumental surfaces exposed to the effluent gases shall be cleaned prior to performing the zero (low-level) and high-level drift adjustments; the optical surfaces and instrumental surfaces shall be cleaned when the cumulative automatic zero compensation, if applicable, exceeds 4 percent opacity.

(7) (i) A CMS is out of control if -

(A) The zero (low-level), mid-level (if applicable), or high-level calibration drift (CD) exceeds two times the applicable CD specification in the applicable performance specification or in the relevant standard; or

(B) The CMS fails a performance test audit (e.g., cylinder gas audit), relative accuracy audit, relative accuracy test audit, or linearity test audit; or

(C) The COMS CD exceeds two times the limit in the applicable performance specification in the relevant standard.

(ii) When the CMS is out of control, the owner or operator of the affected source shall take the necessary corrective action and shall repeat all necessary tests which indicate that the system is out of control. The owner or operator shall take corrective action and conduct retesting until the performance requirements are below the applicable limits. The beginning of the out-of-control period is the hour the owner or operator conducts a performance check (e.g., calibration drift) that indicates an exceedance of the performance requirements established under this part. The end of the out-of-control period is the hour following the completion of corrective action and successful demonstration that the system is within the allowable limits. During the period the CMS is out of control, recorded data shall not be used in data averages and calculations, or to meet any data availability requirement established under this part.

(8) The owner or operator of a CMS that is out of control as defined in paragraph (c)(7) of this section shall submit all information concerning out-of-control periods, including start and end dates and hours and descriptions of corrective actions taken, in the excess emissions and continuous monitoring system performance report required in § 63.10(e)(3).

(d) *Quality control program.*

(1) The results of the quality control program required in this paragraph will be considered by the Administrator when he/she determines the validity of monitoring data.

(2) The owner or operator of an affected source that is required to use a CMS and is subject to the monitoring requirements of this section and a relevant standard shall develop and implement a CMS quality control program. As part of the quality control program, the owner or operator shall develop and submit to the Administrator for approval upon request a site-specific performance evaluation test plan for the CMS performance evaluation required in paragraph (e)(3)(i) of this section, according to the procedures specified in paragraph (e). In addition, each quality control program shall include, at a minimum, a written protocol that describes procedures for each of the following operations:

- (i) Initial and any subsequent calibration of the CMS;
- (ii) Determination and adjustment of the calibration drift of the CMS;
- (iii) Preventive maintenance of the CMS, including spare parts inventory;
- (iv) Data recording, calculations, and reporting;
- (v) Accuracy audit procedures, including sampling and analysis methods; and
- (vi) Program of corrective action for a malfunctioning CMS.

(3) The owner or operator shall keep these written procedures on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, the owner or operator shall keep previous (i.e., superseded) versions of the performance evaluation plan on

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record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. Where relevant, e.g., program of corrective action for a malfunctioning CMS, these written procedures may be incorporated as part of the affected source's startup, shutdown, and malfunction plan to avoid duplication of planning and recordkeeping efforts.

(e) *Performance evaluation of continuous monitoring systems –*

[Performance specification supersedes requirements for THC CEM.]

(1) *General.* When required by a relevant standard, and at any other time the Administrator may require under section 114 of the Act, the owner or operator of an affected source being monitored shall conduct a performance evaluation of the CMS. Such performance evaluation shall be conducted according to the applicable specifications and procedures described in this section or in the relevant standard.

(2) *Notification of performance evaluation.* The owner or operator shall notify the Administrator in writing of the date of the performance evaluation simultaneously with the notification of the performance test date required under § 63.7(b) or at least 60 days prior to the date the performance evaluation is scheduled to begin if no performance test is required.

(3) (i) *Submission of site-specific performance evaluation test plan.* Before conducting a required CMS performance evaluation, the owner or operator of an affected source shall develop and submit a site-specific performance evaluation test plan to the Administrator for approval upon request. The performance evaluation test plan shall include the evaluation program objectives, an evaluation program summary, the performance evaluation schedule, data quality objectives, and both an internal and external QA program. Data quality objectives are the pre-evaluation expectations of precision, accuracy, and completeness of data.

(ii) The internal QA program shall include, at a minimum, the activities planned by routine operators and analysts to provide an assessment of CMS performance. The external QA program shall include, at a minimum, systems audits that include the opportunity for on-site evaluation by the Administrator of instrument calibration, data validation, sample logging, and documentation of quality control data and field maintenance activities.

(iii) The owner or operator of an affected source shall submit the site-specific performance evaluation test plan to the Administrator (if requested) at least 60 days before the performance test or performance evaluation is scheduled to begin, or on a mutually agreed upon date, and review and approval of the performance evaluation test plan by the Administrator will occur with the review and approval of the site-specific test plan (if review of the site-specific test plan is requested).

(iv) The Administrator may request additional relevant information after the submittal of a site-specific performance evaluation test plan.

(v) In the event that the Administrator fails to approve or disapprove the site-specific performance evaluation test plan within the time period specified in § 63.7(c)(3), the following conditions shall apply:

(A) If the owner or operator intends to demonstrate compliance using the monitoring method(s) specified in the relevant standard, the owner or operator shall conduct the performance evaluation within the time specified in this subpart using the specified method(s);

(B) If the owner or operator intends to demonstrate compliance by using an alternative to a monitoring method specified in the relevant standard, the owner or operator shall refrain from conducting the performance evaluation until the Administrator approves the use of the alternative method. If the Administrator does not approve the use of the alternative method within 30 days before the performance evaluation is scheduled to begin, the performance evaluation deadlines specified in

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paragraph (e)(4) of this section may be extended such that the owner or operator shall conduct the performance evaluation within 60 calendar days after the Administrator approves the use of the alternative method. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance evaluation as required in this section (without the Administrator's prior approval of the site-specific performance evaluation test plan) if he/she subsequently chooses to use the specified monitoring method(s) instead of an alternative.

(vi) Neither the submission of a site-specific performance evaluation test plan for approval, nor the Administrator's approval or disapproval of a plan, nor the Administrator's failure to approve or disapprove a plan in a timely manner shall -

(A) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(B) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(4) *Conduct of performance evaluation and performance evaluation dates.* The owner or operator of an affected source shall conduct a performance evaluation of a required CMS during any performance test required under § 63.7 in accordance with the applicable performance specification as specified in the relevant standard. Notwithstanding the requirement in the previous sentence, if the owner or operator of an affected source elects to submit COMS data for compliance with a relevant opacity emission standard as provided under § 63.6(h)(7), he/she shall conduct a performance evaluation of the COMS as specified in the relevant standard, before the performance test required under § 63.7 is conducted in time to submit the results of the performance evaluation as specified in paragraph (e)(5)(ii) of this section. If a performance test is not required, or the requirement for a performance test has been waived under § 63.7(h), the owner or operator of an affected source shall conduct the performance evaluation not later than 180 days after the appropriate compliance date for the affected source, as specified in § 63.7(a), or as otherwise specified in the relevant standard.

(5) *Reporting performance evaluation results.*

(i) The owner or operator shall furnish the Administrator a copy of a written report of the results of the performance evaluation simultaneously with the results of the performance test required under § 63.7 or within 60 days of completion of the performance evaluation if no test is required, unless otherwise specified in a relevant standard. The Administrator may request that the owner or operator submit the raw data from a performance evaluation in the report of the performance evaluation results.

(ii) The owner or operator of an affected source using a COMS to determine opacity compliance during any performance test required under § 63.7 and described in § 63.6(d)(6) shall furnish the Administrator two or, upon request, three copies of a written report of the results of the COMS performance evaluation under this paragraph. The copies shall be provided at least 15 calendar days before the performance test required under § 63.7 is conducted.

(f) *Use of an alternative monitoring method -*

[Additional requirements in 40 CFR 63.1350(l) of 40 CFR 63 Subpart LLL.]

(1) *General.* Until permission to use an alternative monitoring method has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.

(2) After receipt and consideration of written application, the Administrator may approve alternatives to any monitoring methods or procedures of this part including, but not limited to, the following:

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(i) Alternative monitoring requirements when installation of a CMS specified by a relevant standard would not provide accurate measurements due to liquid water or other interferences caused by substances within the effluent gases;

(ii) Alternative monitoring requirements when the affected source is infrequently operated;

(iii) Alternative monitoring requirements to accommodate CEMS that require additional measurements to correct for stack moisture conditions;

(iv) Alternative locations for installing CMS when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements;

(v) Alternate methods for converting pollutant concentration measurements to units of the relevant standard;

(vi) Alternate procedures for performing daily checks of zero (low-level) and high-level drift that do not involve use of high-level gases or test cells;

(vii) Alternatives to the American Society for Testing and Materials (ASTM) test methods or sampling procedures specified by any relevant standard;

(viii) Alternative CMS that do not meet the design or performance requirements in this part, but adequately demonstrate a definite and consistent relationship between their measurements and the measurements of opacity by a system complying with the requirements as specified in the relevant standard. The Administrator may require that such demonstration be performed for each affected source; or

(ix) Alternative monitoring requirements when the effluent from a single affected source or the combined effluent from two or more affected sources is released to the atmosphere through more than one point.

(3) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative monitoring method, requirement, or procedure, the Administrator may require the use of a method, requirement, or procedure specified in this section or in the relevant standard. If the results of the specified and alternative method, requirement, or procedure do not agree, the results obtained by the specified method, requirement, or procedure shall prevail.

(4) (i) Request to use alternative monitoring method. An owner or operator who wishes to use an alternative monitoring method shall submit an application to the Administrator as described in paragraph (f)(4)(ii) of this section, below. The application may be submitted at any time provided that the monitoring method is not used to demonstrate compliance with a relevant standard or other requirement. If the alternative monitoring method is to be used to demonstrate compliance with a relevant standard, the application shall be submitted not later than with the site-specific test plan required in § 63.7(c) (if requested) or with the site-specific performance evaluation plan (if requested) or at least 60 days before the performance evaluation is scheduled to begin.

(ii) The application shall contain a description of the proposed alternative monitoring system and a performance evaluation test plan, if required, as specified in paragraph (e)(3) of this section. In addition, the application shall include information justifying the owner or operator's request for an alternative monitoring method, such as the technical or economic infeasibility, or the impracticality, of the affected source using the required method.

(iii) The owner or operator may submit the information required in this paragraph well in advance of the submittal dates specified in paragraph (f)(4)(i) above to ensure a timely review by the Administrator in order to meet the compliance demonstration date specified in this section or the relevant standard.

(5) Approval of request to use alternative monitoring method.

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(i) The Administrator will notify the owner or operator of approval or intention to deny approval of the request to use an alternative monitoring method within 30 calendar days after receipt of the original request and within 30 calendar days after receipt of any supplementary information that is submitted. Before disapproving any request to use an alternative monitoring method, the Administrator will notify the applicant of the Administrator's intention to disapprove the request together with -

(A) Notice of the information and findings on which the intended disapproval is based; and

(B) Notice of opportunity for the owner or operator to present additional information to the Administrator before final action on the request. At the time the Administrator notifies the applicant of his or her intention to disapprove the request, the Administrator will specify how much time the owner or operator will have after being notified of the intended disapproval to submit the additional information.

(ii) The Administrator may establish general procedures and criteria in a relevant standard to accomplish the requirements of paragraph (f)(5)(i) of this section.

(iii) If the Administrator approves the use of an alternative monitoring method for an affected source under paragraph (f)(5)(i) of this section, the owner or operator of such source shall continue to use the alternative monitoring method until he or she receives approval from the Administrator to use another monitoring method as allowed by § 63.8(f).

(6) Alternative to the relative accuracy test. An alternative to the relative accuracy test for CEMS specified in a relevant standard may be requested as follows:

(i) *Criteria for approval of alternative procedures.* An alternative to the test method for determining relative accuracy is available for affected sources with emission rates demonstrated to be less than 50 percent of the relevant standard. The owner or operator of an affected source may petition the Administrator under paragraph (f)(6)(ii) of this section to substitute the relative accuracy test in section 7 of Performance Specification 2 with the procedures in section 10 if the results of a performance test conducted according to the requirements in § 63.7, or other tests performed following the criteria in § 63.7, demonstrate that the emission rate of the pollutant of interest in the units of the relevant standard is less than 50 percent of the relevant standard. For affected sources subject to emission limitations expressed as control efficiency levels, the owner or operator may petition the Administrator to substitute the relative accuracy test with the procedures in section 10 of Performance Specification 2 if the control device exhaust emission rate is less than 50 percent of the level needed to meet the control efficiency requirement. The alternative procedures do not apply if the CEMS is used continuously to determine compliance with the relevant standard.

(ii) *Petition to use alternative to relative accuracy test.* The petition to use an alternative to the relative accuracy test shall include a detailed description of the procedures to be applied, the location and the procedure for conducting the alternative, the concentration or response levels of the alternative relative accuracy materials, and the other equipment checks included in the alternative procedure(s). The Administrator will review the petition for completeness and applicability. The Administrator's determination to approve an alternative will depend on the intended use of the CEMS data and may require specifications more stringent than in Performance Specification 2.

(iii) *Rescission of approval to use alternative to relative accuracy test.* The Administrator will review the permission to use an alternative to the CEMS relative accuracy test and may rescind such permission if the CEMS data from a successful completion of the alternative relative accuracy procedure indicate that the affected source's emissions are approaching the level of the relevant standard. The criterion for reviewing the permission is that the collection of CEMS data shows that emissions have exceeded 70 percent of the relevant standard for any averaging period, as specified in the relevant

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standard. For affected sources subject to emission limitations expressed as control efficiency levels, the criterion for reviewing the permission is that the collection of CEMS data shows that exhaust emissions have exceeded 70 percent of the level needed to meet the control efficiency requirement for any averaging period, as specified in the relevant standard. The owner or operator of the affected source shall maintain records and determine the level of emissions relative to the criterion for permission to use an alternative for relative accuracy testing. If this criterion is exceeded, the owner or operator shall notify the Administrator within 10 days of such occurrence and include a description of the nature and cause of the increased emissions. The Administrator will review the notification and may rescind permission to use an alternative and require the owner or operator to conduct a relative accuracy test of the CEMS as specified in section 7 of Performance Specification 2.

(g) Reduction of monitoring data.

(1) The owner or operator of each CMS shall reduce the monitoring data as specified in this paragraph. In addition, each relevant standard may contain additional requirements for reducing monitoring data. When additional requirements are specified in a relevant standard, the standard will identify any unnecessary or duplicated requirements in this paragraph that the owner or operator need not comply with.

(2) The owner or operator of each COMS shall reduce all data to 6-minute averages calculated from 36 or more data points equally spaced over each 6-minute period. Data from CEMS for measurement other than opacity, unless otherwise specified in the relevant standard, shall be reduced to 1-hour averages computed from four or more data points equally spaced over each 1-hour period, except during periods when calibration, quality assurance, or maintenance activities pursuant to provisions of this part are being performed. During these periods, a valid hourly average shall consist of at least two data points with each representing a 15-minute period. Alternatively, an arithmetic or integrated 1-hour average of CEMS data may be used. Time periods for averaging are defined in § 63.2.

(3) The data may be recorded in reduced or nonreduced form (e.g., ppm pollutant and percent O₂ or ng/J of pollutant).

(4) All emission data shall be converted into units of the relevant standard for reporting purposes using the conversion procedures specified in that standard. After conversion into units of the relevant standard, the data may be rounded to the same number of significant digits as used in that standard to specify the emission limit (e.g., rounded to the nearest 1 percent opacity).

(5) Monitoring data recorded during periods of unavoidable CMS breakdowns, out-of-control periods, repairs, maintenance periods, calibration checks, and zero (low-level) and high-level adjustments shall not be included in any data average computed under this part. For owners or operators complying with the requirements of Sec. 63.10(b)(2)(vii)(A) or (B), data averages must include any data recorded during periods of monitor breakdown or malfunction.

40 CFR 63.9 Notification requirements.

(a) Applicability and general information.

(1) The requirements in this section apply to owners and operators of affected sources that are subject to the provisions of this part, unless specified otherwise in a relevant standard.

(2) For affected sources that have been granted an extension of compliance under subpart D of this part, the requirements of this section do not apply to those sources while they are operating under such compliance extensions.

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(3) If any State requires a notice that contains all the information required in a notification listed in this section, the owner or operator may send the Administrator a copy of the notice sent to the State to satisfy the requirements of this section for that notification.

(4) (i) Before a State has been delegated the authority to implement and enforce notification requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit notifications to the appropriate Regional Office of the EPA (to the attention of the Director of the Division indicated in the list of the EPA Regional Offices in § 63.13).

(ii) After a State has been delegated the authority to implement and enforce notification requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit notifications to the delegated State authority (which may be the same as the permitting authority). In addition, if the delegated (permitting) authority is the State, the owner or operator shall send a copy of each notification submitted to the State to the appropriate Regional Office of the EPA, as specified in paragraph (a)(4)(i) of this section. The Regional Office may waive this requirement for any notifications at its discretion.

(b) *Initial notifications.*

(1) (i) The requirements of this paragraph apply to the owner or operator of an affected source when such source becomes subject to a relevant standard.

(ii) If an area source that otherwise would be subject to an emission standard or other requirement established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source that is subject to the emission standard or other requirement, such source shall be subject to the notification requirements of this section.

(iii) Affected sources that are required under this paragraph to submit an initial notification may use the application for approval of construction or reconstruction under § 63.5(d) of this subpart, if relevant, to fulfill the initial notification requirements of this paragraph.

(2) The owner or operator of an affected source that has an initial startup before the effective date of a relevant standard under this part shall notify the Administrator in writing that the source is subject to the relevant standard. The notification, which shall be submitted not later than 120 calendar days after the effective date of the relevant standard (or within 120 calendar days after the source becomes subject to the relevant standard), shall provide the following information:

(i) The name and address of the owner or operator;

(ii) The address (i.e., physical location) of the affected source;

(iii) An identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date;

(iv) A brief description of the nature, size, design, and method of operation of the source, including its operating design capacity and an identification of each point of emission for each hazardous air pollutant, or if a definitive identification is not yet possible, a preliminary identification of each point of emission for each hazardous air pollutant; and

(v) A statement of whether the affected source is a major source or an area source.

(3) The owner or operator of a new or reconstructed affected source, or a source that has been reconstructed such that it is an affected source, that has an initial startup after the effective date of a relevant standard under this part and for which an application for approval of construction or reconstruction is not required under § 63.5(d), shall notify the Administrator in writing that the source is subject to the relevant standard no later than 120 days after initial startup. The notification shall provide

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all the information required in paragraphs (b)(2)(i) through (b)(2)(v) of this section, delivered or postmarked with the notification required in paragraph (b)(5).

(4) The owner or operator of a new or reconstructed major affected source that has an initial startup after the effective date of a relevant standard under this part and for which an application for approval of construction or reconstruction is required under § 63.5(d) shall provide the following information in writing to the Administrator:

(i) A notification of intention to construct a new major affected source, reconstruct a major affected source, or reconstruct a major source such that the source becomes a major affected source with the application for approval of construction or reconstruction as specified in § 63.5(d)(1)(i);

(ii) A notification of the date when construction or reconstruction was commenced, submitted simultaneously with the application for approval of construction or reconstruction, if construction or reconstruction was commenced before the effective date of the relevant standard;

(iii) A notification of the date when construction or reconstruction was commenced, delivered or postmarked not later than 30 days after such date, if construction or reconstruction was commenced after the effective date of the relevant standard;

(iv) [Reserved]; and

(v) A notification of the actual date of startup of the source, delivered or postmarked within 15 calendar days after that date.

(5) After the effective date of any relevant standard established by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, an owner or operator who intends to construct a new affected source or reconstruct an affected source subject to such standard, or reconstruct a source such that it becomes an affected source subject to such standard, shall notify the Administrator in writing, of the intended construction or reconstruction. The notification shall be submitted as soon as practicable before the construction or reconstruction is planned to commence (but no sooner than the effective date of the relevant standard) if the construction or reconstruction commences after the effective date of a relevant standard promulgated in this part. The notification shall be submitted as soon as practicable before startup but no later than 60 days after the effective date of a relevant standard promulgated in this part if the construction or reconstruction had commenced and initial startup had not occurred before the standard's effective date. The notification shall include all the information required for an application for approval of construction or reconstruction as specified in § 63.5(d). For major sources, the application for approval of construction or reconstruction may be used to fulfill the requirements of this paragraph.

(c) *Request for extension of compliance.* If the owner or operator of an affected source cannot comply with a relevant standard by the applicable compliance date for that source, or if the owner or operator has installed BACT or technology to meet LAER consistent with § 63.6(i)(5) of this subpart, he/she may submit to the Administrator (or the State with an approved permit program) a request for an extension of compliance as specified in § 63.6(i)(4) through § 63.6(i)(6).

(d) *Notification that source is subject to special compliance requirements.* An owner or operator of a new source that is subject to special compliance requirements as specified in § 63.6(b)(3) and § 63.6(b)(4) shall notify the Administrator of his/her compliance obligations not later than the notification dates established in paragraph (b) of this section for new sources that are not subject to the special provisions.

(e) *Notification of performance test.* The owner or operator of an affected source shall notify the Administrator in writing of his or her intention to conduct a performance test at least 60 calendar

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days before the performance test is scheduled to begin to allow the Administrator to review and approve the site-specific test plan required under § 63.7(c), if requested by the Administrator, and to have an observer present during the test.

(f) *Notification of opacity and visible emission observations.* The owner or operator of an affected source shall notify the Administrator in writing of the anticipated date for conducting the opacity or visible emission observations specified in § 63.6(h)(5), if such observations are required for the source by a relevant standard. The notification shall be submitted with the notification of the performance test date, as specified in paragraph (e) of this section, or if no performance test is required or visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the initial performance test required under § 63.7, the owner or operator shall deliver or postmark the notification not less than 30 days before the opacity or visible emission observations are scheduled to take place.

[Notification not required for VE/opacity test under 40 CFR 63.1350(e) and (j) of 40 CFR 63 Subpart LLL.]

(g) *Additional notification requirements for sources with continuous monitoring systems.* The owner or operator of an affected source required to use a CMS by a relevant standard shall furnish the Administrator written notification as follows:

(1) A notification of the date the CMS performance evaluation under § 63.8(e) is scheduled to begin, submitted simultaneously with the notification of the performance test date required under § 63.7(b). If no performance test is required, or if the requirement to conduct a performance test has been waived for an affected source under § 63.7(h), the owner or operator shall notify the Administrator in writing of the date of the performance evaluation at least 60 calendar days before the evaluation is scheduled to begin;

(2) A notification that COMS results will be used to determine compliance with the applicable opacity emission standard during a performance test required by § 63.7 in lieu of Method 9 or other opacity emissions test method data, as allowed by § 63.6(h)(7)(ii), if compliance with an opacity emission standard is required for the source by a relevant standard. The notification shall be submitted at least 60 calendar days before the performance test is scheduled to begin; and

(3) A notification that the criterion necessary to continue use of an alternative to relative accuracy testing, as provided by § 63.8(f)(6), has been exceeded. The notification shall be delivered or postmarked not later than 10 days after the occurrence of such exceedance, and it shall include a description of the nature and cause of the increased emissions.

(h) *Notification of compliance status.*

(1) The requirements of paragraphs (h)(2) through (h)(4) of this section apply when an affected source becomes subject to a relevant standard.

(2) (i) Before a title V permit has been issued to the owner or operator of an affected source, and each time a notification of compliance status is required under this part, the owner or operator of such source shall submit to the Administrator a notification of compliance status, signed by the responsible official who shall certify its accuracy, attesting to whether the source has complied with the relevant standard. The notification shall list -

(A) The methods that were used to determine compliance;

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(B) The results of any performance tests, opacity or visible emission observations, continuous monitoring system (CMS) performance evaluations, and/or other monitoring procedures or methods that were conducted;

(C) The methods that will be used for determining continuing compliance, including a description of monitoring and reporting requirements and test methods;

(D) The type and quantity of hazardous air pollutants emitted by the source (or surrogate pollutants if specified in the relevant standard), reported in units and averaging times and in accordance with the test methods specified in the relevant standard;

(E) An analysis demonstrating whether the affected source is a major source or an area source (using the emissions data generated for this notification);

(F) A description of the air pollution control equipment (or method) for each emission point, including each control device (or method) for each hazardous air pollutant and the control efficiency (percent) for each control device (or method); and

(G) A statement by the owner or operator of the affected existing, new, or reconstructed source as to whether the source has complied with the relevant standard or other requirements.

(ii) The notification shall be sent before the close of business on the 60th day following the completion of the relevant compliance demonstration activity specified in the relevant standard (unless a different reporting period is specified in a relevant standard, in which case the letter shall be sent before the close of business on the day the report of the relevant testing or monitoring results is required to be delivered or postmarked). For example, the notification shall be sent before close of business on the 60th (or other required) day following completion of the initial performance test and again before the close of business on the 60th (or other required) day following the completion of any subsequent required performance test. If no performance test is required but opacity or visible emission observations are required to demonstrate compliance with an opacity or visible emission standard under this part, the notification of compliance status shall be sent before close of business on the 30th day following the completion of opacity or visible emission observations.

(3) After a title V permit has been issued to the owner or operator of an affected source, the owner or operator of such source shall comply with all requirements for compliance status reports contained in the source's title V permit, including reports required under this part. After a title V permit has been issued to the owner or operator of an affected source, and each time a notification of compliance status is required under this part, the owner or operator of such source shall submit the notification of compliance status to the appropriate permitting authority following completion of the relevant compliance demonstration activity specified in the relevant standard.

(4) [Reserved]

(5) If an owner or operator of an affected source submits estimates or preliminary information in the application for approval of construction or reconstruction required in § 63.5(d) in place of the actual emissions data or control efficiencies required in paragraphs (d)(1)(ii)(H) and (d)(2) of § 63.5, the owner or operator shall submit the actual emissions data and other correct information as soon as available but no later than with the initial notification of compliance status required in this section.

(6) Advice on a notification of compliance status may be obtained from the Administrator.

(i) *Adjustment to time periods or postmark deadlines for submittal and review of required communications.*

(1) (i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (i)(2) and (i)(3) of this section, the owner or operator

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of an affected source remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (i)(2) and (i)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) If the Administrator is unable to meet a specified deadline, he or she will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule.

(j) *Change in information already provided.* Any change in the information already provided under this section shall be provided to the Administrator in writing within 15 calendar days after the change.

40 CFR 63.10 Recordkeeping and reporting requirements.

(a) Applicability and general information.

(1) The requirements of this section apply to owners or operators of affected sources who are subject to the provisions of this part, unless specified otherwise in a relevant standard.

(2) For affected sources that have been granted an extension of compliance under subpart D of this part, the requirements of this section do not apply to those sources while they are operating under such compliance extensions.

(3) If any State requires a report that contains all the information required in a report listed in this section, an owner or operator may send the Administrator a copy of the report sent to the State to satisfy the requirements of this section for that report.

(4) (i) Before a State has been delegated the authority to implement and enforce recordkeeping and reporting requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit reports to the appropriate Regional Office of the EPA (to the attention of the Director of the Division indicated in the list of the EPA Regional Offices in § 63.13).

(ii) After a State has been delegated the authority to implement and enforce recordkeeping and reporting requirements established under this part, the owner or operator of an affected source in such State subject to such requirements shall submit reports to the delegated State authority (which may be the same as the permitting authority). In addition, if the delegated (permitting) authority is the State, the owner or operator shall send a copy of each report submitted to the State to the appropriate Regional Office of the EPA, as specified in paragraph (a)(4)(i) of this section. The Regional Office may waive this requirement for any reports at its discretion.

(5) If an owner or operator of an affected source in a State with delegated authority is required to submit periodic reports under this part to the State, and if the State has an established

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timeline for the submission of periodic reports that is consistent with the reporting frequency(ies) specified for such source under this part, the owner or operator may change the dates by which periodic reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State. For each relevant standard established pursuant to section 112 of the Act, the allowance in the previous sentence applies in each State beginning 1 year after the affected source's compliance date for that standard. Procedures governing the implementation of this provision are specified in § 63.9(i).

(6) If an owner or operator supervises one or more stationary sources affected by more than one standard established pursuant to section 112 of the Act, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State permitting authority) a common schedule on which periodic reports required for each source shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the latest compliance date for any relevant standard established pursuant to section 112 of the Act for any such affected source(s). Procedures governing the implementation of this provision are specified in § 63.9(i).

