

RECEIVED

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

SEP 10 1996

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

DIVISION OF AIR
RESOURCES MANAGEMENT

Complainant,

v.

OGC CASE NO. 96-1751

RINKER MATERIALS CORPORATION,

Respondent.

CONSENT ORDER

This Consent Order is made and entered into between the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION ("the Department") and RINKER MATERIALS CORPORATION, a subsidiary of CSR America, Inc., hereafter known as "Rinker."

1. The Department is the administrative agency of the State of Florida with the power and duty to protect Florida's air and water resources and to administer and enforce Chapter 403, Florida Statutes, and the rules promulgated thereunder, Chapter 62, Florida Administrative Code.

2. Rinker is a Florida corporation that has its principal place of business in West Palm Beach, Florida. Rinker owns and operates a cement mill located in Miami, Dade County, Florida, under the authority of Department permit number AO 13-233208. Rinker is currently doing business in the State of Florida and is a person within the meaning of section 403.031(5), Florida Statutes.

3. Rinker's cement mill includes two wet process, direct-fired cement kilns that were originally constructed in 1957. In wet process cement manufacture, a slurry or filtrate of crushed limerock containing between 20 and 40% moisture content is introduced into an inclined kiln for calcination into quicklime (calcium oxide) clinker by the application of high thermal energies. At Rinker's mill, this thermal energy is provided by the firing of crushed coal. The coal is direct-fired; that is, the volume of air which sweeps the coal mill both conveys the crushed coal to the kiln and serves as the primary combustion air for the kiln.

4. Nitrogen oxides are formed in the combustion process by the oxidation of nitrogen contained in fuels ("fuel NOx") and in combustion air ("thermal NOx"). Because thermal NOx is formed by reaction of oxygen and nitrogen in combustion air at combustion temperatures, the amount of thermal NOx associated with industrial combustion depends on flame temperature, combustion pressure, residence time, and air-to-fuel ratio in the combustion zone. Direct-fired wet process cement manufacture has the potential for substantial thermal NOx emissions due to the quantity of primary combustion air (approximately 28% of total air supply) and the greater heat input needed.

5. In February of 1993, the Department adopted Rule 17-296.570, now Rule 62-296.570, F.A.C.. The purpose of the rule was to prescribe Reasonably Available Control Technology (RACT) for existing major sources of volatile organic compounds ("VOCs") and

NOx located in areas of Florida identified as nonattainment for ozone, including Dade County. Although no specific limitation on emissions of NOx is contained in Rinker's current operating permit, the Department alleges, and Rinker admits, that its cement kilns emit a sufficient volume of thermal NOx to make its mill subject to the RACT determination requirements of Rule 62-296.570(4)(b)8, F.A.C.

6. Rule 62-296.570(4)(b)8, F.A.C., establishes a limitation for NOx emissions of 2.0 lbs. per MMBTU that Rinker cannot meet for its existing direct-fired cement kilns without extensive and expensive retrofitting. Rinker has expended substantial sums in testing to devise and apply methods of equipping and/or operating its existing kilns to minimize the thermal NOx emissions therefrom, but, to date, Rinker has not been successful in achieving reliably and consistently the level of Nox emissions demanded by Rule 62-296.570(4)(b)8, F.A.C..

7. Rinker's testing indicates that the level of NOx emissions demanded by Rule 62-296.570(4)(b)8, F.A.C., can be achieved at Rinker's mill only in one of two alternative manners, both of which require multi-million dollar expenditures by Rinker. First, Rinker could convert each of its existing kilns to indirect firing, at a cost in excess of 5 million dollars. Second, Rinker could modernize its existing wet process facility, converting it to employ indirect-fired, dry process technology, at a cost of 100 million dollars or more.

8. Rinker is willing to adopt whichever of these alternatives Rinker determines is most cost-effective, taking into consideration the age of the existing mill facilities and the degree of reduction in NOx and other criteria pollutant emissions achievable by each alternative. Due to the costs involved, the substantial preliminary engineering work required, as well as the need to design for the integration of new systems into the existing mill operation, Rinker requires additional time in which to select and implement its best alternative method of achieving compliance.

9. Without admitting that its conduct constitutes a violation of law, Rinker admits that its current emissions of NOx associated with operations at the Rinker cement mill are not in compliance with Rule 62-296.570(4)(b)8, F.A.C..

