



City of  
**MIAMI SPRINGS**  
Florida

RECEIVED

SEP 17 1990

DER-BAQM

BUILDING AND ZONING DEPARTMENT  
201 WESTWARD DRIVE  
MIAMI SPRINGS, FL 33166

TELEPHONE  
(305) 885 4581

Mr. Barry Andrews  
Bureau of Air Regulation  
FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION  
2600 Blair Stone Road  
Tallahassee, Florida 32399

September 10, 1990


RE: Tarmac Florida, Inc., Kiln 2 Coal Conversion #AC-13-169901  
Dade County, Florida  
Division of Administrative Hearings Case Number #90-3852

Dear Mr. Andrews:

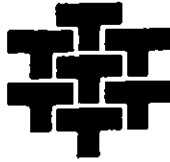
The City of Miami Springs requests that you provide the City with a copy of the Florida Department of Environmental Regulation "Technical Evaluation and Preliminary Determination" of Best Available Control Technology for Prevention of Significant Deterioration of air quality, for the above captioned Permit.

Thank you for your kind attention to this request.

Sincerely yours,

  
Steve Johnson  
City Planner

CC: Dodd A. Southern, City Manager  
Bill MacDonald, Assistant City Manager



TARMAC FLORIDA, INC.

P.O. Box 2998  
Hialeah, Florida 33012  
AUG 19 1990

August 9, 1990

DER-BAQM

Mr. Clair Fancy, P.E., Chief  
Bureau of Air Regulation  
Fla. Dept. of Environmental Regulation  
Twin Towers Office Bldg.  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

RE: Proposed Modification - Kiln No. 2 Coal Conversion  
DER File No. AC13-169901

Dear Mr. Fancy:

Please find enclosed a copy of the affidavit of publication for the *Notice of Intent to Issue Permit* for the above referenced project. Should you have any questions please call me at (305)823-8800.

Sincerely,

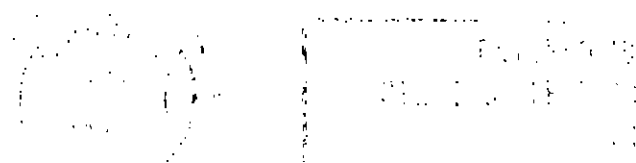
Scott Quaas  
Environmental Specialist

cc: J. Alves - Hopping Boyd Green & Sams



TARMAC FLORIDA, INC.

P.O. Box 2998  
Hialeah, Florida 33012



Mr. Clair Fancy, P.E., Chief  
Bureau of Air Regulation  
Fla. Dept. of Environmental Regulation  
Twin Towers Office Bldg.  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400



# The Miami Herald

PUBLISHED DAILY  
MIAMI - DADE - FLORIDA

STATE OF FLORIDA  
COUNTY OF DADE:

Before the undersigned authority personally appeared

OLGA L. ARCIA

who on oath says that he/she is

CUSTODIAN OF RECORDS

of The Miami Herald, a daily newspaper published at Miami in Dade County, Florida; that the attached copy of advertisement was published in said newspaper in the issue of

AUGUST 7, 1990

Affiant further says that the said The Miami Herald is a newspaper published at Miami, in the said Dade County, Florida and that the said newspaper has heretofore been continuously published in said Dade County, Florida, each day and has been entered as second class mail matter at the post office in Miami, in said Dade County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

*Olga L. Arcia*

Sworn to and subscribed before me this.....7th.....

day of.....August.....A.D. 1990.....

My commission expires.....*Elmer B...*.....

NOTARY PUBLIC IN FLORIDA  
MY COM. EXPIRES 12/31/91  
1990-1991-1992-1993-1994

State of Florida  
Department of  
Environmental  
Regulation

Notice of Intent to Issue  
The Department of Environmental Regulation hereby gives notice of its intent to issue a permit to Florida, Inc., 11000 NW 121 Way, Mableton, Florida 33122 to convert Mr. No. 2 to conforming at their facility in Dade County Florida. A determination of Best Available Control Technology (BACT) was required. The proposed project is subject to Prevention of Significant Deterioration (PSD) regulations. Significant net increases in emissions of sulfur dioxide, nitrogen dioxide, and sulfuric acid mist will result from this project. The Class I nitrogen dioxide PSD increment consumed is 0.02 micrograms per cubic meter (1 percent) of allowable increment of 2.8 micrograms per cubic meter annual average. The Class I sulfur dioxide PSD increment may consume is 18.5 vs. 28 allowable 3-hour average, 4.1 vs. 8 allowable 24-hour average, or 0.6 vs. 2 allowable annual average, in micrograms per cubic meter, respectively. Class II nitrogen dioxide PSD increment consumption is 0.5 vs. 2.8 allowable annual average, in micrograms per cubic meter. Class II sulfur dioxide PSD increment consumption is 10.1 vs. 81.2 allowable 3-hour average, 8.1 vs. 81 allowable 24-hour average, and 8.1 vs. 20 allowable annual average in micrograms per cubic meter, respectively. These emission increases are not expected to cause or contribute to the violation of any ambient air quality standard. The Department is issuing this intent to issue for the reasons stated in the Technical Evaluation and Preliminary Determination.