(7) If an owner or operator supervises one or more stationary sources affected by standards established pursuant to section 112 of the Act (as amended November 15, 1990) and standards set under part 60, part 61, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State permitting authority) a common schedule on which periodic reports required by each relevant (i.e., applicable) standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the stationary source is required to be in compliance with the relevant section 112 standard, or 1 year after the stationary source is required to be in compliance with the applicable part 60 or part 61 standard, whichever is latest. Procedures governing the implementation of this provision are specified in § 63.9(i).

(b) *General recordkeeping requirements.*

(1) The owner or operator of an affected source subject to the provisions of this part shall maintain files of all information (including all reports and notifications) required by this part recorded in a form suitable and readily available for expeditious inspection and review. The files shall be retained for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. At a minimum, the most recent 2 years of data shall be retained on site. The remaining 3 years of data may be retained off site. Such files may be maintained on microfilm, on a computer, on computer floppy disks, on magnetic tape disks, or on microfiche.

(2) The owner or operator of an affected source subject to the provisions of this part shall maintain relevant records for such source of -

(i) The occurrence and duration of each startup, shutdown, or malfunction of operation (i.e., process equipment);

(ii) The occurrence and duration of each malfunction of the air pollution control equipment;

(iii) All maintenance performed on the air pollution control equipment;

(iv) Actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation) when such actions are different from the procedures specified in the affected source's startup, shutdown, and malfunction plan (see § 63.6(e)(3));

(v) All information necessary to demonstrate conformance with the affected source's startup, shutdown, and malfunction plan (see § 63.6(e)(3)) when all actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air

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pollution control equipment to its normal or usual manner of operation) are consistent with the procedures specified in such plan. (The information needed to demonstrate conformance with the startup, shutdown, and malfunction plan may be recorded using a "checklist," or some other effective form of recordkeeping, in order to minimize the recordkeeping burden for conforming events);

(vi) Each period during which a CMS is malfunctioning or inoperative (including out-of-control periods);

(vii) All required measurements needed to demonstrate compliance with a relevant standard (including, but not limited to, 15-minute averages of CMS data, raw performance testing measurements, and raw performance evaluation measurements, that support data that the source is required to re-report);

(A) This paragraph applies to owners or operators required to install a continuous emissions monitoring system (CEMS) where the CEMS installed is automated, and where the calculated data averages do not exclude periods of CEMS breakdown or malfunction. An automated CEMS records and reduces the measured data to the form of the pollutant emission standard through the use of a computerized data acquisition system. In lieu of maintaining a file of all CEMS subhourly measurements as required under paragraph (b)(2)(vii) of this section, the owner or operator shall retain the most recent consecutive three averaging periods of subhourly measurements and a file that contains a hard copy of the data acquisition system algorithm used to reduce the measured data into the reportable form of the standard.

(B) This paragraph applies to owners or operators required to install a CEMS where the measured data is manually reduced to obtain the reportable form of the standard, and where the calculated data averages do not exclude periods of CEMS breakdown or malfunction. In lieu of maintaining a file of all CEMS subhourly measurements as required under paragraph (b)(2)(vii) of this section, the owner or operator shall retain all subhourly measurements for the most recent reporting period. The subhourly measurements shall be retained for 120 days from the date of the most recent summary or excess emission report submitted to the Administrator.

(C) The Administrator or delegated authority, upon notification to the source, may require the owner or operator to maintain all measurements as required by paragraph (b)(2)(vii), if the administrator or the delegated authority determines these records are required to more accurately assess the compliance status of the affected source.

(viii) All results of performance tests, CMS performance evaluations, and opacity and visible emission observations;

(ix) All measurements as may be necessary to determine the conditions of performance tests and performance evaluations;

(x) All CMS calibration checks;

(xi) All adjustments and maintenance performed on CMS;

(xii) Any information demonstrating whether a source is meeting the requirements for a waiver of recordkeeping or reporting requirements under this part, if the source has been granted a waiver under paragraph (f) of this section;

(xiii) All emission levels relative to the criterion for obtaining permission to use an alternative to the relative accuracy test, if the source has been granted such permission under § 63.8(f)(6); and

(xiv) All documentation supporting initial notifications and notifications of compliance status under § 63.9.

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(3) Recordkeeping requirement for applicability determinations. If an owner or operator determines that his or her stationary source that emits (or has the potential to emit, without considering controls) one or more hazardous air pollutants is not subject to a relevant standard or other requirement established under this part, the owner or operator shall keep a record of the applicability determination on site at the source for a period of 5 years after the determination, or until the source changes its operations to become an affected source, whichever comes first. The record of the applicability determination shall include an analysis (or other information) that demonstrates why the owner or operator believes the source is unaffected (e.g., because the source is an area source). The analysis (or other information) shall be sufficiently detailed to allow the Administrator to make a finding about the source's applicability status with regard to the relevant standard or other requirement. If relevant, the analysis shall be performed in accordance with requirements established in subparts of this part for this purpose for particular categories of stationary sources. If relevant, the analysis should be performed in accordance with EPA guidance materials published to assist sources in making applicability determinations under section 112, if any.

(c) *Additional recordkeeping requirements for sources with continuous monitoring systems.* [PS-8A **supersedes requirements for THC CEM**] In addition to complying with the requirements specified in paragraphs (b)(1) and (b)(2) of this section, the owner or operator of an affected source required to install a CMS by a relevant standard shall maintain records for such source of -

(1) All required CMS measurements (including monitoring data recorded during unavoidable CMS breakdowns and out-of-control periods);

(2)-(4) [Reserved]

(5) The date and time identifying each period during which the CMS was inoperative except for zero (low-level) and high-level;

(6) The date and time identifying each period during which the CMS was out of control, as defined in § 63.8(c)(7);

(7) The specific identification (i.e., the date and time of commencement and completion) of each period of excess emissions and parameter monitoring exceedances, as defined in the relevant standard(s), that occurs during startups, shutdowns, and malfunctions of the affected source;

(8) The specific identification (i.e., the date and time of commencement and completion) of each time period of excess emissions and parameter monitoring exceedances, as defined in the relevant standard(s), that occurs during periods other than startups, shutdowns, and malfunctions of the affected source;

(9) [Reserved]

(10) The nature and cause of any malfunction (if known);

(11) The corrective action taken or preventive measures adopted;

(12) The nature of the repairs or adjustments to the CMS that was inoperative or out of control;

(13) The total process operating time during the reporting period; and

(14) All procedures that are part of a quality control program developed and implemented for CMS under § 63.8(d).

(15) In order to satisfy the requirements of paragraphs (c)(10) through (c)(12) of this section and to avoid duplicative recordkeeping efforts, the owner or operator may use the affected source's startup, shutdown, and malfunction plan or records kept to satisfy the recordkeeping requirements of the startup, shutdown, and malfunction plan specified in § 63.6(e), provided that such plan and records adequately address the requirements of paragraphs (c)(10) through (c)(12).

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(d) *General reporting requirements.*

(1) Notwithstanding the requirements in this paragraph or paragraph (e) of this section, the owner or operator of an affected source subject to reporting requirements under this part shall submit reports to the Administrator in accordance with the reporting requirements in the relevant standard(s).

(2) *Reporting results of performance tests.* Before a title V permit has been issued to the owner or operator of an affected source, the owner or operator shall report the results of any performance test under § 63.7 to the Administrator. After a title V permit has been issued to the owner or operator of an affected source, the owner or operator shall report the results of a required performance test to the appropriate permitting authority. The owner or operator of an affected source shall report the results of the performance test to the Administrator (or the State with an approved permit program) before the close of business on the 60th day following the completion of the performance test, unless specified otherwise in a relevant standard or as approved otherwise in writing by the Administrator. The results of the performance test shall be submitted as part of the notification of compliance status required under § 63.9(h).

(3) *Reporting results of opacity or visible emission observations.* The owner or operator of an affected source required to conduct opacity or visible emission observations by a relevant standard shall report the opacity or visible emission results (produced using Test Method 9 or Test Method 22, or an alternative to these test methods) along with the results of the performance test required under § 63.7. If no performance test is required, or if visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the performance test required under § 63.7, the owner or operator shall report the opacity or visible emission results before the close of business on the 30th day following the completion of the opacity or visible emission observations.

(4) *Progress reports.* The owner or operator of an affected source who is required to submit progress reports as a condition of receiving an extension of compliance under § 63.6(i) shall submit such reports to the Administrator (or the State with an approved permit program) by the dates specified in the written extension of compliance.

(5) (i) *Periodic startup, shutdown, and malfunction reports.* If actions taken by an owner or operator during a startup, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are consistent with the procedures specified in the source's startup, shutdown, and malfunction plan [see § 63.6(e)(3)], the owner or operator shall state such information in a startup, shutdown, and malfunction report. Reports shall only be required if a startup, shutdown, or malfunction occurred during the reporting period. The startup, shutdown, and malfunction report shall consist of a letter, containing the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, that shall be submitted to the Administrator semi-annually (or on a more frequent basis if specified otherwise in a relevant standard or as established otherwise by the permitting authority in the source's title V permit). The startup, shutdown, and malfunction report shall be delivered or postmarked by the 30th day following the end of each calendar half (or other calendar reporting period, as appropriate). If the owner or operator is required to submit excess emissions and continuous monitoring system performance (or other periodic) reports under this part, the startup, shutdown, and malfunction reports required under this paragraph may be submitted simultaneously with the excess emissions and continuous monitoring system performance (or other) reports. If startup, shutdown, and malfunction reports are submitted with excess emissions and continuous monitoring system performance (or other periodic) reports, and the owner or operator receives approval to reduce the frequency of reporting for the latter under paragraph (e) of this section, the frequency of reporting for the startup, shutdown, and malfunction reports also may be reduced if the Administrator does not object to the intended change. The

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procedures to implement the allowance in the preceding sentence shall be the same as the procedures specified in paragraph (e)(3) of this section.

(ii) Immediate startup, shutdown, and malfunction reports. Notwithstanding the allowance to reduce the frequency of reporting for periodic startup, shutdown, and malfunction reports under paragraph (d)(5)(i) of this section, any time an action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) is not consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall report the actions taken for that event within 2 working days after commencing actions inconsistent with the plan followed by a letter within 7 working days after the end of the event. The immediate report required under this paragraph shall consist of a telephone call (or facsimile (FAX) transmission) to the Administrator within 2 working days after commencing actions inconsistent with the plan, and it shall be followed by a letter, delivered or postmarked within 7 working days after the end of the event, that contains the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, explaining the circumstances of the event, the reasons for not following the startup, shutdown, and malfunction plan, and whether any excess emissions and/or parameter monitoring exceedances are believed to have occurred. Notwithstanding the requirements of the previous sentence, after the effective date of an approved permit program in the State in which an affected source is located, the owner or operator may make alternative reporting arrangements, in advance, with the permitting authority in that State. Procedures governing the arrangement of alternative reporting requirements under this paragraph are specified in § 63.9(i).

(e) Additional reporting requirements for sources with continuous monitoring systems -

(1) *General.* When more than one CEMS is used to measure the emissions from one affected source (e.g., multiple breechings, multiple outlets), the owner or operator shall report the results as required for each CEMS.

(2) Reporting results of continuous monitoring system performance evaluations.

(i) The owner or operator of an affected source required to install a CMS by a relevant standard shall furnish the Administrator a copy of a written report of the results of the CMS performance evaluation, as required under § 63.8(e), simultaneously with the results of the performance test required under § 63.7, unless otherwise specified in the relevant standard.

(ii) The owner or operator of an affected source using a COMS to determine opacity compliance during any performance test required under § 63.7 and described in § 63.6(d)(6) shall furnish the Administrator two or, upon request, three copies of a written report of the results of the COMS performance evaluation conducted under § 63.8(e). The copies shall be furnished at least 15 calendar days before the performance test required under § 63.7 is conducted.

(3) *Excess emissions and continuous monitoring system performance report and summary report.*
[Exceedances are defined in 40 CFR 63 Subpart LLL.]

(i) Excess emissions and parameter monitoring exceedances are defined in relevant standards. The owner or operator of an affected source required to install a CMS by a relevant standard shall submit an excess emissions and continuous monitoring system performance report and/or a summary report to the Administrator semiannually, except when -

- (A) More frequent reporting is specifically required by a relevant standard;
- (B) The Administrator determines on a case-by-case basis that more frequent reporting is necessary to accurately assess the compliance status of the source; or
- (C) [Reserved].

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(ii) Request to reduce frequency of excess emissions and continuous monitoring system performance reports. Notwithstanding the frequency of reporting requirements specified in paragraph (e)(3)(i) of this section, an owner or operator who is required by a relevant standard to submit excess emissions and continuous monitoring system performance (and summary) reports on a quarterly (or more frequent) basis may reduce the frequency of reporting for that standard to semiannual if the following conditions are met:

(A) For 1 full year (e.g., 4 quarterly or 12 monthly reporting periods) the affected source's excess emissions and continuous monitoring system performance reports continually demonstrate that the source is in compliance with the relevant standard;

(B) The owner or operator continues to comply with all recordkeeping and monitoring requirements specified in this subpart and the relevant standard; and

(C) The Administrator does not object to a reduced frequency of reporting for the affected source, as provided in paragraph (e)(3)(iii) of this section.

(iii) The frequency of reporting of excess emissions and continuous monitoring system performance (and summary) reports required to comply with a relevant standard may be reduced only after the owner or operator notifies the Administrator in writing of his or her intention to make such a change and the Administrator does not object to the intended change. In deciding whether to approve a reduced frequency of reporting, the Administrator may review information concerning the source's entire previous performance history during the 5-year recordkeeping period prior to the intended change, including performance test results, monitoring data, and evaluations of an owner or operator's conformance with operation and maintenance requirements. Such information may be used by the Administrator to make a judgment about the source's potential for noncompliance in the future. If the Administrator disapproves the owner or operator's request to reduce the frequency of reporting, the Administrator will notify the owner or operator in writing within 45 days after receiving notice of the owner or operator's intention. The notification from the Administrator to the owner or operator will specify the grounds on which the disapproval is based. In the absence of a notice of disapproval within 45 days, approval is automatically granted.

(iv) As soon as CMS data indicate that the source is not in compliance with any emission limitation or operating parameter specified in the relevant standard, the frequency of reporting shall revert to the frequency specified in the relevant standard, and the owner or operator shall submit an excess emissions and continuous monitoring system performance (and summary) report for the noncomplying emission points at the next appropriate reporting period following the noncomplying event. After demonstrating ongoing compliance with the relevant standard for another full year, the owner or operator may again request approval from the Administrator to reduce the frequency of reporting for that standard, as provided for in paragraphs (e)(3)(ii) and (e)(3)(iii) of this section.

(v) *Content and submittal dates for excess emissions and monitoring system performance reports.* All excess emissions and monitoring system performance reports and all summary reports, if required, shall be delivered or postmarked by the 30th day following the end of each calendar half or quarter, as appropriate. Written reports of excess emissions or exceedances of process or control system parameters shall include all the information required in paragraphs (c)(5) through (c)(13) of this section, in § 63.8(c)(7) and § 63.8(c)(8), and in the relevant standard, and they shall contain the name, title, and signature of the responsible official who is certifying the accuracy of the report. When no excess emissions or exceedances of a parameter have occurred, or a CMS has not been inoperative, out of control, repaired, or adjusted, such information shall be stated in the report.

(vi) *Summary report.* As required under paragraphs (e)(3)(vii) and (e)(3)(viii) of this section, one summary report shall be submitted for the hazardous air pollutants monitored at each affected

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source (unless the relevant standard specifies that more than one summary report is required, e.g., one summary report for each hazardous air pollutant monitored). The summary report shall be entitled "Summary Report - Gaseous and Opacity Excess Emission and Continuous Monitoring System Performance" and shall contain the following information:

- (A) The company name and address of the affected source;
- (B) An identification of each hazardous air pollutant monitored at the affected source;
- (C) The beginning and ending dates of the reporting period;
- (D) A brief description of the process units;
- (E) The emission and operating parameter limitations specified in the relevant standard(s);
- (F) The monitoring equipment manufacturer(s) and model number(s);
- (G) The date of the latest CMS certification or audit;
- (H) The total operating time of the affected source during the reporting period;
- (I) An emission data summary (or similar summary if the owner or operator monitors control system parameters), including the total duration of excess emissions during the reporting period (recorded in minutes for opacity and hours for gases), the total duration of excess emissions expressed as a percent of the total source operating time during that reporting period, and a breakdown of the total duration of excess emissions during the reporting period into those that are due to startup/shutdown, control equipment problems, process problems, other known causes, and other unknown causes;
- (J) A CMS performance summary (or similar summary if the owner or operator monitors control system parameters), including the total CMS downtime during the reporting period (recorded in minutes for opacity and hours for gases), the total duration of CMS downtime expressed as a percent of the total source operating time during that reporting period, and a breakdown of the total CMS downtime during the reporting period into periods that are due to monitoring equipment malfunctions, nonmonitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and other unknown causes;
- (K) A description of any changes in CMS, processes, or controls since the last reporting period;
- (L) The name, title, and signature of the responsible official who is certifying the accuracy of the report; and
- (M) The date of the report.

(vii) If the total duration of excess emissions or process or control system parameter exceedances for the reporting period is less than 1 percent of the total operating time for the reporting period, and CMS downtime for the reporting period is less than 5 percent of the total operating time for the reporting period, only the summary report shall be submitted, and the full excess emissions and continuous monitoring system performance report need not be submitted unless required by the Administrator.

(viii) If the total duration of excess emissions or process or control system parameter exceedances for the reporting period is 1 percent or greater of the total operating time for the reporting period, or the total CMS downtime for the reporting period is 5 percent or greater of the total operating time for the reporting period, both the summary report and the excess emissions and continuous monitoring system performance report shall be submitted.

(4) Reporting continuous opacity monitoring system data produced during a performance test. The owner or operator of an affected source required to use a COMS shall record the monitoring data

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produced during a performance test required under § 63.7 and shall furnish the Administrator a written report of the monitoring results. The report of COMS data shall be submitted simultaneously with the report of the performance test results required in paragraph (d)(2) of this section.

(f) *Waiver of recordkeeping or reporting requirements.*

(1) Until a waiver of a recordkeeping or reporting requirement has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section.

(2) Recordkeeping or reporting requirements may be waived upon written application to the Administrator if, in the Administrator's judgment, the affected source is achieving the relevant standard(s), or the source is operating under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request.

(3) If an application for a waiver of record-keeping or reporting is made, the application shall accompany the request for an extension of compliance under § 63.6(i), any required compliance progress report or compliance status report required under this part (such as under § 63.6(i) and § 63.9(h)) or in the source's title V permit, or an excess emissions and continuous monitoring system performance report required under paragraph (e) of this section, whichever is applicable. The application shall include whatever information the owner or operator considers useful to convince the Administrator that a waiver of recordkeeping or reporting is warranted.

(4) The Administrator will approve or deny a request for a waiver of recordkeeping or reporting requirements under this paragraph when he/she -

- (i) Approves or denies an extension of compliance; or
- (ii) Makes a determination of compliance following the submission of a required compliance status report or excess emissions and continuous monitoring systems performance report; or
- (iii) Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

(5) A waiver of any recordkeeping or reporting requirement granted under this paragraph may be conditioned on other recordkeeping or reporting requirements deemed necessary by the Administrator.

(6) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.

40 CFR 63.11 Control device requirements. [Flares not applicable.]

40 CFR 63.12 State authority and delegations.

(a) The provisions of this part shall not be construed in any manner to preclude any State or political subdivision thereof from -

(1) Adopting and enforcing any standard, limitation, prohibition, or other regulation applicable to an affected source subject to the requirements of this part, provided that such standard, limitation, prohibition, or regulation is not less stringent than any requirement applicable to such source established under this part;

(2) Requiring the owner or operator of an affected source to obtain permits, licenses, or approvals prior to initiating construction, reconstruction, modification, or operation of such source; or

(3) Requiring emission reductions in excess of those specified in subpart D of this part as a condition for granting the extension of compliance authorized by section 112(i)(5) of the Act.

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(b) (1) Section 112(l) of the Act directs the Administrator to delegate to each State, when appropriate, the authority to implement and enforce standards and other requirements pursuant to section 112 for stationary sources located in that State. Because of the unique nature of radioactive material, delegation of authority to implement and enforce standards that control radionuclides may require separate approval.

(2) Subpart E of this part establishes procedures consistent with section 112(l) for the approval of State rules or programs to implement and enforce applicable Federal rules promulgated under the authority of section 112. Subpart E also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities granted through a section 112(l) approval.

(c) All information required to be submitted to the EPA under this part also shall be submitted to the appropriate State agency of any State to which authority has been delegated under section 112(l) of the Act, provided that each specific delegation may exempt sources from a certain Federal or State reporting requirement. The Administrator may permit all or some of the information to be submitted to the appropriate State agency only, instead of to the EPA and the State agency.

40 CFR 63.13 Addresses of State air pollution control agencies and EPA Regional Offices.

(a) All requests, reports, applications, submittals, and other communications to the Administrator pursuant to this part shall be submitted to the appropriate Regional Office of the U.S. Environmental Protection Agency indicated as follows:

EPA Region IV; Director; Air, Pesticides and Toxics Management Division; 61 Forsyth Street; Atlanta, GA 30303.

(b) All information required to be submitted to the Administrator under this part also shall be submitted to the appropriate State agency of any State to which authority has been delegated under section 112(l) of the Act. The owner or operator of an affected source may contact the appropriate EPA Regional Office for the mailing addresses for those States whose delegation requests have been approved.

(c) If any State requires a submittal that contains all the information required in an application, notification, request, report, statement, or other communication required in this part, an owner or operator may send the appropriate Regional Office of the EPA a copy of that submittal to satisfy the requirements of this part for that communication.

40 CFR 63.14 Incorporations by reference.

(a) The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the FEDERAL REGISTER. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC, at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street, SW., Washington, DC, and at the EPA Library (MD-35), U.S. EPA, Research Triangle Park, North Carolina.

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(b) The materials listed below are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(1) ASTM D1946-77, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for § 63.11(b)(6).

(2) ASTM D2382-76, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method), IBR approved for § 63.11(b)(6).

(3) ASTM D2879-83, Standard Test Method for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, IBR approved for § 63.111 of subpart G of this part.

(4) ASTM D 3695-88, Standard Test Method for Volatile Alcohols in Water by Direct Aqueous-Injection Gas Chromatography, IBR approved for § 63.365(e)(1) of subpart O of this part.

(5) ASTM D 1193-77, Standard Specification for Reagent Water, IBR approved for Method 306, section 4.1.1 and section 4.4.2, of appendix A to part 63.

(6) ASTM D 1331-89, Standard Test Methods for Surface and Interfacial Tension of Solutions of Surface Active Agents, IBR approved for Method 306B, section 2.2, section 3.1, and section 4.2, of appendix A to part 63.

(7) ASTM E 260-91, Standard Practice for Packed Column Gas Chromatography, IBR approved for § 63.750(b)(2) of subpart GG of this part.

(8) ASTM D523-89, Standard Test Method for Specular Gloss, IBR approved for § 63.782.

(9) ASTM D1475-90, Standard Test Method for Density of Paint, Varnish, Lacquer, and Related Products, IBR approved for § 63.788 appendix A.

(10) ASTM D2369-93, Standard Test Method for Volatile Content of Coatings, IBR approved for § 63.788 appendix A.

(11) ASTM D3912-80, Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants, IBR approved for § 63.782.

(12) ASTM D4017-90, Standard Test Method for Water and Paints and Paint Materials by Karl Fischer Method, IBR approved for § 63.788 appendix A.

(13) ASTM D4082-89, Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants, IBR approved for § 63.782.

(14) ASTM D4256-89, [reapproved 1994], Standard Test Method for Determination of the Decontaminability of Coatings Used in Light-Water Nuclear Power Plants, IBR approved for § 63.782.

(15) ASTM D3792-91, Standard Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph, IBR approved for § 63.788 appendix A.

(16) ASTM D3257-93, Standard Test Methods for Aromatics in Mineral Spirits by Gas Chromatography, IBR approved for § 63.786(b).

(17) ASTM E260-91, Standard Practice for Packed Column Gas Chromatography, IBR approved for § 63.786(b).

(18) ASTM E180-93, Standard Practice for Determining the Precision of ASTM Methods for Analysis and Testing of Industrial Chemicals, IBR approved for § 63.786(b).

(19) ASTM D2879-97, Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, IBR approved for Sec. 63.1251 of subpart GGG of this part.

(c) The materials listed below are available for purchase from the American Petroleum Institute

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(API), 1220 L Street, NW., Washington, DC 20005.

(1) API Publication 2517, *Evaporative Loss from External Floating-Roof Tanks*, Third Edition, February 1989, IBR approved for § 63.111 of subpart G of this part.

(2) API Publication 2518, *Evaporative Loss from Fixed-roof Tanks*, Second Edition, October 1991, IBR approved for § 63.150(g)(3)(i)(C) of subpart G of this part.

(3) API Manual of Petroleum Measurement Specifications (MPMS) Chapter 19.2, *Evaporative Loss From Floating-Roof Tanks* (formerly API Publications 2517 and 2519), First Edition, April 1997, IBR approved for Sec. 63.1251 of subpart GGG of this part.

(d) *State and Local Requirements*. The materials listed below are available at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street, SW., Washington, DC.

(1) California Regulatory Requirements Applicable to the Air Toxics Program, April 6, 1998, IBR approved for § 63.99(a)(5)(ii) of subpart E of this part.

(2) [Reserved]

40 CFR 63.15 Availability of information and confidentiality.

(a) *Availability of information*.

(1) With the exception of information protected through part 2 of this chapter, all reports, records, and other information collected by the Administrator under this part are available to the public. In addition, a copy of each permit application, compliance plan (including the schedule of compliance), notification of compliance status, excess emissions and continuous monitoring systems performance report, and title V permit is available to the public, consistent with protections recognized in section 503(e) of the Act.

(2) The availability to the public of information provided to or otherwise obtained by the Administrator under this part shall be governed by part 2 of this chapter.

(b) *Confidentiality*.

(1) If an owner or operator is required to submit information entitled to protection from disclosure under section 114(c) of the Act, the owner or operator may submit such information separately. The requirements of section 114(c) shall apply to such information.

(2) The contents of a title V permit shall not be entitled to protection under section 114(c) of the Act; however, information submitted as part of an application for a title V permit may be entitled to protection from disclosure.

APPENDIX GC
GENERAL PERMIT CONDITIONS [RULE 62-4.160, F.A.C.]

- G.1 The terms, conditions, requirements, limitations, and restrictions set forth in this permit are "Permit Conditions" and are binding and enforceable pursuant to Sections 403.161, 403.727, or 403.859 through 403.861, Florida Statutes. The permittee is placed on notice that the Department will review this permit periodically and may initiate enforcement action for any violation of these conditions.
- G.2 This permit is valid only for the specific processes and operations applied for and indicated in the approved drawings or exhibits. Any unauthorized deviation from the approved drawings or exhibits, specifications, or conditions of this permit may constitute grounds for revocation and enforcement action by the Department.
- G.3 As provided in Subsections 403.087(6) and 403.722(5), Florida Statutes, the issuance of this permit does not convey and vested rights or any exclusive privileges. Neither does it authorize any injury to public or private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations. This permit is not a waiver or approval of any other Department permit that may be required for other aspects of the total project which are not addressed in the permit.
- G.4 This permit conveys no title to land or water, does not constitute State recognition or acknowledgment of title, and does not constitute authority for the use of submerged lands unless herein provided and the necessary title or leasehold interests have been obtained from the State. Only the Trustees of the Internal Improvement Trust Fund may express State opinion as to title.
- G.5 This permit does not relieve the permittee from liability for harm or injury to human health or welfare, animal, or plant life, or property caused by the construction or operation of this permitted source, or from penalties therefore; nor does it allow the permittee to cause pollution in contravention of Florida Statutes and Department rules, unless specifically authorized by an order from the Department.
- G.6 The permittee shall properly operate and maintain the facility and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit, as required by Department rules. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit and when required by Department rules.
- G.7 The permittee, by accepting this permit, specifically agrees to allow authorized Department personnel, upon presentation of credentials or other documents as may be required by law and at a reasonable time, access to the premises, where the permitted activity is located or conducted to:
- (a) Have access to and copy and records that must be kept under the conditions of the permit;
 - (b) Inspect the facility, equipment, practices, or operations regulated or required under this permit, and,
 - (c) Sample or monitor any substances or parameters at any location reasonably necessary to assure compliance with this permit or Department rules.
- Reasonable time may depend on the nature of the concern being investigated.
- G.8 If, for any reason, the permittee does not comply with or will be unable to comply with any condition or limitation specified in this permit, the permittee shall immediately provide the Department with the following information:
- (a) A description of and cause of non-compliance; and
 - (b) The period of noncompliance, including dates and times; or, if not corrected, the anticipated time the non-compliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence of the non-compliance.
-

APPENDIX GC
GENERAL PERMIT CONDITIONS [RULE 62-4.160, F.A.C.]