10. The Department and representatives of Rinker have met in an effort to resolve their disputes as to the applicability of Rule 62-296.570(4)(b)8, F.A.C., and any alleged violation of Chapter 403, Florida Statutes. The parties have agreed to enter into this Consent Order in order to expeditiously address the Department's concerns without litigation and its attendant costs, delays, and risks.

Having reached a resolution of this matter, pursuant to Florida Administrative Code Rule 62-103.110(3), the Department and the Company mutually agree, and it is

ORDERED:

11. Effective on the date this Consent Order is rendered, Rinker shall be authorized to operate its Miami cement mill

facilities in accordance with the conditions of Department permit number AO 13-233208 dated July 29, 1993, and the provisions of the compliance schedule set forth in Paragraph 12 below. The interim NOx emission limit for Rinker shall be 4.5 lbs. per MMBTU. This authorization will remain in effect until the Department determines that on-going operations at Rinker's Miami mill are in compliance with the limitations on NOx emissions set forth in Rule 62-296.570(4)(b)8, F.A.C., or with such alternative limitation on NOx emissions from the mill as may be set forth in any applicable federally enforceable permit issued by the Department to Rinker.

? ton clinker?
RACT=2.0lb
MMBTU

12. (a) No later than one year after the date on which this Consent Order is rendered, Rinker shall notify the Department in writing either that Rinker intends to convert its existing cement kilns to indirect firing for NOx control purposes; or that Rinker intends to convert the facility to dry process technology. Nothing in this paragraph shall be deemed to prohibit Rinker from submitting one or more permit applications for Department review as soon as practicable following the execution of this Consent Order. In the event that the Department has issued Rinker a final construction permit for the alternative selected by Rinker during the one-year period allotted by this paragraph, Rinker shall commence construction of the project within 90 days of the date of its notice to the Department under this paragraph.

(b) If no permit application for the alternative selected by Rinker is under review by the Department, Rinker shall, no later than 90 days after the submission of its notice to the

Department under Paragraph 12(a), submit to the Tallahassee office of the Department's Division of Air Resources Management (DARM) an air construction permit application, accompanied by the appropriate fee as specified in Rule 62-4.050(4)(a), F.A.C., covering the alternative selected by Rinker. Upon receiving notice from DARM that additional information is necessary to complete the application, Rinker shall supply the information within thirty days of notice. Within 90 days of the date on which the application is determined to be complete, the Department shall issue its proposed agency action concerning the application.

(c) In the event that the Department issues Rinker a permit to convert its kilns to indirect firing, Rinker shall complete construction within 18 months of the date on which the construction permit becomes final, or within such other time limit as is allowed by the Department after a written request for extension of time by Rinker. Within 14 days after construction under the permit is completed, Rinker shall furnish to the DARM a certificate of completion of construction sealed by a professional engineer registered in Florida and notify DARM of a date on which compliance testing will be conducted, which date shall be no later than 45 days after construction is certified to be complete, unless an alternative date is authorized by DARM.

(d) In the event that the Department issues Rinker a permit to convert to dry process technology, Rinker shall complete construction of a new kiln and associated facilities within 36 months of the date on which the construction permit becomes final,

or within such other time limit as is allowed by the Department after a written request for extension of time by Rinker. Within 14 days after construction under the permit is completed, Rinker shall furnish to the DARM a certificate of completion of construction sealed by a professional engineer registered in Florida and notify DARM of a date on which compliance testing will be conducted, which date shall be no later than 45 days after construction is certified to be complete, unless an alternative date is authorized by DARM.

(e) No later than 60 days following compliance testing under this paragraph, on-going operations at Rinker's Miami mill shall be in compliance with the limitations on NOx emissions set forth in Rule 62-296.570(4)(b)8, F.A.C., or with such alternative limitation on NOx emissions as may be set forth in any applicable federally enforceable permit issued by the Department. Rinker shall be in compliance with the NOx limitations identified in this paragraph no later than June 30, 2000, if it opts to convert its kilns to indirect firing pursuant to paragraph (c) above, or no later than December 31, 2001, if it opts to convert to dry process technology pursuant to paragraph (d) above.

(f) Rinker agrees to pay the Department stipulated penalties in the amount of \$100 per day for each and every day Rinker fails to timely comply with any of the requirements of paragraph 12(a)-12(e) of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Consent Order. Within 30 days of written demand from the Department, Rinker shall make payment of

the appropriate stipulated penalties to the order of "The Department of Environmental Protection" by cashier's check or money order and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management Trust Fund." Payment shall be sent to the Department of Environmental Protection, Office of General Counsel, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000. The Department may make demands for payment at any time after violations occur. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Consent Order. If the Department is required to file a lawsuit to recover stipulated penalties under this paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this paragraph.