A person whose substantial interests are affected by the Department's proposed permitting decision may petition for an administrative proceeding (hearing) in accordance with Section 120.57, Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel, Florida Department of Environmental Regulation, 2000 Blue Stone Road, Tallahassee, Florida 32399-2400, within fourteen (14) days of publication of this notice. Petitioners shall mail a copy of the petition to the applicant at the address indicated above. Failure to file a petition within this time period shall constitute a waiver of any right such person may have to request an administrative determination (hearing) under Section 120.57, Florida Statutes.

The Petition shall contain the following information:

- The name, address, and telephone number of each petitioner; the action petitioner wants the Department to take with respect to the proposed action; and the county in which the project is proposed;
- A statement of how and when each petitioner's substantial interests are affected by the Department's action or proposed action;
- A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action;
- A statement of the material facts disputed by Petitioner (if any);
- A statement of facts which petitioner contends warrant reversal or modification of the Department's action or proposed action;
- A statement of which rule or statute petitioner contends require reversal or modification of the Department's action or proposed action; and
- A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Department's action or proposed action.

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

The application is available for public inspection during business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays.

Department of Environmental Regulation  
Bureau of Air Regulation  
2000 Blue Stone Road  
Tallahassee, Florida  
32399-2400

Department of Environmental Regulation  
Southeast District  
1800 S. Congress Avenue,  
Suite A  
West Palm Beach, Florida  
33406

Dade County Dept. of Environmental Resources Management  
8015 W. 3rd Avenue,  
2nd Floor  
Miami, Florida 33130

Any person may send written comments on the proposed action to Mr. Bill Thomas at the Department's Tallahassee address. All comments mailed within 30 days of the publication of this notice will be considered in the Department's final determination. Furthermore a public hearing can be requested by any person. Such requests must be submitted within 30 days of this notice.

RECEIVED

HOPPING BOYD GREEN & SAMS

ATTORNEYS AND COUNSELORS

123 SOUTH CALHOUN STREET

POST OFFICE BOX 6528

TALLAHASSEE, FLORIDA 32314

(904) 222-7500

FAX (904) 224-8551

JUN 19 1990

LYDIA R. ANNUNZIATA

KATHLEEN BLIZZARD

THOMAS M. DeROSE

RICHARD W. MOORE

DIANA M. PARKER

LAURA BOYD PEARCE

MICHAEL R. PETROVICH

DAVID L. POWELL

DOUGLAS S. ROBERTS

CECELIA C. SMITH

SAM J. SMITH

CHERYL G. STUART

OF COUNSEL

W. ROBERT FOXES

CARLOS ALVAREZ  
JAMES S. ALVES  
BRIAN H. BIBEAU  
ELIZABETH C. BOWMAN  
WILLIAM L. BOYD, IV  
RICHARD S. BRIGHTMAN  
PETER C. CUNNINGHAM  
WILLIAM H. GREEN  
WADE L. HOPPING  
FRANK E. MATTHEWS  
RICHARD D. MELSON  
WILLIAM D. PRESTON  
CAROLYN S. RAEPPLÉ  
GARY R. SAMS  
ROBERT R. SMITH, JR.

June 19, 1990

BY HAND DELIVERY

David Schwartz, Esquire  
Assistant General Counsel  
Florida Department of Environmental  
Regulation  
2600 Blair Stone Road, Room 654  
Tallahassee, Florida 32399-2400

Dear David:

Enclosed is a copy of the Petition that we filed today with the Office of General Counsel regarding the air construction permit for Tarmac's Kiln No. 2.

Very truly yours,



James S. Alves

Schwartz:JSA/gbb

cc: Clair Fancy, P.E.