The permittee shall be responsible for any and all damages which may result and may be subject to enforcement action by the Department for penalties or for revocation of this permit.

- G.9 In accepting this permit, the permittee understands and agrees that all records, notes, monitoring data and other information relating to the construction or operation of this permitted source which are submitted to the Department may be used by the Department as evidence in any enforcement case involving the permitted source arising under the Florida Statutes or Department rules, except where such use is prescribed by Sections 403.73 and 403.111, Florida Statutes. Such evidence shall only be used to the extent it is consistent with the Florida Rules of Civil Procedure and appropriate evidentiary rules.
- G.10 The permittee agrees to comply with changes in Department rules and Florida Statutes after a reasonable time for compliance, provided, however, the permittee does not waive any other rights granted by Florida Statutes or Department rules.
- G.11 This permit is transferable only upon Department approval in accordance with Florida Administrative Code Rules 62-4.120 and 62-730.300, F.A.C., as applicable. The permittee shall be liable for any non-compliance of the permitted activity until the transfer is approved by the Department.
- G.12 This permit or a copy thereof shall be kept at the work site of the permitted activity.
- G.13 This permit also constitutes:
- (a) Determination of Best Available Control Technology (X);
 - (b) Determination of Prevention of Significant Deterioration (X); and
 - (c) Compliance with New Source Performance Standards (X).
- G.14 The permittee shall comply with the following:
- (a) Upon request, the permittee shall furnish all records and plans required under Department rules. During enforcement actions, the retention period for all records will be extended automatically unless otherwise stipulated by the Department.
 - (b) The permittee shall hold at the facility or other location designated by this permit records of all monitoring information (including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation) required by the permit, copies of all reports required by this permit, and records of all data used to complete the application or this permit. These materials shall be retained at least three years from the date of the sample, measurement, report, or application unless otherwise specified by Department rule.
 - (c) Records of monitoring information shall include:
 - 1. The date, exact place, and time of sampling or measurements;
 - 2. The person responsible for performing the sampling or measurements;
 - 3. The dates analyses were performed;
 - 4. The person responsible for performing the analyses;
 - 5. The analytical techniques or methods used; and
 - 6. The results of such analyses.
- G.15 When requested by the Department, the permittee shall within a reasonable time furnish any information required by law which is needed to determine compliance with the permit. If the permittee becomes aware that relevant facts were not submitted or were incorrect in the permit application or in any report to the Department, such facts or information shall be corrected promptly.

Fin



KOUGLER & ASSOCIATES
ENVIRONMENTAL SERVICES
4014 NW THIRTEENTH STREET
GAINESVILLE, FLORIDA 32609
352/377-5822 • FAX/377-7158

PROJECT 624-98-01

FAX TRANSMITTAL FORM

TO: *Cleve Holladay*

FAX NO. _____
FROM: *John Kougler*
DATE: *11/17/99* SENT BY: *Mindy*

The text being transmitted consists of 3 page(s) PLUS this one. If you do not receive all of the pages or if there are difficulties with this transmission, please call (352) 377-5822.

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Plant - Wide PM10 Emissions

FAXED
11/15/99
Close to/ready

<u>Total VMT</u>	Vehicles/day	mileage	VMT/day
Cement loaded	112	0.67	75.04
empty	112	0.62	69.44
Coal loaded	16	0.90	14.40
empty	16	0.90	14.40
Material loaded	22	0.78	17.16
empty	22	0.78	17.16
Clay loaded	7	0.91	6.37
empty	7	0.91	6.37
Auto in	105	0.53	55.65
out	105	0.53	55.65

331.64
VMT/day

Avg Vehicle Wt.

Avg Vehicle Weight (Weighted Avg based on VMT)

Cement loaded (39.25 tons) x 75.04 VMT +

Cement empty (12.75 tons) x 69.44 VMT +

Auto in (1.5 tons) x 55.65 VMT +

Auto out (1.5 tons) x 55.65 VMT = 6026.89

x 1/331.64 VMT

= 18.17 tons/veh.

Emissions of PM10 Avg Vehicle Wt

$$E = 0.016(0.4/2)^{0.65} (18.17/3)^{1.5} \times 331.64 \frac{\text{Veh-mi}}{\text{day}}$$

= 27.8 lb PM10/day based on avg vehicle wt

Modelled E = 35.9 lb PM10/day (Pg 4 of 11/14/99 Rpt)
Modelled greater than Emissions from Avg Veh. Wt!

Link A-B PM10 Emissions

<u>Total VMT</u>	Vehicle/day	Length A-B (miles)	VMT/day
Cement loaded	112	0.43	48.16
empty	112	0.43	48.16
Coal loaded	16	0.43	6.88
empty	16	0.43	6.88
Material loaded	22	0.43	9.46
empty	22	0.43	9.46
Clay loaded	7	0.43	3.01
empty	7	0.43	3.01
Autos In	105	0.43	45.15
Out	105	0.43	45.15
	324 Veh/day		225.32 VMT/day

Avg Vehicle Wt.

Cement loaded (39.25 tons) × 48.16 VMT +

Cement empty (32.75 tons) × 48.16 VMT +

⋮

Autos out (1.5 tons) × 45.15 VMT = 3675.00 Veh-ton mi/day

× 1/225.32 Veh-mile/day

= 16.31 tons/vehicle

Emissions of R PM10 - Avg Vehicle Wt.

= $0.016 (0.4/2)^{0.65} (16.31/3)^{0.5} \times 225.32 \frac{\text{Veh-mile}}{\text{day}}$

= 16.05 lb PM10/day from Link A-B based on

avg vehicle weight (cont)

Link AB (continued)

Emissions of R PM10 - Individual Vehicle Wts

$$E = 0.016 (0.4/2)^{0.65} \times$$

$$\left[\text{Cement loaded} = (39.25/3)^{1.5} \times 112 \times 0.43 \text{ mi} \right]$$

+
:
:

$$+ \text{Autos out} = (1.5/3)^{1.5} \times 105 \times 0.43 \text{ mi} \left. \right]$$

$$= 0.016 (0.4/2)^{0.65} (3219.56)$$

$$= 22.03 \text{ lb PM10 from Link AB used in model}$$

Note: From page 7 of 8/14/99 Fax,
the emissions from Link AB are
21.60 lb PM10/day

Modeled emissions of fugitive PM10 emissions
are greater than emissions calculated
from Avg Vehicle wt.



KOGLER & ASSOCIATES
ENVIRONMENTAL SERVICES
4014 NW THIRTEENTH STREET
GAINESVILLE, FLORIDA 32609
352/377-5822 • FAX/377-7158

PROJECT 624-98-01

FAX TRANSMITTAL FORM

TO: Cleve Hilladay

FAX NO. _____
FROM: John Kogler
DATE: 11/15/99 SENT BY: [Signature]

The text being transmitted consists of 3 page(s) PLUS this one. If you do not receive all of the pages or if there are difficulties with this transmission, please call (352) 377-5822.

REMARKS: Cleve
Here is additional verification that the
larger PM10 emissions modeled (calculated
from individual vehicle weights) are greater
than PM10 emissions calculated from any
vehicle weight [Signature]

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Plant - wide PM10 Emissions

<u>Total VMT</u>	Vehicles/day	mileage	VMT/day
Cement loaded	112	0.67	75.04
empty	112	0.62	69.44
Coal loaded	16	0.90	14.40
empty	16	0.90	14.40
Materials loaded	22	0.78	17.16
empty	22	0.78	17.16
Clay loaded	7	0.91	6.37
empty	7	0.91	6.37
Autos in	105	0.53	55.65
out	105	0.53	55.65

331.64
VMT/day

Avg Vehicle Wt.

Avg Vehicle Weight (Weighted Avg based on VMT)

Cement loaded (32.25 tons) x 75.04 VMT +

Cement empty (12.75 tons) x 69.44 VMT +

Autos in (1.5 tons) x 55.65 VMT +

Autos out (1.5 tons) x 55.65 VMT = 6026.89

x 1/331.64 VMT

= 18.17 tons/veh.

Emissions of PM10 from Avg Vehicle Wt

$E = 0.016(0.4/e)^{0.65} (18.17/3)^{1.5} \times 331.64 \frac{\text{Veh-mi}}{\text{day}}$

= 27.8 lb PM10/day based on avg vehicle wt

Modelled E = 35.9 lb PM10/day (by 4 of 11/14/99 data)
Modelled greater than Emissions from Avg Veh. Wt!

Link AB PM10 Emissions

<u>Total VMT</u>	<u>Vehicle/day</u>	<u>Length A-B (miles)</u>	<u>VMT/day</u>
Cement loaded	112	0.43	48.16
empty	112	0.43	48.16
Coal loaded	16	0.43	6.88
empty	16	0.43	6.88
Material loaded	22	0.43	9.46
empty	27	0.43	9.46
Clay loaded	7	0.43	3.01
empty	7	0.43	3.01
Autos In	105	0.43	45.15
Out	105	0.43	45.15
	<u>524 Veh/day</u>		<u>225.32</u> VMT/day

Avg Vehicle Wt

Cement loaded (19.25 tons) × 48.16 VMT +

Cement empty (12.75 tons) × 48.16 VMT +

⋮

Autos out (1.5 tons) × 45.15 VMT = 3675.00 Veh-ton mi/day

× 1/225.32 Veh-mile/day

= 16.31 tons/vehicle

Emissions of PM10 - Avg Vehicle Wt

= $0.016 (0.4/2)^{0.65} (16.31/2)^{1.5} \times 225.32 \frac{\text{Veh-mile}}{\text{day}}$

= 16.05 lb PM10/day from Link AB based on

avg vehicle weight (cont)

Link AB (continued)

Emissions of PM₁₀ - Individual Vehicle Lists

$$E = 0.016 (0.4/2)^{0.65} \times$$

$$\left[\text{Count loaded} = (39.25/3)^{1.5} \times 112 \times 0.43 \text{ mi} \right.$$

+
:
:]

$$+ \text{ Autos out} = (1.5/3)^{1.5} \times 105 \times 0.43 \text{ mi}]$$

$$= 0.016 (0.4/2)^{0.65} (3219.56)$$

$$= 22.03 \text{ lb PM}_{10} \text{ from Link AB used in model}$$

Note: From page 7 of 8/14/99 Rpt,
the emissions from Link AB are
21.60 lb PM₁₀ / day

Modeled emissions of fugitive PM₁₀ emissions
are greater than emissions calculated
from Avg Vehicle wt.

cc: C. Holladay

NPS

EPA

NED

File cy



KOGLER & ASSOCIATES
ENVIRONMENTAL SERVICES

4014 NW THIRTEENTH STREET
GAINESVILLE, FLORIDA 32609
352/377-5822 • FAX/377-7158

PROJECT 624/98/01

FAX TRANSMITTAL FORM

TO: Cleve Holladay

FAX NO. _____
FROM: John Koogler
DATE: 11/15/99 SENT BY: JLK

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Link AB / hour 6 + 21

CE / CF vs Cement (avg)

12.75 / 39.25 tons vs 26.00 tons

$$CE = 0.016 (0.4/2)^{0.65} (12.75/3)^{1.5} = 0.049 \text{ lb/VMT}$$

$$CF = 0.016 (0.4/2)^{0.65} (39.25/3)^{1.5} = 0.266$$

Total In + Out = 0.315 lb/VMT

Avg

0.158 lb/VMT
Modeled

$$C_{(avg)} = 0.016 (0.4/2)^{0.65} (26.00/3)^{1.5} = 0.143 \text{ lb/VMT}$$

0.143 lb/VMT

Link AB / hours 7, 10-15, 18-20

All trucks

$$CE = 0.049 \text{ lb/VMT} \times 7.00 \text{ Veh/Ln} = 0.343 \text{ lb/hr-mi}$$

$$CF = 0.266 \times 7.00 = 1.862$$

$$CO_e = 0.058 \times 1.14 = 0.066$$

$$CO_p = 0.266 \times 1.14 = 0.303$$

$$M_e = 0.058 \times 1.57 = 0.091$$

$$M_p = 0.266 \times 1.57 = 0.418$$

$$CL_e = 0.058 \times 0.50 = 0.029$$

$$CL_p = 0.266 \times 0.50 = 0.133$$

20.42

3.245

Avg
0.159
lb/VMT
Modeled

$$\text{Avg Truck Wt.} = [26.00 \times 7.00 + 26.75 (1.14 + 1.57 + 0.50)] / 10.21$$

$$= 26.24 \text{ tons}$$

$$E = 0.016 (0.4/2)^{0.65} (26.24/3)^{1.5} = 0.145 \text{ lb/VMT}$$

0.145 lb/VMT

Link AB / hours 8, 9, 16, 17

All trucks @ 20.42 Veh/hr (in + out)

Autos @ 35.00 Veh/hr (in + out)

All trucks

$$0.159 \text{ lb/UMT} \times 20.42 \text{ Veh/hr} = 3.245 \text{ lb/hr-mi}$$

Autos

$$0.016 (0.4/2)^{0.65} (1.5/3)^{1.5} \times 35.00 \text{ Veh/hr} = 0.070 \text{ lb/hr-mi}$$

$$3.315 \text{ lb/hr-mi}$$

$$\text{Avg Factor} = \frac{3.315 \text{ lb}}{\text{hr-mi}} \times \frac{1}{(20.42 + 35.00)} \frac{\text{hr}}{\text{veh}}$$

$$= 0.060 \text{ lb/veh-mi} \quad - \text{ Modeled}$$

Avg Vehicle wt

$$= \left[\frac{26.24 \text{ tons}}{\text{truck}} \times \frac{20.42 \text{ truck}}{\text{hr}} \right] + \left[\frac{1.5 \text{ tons}}{\text{car}} \times \frac{35 \text{ car}}{\text{hr}} \right]$$

$$[20.42 + 35.00]$$

$$= 10.62 \text{ tons/veh}$$

Factor based on Avg

$$= 0.016 (0.4/2)^{0.65} (10.62/3)^{1.5}$$

$$= 0.037 \text{ lb/veh-mi}$$

File of



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4014 NW THIRTEENTH STREET
GAINESVILLE, FLORIDA 32609
352/377-5822 • FAX/377-7158

PROJECT 624-98-01

FAX TRANSMITTAL FORM

TO: Chris Carlson for Clive Holladay

FAX NO. _____

FROM: Steve Cullen

DATE: 11/15/99 SENT BY: SCC

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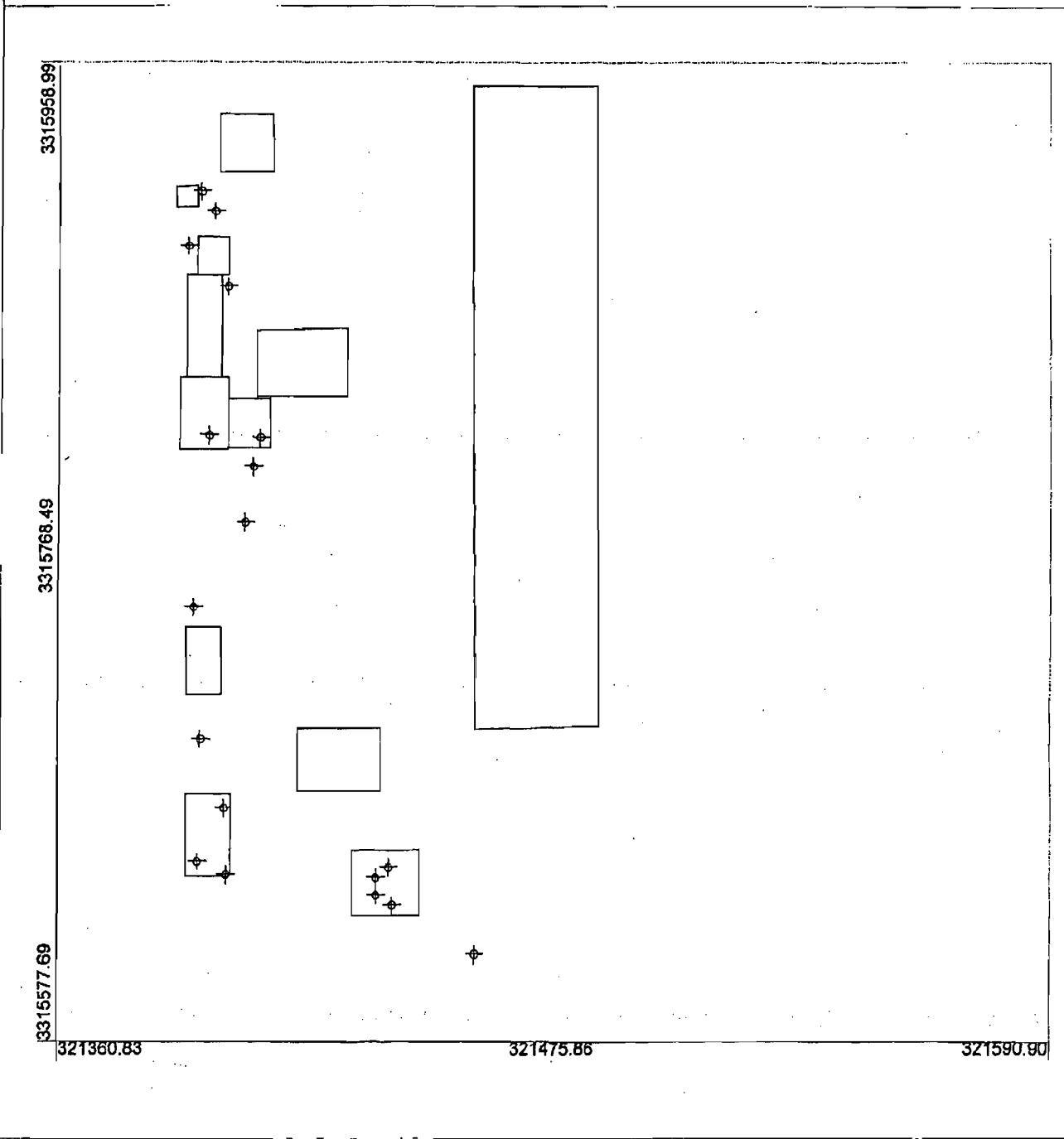
REMARKS: BPIP backup information. Other building heights
from large-scale drawings for Florida Rock Plant.

SC

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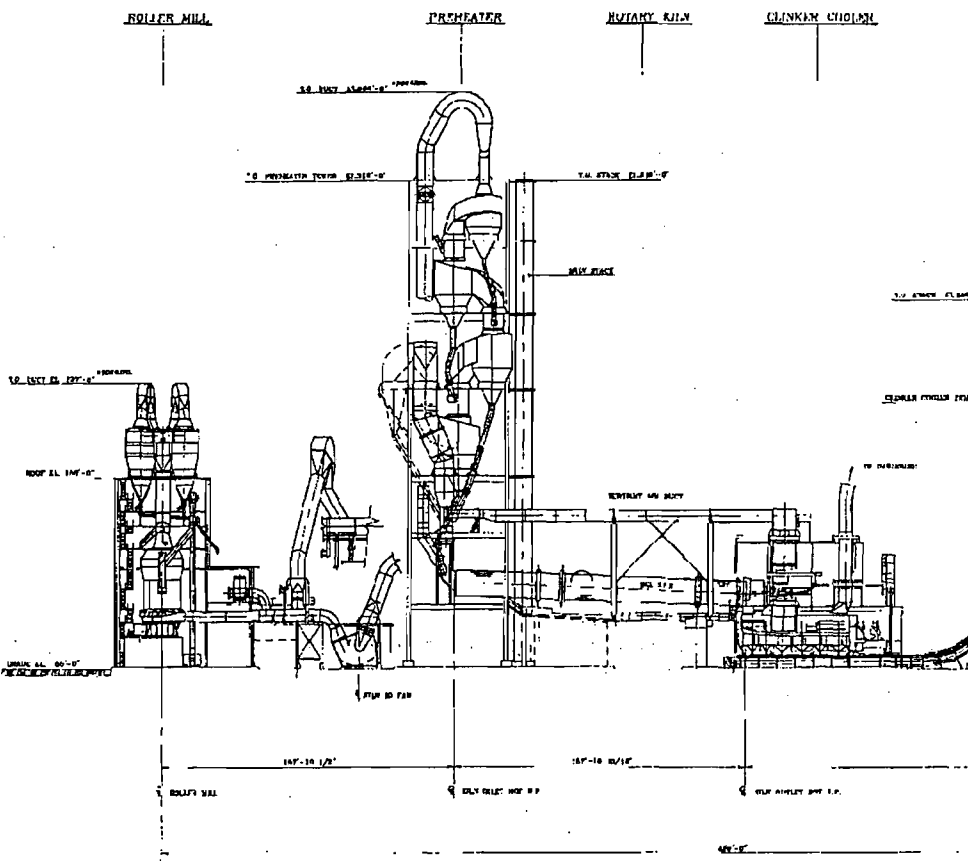
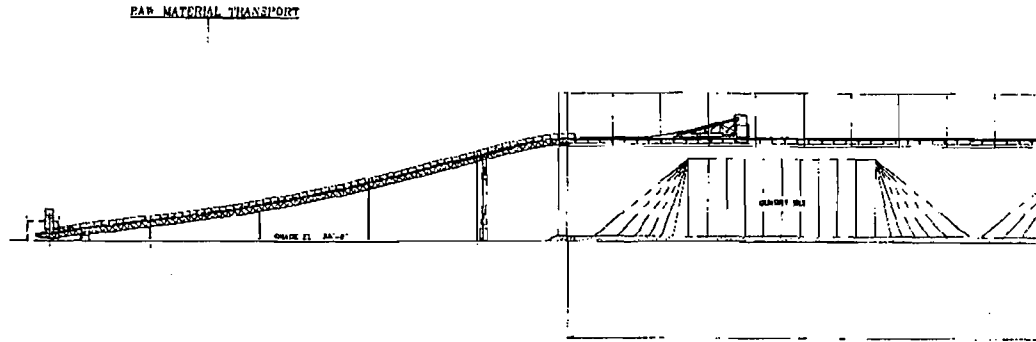
PROJECT NAME :

Suwannee American Cement



COMMENTS :	BUILDINGS :	COMPANY NAME :	
	12	Koogler & Associates	
	SOURCES :	MODELER :	PROJECT NO. :
18	Steve Cullen		
		DATE :	
		11/15/99	

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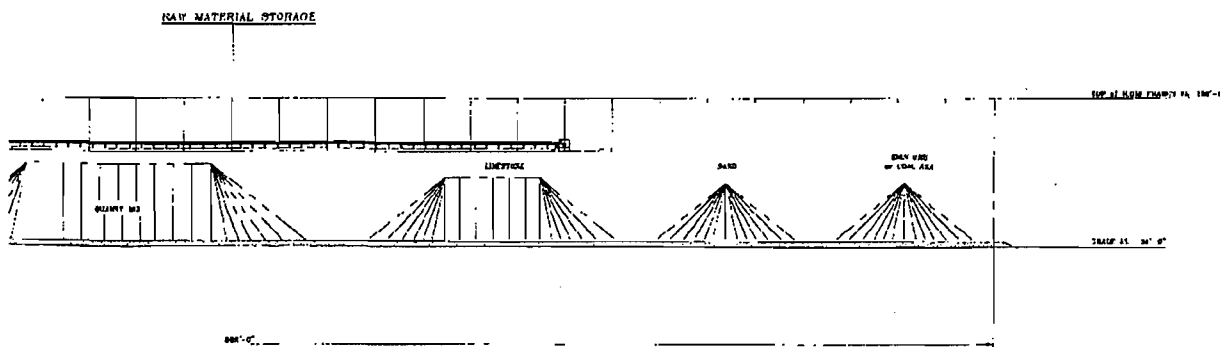
10/30/98 16:56 CCP 323-SEC.dwg

DESIGNED	FAD			
DRAWN	TEG			
CHECKED	FAD			
F.A. DARABI, P.E.				
PROJECT ENGINEER				
LTR.	DATE	REVISIONS	BY	APPRO.

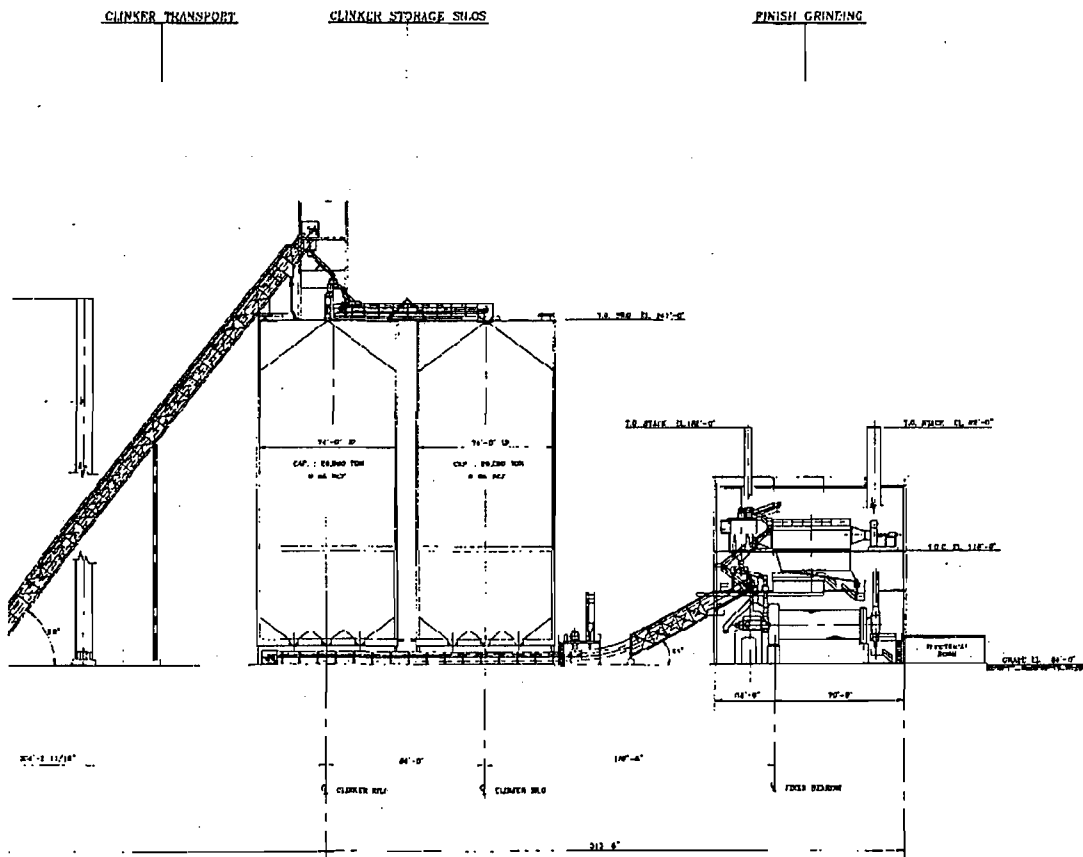
DARABI AND ASSOCIATES INC.
 730 Northeast Walde Road Suite A • Gainesville, Florida 32641 • (352) 376-6888

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ELEVATION
LOOKING EAST



NOTE:

FINAL ARRANGEMENT OF STRUCTURES AND IMPROVEMENTS MAY BE ALTERED AS A RESULT OF GEOTECHNICAL CONSIDERATIONS AND OTHER CONDITIONS UNKNOWN AT THIS TIME. REQUIRED BUFFER AREAS AND SETBACKS WILL BE MAINTAINED IN THE EVENT A SHIFT OR ALTERNATE PLANT LAYOUT IS REQUIRED.