13. In the event that the Department or its duly authorized delegatee issues Rinker a Title V operating permit pursuant to Section 403.0872, Florida Statutes, during the term of this Consent Order, the compliance schedule set forth in Paragraph 12 shall be incorporated therein. Rinker further agrees to pay all Title V fees due and owing for the remainder of the operating year 1996 for NOx emissions.

14. This Consent Order fully resolves the dispute between the Department and Rinker regarding the matters addressed herein. The Department reserves the right to take appropriate enforcement action against Rinker for any future violation of the Department's

rules or permit conditions. Rinker reserves its right to contest any such enforcement action in accordance with applicable law.

15. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Florida Statutes. Rinker's failure to comply with the terms of this Consent Order will constitute a violation of Section 403.161(1)(b), Florida Statutes.

16. A violation of the terms of this Consent Order may subject Rinker to judicial imposition of civil penalties of up to \$10,000 per violation per day.

17. In consideration of the complete and timely performance by Rinker of the obligations agreed to in this Consent Order, the Department hereby waives its right to seek judicial imposition of additional penalties for the specific matters addressed in this Consent Order. Rinker waives its right to an administrative hearing pursuant to Section 120.57(1), Florida Statutes, regarding the terms of this Consent Order. Rinker also waives its right to appeal the terms of this Consent Order.

18. The execution of this Consent Order does not obligate the Department to issue a permit for any facility that does not comply with all applicable statutes, rules, and regulations. Furthermore, the execution of this consent order does not constitute a waiver by Rinker of its right to request a formal administrative hearing or to take all appropriate appeals necessary to challenge the Department's denial of any permit or imposition of any specific permit condition contained in any permit issued by the Department

to Rinker.

19. No modification of the terms of this Consent Order will become effective until it is reduced to writing and executed by all parties.

20. The provisions of this Consent Order shall apply to and be binding upon the parties, their officers, directors, agents, servants, employees, successors, and assigns and all persons, firms and corporations acting under, through or for them and upon those persons, firms, and corporations in active concert or participation with them.

21. Persons who are not parties to this Consent Order but whose substantial interests are affected by this Consent Order have a right, pursuant to Section 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, Tallahassee, FL 32399-3000, within 211 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the DARM at the address referenced in paragraph 12(b), and to the Department's Southeast District Office at 400 North Congress Avenue, West Palm Beach, Florida 33401. Failure to file within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Section 120.57, Florida Statutes.

The petition shall contain the following information:

(a) The name, address, and telephone number of each petitioner; the

Department's Consent Order identification number and the county in which the subject matter or activity is located; (b) a statement of how and when each petitioner received notice of the Consent Order; (c) a statement of how each petitioner's substantial interests are affected by the Consent Order; (d) a statement of the material facts disputed by each petitioner, if any; (e) a statement of facts which the petitioner contends require reversal or modification of the Consent Order; (f) a statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order; (g) a statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing is designed to formulate agency action. Accordingly, 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 decision of the Department with regard to the subject Consent Order have the right to petition to be a party to the proceeding. the petition must conform to the requirements set forth above and be filed (received) within 21 days of receipt 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 may have to request a hearing under Section 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to

Rule 60Q-2.010, Florida Administrative Code.

22. Entry of this Consent Order does not relieve Rinker of the need to comply with applicable federal, state or local laws, regulations or ordinances.

23. If all of the requirements of this Consent Order have not been fully satisfied, Rinker shall, at least 14 days prior to a sale or conveyance of the property or of the business operated thereon, (1) notify the Department of such sale or conveyance; and (2) provide a copy of this Consent Order with all attachments to the new owner.

24. This Consent Order is final agency action of the Department pursuant to Section 120.69, Florida Statutes, and Florida Administrative Code Rule 62-103.110(3), and is final on the date it is rendered and filed with the Clerk of the Department.

Executed this 3rd day of September, 1996,

FOR RINKER MATERIALS CORPORATION

James S. Jenkins III
JAMES S. JENKINS III
VICE PRESIDENT/ CEMENT OPERATIONS

Date: _____

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

for Kathy B. Wetherell
VIRGINIA B. WETHERELL, SECRETARY

Date: 9.3.96

FILING AND ACKNOWLEDGEMENT
FILED, on this date, pursuant to S120.52
Florida Statutes, with the designated
Department Clerk, receipt of which
is hereby acknowledged.

Mary L. Wilson 9/5/96
Clerk Date