Enclosure

*copied: B. Andrews  
J. Reynolds  
M. Gunn  
J. Goldman, SE Dist.  
P. Song, DERM  
M. Armentrout, EPA  
C. Shaver, NPS*

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL REGULATION

TARMAC FLORIDA, INC.,	)	
	)	-
Petitioner,	)	-
	)	
vs.	)	CASE NO. _____
	)	
STATE OF FLORIDA, DEPARTMENT	)	
OF ENVIRONMENTAL REGULATION,	)	
	)	
Respondent.	)	
_____	)	

PETITION FOR FORMAL ADMINISTRATIVE PROCEEDINGS

Petitioner, Tarmac Florida, Inc. ("Tarmac" or "Petitioner"), by and through its undersigned counsel, hereby files this petition for formal administrative proceedings pursuant to Section 120.57(1) and Chapter 403, Florida Statutes, and Titles 17 and 28, Florida Administrative Code, in order to challenge certain construction permit conditions set forth in the Department of Environmental Regulation's ("DER", "Department" or "Respondent") March 29, 1990 Notice of Intent to Issue Permit. In support of this Petition, Tarmac states:

IDENTIFICATION OF PARTIES

1. The name, address, and telephone number of the Petitioner is Tarmac Florida, Inc., Post Office Box 2998, Hialeah, Florida, 33102, 305/823-8800.

2. The name and address of the Respondent is State of Florida, Department of Environmental Regulation, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

RESPONDENTS' FILE NUMBER AND COUNTY

3. DER has assigned File Nos. AC 13-169901 and PSD-FL-142 to this matter. This Petition relates to a DER air pollution source construction permit to alter the fuel type capability of Kiln No. 2 at Tarmac's facility in Dade County, Florida.

RECEIPT OF NOTICE OF AGENCY ACTION

4. Tarmac received DER's Intent to Issue Permit by U.S. Mail on or about April 4, 1990. The Department extended the time for initiating administrative proceedings to June 19, 1990.

SUBSTANTIAL INTERESTS AFFECTED

5. Tarmac operates a Portland cement manufacturing plant in Dade County that has been in existence for over twenty years. Tarmac has applied to DER for an air pollution source construction permit authorizing conversion of Kiln No. 2 at the facility to burn coal. Tarmac has a very significant investment in the ongoing and efficient operation of the facility, including Kiln No. 2. The proposed coal conversion is essential to Tarmac's ongoing viability in the domestic cement manufacturing industry, which

currently is threatened by foreign importation of cement products. Certain conditions contained in the DER construction permit for Kiln No. 2 are unreasonable, unnecessary, and unauthorized under Chapter 403, Florida Statutes. These conditions would without justification expose Tarmac to oppressive and infeasible operating costs. Therefore, the Intent to Issue Permit substantially and detrimentally impacts Tarmac.

#### DISPUTED ISSUES OF MATERIAL FACT

6. The disputed issues of material fact involve the sulfur dioxide ("SO<sub>2</sub>") and nitrogen oxides ("NO<sub>x</sub>") emission limitations proposed by DER as best available control technology ("BACT") in the construction permit. DER's BACT determination, as currently proposed, is arbitrary and capricious. Specific issues of material fact include whether DER, in formulating SO<sub>2</sub> and NO<sub>x</sub> BACT limitations applicable to the Kiln No. 2 coal conversion:

- a. Is ignoring site-specific emissions data;
- b. Is misinterpreting site-specific emissions data;
- c. Is improperly comparing different processes and industries to Tarmac's proposed process;
- d. Is improperly and insufficiently accounting for economic considerations;



- e. Is basing BACT emission limitations on factors not germane to the BACT process;
- f. Is incorrect in determining that its proposed BACT limitations are achievable and economically feasible;
- g. Is erroneously applying scientific principles to the circumstances at hand;
- h. Is improperly applying applicable precedents in the formulation of BACT limitations;
- i. Is acting in a manner that is not uniform and consistent with its previous actions on similar or analogous applications; and
- j. Is capable of articulating facts and circumstances that justify the incipient agency policy embodied in the Intent to Issue Permit.

#### FACTS

7. Tarmac operates a Portland cement manufacturing plant in northwest Dade County, just east of the Turnpike Extension and south of U.S. 27. The Tarmac facility consists of three cement kilns, each of which is the subject of current air operation permit issued by DER. Kilns 1 and 2 are permitted to burn natural gas or No. 6 fuel oil, and each has a production capacity of 25.0 tons per hour (TPH) of clinker. Kiln 3 is a larger kiln that is permitted to

burn coal, natural gas, or No. 6 fuel oil and has a capacity of 87.5 TPH clinker.

8. On or about August 31, 1989, Tarmac submitted to DER an application for a construction permit that would authorize conversion of Kiln No. 2 to coal burning capability.