INTERNATIONAL
ATLANTA, GA

SUWANNEE AMERICAN CEMENT Co
BRANFORD PLANT

SITE CROSS SECTION

APPROVED FOR D&A BY

F.A. DARABI, P.E.
REG. PROF. ENGINEER

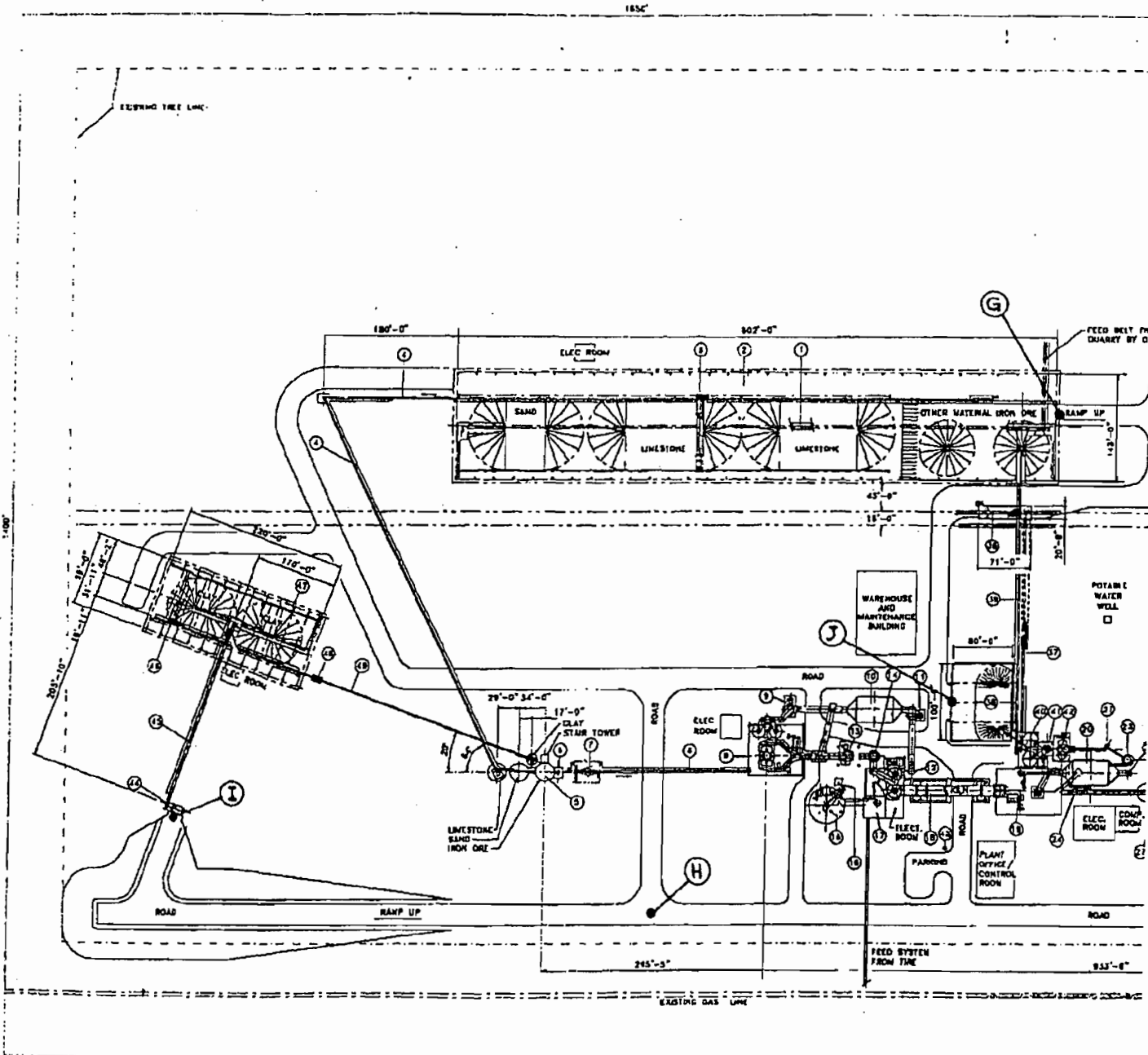
DATE
NOV 1993

SCALE
1"=50'

PROJECT NO.
01100-323-01

DWG. NO.

BEST AVAILABLE COPY

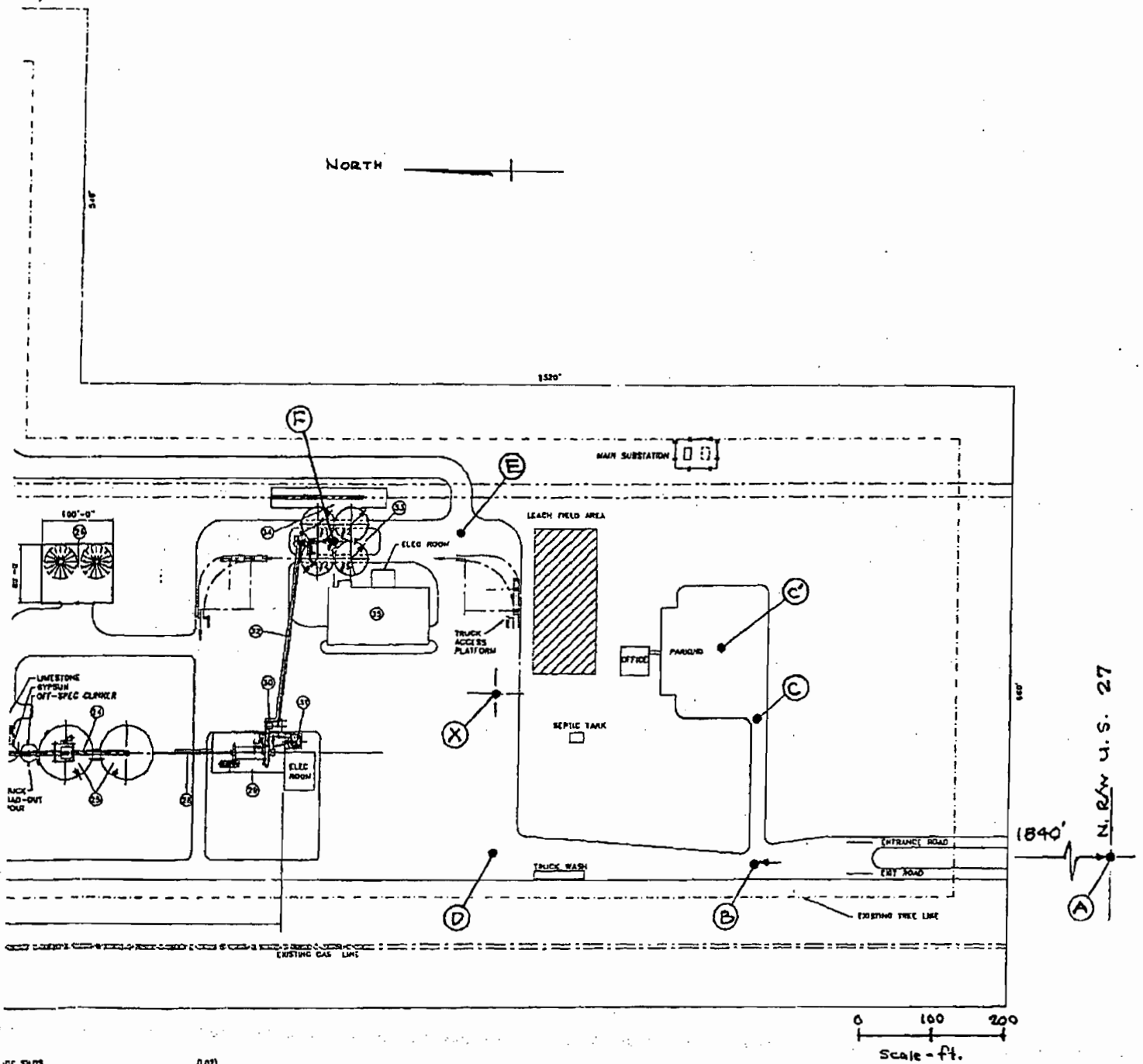


2970

LEGEND

- | | | |
|---|-----------------|----------------|
| 1. RAW MATERIAL TRANSPORT FROM QUARRY | (C02) | 23. CLINKER 1 |
| 2. RAW MATERIAL STORAGE | (C04) | 24. LIMESTONE |
| 3. PORTAL RECLAIMER | (C05) | 25. FURROW #1 |
| 4. RAW MATERIAL TRANSPORT | (C01) | 26. CLINKER 2 |
| 5. ROLLER MILL ADDITIVE BINS | (D07, D10, D11) | 27. FURROW #2 |
| 6. RAW MATERIAL TRANSPORT TO ROLLER MILL | (D40, D41) | 28. CEMENT C |
| 7. POTASS ANALYZER | (D12) | 29. CEMENT T |
| 8. ROLLER MILL | (E12) | 30. CEMENT 3 |
| 9. ROLLER MILL EXHAUST FAN | (E13) | 31. RAIL CAR |
| 10. KLM / MILL ELECTROSTATIC PRECIPITATOR | (E19) | 32. PACKAGING |
| 11. ESP EXHAUST FAN | (E20) | 33. COAL A & B |
| 12. MAIN STACK | (E21) | 34. COAL A & B |
| 13. KLM ID FAN | (K11) | 35. COAL STO |
| 14. COOLING TOWER | (K10) | 36. IRON ORE |
| 15. HOMOGENIZING BLD & BLOWER ROOM | (C01) | 37. COAL STO |
| 16. ALLEVATOR | (E23) | 38. COAL STO |
| 17. PREHEATER AND KLM FEED SYSTEM | (K01) | 39. COAL STO |
| 18. ROTARY KLM | (K02) | 40. COAL STO |
| 19. CLINKER COOLER | (K05) | 41. COAL STO |
| 20. CLINKER COOLER ELECTROSTATIC PRECIPITATOR | (K13) | 42. COAL STO |
| 21. COAL MILL FAN | (S18) | 43. KLM SHED |
| 22. ESP EXHAUST FAN | (K14) | 44. CLAY FEE |
| 23. CLINKER COOLER EXHAUST STACK | (K18) | 45. CLAY FRA |
| 24. CLINKER TRANSPORT | (D01, D01) | 46. PORTAL R |
| | | 47. CLAY STO |
| | | 48. FURROW C |
| | | 49. CLAY TRA |

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- ICE SILDS (L07)
- TYPSUN STORAGE (L13)
- DRIVE BINS (L06, L10)
- INTIVE TRANSPORT TO FINISH MILL (M11)
- R (M01)
- 1 BIN (M20)
- PORT TO STORAGE SILDS (M30)
- CE SILDS AND TRUCK LOADING W/SCALES (M01)
- MHC (M20)
- I (M00)
- ORE UNLOADING (M01)
- ORE TRANSPORT (M03)
- ESPORT (M07)
- BINS (M00)
- (M16, M11)
- (M10)
- IT COLLECTOR (M17)
- CRUSHER (M10)
- RT (M11/M12)
- WER (M14)
- BUILDING (M14)
- DIP HOPPER (M17)
- AT (M11)

PRELIMINARY
04/01/99

SUWANNEE AMERICAN CEMENT CO.
BRANFORD, FLORIDA

UNITS DRAWING SPECIES INDICATED ARE TO BE CLEANED, REPAIRED OR REPLACED AS SHOWN BY THE CONTRACTOR.	ALL WORK SHALL BE ACCORDING TO THE SPECIFICATIONS AND DRAWINGS.	
DATE: 11/15/99 DRAWN BY:	CHECKED BY:	SUWANNEE AMERICAN CEMENT CO. BRANFORD, FLORIDA PHONE: 7400-7153

Flecy



KOGLER & ASSOCIATES
ENVIRONMENTAL SERVICES

4014 NW THIRTEENTH STREET
GAINESVILLE, FLORIDA 32609
352/377-5822 • FAX/377-7158

PROJECT 624/98/01

FAX TRANSMITTAL FORM

TO: Cleve Holladay
850 / 922 - 6979

FAX NO. _____
FROM: John Koogler
DATE: 8/14/99 SENT BY: JK

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REMARKS: Cleve - excuse the handwritten notes. Hope this is all you need.
JK

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PM10 Point Source
Emissions

Keln Raw Mill @ 0.11 lb/tm preheater Bed
$$\text{PM}_{10} = 0.11 \text{ lb/tm} \times 178 \text{ tph} \times 0.126$$
$$= 2.47 \text{ g/sec}$$

Cooler @ 0.06 lb/tm preheater Bed
$$\text{PM}_{10} = 0.06 \text{ lb/tm} \times 178 \text{ tph} \times 0.126$$
$$= 1.35 \text{ g/sec}$$

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Suwannee American Cement

Fugitive PM₁₀ from Vehicle
Traffic

Vehicle	Round Trips/Day	Distance (mi)*	Weight (tons)	
			Empty	Loaded
Cement trucks	112	0.62/0.67**	12.75	39.25
Coal trucks	16	0.90	14.25	39.25
Raw Materials				
Clay	7	0.91	14.25	39.25
Other	22	0.70	14.25	39.25
Autos	105	0.53	1.5	1.5

* One-way travel distance

** Empty / Loaded

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Total PM10 Emissions
Vehicle Traffic

$$E = 0.016 (Silt/2)^{0.65} (Wt/3)^{1.5} \quad AP-42$$

$$= 0.016 (0.4/2)^{0.65} \times$$

[Cement loaded:	$(39.25/3)^{1.5} \times 112 \times 0.67 \text{ mi}$	=	3551.2
+ empty:	$(12.75/3)^{1.5} \times 112 \times 0.62 \text{ mi}$	=	608.4
Coal + loaded:	$(39.25/3)^{1.5} \times 16 \times 0.90 \text{ mi}$	=	681.5
+ empty:	$(14.25/3)^{1.5} \times 16 \times 0.90 \text{ mi}$	=	149.1
Materials + loaded:	$(39.25/3)^{1.5} \times 22 \times 0.78 \text{ mi}$	=	812.1
+ empty:	$(14.25/3)^{1.5} \times 22 \times 0.78 \text{ mi}$	=	177.6
Clay + loaded:	$(39.25/3)^{1.5} \times 7 \times 0.91 \text{ mi}$	=	301.5
+ empty:	$(14.25/3)^{1.5} \times 7 \times 0.91 \text{ mi}$	=	65.9
Autos + in:	$(1.5/3)^{1.5} \times 105 \times 0.53 \text{ mi}$	=	19.7
+ out:	$(1.5/3)^{1.5} \times 105 \times 0.53 \text{ mi}$	=	19.7
			<hr/>
			6386.6]

$$= 0.016 (0.4/2)^{0.65} (6386.8) = 35.9 \text{ lb/day}$$

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Fugitive PM10 Emission Rates

Vehicle	Emissions (lb/day)	One-Way Dist (mi)	Travel Hours	Travel Time (hr/day)	Emissions (g/sec)		
					10x10m Source	20x20m Source	Park Source
Cement Loaded	19.96	0.67	0500-2100	16	14.58E-04	29.16E-04	-
Empty	3.42	0.62	0500-2100	16	2.70	5.40	-
Coal Loaded	3.83	0.90	0600-2000	14	2.38	4.76	-
Empty	0.84	0.90	0600-2000	14	0.52	1.04	-
Materials Loaded	4.56	0.78	0600-2000	14	3.27	6.54	-
Empty	1.00	0.78	0600-2000	14	0.72	1.43	-
Clay Loaded	1.69	0.91	0600-2000	14	1.04	2.08	-
Empty	0.37	0.91	0600-2000	14	0.23	0.46	-
Antes In	0.11	0.53	{0700-0900}	6	0.27	0.16*	1.22
			{1300-1700}				
Antes Out	0.11	0.53	{2300-0100}				
Total	35.9						* 6x16m source

$$\text{Emissions (g/s)} = \text{Emissions (lb/day)} \times 453.69/\text{lb} \times 1/3600 \text{ sec/hr} \\
 \times 1/\text{Travel Time (hr/d)} \times 1/(\text{Dist (mi)} \times 1609 \text{ m/mi}) \\
 \times \text{Source dimension (m)}$$

LINK	AD	BC	C'	BD	DX	XE	EF	FX	EG	DH	HI	HJ
Number of Sources	69	10	1	12	3	4	3	12	15	20	14	12
C-C Spacing (m)	10	6	-	10	20	20	20	20	20	20	20	20
Hour	SOURCES CONTRIBUTING TO EMISSIONS											
1	A	A	A	O	O	O	O	O	O	O	O	O
2	O	O	O	O	O	O	O	O	O	O	O	O
3	O	O	O	O	O	O	O	O	O	O	O	O
4	O	O	O	O	O	O	O	O	O	O	O	O
5	O	O	O	O	O	O	O	O	O	O	O	O
6	CE,CF	O	O	CE,CF	CE,CF	CE	CF	CF	O	O	O	O
7	All	O	O	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
8	A All	A	A	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
9	A All	A	A	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
10	All	O	O	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
11	All	O	O	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
12	All	O	O	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
13	All	O	O	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
14	All	O	O	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
15	All	O	O	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
16	A All	A	A	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
17	A All	A	A	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
18	All	O	O	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
19	All	O	O	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
20	All	O	O	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
21	CE,CF	O	O	CE,CF	CE,CF	CE	CE	CF	O	O	O	O
22	O	O	O	O	O	O	O	O	O	O	O	O
23	O	O	O	O	O	O	O	O	O	O	O	O
24	A	A	A	O	O	O	O	O	O	O	O	O

KEY A - Automobile In and Out
 CE - Cement Empty
 CF - Cement Full
 CL - Clay Empty and Loaded
 CO - Coal Empty and Loaded
 M - Raw Materials (Other than Clay) Empty and Loaded
 O - No Traffic
 All - All Truck Types

LINK	AB	BC	C'	BD	DX	XE	EF	FX	EG	DH	HI	HJ
Number of Sources	69	10	1	12	3	4	3	12	15	20	14	12
C-C Spacing (in)	10	6	-	10	20	20	20	20	20	20	20	20

Hour	SOURCES CONTRIBUTING TO EMISSIONS											
1	A	A	A	O	O	O	O	O	O	O	O	O
2	O	O	O	O	O	O	O	O	O	O	O	O
3	O	O	O	O	O	O	O	O	O	O	O	O
4	O	O	O	O	O	O	O	O	O	O	O	O
5	O	O	O	O	O	O	O	O	O	O	O	O
6	CE,CF	O	O	CE,CF	CE,CF	CE	CE	CF	O	O	O	O
7	All	O	O	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
8	A All	A	A	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
9	A All	A	A	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
10	All	O	O	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
11	All	O	O	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
12	All	O	O	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
13	All	O	O	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
14	All	O	O	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
15	All	O	O	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
16	A All	A	A	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
17	A All	A	A	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
18	All	O	O	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
19	All	O	O	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
20	All	O	O	All	CE,CF M	CE,M	CE	CF	M	CO,CL	CL	CO
21	CE,CF	O	O	CE,CF	CE,CF	CE	CE	CF	O	O	O	O
22	O	O	O	O	O	O	O	O	O	O	O	O
23	O	O	O	O	O	O	O	O	O	O	O	O
24	A	A	A	O	O	O	O	O	O	O	O	O

KEY A - Automobile In and Out
 CE - Cement Empty
 CF - Cement Full
 CL - Clay Empty and Loaded
 CO - Coal Empty and Loaded
 M - Raw Materials (Other than Clay) Empty and Loaded
 O - No Traffic
 All - All Truck Types

LINK	AB	BC	C'	BD	DX	XE	EF	FX	EG	DH	HI	HJ
Number of Sources	69	10	1	12	3	4	3	12	15	20	14	12
C-C Spacing (m)	10	6	-	10	20	20	20	20	20	20	20	20
Hour	Emissions (g/s) x 10 ⁴											
1	0.53	0.32	2.39	0	0	0	0	0	0	0	0	0
2	0	0	0	0	0	0	0	0	0	0	0	0
3	0	0	0	0	0	0	0	0	0	0	0	0
4	0	0	0	0	0	0	0	0	0	0	0	0
5	0	0	0	0	0	0	0	0	0	0	0	0
6	17.29	0	0	17.29	34.58	5.40	5.40	29.18	0	0	0	0
7	25.48	0	0	25.48	42.53	13.40	5.40	29.18	8.00	8.38	2.54	5.84
8	26.01	0.32	2.39	25.48	42.53	13.40	5.40	29.18	8.00	8.38	2.54	5.84
9	26.01	0.32	2.39	25.48	42.53	13.40	5.40	29.18	8.00	8.38	2.54	5.84
10	25.48	0	0	25.48	42.53	13.40	5.40	29.18	8.00	8.38	2.54	5.84
11	25.48	0	0	25.48	42.53	13.40	5.40	29.18	8.00	8.38	2.54	5.84
12	25.48	0	0	25.48	42.53	13.40	5.40	29.18	8.00	8.38	2.54	5.84
13	25.48	0	0	25.48	42.53	13.40	5.40	29.18	8.00	8.38	2.54	5.84
14	25.48	0	0	25.48	42.53	13.40	5.40	29.18	8.00	8.38	2.54	5.84
15	25.48	0	0	25.48	42.53	13.40	5.40	29.18	8.00	8.38	2.54	5.84
16	26.01	0.32	2.39	25.48	42.53	13.40	5.40	29.18	8.00	8.38	2.54	5.84
17	26.01	0.32	2.39	25.48	42.53	13.40	5.40	29.18	8.00	8.38	2.54	5.84
18	25.48	0	0	25.48	42.53	13.40	5.40	29.18	8.00	8.38	2.54	5.84
19	25.48	0	0	25.48	42.53	13.40	5.40	29.18	8.00	8.38	2.54	5.84
20	25.48	0	0	25.48	42.53	13.40	5.40	29.18	8.00	8.38	2.54	5.84
21	17.29	0	0	17.29	34.58	5.40	5.40	29.18	0	0	0	0
22	0	0	0	0	0	0	0	0	0	0	0	0
23	0	0	0	0	0	0	0	0	0	0	0	0
24	0.53	0.32	2.39	0	0	0	0	0	0	0	0	0
Total (g/s)	394.5	1.92	14.34	291.3	664.6	198.4	86.4	462.0	112.0	117.3	35.6	81.8
Total (lb/day)	21.60	0.015	0.011	3.73	1.58	0.63	0.21	4.45	1.32	1.86	0.40	0.78
Total (lb/day) = Total (g/s) x 3600 (s/hr) x no. sources x 1/453.6 (g/lb) x 10 ⁻⁴												36.5 lb/day



KOUGLER & ASSOCIATES
ENVIRONMENTAL SERVICES
4014 NW THIRTEENTH STREET
GAINESVILLE, FLORIDA 32609
352/377-5822 • FAX/377-7158

PROJECT 024-98-01

FAX TRANSMITTAL FORM

TO: Joe Kuban

FAX NO. _____

FROM: John Kougler

DATE: 11/12/99 SENT BY: Nandy

The text being transmitted consists of 1 page(s) PLUS this one. If you do not receive all of the pages or if there are difficulties with this transmission, please call (352) 377-5822.

REMARKS: _____

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**Emissions from 1000-kw (electric)/Natural-Gas Fired Emergency Generator
Suwannee American Cement Co. Inc.**

Pollutant	Emission Factor (1) (g/kw-hr)	Emergency Generator (2) Emissions (lb/hr)
Nox	3.1	8.5
CO	1.5	4.1
VOC(3)	0.2	0.5

- (1) From EPA, AP-42, Section 3.2, Table 3.2-7 for 2-cycle lean burn engine with clean burn technology
- (2) Emissions from 1000 kw electric generator unit = (g/kw-hr) x 1000 kw electric x 1.25 engine-to-electric x 1/453.6 g/lb
- (3) Non-methane VOCs

NOTE: Generator exempt from permitting per 62-210.300(3)(a)20 FAC if natural gas use does not exceed 4.4 million cubic feet per year.



KOUGLER & ASSOCIATES
ENVIRONMENTAL SERVICES

4014 NW THIRTEENTH STREET
GAINESVILLE, FLORIDA 32609
352/377-5822 • FAX/377-7158

PROJECT 024-98-01

File

FAX TRANSMITTAL FORM

TO: *Cleve Holladay*

FAX NO. _____

FROM: *John Kougler*

DATE: *11/12/99* SENT BY: *Wendy*

The text being transmitted consists of *5* page(s) PLUS this one. If you do not receive all of the pages or if there are difficulties with this transmission, please call (352) 377-5822.

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KOGLER & ASSOCIATES
ENVIRONMENTAL SERVICES

4014 NW THIRTEENTH STREET
GAINESVILLE, FLORIDA 32609
352/377-5822 ▪ FAX/377-7158

MEMORANDUM

TO: Cleve Holladay

FROM: John Koogler

DATE: November 12, 1999

The attached describes the development of the vehicle generated PM10 emissions inventory for Suwannee American Cement and the basis of the air quality impact analysis.

Call if there are any questions.

Traffic Generated Fugitive Particulate Matter Emissions

The air quality impact of fugitive particulate matter (PM10) generated by vehicle traffic associated with the Suwannee American Cement plant has been assessed. The traffic included in the assessment was the automobile traffic generated by plant employees and the truck traffic required to deliver raw materials to the plant and to transport finish cement from the plant.

The emission rates of fugitive PM10 were calculated using EPA emission factors (EPA Publication AP-42, Section 13.2.1, October 1997). The impact of these emissions on ambient air quality was evaluated using the ISC-ST Air Quality Model (Version 99155); the same air quality model used for evaluating point source emissions from the plant and from off-site sources. The meteorological data used in the model represented the period 1989-1993. The surface meteorological data were from Gainesville, Florida, and the upper air data were from Waycross, Georgia.

The automotive traffic volume was from a report prepared for Suwannee American Cement by Burns Traffic Services, Inc. (undated). This report assumed employment of 100 persons and a traffic volume of 1.05 round trips per person per day. The automotive traffic flow was assumed to occur during a two-hour period in the morning, a two-hour period in the afternoon and a two-hour period at late night (periods of time corresponding to shift changes).

The volume of truck traffic was based on the number of trucks necessary to transport raw materials to the site and to transport finish cement from the site. It was assumed that all of the cement would be transported from the site by WB-50 tanker trucks. The empty weight of these trucks is 25,500 pounds and the loaded weight is 78,500 pounds (26.5 net tons per load). It was estimated that there will be 112 round trips per day, 312 days per year. Cement truck traffic was assumed to arrive at and leave the plant between 0500 and 2100 hours each day (16 hours per day).

Coal and other materials were all assumed to be received at the plant in WB-50 dump trucks. These trucks have an empty weight of 28,500 pounds and a loaded weight of 78,600 pounds (25.0 net tons per load). It was estimated that 127,896 tons per year of coal will be required to fire the kiln 8760 hours per year. This amount of coal will require approximately 16 round trips per day, 312 days per year. It was assumed that coal and other raw materials will be received at the plant between 0600 and 2000 hours each day (14 hours per day).

The raw materials required at the plant include clay, flyash, iron ore, gypsum and various other additives required for finished cement. To be conservative, it was assumed that all clay required for the production of raw meal will be transported to the plant from off-site. It was estimated that 54,000 tons of clay and 167,500

tons of the other raw materials combined will be required per year. Clay was accounted for separately as it will be stored in a different location than the other materials (see attached site plan).

The clay deliveries will require seven round trips per day and the delivery of the other raw materials will require approximately 22 round trips per day, 312 days per year.

The routes used by the various vehicles can be followed on the attached site plan. All traffic will enter the plant property by turning north off of U.S. 27 onto the paved plant access road. All vehicles will travel approximately 0.43 miles north on the plant access road to the plant site. Automobile traffic will enter the paved plant parking area at this point while truck traffic will continue into the plant. The cement trucks will travel to the point on the site plan designated 33; Cement Storage Silos and Truck Loading with Scales. The raw materials trucks (other than clay) will continue to the south end of the storage hall (on the east side of the plant site) to the storage area designated "Other Material/Iron Ore". The trucks delivering clay will proceed to the north end of the plant site to the point designated 44; Clay Feeder/Crusher. Coal trucks will proceed to the center of the plant site to the area designated 38; Coal Storage.

The routes traveled have been designated by roadway links identified by letters (A-B, B-C, etc.). These designations are shown on the attached site plan.

Fugitive PM10 emissions from vehicle traffic were estimated using procedures outlined in *Compilation of Air Pollutant Emission Factors, Section 13.2.1, Paved Roads*, EPA Publication AP-42 (October 1997). The general equation used to determine PM10 emissions was:

$$E \text{ (lb/VMT)} = 0.016 \text{ (silt, \%2)}^{0.65} \text{ (vehicle weight, tons/3)}^{1.5}$$

The silt loading on the paved surfaces of 0.4 grams per square meter was selected from Table 13.2.1-2 of the referenced EPA document for normal conditions and low ADT (Average Daily Traffic) roads. The vehicle weight for loaded and empty trucks is as defined previously. The average automobile weight was estimated to be 1.5 tons.

The emissions generated by vehicle traffic were represented by volume sources in the ISC-ST air quality model. For roadway link A-B and B-D, 10 meter by 10 meter by 5 meter high volume sources located 10 meters center-to-center were used. For roadway link B-C (automobile traffic to parking), volume sources 6 meters by 6 meters by 3 meters high located 6 meters center-to-center were used. The parking area was represented by a single 45 meter by 45 meter by 3 meter high volume source. All other roadway links were represented by 10 meter by 10 meter by 5 meter high volume sources located 20 meters center-to-center.

The total PM10 emissions estimated for all vehicle traffic was 36.0 pounds per day. Scaling factors were used in the air quality model to account for the hours that emissions are actually expected to occur over each roadway link.

The modeling was conducted with point source emissions of PM10 particles, fugitive vehicle traffic generated PM10 emissions from Suwannee American Cement and PM10 emissions from all inventory sources (all assumed to be increment consuming). Modeling results are summarized in the attached table and output files have been transmitted electronically. The data show that the impacts of fugitive PM10 particles generated by vehicle traffic when combined with impacts of point source emissions of PM10 from Suwannee American and off-site sources will not result in exceedences of PSD increments or National Ambient Air Quality Standards for PM10 particles.

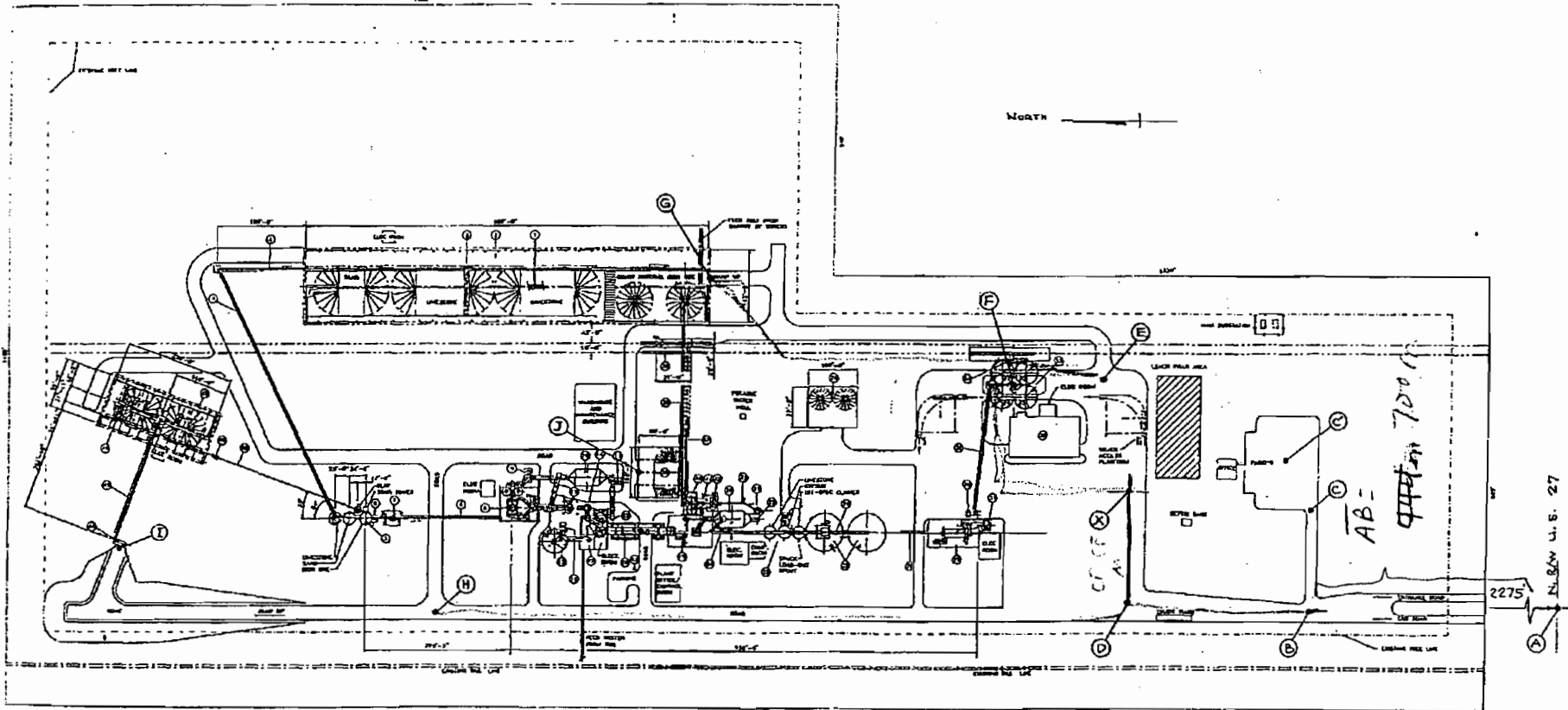
Best Available Copy

0006/006

KOOCLER ASSOC., P.C. FDER TALL

332 377 7138

11/12/98 11:50



LEGEND

- | | | | |
|------------------------------------|----|--------------------------|-----|
| 1. AIR WASHING SYSTEM FROM QUARRY | 22 | 28. CLAYER STORAGE SLACK | 257 |
| 2. AIR WASHING SYSTEM FROM QUARRY | 23 | 29. CLAYER STORAGE SLACK | 258 |
| 3. AIR WASHING SYSTEM FROM QUARRY | 24 | 30. CLAYER STORAGE SLACK | 259 |
| 4. AIR WASHING SYSTEM FROM QUARRY | 25 | 31. CLAYER STORAGE SLACK | 260 |
| 5. AIR WASHING SYSTEM FROM QUARRY | 26 | 32. CLAYER STORAGE SLACK | 261 |
| 6. AIR WASHING SYSTEM FROM QUARRY | 27 | 33. CLAYER STORAGE SLACK | 262 |
| 7. AIR WASHING SYSTEM FROM QUARRY | 28 | 34. CLAYER STORAGE SLACK | 263 |
| 8. AIR WASHING SYSTEM FROM QUARRY | 29 | 35. CLAYER STORAGE SLACK | 264 |
| 9. AIR WASHING SYSTEM FROM QUARRY | 30 | 36. CLAYER STORAGE SLACK | 265 |
| 10. AIR WASHING SYSTEM FROM QUARRY | 31 | 37. CLAYER STORAGE SLACK | 266 |
| 11. AIR WASHING SYSTEM FROM QUARRY | 32 | 38. CLAYER STORAGE SLACK | 267 |
| 12. AIR WASHING SYSTEM FROM QUARRY | 33 | 39. CLAYER STORAGE SLACK | 268 |
| 13. AIR WASHING SYSTEM FROM QUARRY | 34 | 40. CLAYER STORAGE SLACK | 269 |
| 14. AIR WASHING SYSTEM FROM QUARRY | 35 | 41. CLAYER STORAGE SLACK | 270 |
| 15. AIR WASHING SYSTEM FROM QUARRY | 36 | 42. CLAYER STORAGE SLACK | 271 |
| 16. AIR WASHING SYSTEM FROM QUARRY | 37 | 43. CLAYER STORAGE SLACK | 272 |
| 17. AIR WASHING SYSTEM FROM QUARRY | 38 | 44. CLAYER STORAGE SLACK | 273 |
| 18. AIR WASHING SYSTEM FROM QUARRY | 39 | 45. CLAYER STORAGE SLACK | 274 |
| 19. AIR WASHING SYSTEM FROM QUARRY | 40 | 46. CLAYER STORAGE SLACK | 275 |
| 20. AIR WASHING SYSTEM FROM QUARRY | 41 | 47. CLAYER STORAGE SLACK | 276 |
| 21. AIR WASHING SYSTEM FROM QUARRY | 42 | 48. CLAYER STORAGE SLACK | 277 |
| 22. AIR WASHING SYSTEM FROM QUARRY | 43 | 49. CLAYER STORAGE SLACK | 278 |
| 23. AIR WASHING SYSTEM FROM QUARRY | 44 | 50. CLAYER STORAGE SLACK | 279 |
| 24. AIR WASHING SYSTEM FROM QUARRY | 45 | 51. CLAYER STORAGE SLACK | 280 |
| 25. AIR WASHING SYSTEM FROM QUARRY | 46 | 52. CLAYER STORAGE SLACK | 281 |
| 26. AIR WASHING SYSTEM FROM QUARRY | 47 | 53. CLAYER STORAGE SLACK | 282 |
| 27. AIR WASHING SYSTEM FROM QUARRY | 48 | 54. CLAYER STORAGE SLACK | 283 |

PRELIMINARY
04/01/99

SUWANNEE AMERICAN CEMENT CO.
BRANFORD, FLORIDA

2275

Scale - Ft.

1" = 333'

INTEROFFICE MEMORANDUM

Date: 12-Nov-1999 09:23am
From: Koogler & Associates
koogler@worldnet.att.net

Dept:
Tel No:

To: Joseph Kahn TAL 850/921-9519 (KAHN_J@dep.state.fl.us)
CC: Cleve Holladay TAL 904/488-1344 (HOLLADAY_C@dep.state.fl.us)

Subject: 5 year data of air modeling for SAC

Here are all five years of modeling data. I apologize for not sending all files originally.

Max Lee

Name	Size	Modified	Comment
SWSO2A91.OUT	181,958	11/11/99 9:18 AM	
SWCO_90.OUT	181,958	11/10/99 9:00 PM	
SWCO_91.OUT	182,092	11/10/99 9:01 PM	
SWCO_92.OUT	182,092	11/10/99 9:03 PM	
SWCO_93.OUT	181,958	11/10/99 9:05 PM	
SWCO8_89.OUT	182,092	11/10/99 8:49 PM	
SWCO8_90.OUT	181,958	11/10/99 8:51 PM	
SWCO8_91.OUT	182,092	11/10/99 8:53 PM	
SWCO8_92.OUT	182,092	11/10/99 8:54 PM	
SWCO8_93.OUT	181,958	11/10/99 8:56 PM	
SWNX_90.OUT	182,092	11/10/99 9:17 PM	
SWNX_89.OUT	182,092	11/10/99 9:15 PM	
SWNX_91.OUT	182,092	11/10/99 9:19 PM	
SWNX_92.OUT	182,092	11/10/99 9:20 PM	
SWNX_93.OUT	182,092	11/10/99 9:22 PM	
SWSO2_89.OUT	181,958	11/10/99 9:07 PM	
SWSO2_90.OUT	181,958	11/10/99 9:08 PM	
SWSO2_91.OUT	181,958	11/10/99 9:10 PM	
SWSO2_92.OUT	179,338	11/10/99 9:12 PM	
SWSO2_93.OUT	181,958	11/10/99 9:14 PM	
SWSO2A89.OUT	181,958	11/11/99 9:14 AM	
SWSO2A90.OUT	181,958	11/11/99 9:16 AM	
SWCO_89.OUT	182,092	11/10/99 8:58 PM	
SWSO2A92.OUT	181,958	11/11/99 9:32 AM	
SWSO2A93.OUT	181,958	11/11/99 9:19 AM	
SWPM_89.OUT	449,746	11/11/99 1:17 PM	
SWPM_91.OUT	449,746	11/11/99 3:52 PM	
SWPM_92.OUT	449,746	11/11/99 5:19 PM	
SWPM_93.OUT	449,746	11/11/99 6:38 PM	
SWPM_90.OUT	449,746	11/11/99 2:32 PM	

Name

Size Modified

Comment

SAC_air_modeling summary.doc

23,040 11/12/99 8:59 AM

Name	Size	Modified	Comment
NXINV_92.OUT	206,183	11/11/99 12:30 AM	
NXINV_89.OUT	206,183	11/10/99 10:06 PM	
NXINV_91.OUT	206,183	11/10/99 11:42 PM	
NXINV_90.OUT	206,183	11/10/99 10:50 PM	
NXINV_93.OUT	206,183	11/11/99 1:19 AM	
SWPM2_93.OUT	508,622	11/11/99 1:47 AM	
SWPM2_92.OUT	508,622	11/10/99 11:47 PM	
SWPM2_91.OUT	508,622	11/10/99 9:47 PM	
SWPM2_90.OUT	508,622	11/10/99 7:41 PM	
SWPM2_89.OUT	508,622	11/11/99 11:58 AM	

Application Processing Fee

Check one:

Attached - Amount: **\$7500**

Not Applicable.

Construction/Modification Information

1. Description of Proposed Project or Alterations:

The project is the construction of a new Portland cement manufacturing plant. The plant will combine raw materials in a preheater/precalciner kiln with in-line raw mill. The resulting clinker will be interground with gypsum and limestone to produce various types of cement. Cement will be shipped in bulk by truck, and will also be bagged.

The primary fuels for the pyroprocessing system will be coal, petroleum coke, and natural gas. Whole tires and/or tire-derived fuel will be used as supplemental fuel.

Fabric filter baghouses will control particulate matter emissions from all emission points except the clinker cooler. An ESP will control emissions from the clinker cooler.

2. Projected or Actual Date of Commencement of Construction: **Upon FDEP Approval**

3. Projected Date of Completion of Construction: **Three (3) years after commencement**

Professional Engineer Certification

1. Professional Engineer Name: **Steven C. Cullen, P.E.**
Registration Number: **45188**

2. Professional Engineer Mailing Address:

Organization/Firm: **Koogler & Associates**

Street Address: **4014 NW 13th Street**

City: **Gainesville**

State: **FL**

Zip Code: **32609**

3. Professional Engineer Telephone Numbers:

Telephone: **(352) 377-5822**

Fax: **(352) 377-7158**

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**C. EMISSIONS UNIT DETAIL INFORMATION
(Regulated Emissions Units Only)**

Emissions Unit Details

1. Initial Startup Date: NA		
2. Long-term Reserve Shutdown Date: NA		
3. Package Unit: NA		
Manufacturer:	Model Number:	
4. Generator Nameplate Rating: NA	MW	
5. Incinerator Information: NA		
Dwell Temperature:		°F
Dwell Time:		seconds
Incinerator Afterburner Temperature:		°F

Emissions Unit Operating Capacity

1. Maximum Heat Input Rate: NA	mmBtu/hr
2. Maximum Incineration Rate: NA	lb/hr tons/day
3. Maximum Process or Throughput Rate: 178.0 TPH dry feed to preheater	
4. Maximum Production Rate: NA	
5. Operating Capacity Comment (limit to 200 characters): Feed limited to an annual rate of: 163 tph (avg.) x 8760 hrs/yr = 1,427, 150 tpy	

Emissions Unit Operating Schedule

Requested Maximum Operating Schedule:		
hours/day	days/week	8760 hours/year
weeks/year		

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**F. SEGMENT (PROCESS/FUEL) INFORMATION
(Regulated and Unregulated Emissions Units)**

Segment Description and Rate: Segment 1 of 1

1. Segment Description (Process/Fuel Type and Associated Operating Method/Mode) (limit to 500 characters): Mineral Products: Cement Manufacturing: Dry Process: Raw Material Transfer	
2. Source Classification Code (SCC): 3-05-006-12	
3. SCC Units: Tons Processed	
4. Maximum Hourly Rate: 178	5. Maximum Annual Rate: 1,427,150
6. Estimated Annual Activity Factor: NA	
7. Maximum Percent Sulfur: NA	8. Maximum Percent Ash: NA
9. Million Btu per SCC Unit: NA	
10. Segment Comment (limit to 200 characters): Raw meal from blend silo: Dry preheater feed	

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**C. EMISSIONS UNIT DETAIL INFORMATION
(Regulated Emissions Units Only)**

Emissions Unit Details

1. Initial Startup Date: NA		
2. Long-term Reserve Shutdown Date: NA		
3. Package Unit: NA		
Manufacturer:		Model Number:
4. Generator Nameplate Rating: NA		MW
5. Incinerator Information: NA		
	Dwell Temperature:	°F
	Dwell Time:	seconds
	Incinerator Afterburner Temperature:	°F

Emissions Unit Operating Capacity

1. Maximum Heat Input Rate:		364 mmBtu/hr
2. Maximum Incineration Rate: NA	lb/hr	tons/day
3. Maximum Process or Throughput Rate: NA		
4. Maximum Production Rate: 2520 tons/day clinker		
5. Operating Capacity Comment (limit to 200 characters): NA		

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Emissions Unit Operating Schedule

Requested Maximum Operating Schedule:		
	hours/day	days/week
	weeks/year	8760 hours/year

**E. EMISSION POINT (STACK/VENT) INFORMATION
(Regulated Emissions Units Only)**

Emission Point Description and Type

1. Identification of Point on Plot Plan or Flow Diagram: E-21 Stack	
2. Emission Point Type Code: <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4	
3. Descriptions of Emissions Points Comprising this Emissions Unit for VE Tracking (limit to 100 characters per point): NA	
4. ID Numbers or Descriptions of Emission Units with this Emission Point in Common: NA	
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5. Discharge Type Code: BUREAU OF AIR REGULATION	
<input type="checkbox"/> D <input type="checkbox"/> F <input type="checkbox"/> H <input type="checkbox"/> P <input type="checkbox"/> R <input checked="" type="checkbox"/> V <input type="checkbox"/> W	
6. Stack Height:	315 feet
7. Exit Diameter:	9.42 feet
8. Exit Temperature: (Compound Operation)	205°F

F. SEGMENT (PROCESS/FUEL) INFORMATION
(Regulated and Unregulated Emissions Units)

Segment Description and Rate: Segment 1 of 5

1. Segment Description (Process/Fuel Type and Associated Operating Method/Mode) (limit to 500 characters): Mineral Products: Cement Manufacturing: Dry Process: Preheater/Precalciner Kiln	
2. Source Classification Code (SCC): 3-05-006-23	
3. SCC Units: Tons Clinker	
4. Maximum Hourly Rate: 105 (24-hr avg)	5. Maximum Annual Rate: 839,500
6. Estimated Annual Activity Factor: NA	
7. Maximum Percent Sulfur: NA	8. Maximum Percent Ash: NA
9. Million Btu per SCC Unit: NA	
10. Segment Comment (limit to 200 characters): <p style="text-align: center;">RECEIVED NOV 12 1999 BUREAU OF AIR REGULATION</p>	

**H. EMISSIONS UNIT POLLUTANT DETAIL INFORMATION
(Regulated Emissions Units Only - Emissions Limited Pollutants Only)**

Pollutant Detail Information: Pollutant 1 of 7

1. Pollutant Emitted: PM		
2. Total Percent Efficiency of Control:		%
3. Potential Emissions:	23.14 lb/hour	92.8 tons/year
4. Synthetically Limited? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
5. Range of Estimated Fugitive/Other Emissions: <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 _____ to _____ tons/year		
6. Emission Factor: 0.13 lb/ton of dry preheater feed Reference: BACT		
7. Emissions Method Code: <input checked="" type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5		
8. Calculation of Emissions (limit to 600 characters): 178 TPH x 0.13 lb/ton = 23.14 lb/hour 1,427,150 TPY x 0.13 lb/ton = 92.8 tons/year		
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p>RECEIVED</p> <p>NOV 12 1999</p> <p>BUREAU OF AIR REGULATION</p> </div>		
9. Pollutant Potential/Estimated Emissions Comment (limit to 200 characters):		

Emissions Unit Information Section 3 of 6 [In-Line Kiln/Raw Mill]

Allowable Emissions (Pollutant identified on front of page)

A.

1. Basis for Allowable Emissions Code: BACT		
2. Future Effective Date of Allowable Emissions: NA		
3. Requested Allowable Emissions and Units: 0.13 lb/ton of dry preheater feed		
4. Equivalent Allowable Emissions:	23.14 lb/hour	92.8 tons/year
5. Method of Compliance (limit to 60 characters): Method 5		
6. Pollutant Allowable Emissions Comment (Desc. of Related Operating Method/Mode) (limit to 200 characters): The requested allowable emission rate represents BACT and is more stringent than NSPS/NESHAP.		

B.

1. Basis for Allowable Emissions Code: NA		
2. Future Effective Date of Allowable Emissions:		
3. Requested Allowable Emissions and Units:		
4. Equivalent Allowable Emissions:	lb/hr	tons/year
5. Method of Compliance (limit to 60 characters):		
6. Pollutant Allowable Emissions Comment (Desc. of Related Operating Method/Mode) (limit to 200 characters): RECEIVED NOV 12 1999 BUREAU OF AIR REGULATION		

Emissions Unit Information Section 3 of 6 [In-Line Kiln/Raw Mill]

Pollutant Detail Information: Pollutant 2 of 7

1. Pollutant Emitted: PM10		
2. Total Percent Efficiency of Control:		%
3. Potential Emissions:	19.58 lb/hour	78.5 tons/year
4. Synthetically Limited? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
5. Range of Estimated Fugitive/Other Emissions: <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 _____ to _____ tons/year		
6. Emission Factor: 85% of PM = 0.11 lb/ton of dry preheater feed Reference: BACT		
7. Emissions Method Code: <input checked="" type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5		
8. Calculation of Emissions (limit to 600 characters): 178 TPH x 0.11 lb/ton = 19.58 lb/hour 1,427,150 TPY x 0.11 lb/ton = 78.5 tons/year		
9. Pollutant Potential/Estimated Emissions Comment (limit to 200 characters)		

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Emissions Unit Information Section 3 of 6 [In-Line Kiln/Raw Mill]

Allowable Emissions (Pollutant identified on front of page)

A.

1. Basis for Allowable Emissions Code: BACT		
2. Future Effective Date of Allowable Emissions: NA		
3. Requested Allowable Emissions and Units: 0.11 lb/ton of dry preheater feed		
4. Equivalent Allowable Emissions:	19.58 lb/hour	78.5 tons/year
5. Method of Compliance (limit to 60 characters): Method 5 for PM		
6. Pollutant Allowable Emissions Comment (Desc. of Related Operating Method/Mode) (limit to 200 characters): The requested allowable emission rate represents BACT.		

B.

1. Basis for Allowable Emissions Code: NA		
2. Future Effective Date of Allowable Emissions:		
3. Requested Allowable Emissions and Units:		
4. Equivalent Allowable Emissions:	lb/hr	tons/year
5. Method of Compliance (limit to 60 characters):		
6. Pollutant Allowable Emissions Comment (Desc. of Related Operating Method/Mode) (limit to 200 characters):		

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Emissions Unit Information Section 3 of 6 [In-Line Kiln/Raw Mill]

Pollutant Detail Information: Pollutant 3 of 7

1. Pollutant Emitted: SO2		
2. Total Percent Efficiency of Control:		%
3. Potential Emissions:	28.35 lb/hour	113.3 tons/year
4. Synthetically Limited? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
5. Range of Estimated Fugitive/Other Emissions: <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 _____ to _____ tons/year		
6. Emission Factor: 0.27 lb/ton of clinker Reference: BACT		
7. Emissions Method Code: <input checked="" type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5		
8. Calculation of Emissions (limit to 600 characters): 105 TPH x 0.27 lb/ton = 28.35 lb/hour 839,500 TPY x 0.27 lb/ton = 113.3 tons/year		
9. Pollutant Potential/Estimated Emissions Comment (limit to 200 characters):		

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Emissions Unit Information Section 3 of 6 [In-Line Kiln/Raw Mill]

Allowable Emissions (Pollutant identified on front of page)

A.

1. Basis for Allowable Emissions Code: BACT
2. Future Effective Date of Allowable Emissions: NA
3. Requested Allowable Emissions and Units: 0.27 lb/ton of clinker
4. Equivalent Allowable Emissions: 28.35 lb/hour 113.3 tons/year
5. Method of Compliance (limit to 60 characters): CEM
6. Pollutant Allowable Emissions Comment (Desc. of Related Operating Method/Mode) (limit to 200 characters):

B.

1. Basis for Allowable Emissions Code: NA
2. Future Effective Date of Allowable Emissions:
3. Requested Allowable Emissions and Units:
4. Equivalent Allowable Emissions: lb/hr tons/year
5. Method of Compliance (limit to 60 characters):
6. Pollutant Allowable Emissions Comment (Desc. of Related Operating Method/Mode) (limit to 200 characters):

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Emissions Unit Information Section 3 of 6 [In-Line Kiln/Raw Mill]

Pollutant Detail Information: Pollutant 4 of 7

1. Pollutant Emitted: NOX		
2. Total Percent Efficiency of Control:		%
3. Potential Emissions:	304.5 lb/hour	1217.3 tons/year
4. Synthetically Limited? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
5. Range of Estimated Fugitive/Other Emissions: <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 _____ to _____ tons/year		
6. Emission Factor: 2.9 lb/ton of clinker Reference: BACT		
7. Emissions Method Code: <input checked="" type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5		
8. Calculation of Emissions (limit to 600 characters): 105 TPH x 2.9 lb/ton = 304.5 lb/hour 839,500 TPY x 2.9 lb/ton = 1217.3 tons/year <div style="text-align: center;">RECEIVED NOV 12 1999 BUREAU OF AIR REGULATION</div>		
9. Pollutant Potential/Estimated Emissions Comment (limit to 200 characters): Permittee requests 3.8 lb/ton clinker (399.0 lb/hr & 1595.1 tons/year) during the first two years after startup.		

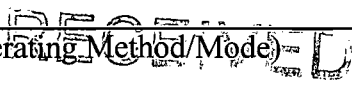
Emissions Unit Information Section 3 of 6 [In-Line Kiln/Raw Mill]

Allowable Emissions (Pollutant identified on front of page)

A.

1. Basis for Allowable Emissions Code: BACT		
2. Future Effective Date of Allowable Emissions: NA		
3. Requested Allowable Emissions and Units: 2.9 lb/ton of clinker		
4. Equivalent Allowable Emissions:	304.5 lb/hour	1217.3 tons/year
5. Method of Compliance (limit to 60 characters): CEM		
6. Pollutant Allowable Emissions Comment (Desc. of Related Operating Method/Mode) (limit to 200 characters):		
Permittee requests 3.8 lb/ton clinker (399.0 lb/hr & 1595.1 tons/year) during the first two years after startup.		

B.

1. Basis for Allowable Emissions Code: NA		
2. Future Effective Date of Allowable Emissions:		
3. Requested Allowable Emissions and Units:		
4. Equivalent Allowable Emissions:	lb/hr	tons/year
5. Method of Compliance (limit to 60 characters):		
6. Pollutant Allowable Emissions Comment (Desc. of Related Operating Method/Mode) (limit to 200 characters):		
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Emissions Unit Information Section 3 of 6 [In-Line Kiln/Raw Mill]

Pollutant Detail Information: Pollutant 5 of 7

1. Pollutant Emitted: CO		
2. Total Percent Efficiency of Control:		%
3. Potential Emissions:	378.0 lb/hour	1511.1 tons/year
4. Synthetically Limited? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
5. Range of Estimated Fugitive/Other Emissions: <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 _____ to _____ tons/year		
6. Emission Factor: 3.6 lb/ton of clinker Reference: BACT (DEP Permit No. PSD-FL-228)		
7. Emissions Method Code: <input checked="" type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5		
8. Calculation of Emissions (limit to 600 characters): 105 TPH x 3.6 lb/ton = 378.0 lb/hour 839,500 TPY x 3.6 lb/ton = 1511.1 tons/year		
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9. Pollutant Potential/Estimated Emissions Comment (limit to 200 characters):		

Emissions Unit Information Section 3 of 6 [In-Line Kiln/Raw Mill]


Allowable Emissions (Pollutant identified on front of page)

A.

1. Basis for Allowable Emissions Code: BACT		
2. Future Effective Date of Allowable Emissions: NA		
3. Requested Allowable Emissions and Units: 3.6 lb/ton of clinker		
4. Equivalent Allowable Emissions:	378.0 lb/hour	1511.1 tons/year
5. Method of Compliance (limit to 60 characters): Method 10		
6. Pollutant Allowable Emissions Comment (Desc. of Related Operating Method/Mode) (limit to 200 characters):		

B.