9. The proposed Kiln No. 2 coal conversion will increase emissions of various regulated air pollutants. The United States Environmental Protection Agency ("EPA") and DER have implemented regulations that require prevention of significant deterioration ("PSD") review in conjunction with modifications of existing sources that increase air emissions above specified threshold amounts. Tarmac's application is subject to PSD review. EPA's PSD regulations are found at 40 CFR §§51.166 and 52.21; the PSD program is administered through Florida's EPA-approved State Implementation Plan, which is comprised of applicable portions of Chapter 17-2, Florida Administrative Code. DER's PSD regulations are codified at Florida Administrative Code Rule 17-2.510. These regulations require application of BACT, a term that is defined by Rule 17-2.100(29) as follows:

An emission limitation, including a visible emissions standard, based on the maximum degree of reduction of each pollutant emitted which the Department, on a case by case basis, taking into account energy, environmental and economic impacts, and other costs, determines is achievable through application of production processes and available methods, systems and techniques (including fuel

cleaning or treatment or innovative fuel combustion techniques) for control of each such pollutant.

10. Technical information and analysis required by the PSD regulations was set forth in Tarmac's application. Information pertaining to control technology review, and BACT, was set forth in Section 4.0 of the application.

11. Although DER has responsibility for making BACT determinations in Florida, EPA typically comments upon and participates in the process. DER historically adheres to EPA guidance. In December, 1978, EPA published Guidelines for the Evaluation of BACT to assist states in rendering BACT determinations. Late in 1987, EPA issued a memorandum advocating a so-called "top-down" approach to BACT determinations, reflecting a stringent shift in EPA policy that has proven to be controversial. In general, the top-down BACT approach requires that deliberations begin with the most stringent limitation that has been applied to the same source category; the applicant must propose to comply with this limitation unless there are specific facts warranting its rejection, such as site-specific technical or economic infeasibility. More recently, EPA made available a new "draft" top-down BACT guidance document in March, 1990.

12. In its construction permit application, Tarmac proposed that BACT for SO<sub>2</sub> is inherent removal in the kiln. Assuming a minimum removal efficiency of 36%, Tarmac proposed that the SO<sub>2</sub> emission limitation be set at the rate

of 400 lbs./hr. (16.0 lbs./ton of clinker). Moreover, Tarmac proposed that performance tests be undertaken after start-up of Kiln No. 2, and that the SO<sub>2</sub> limitation should thereafter be adjusted downward, as justified. -

13. By letter dated October 4, 1989, DER informed Tarmac that EPA had requested additional information on Tarmac's application. More specifically, DER forwarded a draft letter from EPA indicating that PSD/BACT review was required for NO<sub>x</sub>, and that Tarmac's analysis of proposed BACT for SO<sub>2</sub> emissions requires consideration of alternatives such as adding a baghouse or utilizing lower sulfur coal.

14. By letter dated November 13, 1989, Tarmac provided detailed responses to EPA's comments and concerns. Tarmac acknowledged that a BACT analysis is required for NO<sub>x</sub>, and proposed a BACT limitation of 169.3 lbs./hr. (6.77 lbs./ton clinker). Moreover, Tarmac provided a detailed response to EPA's concerns regarding what constitutes appropriate BACT for SO<sub>2</sub> emissions. Tarmac provided cost figures demonstrating that low sulfur coal is not an economically feasible alternative. Tarmac also provided technical information demonstrating that the potential alternative of adding a baghouse to Kiln No. 2 would not significantly reduce SO<sub>2</sub> emissions and would not be economically feasible. Finally, Tarmac showed that predicting the

inherent SO<sub>2</sub> removal that will occur in Kiln No. 2 is extremely problematic, and reiterated its willingness to accept the lowest limit demonstrably achievable as ultimately gleaned from post-coal conversion operations. -

15. EPA issued another letter commenting upon the BACT analysis for the Tarmac coal conversion on December 13, 1990. In this letter, EPA requested additional data on inherent SO<sub>2</sub> removal and on the economic feasibility of utilizing low sulfur coal.

16. By letter dated January 15, 1990, Tarmac provided additional analysis in response to EPA's concerns. In this letter, Tarmac provided detailed information demonstrating that low sulfur coal is not an economically feasible option for Kiln No. 2. With respect to SO<sub>2</sub> removal, Tarmac explained why data from Kiln No. 3 are of limited usefulness for purposes of predicting emissions from Kiln No. 2, and concluded:

Tarmac does not believe that SO<sub>2</sub> emissions from Kiln 2 will be as high as requested. The problem is, without adequate test data on the kiln, what should the emission limit be? No one knows the answer to this until the kiln can be converted and tested. This is precisely what Tarmac is proposing, and is willing to accept as a permit condition, a testing plan which will define the appropriate emission limit for the kiln. This will avoid the past mistake on Kiln 3 of trying to guess an emission limit that can be met, and guessing wrong.

There seems to be no argument that the control technology for SO<sub>2</sub> removal is the cement kiln itself (i.e., no add-on control equipment). As