1. Basis for Allowable Emissions Code: NA		
2. Future Effective Date of Allowable Emissions:		
3. Requested Allowable Emissions and Units:		
4. Equivalent Allowable Emissions:	lb/hr	tons/year
5. Method of Compliance (limit to 60 characters):		
6. Pollutant Allowable Emissions Comment (Desc. of Related Operating Method/Mode) (limit to 200 characters):		


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Emissions Unit Information Section 3 of 6 [In-Line Kiln/Raw Mill]

Pollutant Detail Information: Pollutant 6 of 7

1. Pollutant Emitted: VOC		
2. Total Percent Efficiency of Control:		%
3. Potential Emissions:	12.6 lb/hour	50.4 tons/year
4. Synthetically Limited? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
5. Range of Estimated Fugitive/Other Emissions: <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 _____ to _____ tons/year		
6. Emission Factor: 0.12 lb/ton of clinker Reference: BACT & AP-42, 5th Edition, Table 11.6-8		
7. Emissions Method Code: <input checked="" type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5		
8. Calculation of Emissions (limit to 600 characters): 105 TPH x 0.12 lb/ton = 12.6 lb/hour 839,500 TPY x 0.12 lb/ton = 50.4 tons/year <p style="text-align: right;">RECEIVED NOV 12 1999 BUREAU OF AIR REGULATION</p>		
9. Pollutant Potential/Estimated Emissions Comment (limit to 200 characters):		

Emissions Unit Information Section 3 of 6 [In-Line Kiln/Raw Mill]

Allowable Emissions (Pollutant identified on front of page)

A.

1. Basis for Allowable Emissions Code: BACT		
2. Future Effective Date of Allowable Emissions: NA		
3. Requested Allowable Emissions and Units: 0.12 lb/ton of clinker		
4. Equivalent Allowable Emissions:	12.6 lb/hour	50.4 tons/year
5. Method of Compliance (limit to 60 characters): CEM		
6. Pollutant Allowable Emissions Comment (Desc. of Related Operating Method/Mode) (limit to 200 characters):		
<p>The requested allowable emission rate represents BACT and is more stringent than NESHAP. The proposed MACT limit is 50 ppmvd as propane at 7% O₂. This equates to 49.48 lb/hr and 184.0 tons/year for this facility.</p> <p>The CEM is a requirement of the NESHAP.</p>		

B.

1. Basis for Allowable Emissions Code: NA		
2. Future Effective Date of Allowable Emissions:		
3. Requested Allowable Emissions and Units:		
4. Equivalent Allowable Emissions:	lb/hr	tons/year
5. Method of Compliance (limit to 60 characters):		
6. Pollutant Allowable Emissions Comment (Desc. of Related Operating Method/Mode) (limit to 200 characters):		
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**B. GENERAL EMISSIONS UNIT INFORMATION
(Regulated and Unregulated Emissions Units)**

Emissions Unit Description and Status

4. Description of Emissions Unit Addressed in This Section (limit to 60 characters): Clinker Cooler		
2. Emissions Unit Identification Number: <input checked="" type="checkbox"/> No Corresponding ID <input type="checkbox"/> Unknown		
3. Emissions Unit Status Code: C	4. Acid Rain Unit? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	5. Emissions Unit Major Group SIC Code: 32
6. Emissions Unit Comment (limit to 500 characters): This emissions unit covers the clinker cooler.		

Emissions Unit Control Equipment

A.

1. Description (limit to 200 characters): Clinker Cooler ESP	<p>RECEIVED NOV 12 1999 BUREAU OF AIR REGULATION</p>
2. Control Device or Method Code: 010	

**C. EMISSIONS UNIT DETAIL INFORMATION
(Regulated Emissions Units Only)**

Emissions Unit Details

1. Initial Startup Date: NA		
2. Long-term Reserve Shutdown Date: NA		
3. Package Unit: NA		
Manufacturer:	Model Number:	
4. Generator Nameplate Rating: NA	MW	
5. Incinerator Information: NA		
	Dwell Temperature:	°F
	Dwell Time:	seconds
	Incinerator Afterburner Temperature:	°F

Emissions Unit Operating Capacity

1. Maximum Heat Input Rate: NA	mmBtu/hr
2. Maximum Incineration Rate: NA	lb/hr tons/day
3. Maximum Process or Throughput Rate: 2520 tons/day of clinker	
4. Maximum Production Rate: NA	
5. Operating Capacity Comment (limit to 200 characters): Annual clinker production limited to 839,500 tpy	

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Emissions Unit Operating Schedule

Requested Maximum Operating Schedule:		
	hours/day	days/week
	weeks/year	8760 hours/year

**F. SEGMENT (PROCESS/FUEL) INFORMATION
(Regulated and Unregulated Emissions Units)**

Segment Description and Rate: Segment 1 of 1

1. Segment Description (Process/Fuel Type and Associated Operating Method/Mode) (limit to 500 characters): Mineral Products: Cement Manufacturing: Dry Process: Clinker Cooler	
2. Source Classification Code (SCC): 3-05-006-14	
3. SCC Units: Tons Clinker	
4. Maximum Hourly Rate: 105 (24-hr avg)	5. Maximum Annual Rate: 839,500
6. Estimated Annual Activity Factor: NA	
7. Maximum Percent Sulfur: NA	8. Maximum Percent Ash: NA
9. Million Btu per SCC Unit: NA	
10. Segment Comment (limit to 200 characters): <div style="text-align: right;"> <p>RECEIVED</p> <p>NOV 12 1999</p> <p>BUREAU OF AIR REGULATION</p> </div>	

**H. EMISSIONS UNIT POLLUTANT DETAIL INFORMATION
(Regulated Emissions Units Only - Emissions Limited Pollutants Only)**

Pollutant Detail Information: Pollutant 1 of 2

1. Pollutant Emitted: PM		
2. Total Percent Efficiency of Control:		%
3. Potential Emissions:	12.46 lb/hour	50.0 tons/year
4. Synthetically Limited? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
5. Range of Estimated Fugitive/Other Emissions: <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 _____ to _____ tons/year		
6. Emission Factor: 0.07 lb/ton of dry preheater feed Reference: BACT		
7. Emissions Method Code: <input checked="" type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5		
8. Calculation of Emissions (limit to 600 characters): 178 TPH x 0.07 lb/ton = 12.46 lb/hour 1,427,150 TPY x 0.07 lb/ton = 50.0 tons/year		
9. Pollutant Potential/Estimated Emissions Comment (limit to 200 characters):		

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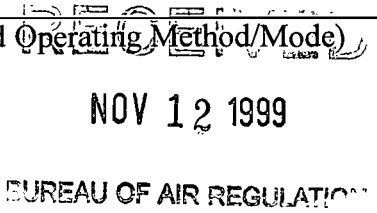
Emissions Unit Information Section 4 of 6 [Clinker Cooler]

Allowable Emissions (Pollutant identified on front of page)

A.

1. Basis for Allowable Emissions Code: RULE		
2. Future Effective Date of Allowable Emissions: NA		
3. Requested Allowable Emissions and Units: 0.07 lb/ton of dry preheater feed		
4. Equivalent Allowable Emissions:	12.46 lb/hour	50.0 tons/year
5. Method of Compliance (limit to 60 characters): Method 5		
6. Pollutant Allowable Emissions Comment (Desc. of Related Operating Method/Mode) (limit to 200 characters):		
The requested allowable emission rate represents BACT.		

B.

1. Basis for Allowable Emissions Code: NA		
2. Future Effective Date of Allowable Emissions:		
3. Requested Allowable Emissions and Units:		
4. Equivalent Allowable Emissions:	lb/hr	tons/year
5. Method of Compliance (limit to 60 characters):		
6. Pollutant Allowable Emissions Comment (Desc. of Related Operating Method/Mode) (limit to 200 characters):		
 <p>NOV 12 1999 BUREAU OF AIR REGULATION</p>		

Emissions Unit Information Sectio 4 of 6 [Clinker Cooler]

Pollutant Detail Information: Pollutant 2 of 2

1. Pollutant Emitted: PM10		
2. Total Percent Efficiency of Control:		%
3. Potential Emissions:	10.68 lb/hour	42.8 tons/year
4. Synthetically Limited? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
5. Range of Estimated Fugitive/Other Emissions: <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 _____ to _____ tons/year		
6. Emission Factor: 85% of PM = 0.06 lb/ton of dry preheater feed Reference: BACT		
7. Emissions Method Code: <input checked="" type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5		
8. Calculation of Emissions (limit to 600 characters): 178 TPH x 0.06 lb/ton = 10.68 lb/hour 1,427,150 TPY x 0.06 lb/ton = 42.8 tons/year <div style="text-align: right; margin-top: 20px;"> RECEIVED NOV 12 1999 BUREAU OF AIR REGULATION </div>		
9. Pollutant Potential/Estimated Emissions Comment (limit to 200 characters):		

Emissions Unit Information Sectio 4 of 6 [Clinker Cooler]

Allowable Emissions (Pollutant identified on front of page)

A.

1. Basis for Allowable Emissions Code: BACT
2. Future Effective Date of Allowable Emissions: NA
3. Requested Allowable Emissions and Units: 0.06 lb/ton of dry preheater feed
4. Equivalent Allowable Emissions: 10.68 lb/hour 42.8 tons/year
5. Method of Compliance (limit to 60 characters): Method 5 for PM
6. Pollutant Allowable Emissions Comment (Desc. of Related Operating Method/Mode) (limit to 200 characters): The requested allowable emission rate represents BACT.

B.

1. Basis for Allowable Emissions Code: NA
2. Future Effective Date of Allowable Emissions:
3. Requested Allowable Emissions and Units:
4. Equivalent Allowable Emissions: lb/hr tons/year
5. Method of Compliance (limit to 60 characters):
6. Pollutant Allowable Emissions Comment (Desc. of Related Operating Method/Mode) (limit to 200 characters): RECEIVED NOV 12 1999 BUREAU OF AIR RECREATION

**C. EMISSIONS UNIT DETAIL INFORMATION
(Regulated Emissions Units Only)**

Emissions Unit Details

1. Initial Startup Date: NA		
2. Long-term Reserve Shutdown Date: NA		
3. Package Unit: NA		
Manufacturer:		Model Number:
4. Generator Nameplate Rating: NA		MW
5. Incinerator Information: NA		
	Dwell Temperature:	°F
	Dwell Time:	seconds
	Incinerator Afterburner Temperature:	°F

Emissions Unit Operating Capacity


1. Maximum Heat Input Rate: NA		mmBtu/hr
2. Maximum Incineration Rate: NA	lb/hr	tons/day
3. Maximum Process or Throughput Rate: NA		
4. Maximum Production Rate: 150 TPH cement from finish mill		
6. Operating Capacity Comment (limit to 200 characters): Annual production rate limited to:		
<p align="center">136 tph (avg.) x 8760 hrs/yr = 1,191,360 tpy</p>		<p>RECEIVED</p> <p>NOV 12 1999</p> <p>BUREAU OF AIR REGULATION</p>

Emissions Unit Operating Schedule

Requested Maximum Operating Schedule:		
	hours/day	days/week
	weeks/year	8760 hours/year

**F. SEGMENT (PROCESS/FUEL) INFORMATION
(Regulated and Unregulated Emissions Units)**

Segment Description and Rate: Segment 1 of 2

1. Segment Description (Process/Fuel Type and Associated Operating Method/Mode) (limit to 500 characters): Mineral Products: Cement Manufacturing: Dry Process: Clinker Grinding	
2. Source Classification Code (SCC): 3-05-006-17	
3. SCC Units: Tons Cement Produced	
4. Maximum Hourly Rate: 150	5. Maximum Annual Rate: 1,191,360
6. Estimated Annual Activity Factor: NA	
7. Maximum Percent Sulfur: NA	8. Maximum Percent Ash: NA
9. Million Btu per SCC Unit: NA	
10. Segment Comment (limit to 200 characters): This segment is the storage, conveying and finish milling of clinker, gypsum, limestone, grinding aids, and other mineral aggregates into Portland and masonry cements. <div style="text-align: right;">  NOV 12 1999 BUREAU OF AIR REGISTRATION </div>	

Emissions Unit Information Section 6 of 6 [Coal Processing]

9. Actual Volumetric Flow Rate: See Table	acfm
10. Percent Water Vapor : See Table	%
11. Maximum Dry Standard Flow Rate: See Table	dscfm
12. Nonstack Emission Point Height: NA	feet
13. Emission Point UTM Coordinates: Zone: East (km): North (km):	
14. Emission Point Comment (limit to 200 characters):	

	HEIGH FT.	DIAM. FT.	TEMP. °F	ACFM	H2O	DSCFM
S-17	10	3.5	150	24,000	6.5%	19423
S-21	60	1.0	150	3,000	2%	2545
Total =						21,968

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BUREAU OF AIR REGULATION

4. Professional Engineer Statement:

I, the undersigned, hereby certify, except as particularly noted herein, that:*

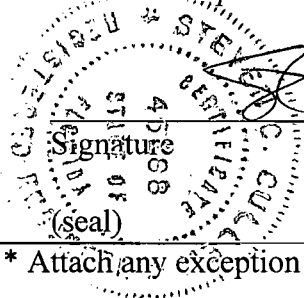
(1) To the best of my knowledge, there is reasonable assurance that the air pollutant emissions unit(s) and the air pollution control equipment described in this Application for Air Permit, when properly operated and maintained, will comply with all applicable standards for control of air pollutant emissions found in the Florida Statutes and rules of the Department of Environmental Protection; and

(2) To the best of my knowledge, any emission estimates reported or relied on in this application are true, accurate, and complete and are either based upon reasonable techniques available for calculating emissions or, for emission estimates of hazardous air pollutants not regulated for an emissions unit addressed in this application, based solely upon the materials, information and calculations submitted with this application.

If the purpose of this application is to obtain a Title V source air operation permit (check here [] if so), I further certify that each emissions unit described in this Application for Air Permit, when properly operated and maintained, will comply with the applicable requirements identified in this application to which the unit is subject, except those emissions units for which a compliance schedule is submitted with this application.

If the purpose of this application is to obtain an air construction permit for one or more proposed new or modified emissions units (check here [X] if so), I further certify that the engineering features of each such emissions unit described in this application have been ~~designed or examined by me or individuals under my direct supervision~~ and found to be in conformity with sound engineering principles applicable to the control of emissions of the air pollutants characterized in this application.

If the purpose of this application is to obtain an initial air operation permit or operation permit revision for one or more newly constructed or modified emissions units (check here [] if so), I further certify that, with the exception of any changes detailed as part of this application, each such emissions unit has been constructed or modified in substantial accordance with the information given in the corresponding application for air construction permit and with all provisions contained in such permit.



[Handwritten Signature]

Signature
of
(seal)

11/8/99
Date

* Attach any exception to certification statement.

RECEIVED

NOV 12 1999

4. Professional Engineer Statement:

I, the undersigned, hereby certify, except as particularly noted herein, that:*

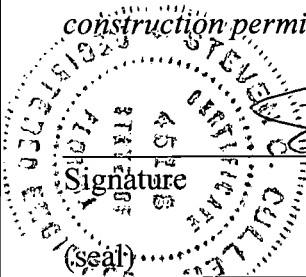
(1) To the best of my knowledge, there is reasonable assurance that the air pollutant emissions unit(s) and the air pollution control equipment described in this Application for Air Permit, when properly operated and maintained, will comply with all applicable standards for control of air pollutant emissions found in the Florida Statutes and rules of the Department of Environmental Protection; and

(2) To the best of my knowledge, any emission estimates reported or relied on in this application are true, accurate, and complete and are either based upon reasonable techniques available for calculating emissions or, for emission estimates of hazardous air pollutants not regulated for an emissions unit addressed in this application, based solely upon the materials, information and calculations submitted with this application.

If the purpose of this application is to obtain a Title V source air operation permit (check here [] if so), I further certify that each emissions unit described in this Application for Air Permit, when properly operated and maintained, will comply with the applicable requirements identified in this application to which the unit is subject, except those emissions units for which a compliance schedule is submitted with this application.

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If the purpose of this application is to obtain an initial air operation permit or operation permit revision for one or more newly constructed or modified emissions units (check here [] if so), I further certify that, with the exception of any changes detailed as part of this application, each such emissions unit has been constructed or modified in substantial accordance with the information given in the corresponding application for air construction permit and with all provisions contained in such permit.

A circular seal for a Professional Engineer in the State of Florida. The seal contains the text "FLORIDA STATE BOARD OF PROFESSIONAL ENGINEERS" around the perimeter and "STEVEN" in the center. A signature is written over the seal.
Signature

11/8/99
Date

RECEIVED

* Attach any exception to certification statement.

NOV 12 1999

BUREAU OF AIR REGULATION

4. Professional Engineer Statement:

I, the undersigned, hereby certify, except as particularly noted herein*, that:

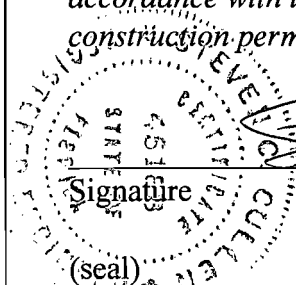
(1) To the best of my knowledge, there is reasonable assurance that the air pollutant emissions unit(s) and the air pollution control equipment described in this Application for Air Permit, when properly operated and maintained, will comply with all applicable standards for control of air pollutant emissions found in the Florida Statutes and rules of the Department of Environmental Protection; and

(2) To the best of my knowledge, any emission estimates reported or relied on in this application are true, accurate, and complete and are either based upon reasonable techniques available for calculating emissions or, for emission estimates of hazardous air pollutants not regulated for an emissions unit addressed in this application, based solely upon the materials, information and calculations submitted with this application.

If the purpose of this application is to obtain a Title V source air operation permit (check here [] if so), I further certify that each emissions unit described in this Application for Air Permit, when properly operated and maintained, will comply with the applicable requirements identified in this application to which the unit is subject, except those emissions units for which a compliance schedule is submitted with this application.

If the purpose of this application is to obtain an air construction permit for one or more proposed new or modified emissions units (check here [X] if so), I further certify that the engineering features of each such emissions unit described in this application have been ~~designed or examined by me or individuals under my direct supervision~~ and found to be in conformity with sound engineering principles applicable to the control of emissions of the air pollutants characterized in this application.

If the purpose of this application is to obtain an initial air operation permit or operation permit revision for one or more newly constructed or modified emissions units (check here [] if so), I further certify that, with the exception of any changes detailed as part of this application, each such emissions unit has been constructed or modified in substantial accordance with the information given in the corresponding application for air construction permit and with all provisions contained in such permit.



[Handwritten Signature]

Signature
(seal)

11/8/99
Date

RECEIVED

* Attach any exception to certification statement.

NOV 12 1999

BUREAU OF AIR REGULATION

INTEROFFICE MEMORANDUM

Date: 11-Nov-1999 05:03pm
From: Koogler & Associates
koogler@worldnet.att.net
Dept:
Tel No:

To: Joseph Kahn TAL 850/921-9519 (KAHN_J@dep.state.fl.us)

Subject: SAC application

I have attached the application for Suwannee American Cement (SAC) and modeling results for the class II impacts.

Please note that the modeling output files are those for the years of maximum impact. If you want all five years of output data please email back. As well, if you have other questions please let me know. ph# 352 377-5822

Sincerely,
Max Lee for John Koogler

Name
SUW2.doc

Size Modified
637,440 11/8/99 5:00 PM

Comment

Name	Size	Modified	Comment
Swpm_91_class2.out	508,622	11/10/99 9:47 PM	
SAC_airmodeling summary&Generator summary	24,576	11/11/99 4:46 PM	
SAC_plot.xls	79,360	11/11/99 4:45 PM	
SWNX_89.OUT	182,092	11/10/99 9:15 PM	
Swpm_90_class2.out	508,622	11/10/99 7:41 PM	
Swnx_90_class2.out	206,183	11/10/99 10:50 PM	
Swso2_89_3hr.out	181,958	11/10/99 9:07 PM	
SWSO2A89.OUT	181,958	11/11/99 9:14 AM	
SWSO2A91.OUT	181,958	11/11/99 9:18 AM	
SWCO_91.OUT	182,092	11/10/99 9:01 PM	

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NOTICE OF ADMINISTRATIVE PROCEEDING
ON PERMIT APPLICATION

NOV 09 1999

BUREAU OF AIR REGULATION

The Department of Environmental Protection gives notice of the receipt of a petition for an administrative proceeding (hearing) on the Department's denial of a permit to Surawnee American Cement Company, Inc., Post Office Box 410, Branford, Florida 32008 in DEP File No. 1210465-001-AC, PSD-FL-259, Branford Plant, Portland Cement Plant, Surawnee County, OGC File No. 99-1125, DOAH Case No. 99-3095, to construct a new dry process, preheater/precalciner type portland cement plant near Branford, to be located at U.S. Highway 27 at County Road 49, Surawnee County. Notice of the intent to deny was published on July 2, 1999.

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 may result in the issuance of a permit as requested by the applicant or as modified in the course of the proceeding or by settlement.

A person whose substantial interests are affected by the Department's proposed permitting decision 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 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-300.

Petitions filed by any person, other than those entitled to written notice under section 120.60(3) of the Florida Statutes must be filed within fourteen days of publication of the notice or receipt of the written notice, whichever occurs first. The 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 of the Florida Statutes, or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with rule 28-106.205 of the Florida Administrative Code.

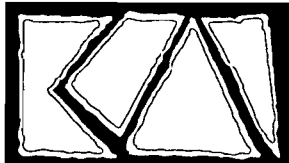
A petition that disputes the material facts on which the Department's action is based must contain the following information: (a) The name and address of each agency affected and each agency's file or identification number, if known; (b) The name, address and telephone number of the petitioner, the name 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 materials 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 have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation is not available in this proceeding.

Any party to the permit denial has the right to seek judicial review of it under section 120.68 of the Florida Statutes, by filing a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department 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.

TALI #207274 v1



KOOGLER & ASSOCIATES
ENVIRONMENTAL SERVICES

4014 NW THIRTEENTH STREET
GAINESVILLE, FLORIDA 32609
352/377-5822 ■ FAX/377-7158

KA 624-98-01

November 8, 1999

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NOV 08 1999

BUREAU OF AIR REGULATION

Mr. Joe Kahn
Florida Department of
Environmental Protection
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Subject:: Draft Air Construction Permit 1210465-001-AC,
PSD-FL-259
Suwannee American Cement Company
Comments on Draft Permit

Dear Joe:

I appreciated the opportunity to meet with you on October 27, 1999, to discuss the draft air construction permit that has been prepared for the Suwannee American Cement Company (Suwannee American). By this letter, I am providing you with a written copy of our comments and, in some cases, our request for a modification or deletion of permit conditions. The comments are related to the Technical Evaluation and Preliminary Determination, the Best Available Control Technology Determination, and to the draft permit. The subject matter of our comments is referenced by page number and document section number.

First, we request that the maximum hourly rates of the preheater feed, clinker production and finished cement production be increased to account for maximum plant capacity. The annual rates will not change. The maximum rates requested are 178 tons per hour for preheater feed (from 163 tons per hour), 105 tons per hour for clinker production (from 95.83 tons per hour) and 150 tons per hour for finished cement production (from 136 tons per hour). The updated modeling will be submitted under separate cover.

Comments On Technical Evaluation And Preliminary Determination

Page TE-2, Section 1.1 and draft permit page 1 of 50

The authorized representative should be changed to Fred W. Koester, (President, Suwannee American Cement Company, Inc.). A revised authorization page for the permit application is attached.

Page TE-2, Section 2.1

The distance from the plant site to the Chassahowitzka Class I PSD area appears to be incorrect. The correct distance is about 132 kilometers. This appears to be a typographical error. All of the analyses that have been performed to evaluate the impact of the plant on Class I PSD areas were based on correct distances.

Page TE-3, Section 2.3

In the permit application, it was stated that the facility is a major source of Hazardous Air Pollutants (HAPs). This was a presumptive statement based on worst-case expectations of HCl emissions. A determination will be made once the plant is operational as to the actual status of the plant; i.e., either a major source or an area source of HAPs.

Page TE-5, Second paragraph

The fourth sentence of the paragraph should read:

“... mixed with gypsum and limestone and ground in a ball mill in the finish milling”

Page TE-5, Section 3.2, Raw Milling Operations

The emissions from the raw mill and kiln will be controlled by a baghouse rather than an electrostatic precipitator (ESP). The specifications of the baghouse including a performance guarantee comparable to the performance guarantee for the kiln/raw mill ESP are attached. Revised permit application pages will be submitted under separate cover.

Converting from an ESP to a baghouse will have no effect on plant or operating information presented in the permit application. Stack gas flow rates and temperatures will remain unchanged, none of the proposed emission rates from the kiln/raw mill stack (or other stacks) will change and there will be no process changes.

Page TE-6, Section 3.2, Clinker Cooling and Handling

The electrostatic precipitator proposed to control emission from the clinker cooler will not change.

Page TE-8, Section 6.1, Compliance Procedures

All comments related to compliance testing and monitoring will be included in this section even though references to these issues appear at several places in the draft permit document. Comments will be made on PM10 testing on the kiln/raw mill and cooler, the initial compliance testing requirements for emission points controlled by baghouses and the requirement for a carbon monoxide (CO) CEMs.

PM10 Emissions Measurements on Kiln/Raw Mill and Cooler.

It is requested that Suwannee American be given the option to demonstrate compliance with the PM and PM10 emission limits for the kiln/raw mill and cooler by measuring total PM emissions using the EPA Method 5 test procedure and assuming all of the collected particulate matter is PM10. If Suwannee American can demonstrate compliance with both the PM and PM10 emission limits using this approach, there will be no requirement to make separate PM10 emission measurements using EPA Method 201.

This option has been granted to other facilities and should be granted for Suwannee American. The alternative proposed represents no relaxation of permit conditions and actually requires PM emission rates to comply with the more stringent PM10 emission limits for this alternative compliance demonstration to be successful.

Initial Compliance Testing of Emission Points Controlled by Baghouses

There are approximately 20 emission points that are potential sources of PM/PM10 emissions that will be controlled by baghouses. The draft permit requires that initial compliance with the particulate matter emission limiting standard for all of these emission points (0.01 grains per dry standard cubic foot) be demonstrated by an emission test using EPA Method 5. Thereafter,

compliance is to be demonstrated with an opacity standard (five percent opacity, maximum).

The requirement for initial and ongoing compliance demonstrations for emission points controlled by baghouses that are minor sources (i.e., less than 100 tons per year) has typically been met by demonstrating compliance with an opacity standard of five percent or less. This requirement is typical in most permits issued by the Department for Portland cement facilities and other sources of particulate matter.

The real burden of this requirement is not the emission tests themselves but the requirement to provide stack sampling facilities and access to the facilities for the one-time tests. It is estimated that the cost of the compliance testing for the approximate 20 emission points will be in the range of \$40-50,000. The cost of providing stack sampling facilities and access to the emission points has been estimated to be in the range of \$100,000 plus. The cost of providing stack sampling facilities and access is high because many of the baghouses are designed with side vents rather than stacks. To conduct a Method 5 test on these baghouses (17 of the 20) would require the installation of a permanent or temporary stack. The other major element in the cost involves providing access to the emission points that satisfies safety requirements. Many of the emission points are elevated and/or have no adjacent structures upon which suitable access can be built.

In lieu of the initial emission tests on all emission points controlled by baghouse, Suwannee American proposes the following. There are three minor emission points controlled by baghouses that will have stacks. These are Emission Points N-09 and N-12 in the finish mill and Emission Point S-17 in the coal mill. [Emission Point S-17 was to be vented into the clinker cooler stack; however, a design change, that will be addressed in subsequent sections of this correspondence, will result in emission point S-17 being vented through a separate stack.] For these three emission points that will have stacks, Suwannee American proposes to install sampling ports and access to the ports so that initial compliance can be demonstrated by emission measurements in accordance with EPA Method 5. For the remaining approximate 17 emission points controlled by baghouses, all of which are minor sources (less than 100 tons per year), Suwannee American proposes that initial and continuing compliance be demonstrated by visible emissions observations and a five percent opacity standard.

The three emission points that have stacks are the larger emission points (higher air flow rates and hence, higher potential particulate matter emission rates). Suwannee American is of the opinion that initial Method 5 tests on these emission points is reasonable. Suwannee American is of the opinion, however, that the expenditure of \$8,000-9,000 on each of the approximate 17 smaller

baghouses for a one-time initial compliance test (for both testing and stack sampling facilities) on approximately is not reasonable.

The proposed alternative is technically sound considering the performance record of baghouses and the fact that all of the baghouses (for the approximate 20 emission points) will be off-the-shelf items that have been properly selected and designed and have been certified by a registered Professional Engineer. If there are no visible emissions from these baghouses (less than five percent opacity), it is virtually a certainty that measured particulate matter emissions will be less than 0.01 grains per dry standard cubic foot. This is one of the reasons the Department adopted rules such as 62-297.330(6), FAC; the rule allowing an opacity test in lieu of EPA Method 5 tests for certain emission points equipped with baghouses.

It should also be taken into consideration that the initial compliance that the proposed permit condition is intended to demonstrate is not a problem with smaller baghouses. The concern, if there is one, should be continuing compliance. Continuing compliance at Suwannee American for emission points controlled by baghouses (and other emission points) will be demonstrated through the compliance assurance monitoring requirements of the Title V permit and an operation/maintenance plan that Suwannee American will develop.

The Carbon Monoxide CEM

The CO CEMs proposed for the kiln/raw mill stack has not been required on other cement plants permitted in Florida (Rinker, FRI, Florida Crushed Stone or Southdown). Compliance with the CO emission limit at these other plants has been demonstrated through the use of annual compliance testing and the use of process monitors for CO and oxygen (O₂). Suwannee American will have process monitors for CO and O₂ that are similar to those that have been installed at other plants and will conduct annual compliance testing, but in addition, Suwannee American will be required to install a VOC CEMS to comply with the MACT standard. Among other things, the VOC CEMs will provide continuing demonstration of good combustion practices and hence, be another indicator of CO levels in the stack gas.

Suwannee American is of the opinion that data provided by the process CO and O₂ monitors, the annual compliance testing, the VOC CEMs and other process monitoring that will be required by the Title V permit will provide the Department with assurance that the CO emission limit will be met on a continuing basis. The installation of a CO CEM is a redundant and costly requirement that, in our opinion, is unnecessary.

Page TE-13, Second table

There is a typographical error in the title of this table. The reference to the "Wolf Island" Class I PSD area should be to the "St. Marks" Class I PSD area.

Page TE-15, Section 8, Additional Requirements

Some of the additional requirements imposed by the permit go beyond what is normally required in air construction permits and are unacceptable to Suwannee American.

Telemetry CEMs, COMs and Operational Data to FDEP Offices

Suwannee American has discussed a telemetry system that will transmit CEMs and COMs data to FDEP offices but has never discussed transmitting operational data. The data generated by the CEMs and COMs on the kiln/raw mill and cooler stacks are processed by a computer dedicated to those systems. Suwannee American has agreed to provide the necessary software in the CEMs/COMs computer to make the data available to the Department and to provide the Department access to this computer. It will be the responsibility of the Department to transmit data from the system to any of its offices.

The computer system that contains the process data that is proposed to be transmitted to the Department's offices is the computer system that controls plant operations. For security purposes, Suwannee American cannot agree to provide FDEP or any other party access to this system. The process data that are proposed to be transmitted to FDEP offices (draft permit, page 17, Condition 9) will be recorded at the plant and will be available for Department review. The transmission of the CEMs and COMs data to the Department will provide the Department with the assurance necessary to demonstrate continuing compliance with emission limiting standards without the need for process data.

Requirement for the Manufacturer or Vendor of Control Equipment to Perform Inspections or Maintenance

The proposed requirement for the manufacturer or vendor of the control equipment for the kiln/raw mill and cooler to perform regular inspections, maintenance and repairs is unacceptable to Suwannee American. This requirement goes far beyond what the Department rules require and what has typically been required by the Department at other facilities.

Suwannee American has agreed to transmit CEMs and COMs data to the Department's offices on a continuing basis. These data, and in particular the COMs data, will provide continuing assurance that the kiln/raw mill and cooler

control equipment are functioning properly. Additionally, Suwannee American will agree to develop an Operation and Maintenance Plan that will be implemented by plant personnel for this and other control equipment. Suwannee American will further agree that the plan will be subject to Department review.

Qualifications of the Facility Manager

The proposed permit condition (page 10, Condition 30) that sets forth the qualifications of the facility manager and the time the manager is to spend at the plant is unacceptable to Suwannee American. Suwannee American will employ qualified management and qualified plant operators as would any company investing \$80,000,000-100,000,000 in a facility. To attempt to operate a facility representing such an investment with anything other than qualified management and operators would not be a wise decision and would be and unacceptable to investors in the project. Suwannee American cannot, however, agree to a permit condition that dictates the experience of the facility manager, how and where this experience is to be gained or how much time the manager is to be on site. There is no rule basis for such a requirement.

Page TE-17, Fourth Comment

The comment in general relates to emissions from vehicle traffic associated with the facility. We agree with the Department's comment that vehicle emissions other than fugitive PM10 emissions are not required to be addressed. The fugitive PM10 emissions associated with automotive and truck traffic associated with the plant have been addressed as discussed with the Department. This assessment is provided under separate cover.

Comments on Best Available Control Technology

Page BD-6, Sulfur Dioxide

The Department's assessment of the dry circulating scrubber for SO₂ control assumes that the kiln/raw mill particulate matter control device can be used for reagent recovery. This is not possible as pointed out in our letter to the Department dated April 28, 1999. As a result, the Department's estimated control cost of \$7,400 per ton of SO₂ (while high enough to preclude this system as a viable control option) is too low.

Page BD-8, First paragraph

The reference to the PM10 emission limit on the next to last line of this paragraph should read 0.0085 grains per dry standard cubic foot rather than 0.085 grains per dry standard cubic foot.

BD-8, Second paragraph

It is requested that the last sentence be modified to read:
“Cement trucks leaving the plant”

Page BD-9, Last paragraph

As stated previously, Suwannee American cannot agree to transmit process data to the Department's offices.

Comments on Draft Permit

Page 4, Condition 6

It is requested that the construction permit be valid for a period of three (3) years.

Page 5, Condition 8

The proposed Condition states:

“The owner or operator shall apply for and receive a Title V operating permit ...” [Emphasis added]

The rule citation is 62-213, FAC. Rule 62-213.420, FAC, requires operators to apply for a Title V permit 90 days prior to the expiration of a construction permit, but no later than 180 days after commencement of operation.

Suwannee American will apply for the Title V operating permit 90 days prior to the expiration of the construction permit or no later than 180 days after commencement of construction whichever occurs first, but the company has no control over when the Title V permit will be issued. This being the case,

Suwannee American requests that the phrase and received be removed from Condition 8.

Page 6, Condition 10, Additional Reasonable Precautions

The precaution that requires, "storage piles to be shaped, compacted and oriented to minimize wind erosion" cannot practically be applied at the Suwannee American facility and should be removed from the permit. This requirement is suitable for the storage of large quantities of bulk material in unenclosed areas. At the Suwannee American plant, and as required by the first Additional Reasonable Precaution, the raw materials will be stored under roof or in enclosed vessels. The orientation of materials stored under roof will be dictated by the orientation of the covered storage area. Similarly, the dimensions of the covered storage area will dictate the shape of the storage piles. The requirement to compact the storage material is not practical because of the requirements of the reclamation equipment and/or the high turnover of stored material. It is our professional opinion that the moisture content of the stored material and the partial shield provided by the roofed storage will be more than adequate to minimize the generation of fugitive particulate matter.

It is requested that the last precaution be revised to read:

"Cement trucks leaving the plant"

Page 9, Condition 28

It is our understanding that the ambient PM10 monitor specified by this Condition is a monitor that will continuously measure ambient PM10 concentrations (such as the monitor available through Anderson Instruments, Inc.) rather than a monitor that will operate one day out of every six days. As with the transmission of the CEM and COM system data, Suwannee American will provide telemetry access to the continuous PM10 monitor. Transmitting of data from the monitor will be the responsibility of FDEP.

The sentence beginning at the bottom of page 9 and continuing onto page 10 states:

"New or existing monitoring devices shall be located as designated by the Department."

This requirement is open ended and should be revised. Suwannee American will locate the single continuous ambient PM10 monitor specified in this Condition at a location designated by the Department but does not agree to install other new

monitoring devices. Also, Suwannee American does not agree to relocate the one specified monitor unless it is demonstrated by the Department or by Suwannee American that the initial location of the monitor is defective.

Regarding the location of the PM10 monitor, Suwannee American suggests that the monitor required by this condition be located in Branford. Branford is the population center nearest the plant.

Page 10, Condition 30

As stated previously, the Condition dictating the experience of the facility manager is not acceptable to Suwannee American.

Page 12, Condition 2

There is a typographical error in the note which is part of this Condition. The annual limit should read, "... 1,679,000 tons per year."

Page 13, Condition 7(A)

There is a typographical error in this Condition. The reference to test methods should read, "... 40 CFR 60, Appendix A"

Page 17, Condition 2.A.

A requirement for "... vertical and horizontal guillotine gates and a ram." is overly prescriptive. It is suggested that the Condition specify that the tire feeder shall be designed with a double air lock feed system."

The tire feeder has not yet been designed. Once the design has been finalized, and before installation, the design will be submitted to the Department for review.

Page 17, Condition 5

This Condition states that no air heater shall be installed in the raw mill. An air heater is required for proper plant operations; therefore, this Condition must be modified. The permit application submitted to the Department specifies a 35² MMBtu per hour oil fired heater associated with the raw mill (Equipment No. E02-01). The information provided indicated that the heater will be fired at an average heat input rate of 15.7 MMBtu per hour during the winter and 7.6 MMBtu per hour during the summer. The heater is not addressed in any more detail in

the permit application as the air and combustion products from the heater pass through the raw mill and then through the equipment controlling emissions from the kiln/raw mill. The air heater is not a separate emission point and emissions, including the gas volume and combustion product, have been accounted for in emissions from the kiln/raw mill stack.

In the final plant design, the air heater has been changed to a natural gas fired heater with the same rating. The gas firing rate to the heater, at maximum capacity, will be 0.031 million cubic feet per hour. This will result in the following approximate air pollutant emission rate based on EPA emission factors for gas fired boilers:

- NOx - 3.12 pounds per hour or 0.03 pounds per ton of clinker
- CO - 2.62 pounds per hour or 0.03 pounds per ton of clinker
- SO₂ - 0.02 pounds per hour or less than 0.01 pounds per ton of clinker
- VOC - 0.08 pounds per hour or less than 0.01 pounds per ton of clinker

As stated previously, these emissions and the gas volume associated with the heater have already been accounted for in the emission limits that have been established for the kiln/raw mill.

Page 17, Condition 9

As stated previously, Suwannee American cannot, for security purposes, allow access to the computer generating process data through a telemetry system. Suwannee American does agree, as discussed with the Department, to provide the Department with access to the computer system that generates the CEMs and COMs emission data.

The requirement in this Condition that the telemetry system be out of operation at each location for no more than 40 minutes per month is unreasonable. First, Suwannee American has agreed only to provide the Department with access to the CEMs/COMs computer system. The Department will have the responsibility for supplying and maintaining the contact with this system. As a result, Suwannee American will only have control over the fraction of time the CEMs/COMs are on line; and no control over the transmission of data.

Secondly, the requirement for no more than 40 minutes downtime per month is unreasonable regardless of which entity operates the system. This represents an acceptable downtime of only 0.09 percent of the time. It is our understanding that an acceptable downtime for a CEMs or COMs is in the range of 5-10 percent per month based on discussions with suppliers of CEMs and telemetry systems. Suwannee American will accept the responsibility of maintaining the CEMs and

COMs on line a fraction of time that is consistent with the requirements of other facilities statewide.

Page 18, Condition 10

As stated previously, the requirement to have the manufacturer or vendor of control equipment for the kiln/raw mill and clinker cooler to provide regular inspections and maintenance is unacceptable. Suwannee American will prepare a Operation/Maintenance Plan for control equipment and will implement the inspection and maintenance with plant personnel. Additionally, Suwannee American will provide FDEP with real-time access to the CEMs and COMs to verify the operating status of the control equipment.

Page 18, Condition 12

Suwannee American has no objection to this Condition so long as any revision to emission limits be based on data that represents a full range of operating conditions and a representative period of time and that any revised emission limits contain a reasonable margin of safety.

Page 19, Condition 15

The height of the kiln/raw mill stack will be increased from 250 feet to 315 feet above grade. This design change is necessary so that the top of the stack will clear the top of the preheater. Air quality modeling is included as Attachment 4 demonstrating that this modification and other modifications discussed herein will not cause exceedances of applicable PSD limits or air quality standards. A revised page of the permit application reflecting the increased stack height will be provided under separate cover.

Page 20, First Paragraph following Footnote 7

The hourly emission limit for mercury should be deleted from the permit. The basis for establishing a mercury emissions from the plant is a material balance that includes all of the mercury introduced into the pyroprocessing system from raw materials and fuels and the assumption that all of the mercury introduced to the plant is released to the atmosphere. Condition 13 (page 19) states the basis for the mercury emission limit and Condition 27 (page 25) establishes the record keeping necessary for the material balance. Both Conditions 13 and 27 specify that the mercury input to the pyroprocessing system, and hence, the presumed mercury emissions, are based on a rolling 12-month mercury input. As such, the

hourly emission limit established by Condition 15 is inconsistent with other permit requirements and not supported by rule and therefore, should be deleted.

Page 21, Condition 16

Emissions from the coal mill will no longer be discharged through the clinker cooler stack. The details of this modification will be addressed in subsequent comments.

The emission limits for the clinker cooler (Emission Unit 005) will remain unchanged as the BACT determination for the clinker cooler includes no credit for emissions from the coal mill.

Page 22, Condition 18

As stated previously, Suwannee American requests that the requirement for the CO CEMs be deleted from the permit.

Page 23, Condition 18

The installation of the COMs for the clinker cooler will be simplified as the coal mill will no longer be discharged through the clinker cooler stack.

Page 24, Condition 21

The requirement for mercury emission measurements and the reporting requirement for the emission rates of other metals should be deleted from the permit. As discussed previously, mercury limitations are based on the annual input of mercury to the pyroprocessing system as determined by a material balance. There is no rule that would support the requirement for mercury emissions measurement nor for the reporting of the emission rates of other unregulated metals.

As stated previously, Suwannee American requests the option of demonstrating compliance with both the PM and PM10 emission limiting standards by conducting total particulate matter emission measurements using EPA Method 5 and assuming all collected particulate matter is PM10.

The Condition requires separate emission measurements for regulated pollutants under four fuel firing scenarios. It is requested that emission measurements be required only if a fuel firing scenario is used more than 400 hours per year. This

request is consistent with conditions that have been incorporated into other permits issued by the Department.

Page 25, Condition 24

A weigh cell on the deep bucket conveyor transferring clinker from the clinker cooler to the clinker silos will directly measure clinker production thus eliminating the necessity to develop a relationship between clinker production and preheater feed rate.

Page 25, Condition 25

The requirement to maintain records of heat input on a 1-hour rolling average basis, updated every minute, is not practical.

The firing rate of coal, petroleum coke, fuel oil and natural gas will be recorded continuously and could be reported on a 1-hour rolling average updated each minute. The heating value of the fuels, however, will only be determined periodically; with each shipment of coal, petroleum coke and fuel oil and on some periodic schedule by the supplier of natural gas. Calculated heat inputs from these fuels on a rolling 1-hour average, updated every minute, therefore becomes an exercise in arithmetic as minute-by-minute values of fuel heating values are not known.

The other difficulty associated with this requirement is related to heat input from firing tire derived fuel; either as whole tires directly into the pyroprocessing system or as tires into a gasifier. As with the other fuels, the heating value of tires will be determined only periodically. In addition to not having the heating value of tires on a minute-by-minute basis, and unlike other fuels, the tire firing rate on a minute-by-minute basis (either directly to the pyroprocessing system or the gasifier) will not be known.

From a practical standpoint, the determination of heat input to the pyroprocessing system on block-hour basis is reasonable. It is proposed that the block-hourly heat input rate be determined by multiplying the hourly average fuel firing rate (regardless of fuel) by the heating value representative of that fuel. This has typically been the requirement at other cement plants and other fuel burning facilities and is the most practical and meaningful way to report heat input.

Page 25, Condition 27

It is suggested that the sampling of raw materials be conducted at the discharge of the blend silo rather than at the raw mill feed. The raw mill feed consists of several components whereas the material from the blend silo is a blended composite of the feed material actually fed to the pyroprocessing system.

Regarding the frequency of sampling, it is requested that this condition specify sampling as proposed in the draft permit for the first three months of plant operation, one month per quarter thereafter for the first year, and one month per year thereafter. If there is a change in raw materials or fuel, sampling will be conducted for one month following the change. If any of the sampling indicates monthly input rates of mercury to the plant are greater than expected, the sampling schedule of the initial year will be repeated.

Page 49, Condition 3

Emissions from the coal mill (Emission Point S-17) will no longer be discharged through the clinker cooler stack (Stack K-15). The emissions from the coal mill will be discharged through a separate stack serving only the coal mill baghouse. Revised pages of the permit application will be provided under separate cover.

PM/PM10 emissions from the coal mill stack will not exceed 0.01 grains per dry standard cubic foot or 2.06 pounds per hour and 9.0 tons per year.

Air quality modeling is included in ^{NOT ATTACHED} Attachment 4 demonstrating that the emissions from the coal mill, when discharged through a separate stack, will not cause an exceedance of applicable PSD increments or a violation of ambient air quality standards.

Page 50, Condition 4

The separation of the coal mill and clinker cooler discharges will simplify compliance testing. As proposed previously, Suwannee American will conduct emission measurements for particulate matter on the coal mill stack to demonstrate initial compliance with the particulate matter emission limiting standard of 0.01 grains per dry standard cubic foot and 2.06 pounds per hour. Thereafter, compliance will be demonstrated with visible emissions observations (EPA Method 9) and an opacity standard of five percent.

Compliance with emission and opacity limits for the clinker cooler (page 21, Condition 16) will be demonstrated as required by Condition 21 (page 23).

As the coal mill and clinker cooler discharges will be separated (Condition 22, page 24) is no longer required and can be deleted from the permit.

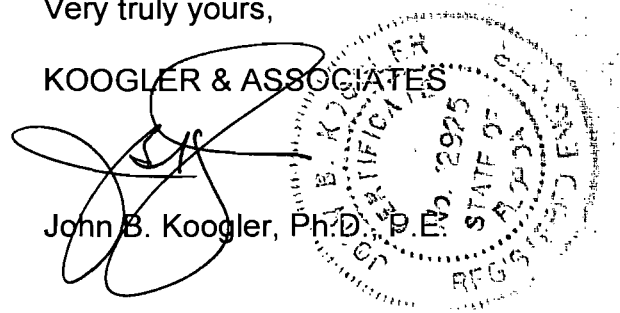
* * * *

I appreciate your review of these comments and will be available to meet with you, should it be necessary, to resolve these matters. Please give me a call with your comments.

Very truly yours,

KOOGLER & ASSOCIATES

John B. Koogler, Ph.D., P.E.



JBK:wa

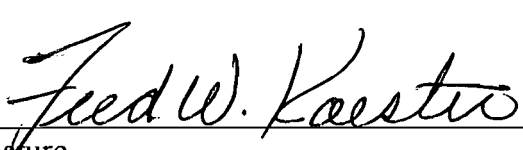
- C: Mr. Fred Koester
Mr. Charles Yagel
Mr. Frank Darabi
Mr. George Reeves
Mr. Robert Vezina
Mr. Larry Sellars

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NOV 08 1999

Owner/Authorized Representative or Responsible Official

BUREAU OF AIR REGULATION

1. Name and Title of Owner/Authorized Representative or Responsible Official: Fred W. Koester – President
2. Owner/Authorized Representative or Responsible Official Mailing Address: Organization/Firm: Suwannee American Cement Company, Inc. Street Address: Post Office Box 410 City: Branford State: FL Zip Code: 32008
3. Owner/Authorized Representative or Responsible Official Telephone Numbers: Telephone: (352) 542-7942 Fax: (352) 542-3417
4. Owner/Authorized Representative or Responsible Official Statement: <i>I, the undersigned, am the owner or authorized representative* of the non-Title V source addressed in this Application for Air Permit or the responsible official, as defined in Rule 62-210.200, F.A.C., of the Title V source addressed in this application, whichever is applicable. I hereby certify, based on information and belief formed after reasonable inquiry, that the statements made in this application are true, accurate and complete and that, to the best of my knowledge, any estimates of emissions reported in this application are based upon reasonable techniques for calculating emissions. The air pollutant emissions units and air pollution control equipment described in this application will be operated and maintained so as to comply with all applicable standards for control of air pollutant emissions found in the statutes of the State of Florida and rules of the Department of Environmental Protection and revisions thereof. I understand that a permit, if granted by the Department, cannot be transferred without authorization from the Department, and I will promptly notify the Department upon sale or legal transfer of any permitted emissions unit.</i>  Signature _____ Date <u>11/8/99</u>

* Attach letter of authorization if not currently on file.



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BUREAU OF AIR REGULATION

PROPOSAL

TO

KRUPP POLYSIUS CORP.
180 INTERSTATE NORTH PARKWAY
ATLANTA, GA 30339-2194

ATTN: MR. EDWARD R. GRAHAM

FOR

AMERICAN CEMENT
BRANDORD, FLORIDA

INQUIRY NO. 7153-JCL-01

BRANDT FILTRATION GROUP PROPOSAL NO. 1926

August 5, 1999

Best Available Copy

BRANDT
FILTRATION GROUP
Advanced Air Pollution Control Technology

August 6, 1999

Krupp Polysius Corp.
180 Interstate North Parkway
Atlanta, GA 30339-2194

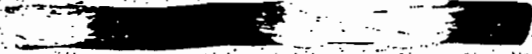
Attention: Edward R. Graham - Senior Buyer

Bid for: Reverse Air Main Kiln Baghouse
Inquiry # 7153-JCL-01

Reference: Brandt Filtration Group Proposal No. 1926

Dear Mr. Graham:

We are pleased to submit this proposal in response to the above listed request for quotation. Pricing for the design and supply of an eight (8) compartment reverse air baghouse complete with structural support steel, access platforms, stairs, ladders, screw conveyors, slide gates, rotary valves, reverse air fan, and ductwork is as follows:



Should you require additional information, please contact me. We look forward to working with you on this very important project.

Yours very truly,
BRANDT FILTRATION GROUP, INC.

A handwritten signature in cursive script that reads "Steve E. Nance".

Steve E. Nance
Executive Vice President & General Manager

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POLYSIUS CORPORATION

Specification No.

5.0 VENDOR DATA SHEETS MAIN KILN / MILL BAGHOUSE OPTION #2Fabric Filter Design Conditions:

Maximum Volume at Operating Conditions

200,000 ACFM

Temperature at Operation Conditions

450°F ✓

Dust Bulk Density

45 PCF65 PCF

Guaranteed Efficiency

99.97%

Inlet Dust Loading

20 gr/ACF ✓

Guaranteed Outlet Loading

Guaranteed Pressure Drop Across
the Fabric Filter6" W.G. ✓Air to Cloth Ratio Gross
(~~including air~~)1.24 : 1

Air to Cloth Ratio with One Module Down (w/R.A.)

1.65 : 1

Air to Cloth Ratio with Two Modules Down (w/R.A.)

1.93 : 1

Reverse-Air Air to Cloth Ratio

1.70 : 1Fabric Filter Arrangement:

Model Number

8-1216-35

Number of Fabric Filters

ONE (1)

Construction

WELDED C. STEEL PLATE

Number of Compartments

EIGHT (8)

Number of Bags per Compartment

192

Total Number of Bags per Fabric Filter

1,536Filter Bag:

Media

WOVEN FIBERGLASS

Finish

TEFLON B

Weave

3x1

POLYSIUS CORPORATION

Specification No.

Count	<u>44 x 24</u>
Weight	<u>15 oz/YD²</u>
Dimensions	<u>12" DIA. x 35'-0" ✓</u>
Anti-Deflations Rings	<u>SEVEN (7) ✓</u>
Cap	<u>CARBON STEEL</u>
Connections Top/Bottom	<u>SPRING & CHAIN / SNAP BAND ✓</u>
Height of Thimbles	<u>N/A</u>
Bag Reach	<u>3 BAG</u>
Bag Suspension	<u>DRAW BAR INCREASING RATE SPRING</u>
Recommended Tension	<u>65 lbs.</u>
<u>Casing and Hoppers:</u>	
Casing Material and Thickness	<u>A-36 , 3/16"</u>
Casing Design Pressure	<u>± 25" W.G.</u>
Compartment Access Door Quantity & Size	<u>FOUR (4) 24" W. x 60" H.</u>
Quantity of Hoppers	<u>EIGHT (8)</u>
Type of Hoppers	<u>TROUGH</u>
Hopper Material and Thickness	<u>A-36 , 3/16"</u>
Hopper Valley Angle	<u>52° MIN.</u>
Hopper Internal Gas Distribution and Reentrainment Devices	<u>YES</u>
Total Hopper Volume	<u>1,811 FT³ / HOPPER</u>
Hopper Accessories (per hopper)	<u>(2) HINGED MANWAYS</u> <u>(1) DUST LEVEL SENSOR</u>
<u>Fabric Filter Cleaning System:</u>	
Method of Cleaning	<u>REVERSE AIR FAN</u>
Assistance	<u>NONE</u>
Number of Reverse-Air Fans	<u>ONE (1)</u>

Standby Fan Included	<u>NO</u>
Type of Fan	<u>INDUSTRIAL CENTRIFUGAL EXHAUSTER</u>
Type of Blades	<u>RADIAL TIP</u> ✓
Type Drive	<u>V-BELT</u> ✓
H.P. of Drive Motor	<u>100 HP.</u> ✓
Manufacturer of Fan	<u>TWIN CITY OR EQUAL</u>
Design Volume of Fan	<u>34,403 ACFM</u> ✓
Reverse-Air Ductwork	<u>A-36, 3/16" TK.</u>
Diameter of Reverse-Air Ductwork	<u>40" I.DIA.</u> ✓
Number of Compartment Reverse-Air Poppet Valves	<u>ONE (1) PER COMP'T.</u> ✓
Type Valve	<u>POPPET DISK</u> ✓
Diameter of Reverse-Air Valves	<u>44" DIA.</u>
Actuation of Reverse-Air Valves	<u>5" DIA. PNEU. CYL.</u> ✓
Control of Reverse-Air Valves	<u>120V. 4WAY, 2 POSITION SOL. VALVE</u>
Manual Lockout	<u>YES</u>
Number of Compartment Outlet Poppet Valves	<u>ONE (1) PER COMP'T.</u> ✓
Type Valve	<u>POPPET DISK</u> ✓
Diameter of Outlet Valves	<u>50" DIA.</u>
Actuation of Outlet Valves	<u>6" DIA. PNEU. CYL.</u> ✓
Control of Outlet Valves	<u>120V. 4WAY, 2 POSITION SOL. VALVE</u>
Manual Lockout	<u>YES</u>
Number of Compartment Inlet Valves	<u>ONE (1) PER COMP'T.</u> ✓
Type Valve	<u>BUTTERFLY</u> ✓
Size of Inlet Valve	<u>3' x 8'</u>
Actuation of Inlet Valves	<u>5" DIA. PNEU. CYL.</u> ✓

POLYSIUS CORPORATION

Specification No.

Control of Outlet Valves		<u>120V. 4WAY, 2 POSITION SOL. VALVE</u>
Manual Lockout		<u>YES</u>
<u>Fabric Filter Control System:</u>		
Type of Controller		<u>ALLEN BRADLEY</u>
Instrumentation		<u>PHOTOHELIC INLET/OUTLET ✓</u> " EACH COMPARTMENT <u>SPEED SWITCH EACH SCREW COM.</u> " " " ROTARY VALVE.
Motor Starters/Control Centers		<u>NO</u>
Power Distribution Panels		<u>NO</u>
<u>Dust Conveyor System:</u>		<u>Rotary valve ?</u>
Quantity and Size of Screw Conveyors and Location	8	<u>✓ 10" DIA. HOPPER SCREW W/ 5 HP MOTOR</u>
	2	<u>16" DIA. GATHER-UP SCREW W/ 25 HP MOTOR</u>
	1	<u>16" DIA. CROSSOVER SCREW W/ 25 HP MOTOR</u>
Design Conveyor Loading		<u>100% @ 65 PCF FOR HP. CALC'S.</u>
Screw Speed and Motor HP		<u>(SEE ABOVE)</u>
<u>Summary:</u>		
Over All Dimensions		<u>54'W. x 74'L. x 70'H.</u>
Total Weights (W/O INSULATION)		
Housing and Hoppers		<u>440,300 lbs</u>
Duct Work (REVERSE AIR)		<u>16,200 lbs</u>
Bags		<u>18,500 lbs</u>
Accessories		<u>10,000 lbs</u>
Total		<u>485,000 lbs ✓</u>
Total Field Welding, Feet		<u>APPROX 7,800 L.F.</u>
Thermal Insulation, Thickness		<u>FIBERGLASS, 4" TK.</u>
Total Area, Ft. ²		<u>32,900 FT²</u>
<u>SURFACE PREP. AND PAINTING</u>		<u>STRUCT. STEEL. SSPC-SP6</u> <u>EXT. PLATE SURFACE</u> <u>SSPC-SP3, BOTH INDUSTRIAL</u> <u>SHOP PRIMER.</u>

GUARANTEES AND WARRANTIES

PERFORMANCE GUARANTEES

Any contract resulting from this proposal, or the inquiry to which this proposal responds, must include the following clauses:

THE WARRANTIES AND GUARANTEES IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES AND GUARANTEES OR OTHER STANDARDS OR REQUIREMENTS OF PERFORMANCE OR QUALITY EXPRESS, STATUTORY, AND IMPLIED.

PARTICULATE EMISSION GUARANTEES

Brandt Filtration guarantees that the proposed equipment will limit solid particulate emissions, to a maximum outlet loading of .007 g/DSCF at the specified operating conditions of flue gas volume, inlet load temperature, pressure and particulate composition.

PRESSURE DROP GUARANTEES

Brandt Filtration guarantees that the baghouse pressure drop will not exceed .6" w.g. when operated at the DESIGN CONDITIONS.

FILTER BAG WARRANTY

Brandt Filtration will provide a minimum bag life warranty as follows:

Brand Filtration will replace, without charge, bags found to be defective under normal and proper use within the first thirty-six (36) months from the date of initial operation of the fabric filter equipment.

Deterioration occasioned by damage from moisture, acid attack, or caused by misuse, or excessive heat shall not constitute defects. This warranty is exclusive of all costs related to removal or reinstallation of the existing equipment and installation of the replacement bags which shall be borne by the Purchaser.

All failed bags must be either returned to Brandt Filtration (F.O. B. Norcross, Georgia) or kept for inspection at the plant by Brandt Filtration personnel. Each bag shall be identified by compartment and location within the compartment. All operating and maintenance records are to be made available to Brandt Filtration upon request.



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NOV 08 1999

BUREAU OF AIR REGULATION

PROPOSAL

TO

KRUPP POLYSIUS CORP.
180 INTERSTATE NORTH PARKWAY
ATLANTA, GA 30339-2194

ATTN: MR. EDWARD R. GRAHAM

FOR

AMERICAN CEMENT
BRANDORD, FLORIDA

INQUIRY NO. 7153-JCL-01

BRANDT FILTRATION GROUP PROPOSAL NO. 1926

August 5, 1999

Best Available Copy



August 6, 1999

Krupp Polysius Corp.
180 Interstate North Parkway
Atlanta, GA 30339-2194

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Steve E. Nance
Executive Vice President & General Manager

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POLYSIUS CORPORATION

Specification No.

5.0 VENDOR DATA SHEETS MAIN KILN/MILL BAGHOUSE OPTION #2Fabric Filter Design Conditions:Maximum Volume at Operating Conditions 200,000 ACFMTemperature at Operation Conditions 450° F ✓Dust Bulk Density 45 PCF65 PCFGuaranteed Efficiency 99.97 %Inlet Dust Loading 20 gr/ACF ✓

Guaranteed Outlet Loading _____

Guaranteed Pressure Drop Across
the Fabric Filter 6" W.G. ✓Air to Cloth Ratio Gross
(~~including reverse air~~) 1.24 : 1Air to Cloth Ratio with One Module Down (w/R.A.) 1.65 : 1Air to Cloth Ratio with Two Modules Down (w/R.A.) 1.93 : 1Reverse-Air Air to Cloth Ratio 1.70 : 1Fabric Filter Arrangement:Model Number 8-1216-35Number of Fabric Filters ONE (1)Construction WELDED C. STEEL PLATENumber of Compartments EIGHT (8)Number of Bags per Compartment 192Total Number of Bags per Fabric Filter 1,536Filter Bag:Media WOVEN FIBERGLASSFinish TEFLON BWeave 3 x 1

POLYSIUS CORPORATION

Specification No.

Count	<u>44 x 24</u>
Weight	<u>15 oz/YD²</u>
Dimensions	<u>12" DIA. x 35'-0" ✓</u>
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Bag Reach	<u>3 BAG</u>
Bag Suspension	<u>DRAW BAR INCREASING RATE SPRING</u>
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Hopper Internal Gas Distribution and Reentrainment Devices	<u>YES</u>
Total Hopper Volume	<u>1,811 FT³ / HOPPER</u>
Hopper Accessories (per hopper)	<u>(2) HINGED MANWAYS</u> <u>(1) DUST LEVEL SENSOR</u>
<u>Fabric Filter Cleaning System:</u>	
Method of Cleaning	<u>REVERSE AIR FAN</u>
Assistance	<u>NONE</u>
Number of Reverse-Air Fans	<u>ONE (1)</u>

POLYSIUS CORPORATION

Specification No.

Standby Fan Included	<u>NO</u>
Type of Fan	<u>INDUSTRIAL CENTRIFUGAL EXHAUSTER</u>
Type of Blades	<u>RADIAL TIP</u> ✓
Type Drive	<u>V-BELT</u> ✓
H.P. of Drive Motor	<u>100 HP.</u> ✓
Manufacturer of Fan	<u>TWIN CITY OR EQUAL</u>
Design Volume of Fan	<u>34,403 ACFM</u> ✓
Reverse-Air Ductwork	<u>A-36, 3/16" THK.</u>
Diameter of Reverse-Air Ductwork	<u>40" I.DIA.</u> ✓
Number of Compartment Reverse-Air Poppet Valves	<u>ONE (1) PER COMP'T.</u> ✓
Type Valve	<u>POPPET DISK</u> ✓
Diameter of Reverse-Air Valves	<u>44" DIA.</u>
Actuation of Reverse-Air Valves	<u>5" DIA. PNEU. CYL.</u> ✓
Control of Reverse-Air Valves	<u>120V. 4WAY, 2 POSITION SOL. VALVE</u>
Manual Lockout	<u>YES</u>
Number of Compartment Outlet Poppet Valves	<u>ONE (1) PER COMP'T.</u> ✓
Type Valve	<u>POPPET DISK</u> ✓
Diameter of Outlet Valves	<u>50" DIA.</u>
Actuation of Outlet Valves	<u>6" DIA. PNEU. CYL.</u> ✓
Control of Outlet Valves	<u>120V. 4WAY, 2 POSITION SOL. VALVE</u>
Manual Lockout	<u>YES</u>
Number of Compartment Inlet Valves	<u>ONE (1) PER COMP'T.</u> ✓
Type Valve	<u>BUTTERFLY</u> ✓
Size of Inlet Valve	<u>3' x 8'</u>
Actuation of Inlet Valves	<u>5" DIA. PNEU. CYL.</u> ✓

POLYSIUS CORPORATION

Specification No.

Control of Outlet Valves 120V, 4WAY, 2 POSITION SOL. VALVE
 Manual Lockout YES

Fabric Filter Control System:

Type of Controller ALLEN BRADLEY
 Instrumentation PHOTOHELIC INLET/OUTLET ✓
" EACH COMPARTMENT
SPEED SWITCH EACH SCREW CON.
" " " ROTARY VALVE.

Motor Starters/Control Centers NO

Power Distribution Panels NO

Dust Conveyor System:

Quantity and Size of Screw Conveyors and Location 8 10" DIA. HOPPER SCREW w/ 5 HP MOTOR
2 16" DIA. GATHER-UP SCREW w/ 25 HP MOTOR
1 16" DIA. CROSSOVER SCREW w/ 25 HP MOTOR

Design Conveyor Loading 100% @ 65 PCF FOR HP. CALCS.

Screw Speed and Motor HP (SEE ABOVE)

Summary:

Over All Dimensions 54' W. x 74' L. x 70' H.

Total Weights (W/O INSULATION)

Housing and Hoppers 440,300 lbs

Duct Work (REVERSE AIR) 16,200 lbs

Bags 18,500 lbs

Accessories 10,000 lbs

Total 485,000 lbs ✓

Total Field Welding, Feet APPROX 7,800 L.F.

Thermal Insulation, Thickness FIBERGLASS, 4" TK.

Total Area, Ft.² 32,900 FT²

SURFACE PREP. AND PAINTING

STRUCT. STEEL. SSPC-SP6
EXT. PLATE SURFACE
SSPC-SP3, BOTH INDUSTRIAL
SHOP PRIMER.

GUARANTEES AND WARRANTIES

PERFORMANCE GUARANTEES

Any contract resulting from this proposal, or the inquiry to which this proposal responds, must include the following clauses:

THE WARRANTIES AND GUARANTEES IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES AND GUARANTEES OR OTHER STANDARDS OR REQUIREMENTS OF PERFORMANCE OR QUALITY EXPRESS, STATUTORY, AND IMPLIED.

PARTICULATE EMISSION GUARANTEES

Brandt Filtration guarantees that the proposed equipment will limit solid particulate emissions, to a maximum outlet loading of .007 g/DSCF at the specified operating conditions of flue gas volume, inlet load temperature, pressure and particulate composition.

PRESSURE DROP GUARANTEES

Brandt Filtration guarantees that the baghouse pressure drop will not exceed .6" w.g. when operated at the DESIGN CONDITIONS.

FILTER BAG WARRANTY

Brandt Filtration will provide a minimum bag life warranty as follows:

Brand Filtration will replace, without charge, bags found to be defective under normal and proper use within the first thirty-six (36) months from the date of initial operation of the fabric filter equipment.

Deterioration occasioned by damage from moisture, acid attack, or caused by misuse, or excessive heat shall not constitute defects. This warranty is exclusive of all costs related to removal or reinstallation of the existing equipment and installation of the replacement bags which shall be borne by the Purchaser.

All failed bags must be either returned to Brandt Filtration (F.O. B. Norcross, Georgia) or kept for inspection at the plant by Brandt Filtration personnel. Each bag shall be identified by compartment and location within the compartment. All operating and maintenance records are to be made available to Brandt Filtration upon request.

Date 8-5-99

AUDIO/VIDEO SERVICES ORDER

11444

Joseph Kahn 8. 921-9519

Tallahassee Camera & Image Center <input checked="" type="checkbox"/> 2880 Apalachee Pkwy. Tallahassee, FL 32301 (850) 877-1152 <input type="checkbox"/> 2011 N. Monroe 553-9434	Customer Name <u>Chris Bruant</u>	Daytime Phone <u>521-0700</u>
	Street Address <u>301 S. Krough St.</u>	Evening Phone _____
	City <u>Tallahassee, FL</u> State <u>FL</u> Zip <u>32301</u>	Ready By <u>8-10-99 12noon</u>

VIDEO TRANSFER SERVICES (SKU 0030)

Reels/Slides/Prints	Estimate	Actual	Price@	Estimate Total	Actual Total
_____ Rolls 8mm Film	_____ ft.	_____ ft.	\$ _____ /ft.	\$ <u>28</u>	\$ _____
_____ Rolls Super 8mm Film	_____ ft.	_____ ft.	\$ _____ /ft.	\$ _____	\$ _____
_____ Rolls 16mm Film	_____ ft.	_____ ft.	\$ _____ /ft.	\$ _____	\$ _____
35mm Slides	_____ slides	_____ slides	\$ _____ /slide	\$ _____	\$ _____
Prints	_____ prints	_____ prints	\$ _____ /print	\$ _____	\$ _____
Background Music	_____ hours	_____ hours	\$ _____ /½ hr.	\$ _____	\$ _____
Splices	_____ splices	_____ splices	\$ _____ /splice	\$ _____	\$ _____
Titles	_____ titles	_____ titles	\$ _____ /title	\$ _____	\$ _____
Reels Rewinding	_____ reels	_____ reels	\$ _____ /reel	\$ _____	\$ _____

Custom A/V Editing 0029 Est. Hrs: _____ Actual Hrs. _____ \$ _____ ½ hr. \$ _____

TITLE _____
 (Use Back for Additional Titles) \$ _____ \$ _____

AUDIO/VIDEO DUBBING SERVICES

Original Type	# of Tapes	Tape Length	Dub To / Quantity	SKU	Unit Price	Total
<u>VHS S-VHS 8mm Hi 8m VHS-C</u>	<u>2</u>	<u>120 min each</u>	_____	_____	\$ _____ ea.	\$ _____
Other	_____	_____	_____	_____	\$ _____ ea.	\$ _____
_____	_____	_____	_____	_____	\$ _____ ea.	\$ _____

AUDIO/VIDEO TAPES

Tape Description	Tape Length	SKU	Quantity	Unit Price	Total
_____	_____	_____	_____	\$ _____ ea.	\$ _____
_____	_____	_____	_____	\$ _____ ea.	\$ _____
_____	_____	_____	_____	\$ _____ ea.	\$ _____

make 1 copy of each videotape.
 originals belong to Joseph Kahn.
 Christopher Bruant get the copies.

<input type="checkbox"/> Copy in Any Order <input checked="" type="checkbox"/> Copy in Sequence	SUB TOTAL \$ _____ \$ _____ ea. \$ _____ \$ _____ ea. \$ _____ \$ _____ ea. \$ _____ \$ _____ ea. \$ _____ \$ _____ ea. \$ _____
--	--

CUSTOMER RECEIPT AND LIMIT OF LIABILITY NOTICE

Submitting any video tape, film, print, or negative to this firm for processing, printing, or other handling, constitutes an agreement by you that any damages or loss by our company, subsidiary or agents, even though due to the negligence or other fault of our company, subsidiary or agents, will only entitle you to replacement with a like amount of unexposed film and processing or video tape. Except for such replacement, the acceptance of the video tape, film, print, slide, or negative is without other warranty of liability, and recovery for any incidental or consequential damages is excluded. Not responsible for material left over 90 days.

I understand that I am the sole owner of the photographs, negatives, video and music or have received permission from the author to duplicate. I assume total responsibility for any copyright hereof. This agreement constitutes a non-refundable contract for services rendered. Tallahassee Camera and Image will do the best possible job with the submitted material. No deposits or submitted material may be returned without payment in full.

X _____
 Customer's Signature

LAW OFFICES

OERTEL, HOFFMAN, FERNANDEZ & COLE, P.A.

301 S. BRONOUGH ST., 5TH FL.
POST OFFICE BOX 1110 (ZIP 32302-1110)
TALLAHASSEE, FLORIDA 32301

(850) 521-0700
FAX (850) 521-0720

F A C S I M I L E C O V E R S H E E T

DATE: 8/4/99

CLIENT NO. _____

TO: Joseph Dahn

FAX NO. 902-6979

FROM: Chris Bryant

3 pages (including cover sheet) are being transmitted for the following reason(s):

- As we discussed
- As requested
- For your information
- For your comments
- For your approval

- Hard copy will be sent:
- Via regular mail
 - Via overnight mail
 - Via facsimile only

Document Description: 8/4/99 Letter Re: Video Tape Copies

COMMENTS: _____

DROPPED OFF ORIGINALS 8/5/99

READY BY 8/10/99 SHERYL HARTZEL

This facsimile message may contain privileged and confidential information intended only for the individual named above. If the reader of this message is not the intended recipient, or the agent responsible to deliver it to the intended recipient, you are hereby notified that any review, dissemination, distribution, or copying of this communication is prohibited. If this communication was received in error, please immediately notify us by telephone and return the original message to us at the address above.

LAW OFFICES

OERTEL, HOFFMAN, FERNANDEZ & COLE, P.A.301 SOUTH BRONOUGH STREET
SUITE 800
TALLAHASSEE, FLORIDA 32301(850) 521-0700
FAX (850) 521-0720MAILING ADDRESS:
POST OFFICE BOX 1110
TALLAHASSEE, FLORIDA 32302-1110<http://www.ohfc.com>TIMOTHY P. ATKINSON
JEFFREY BROWN
M. CHRISTOPHER BRYANT
C. ANTHONY CLEVELAND
TERRY COLE
SEGUNDO J. FERNANDEZ
DANIEL W. HARTMAN
KENNETH F. HOFFMAN
KENNETH G. OERTEL
PATRICIA A. RENOVITCH**VIA FACSIMILE**
922-6979

August 4, 1999

Mr. Joseph Kahn, P.E.
New Source Review Section
Division of Air Resources Management
Bureau of Air Regulation
Department of Environmental Protection
2600 Blair Stone Road, MS 5505
Tallahassee, FL 32399-2400**Re: Suwannee American Cement Company, Inc.**
DEP File No. 1210465-001-AC (PSD-FL-259)
Copies of Video Tapes From Permitting File**Dear Joe:**

To follow up on your telephone call to me on Monday, August 2, I have contacted Tallahassee Camera Center at 2880 Apalachee Parkway (phone number 877-1152) about copying the video tapes that are in the Department's permitting file. They have indicated that they will do so on their own tapes, and will charge me the costs of the tape and the reproduction.

You had indicated that the best way to handle this would be for you or someone else from the Department to drop the originals off at Tallahassee Camera Center, and to pick them up when the copying is completed, so as to avoid any questions about custody, security, and integrity of the originals. I am in complete agreement that that is the best way to handle it.

Please arrange to have someone from the Department drop the tapes off at Tallahassee Camera Center. They have informed me that it may be as much as a two-day turn-around time to duplicate the tapes. You can either have Tallahassee Camera notify me directly when the copies are ready, or have them notify you and I will await hearing from you in that situation.

Mr. Joseph Kahn, P.E.
August 4, 1999
Page

In addition to the charges from Tallahassee Camera Center, if there are any clerical or personnel charges levied by the Department for arranging for this, Suwannee American and this firm agree to pay any such reasonable charges.

Thank you for your assistance. If you have any questions, please give me a call.

Sincerely,



M. Christopher Bryant

MCB/dg
Kahn8-4-99.Ltr

cc: Jack Chisolm, DEP Deputy General Counsel

LAW OFFICES

OERTEL, HOFFMAN, FERNANDEZ & COLE, P.A.

301 SOUTH BRONOUGH STREET
SUITE 500
TALLAHASSEE, FLORIDA 32301

(850) 521-0700

FAX (850) 521-0720

MAILING ADDRESS:

POST OFFICE BOX 1110
TALLAHASSEE, FLORIDA 32302-1110

<http://www.ohfc.com>

TIMOTHY P. ATKINSON
JEFFREY BROWN
M. CHRISTOPHER BRYANT
C. ANTHONY CLEVELAND
TERRY COLE
SEGUNDO J. FERNANDEZ
DANIEL W. HARTMAN
KENNETH F. HOFFMAN
KENNETH G. OERTEL
PATRICIA A. RENOVITCH

RECEIVED

AUG 05 1999

BUREAU OF AIR REGULATION

**VIA FACSIMILE
922-6979**

August 4, 1999

Mr. Joseph Kahn, P.E.
New Source Review Section
Division of Air Resources Management
Bureau of Air Regulation
Department of Environmental Protection
2600 Blair Stone Road, MS 5505
Tallahassee, FL 32399-2400

Re: Suwannee American Cement Company, Inc.
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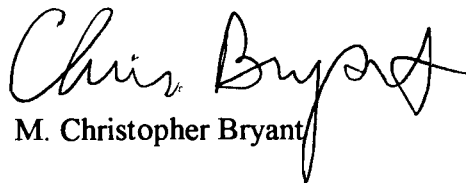
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Mr. Joseph Kahn, P.E.
August 4, 1999
Page

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Thank you for your assistance. If you have any questions, please give me a call.

Sincerely,

A handwritten signature in black ink that reads "Chris Bryant". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

M. Christopher Bryant

MCB/dg
Kahn8-4-99.Ltr

xc: Jack Chisolm, DEP Deputy General Counsel

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

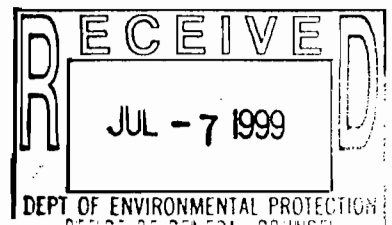
vs.

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 Svonn 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
Kathy Cantwell, for Florida Chapter of the
Sierra Club

VERIFICATION OF PLEADING

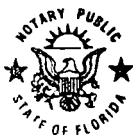
I HEREBY CERTIFY that for purposes of Section 403.412(5), Fla. Stats., I have read the foregoing Petition for Administrative Hearing pursuant to the Florida Department of Environmental Protection's Notice of Denial of an air permit to construct and operate a portland cement plant by Suwannee American 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 2nd day of July, 1999.

Svenn Lindskold
Svenn Lindskold, for Save Our Suwannee

ACKNOWLEDGEMENT

BEFORE ME appeared Kathy Cantwell and Svenn Lindskold, 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.

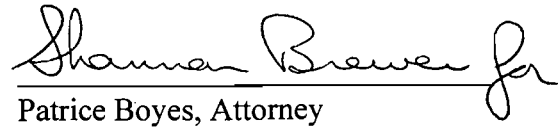
Patrice F. Boyes
Patrice Boyes, Notary Public
My commission expires:



PATRICE F BOYES
My Commission CC513247
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

BEST AVAILABLE COPY

**BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

SUWANNEE AMERICAN CEMENT
COMPANY, INC.,

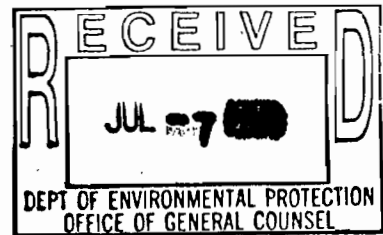
Petitioner,

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

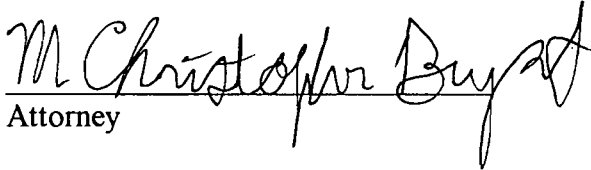
OERTEL, HOFFMAN, FERNANDEZ
& COLE, P.A.
Post Office Box 1110
Tallahassee, FL 32302-1110
(850) 521-0070

and

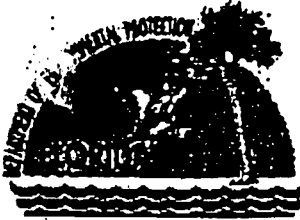
GEORGE T. REEVES
Fla. Bar I.D. No. 0009407
General Counsel
Suwannee American Cement Company, Inc.
P. O. Box 1829
Lake City, FL 32056
(904) 752-7585

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

Jeb 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. Strubs

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-259
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 Lindskold *
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 Polini *

Clerk Stamp

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

Kenn Jober
(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.

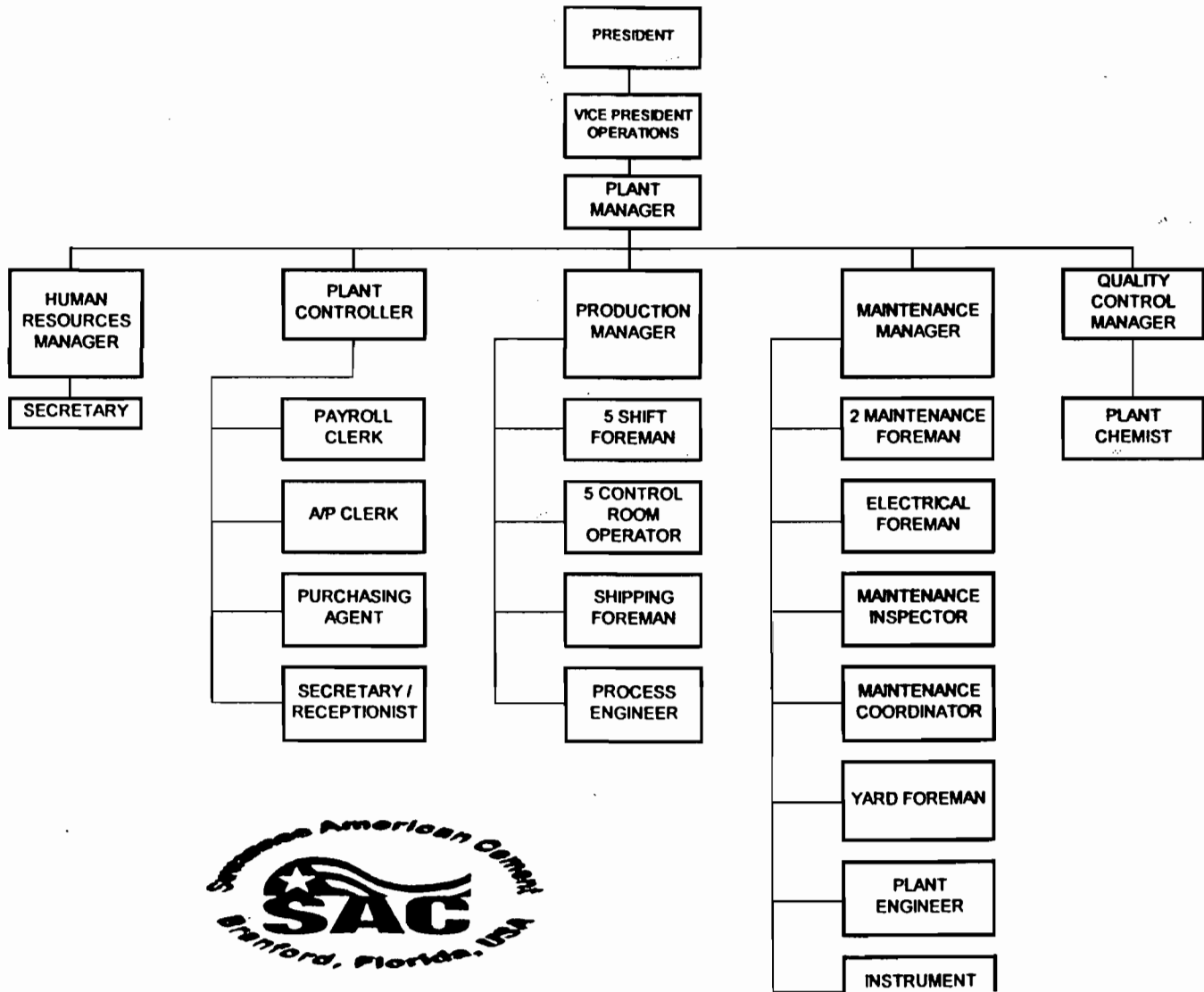
MAINTENANCE MANAGER

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

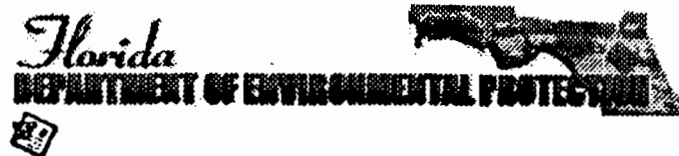


DESTINATION

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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 Struhs.

-MORE-

DEP Fact Sheet



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Last updated:
June 21, 1999



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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.

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.

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DEP Fact Sheet



E-MAIL Contact DEP Communications

Last updated:
June 21, 1999

DEP ROUTING AND TRANSMITTAL SLIP

TO: (NAME, OFFICE, LOCATION)

1. DOUG BEASAW - OIC 3. _____
2. MAIL STATION # 35 4. _____
5. _____

PLEASE PREPARE REPLY FOR:

- SECRETARY'S SIGNATURE
- DIV/DIST DIR SIGNATURE
- MY SIGNATURE
- YOUR SIGNATURE
- DUE DATE _____

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

COMMENTS:

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

FYI, RE:
SUNSHINE AMERICAN.

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	SEBASTIAN FERNANDEZ	From	JOE KAHN		
Co./Dept.		Co.	FOEP		
Phone #	521-0700	Phone #	921-9519		
Fax #	521-0720	Fax #	922-6979		