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PS Form 3800, JUNE 1991

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<p>SENDER:</p> <ul style="list-style-type: none"> • Complete items 1 and/or 2 for additional services. • Complete items 3, and 4a & b. • Print your name and address on the reverse of this form so that we can return this card to you. • Attach this form to the front of the mailpiece, or on the back if space does not permit. • Write "Return Receipt Requested" on the mailpiece below the article number. • The Return Receipt will show to whom the article was delivered and the date delivered. 		<p>I also wish to receive the following services (for an extra fee):</p> <p>1. <input type="checkbox"/> Addressee's Address</p> <p>2. <input type="checkbox"/> Restricted Delivery</p> <p>Consult postmaster for fee.</p>	
<p>3. Article Addressed to: Mr. F. Doug Owenby Vice President/Operations Mgr. Champion International Corporation 375 Muscogee Road Cantonment, Florida 32533</p>		<p>4a. Article Number P. 872 563 611</p>	
<p>6. Signature (Agent) <i>[Handwritten Signature]</i></p>		<p>4b. Service Type <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Insured <input type="checkbox"/> COD</p>	
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STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF PERMIT

In the matter of an
Application for Permit by:

DEP File No. AC 17-223343
Escambia County

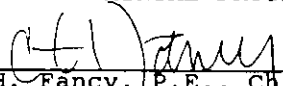
Mr. F. Doug Owenby
Vice President/Operations Manager
Champion International Corporation
375 Muscogee Road
Cantonment, Florida 32533

Enclosed is Permit Number AC 17-223343 to allow modifications to be made to the existing pulp mill located in Cantonment, Escambia County, Florida. This permit is issued pursuant to Section(s) 403, Florida Statutes.

Any party to this Order (permit) has the right to seek judicial review of the permit 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 in the Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400; 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 30 days from the date this Notice is filed with the Clerk of the Department.

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

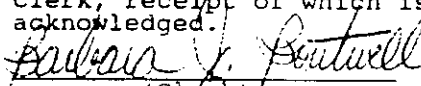

C. H. Fancy, P.E., Chief
Bureau of Air Regulation
2600 Blair Stone Road
Tallahassee, FL 32399-2400
904-488-1344

CERTIFICATE OF SERVICE

The undersigned duly designated deputy agency clerk hereby certifies that this NOTICE OF PERMIT and all copies were mailed before the close of business on April 5, 1994 to the listed persons.

Clerk Stamp

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


(Clerk) 4/5/94
(Date)

Copies furnished to:

E. Middleswart, NW District
J. Harper, EPA
J. Braswell, OGC
T. Cole, OHF&C
D. Smith, P.E., CE
J. Bunyak, NPS
G. Golson, ADEM
K. Moore, CIC

Final Determination

Champion International Corporation
Escambia County
Cantonment, Florida

Construction Permit No.
AC 17-223343
PSD-FL-200

Department of Environmental Protection
Division of Air Resources Management
Bureau of Air Protection

March 25, 1994

Final Determination
Champion International Corporation
Escambia County
AC 17-223343: Mill Modification
PSD-FL-200

The construction permit application package and supplementary material have been reviewed by the Department. Public Notice of the Department's Intent to Issue was published in the Pensacola News Journal on March 13, 1993. The Revised Technical Evaluation and Preliminary Determination was distributed on March 10, 1993, and available for public inspection at the Department's Northwest District office and the Department's Bureau of Air Regulation office.

During the public notice period, petitions for an administrative hearing were received (OGC Case Nos.: 93-0913, 93-1065, 93-1066 and 93-1067; DOAH Case Nos.: 93-2053, 93-2054, 93-2055, 93-2056 and 93-2057). On January 27, 1994, DOAH Hearing Officer P. Michael Ruff issued and signed an Order of the Hearing Officer granting Motions to Dismiss Petitions. Based on the Motions to Dismiss, the Department's Secretary Virginia B. Wetherell signed a Final Order on March 9, 1994, directing the Department's Bureau of Air Regulation to issue the construction permit upon the terms and conditions set forth in the Department's Intent to Issue and draft permit issued March 10, 1993.

Attachments to be incorporated: AC 17-223343 and PSD-FL-200

- o Proof of Publication of the Department's Intent to Issue in the Pensacola News Journal issue of March 13, 1993.
- o Verified Petition for a Formal Hearing pursuant to Section 120.57, Florida Statutes, received March 23, 1993, by the Department's OGC.
- o Mr. Brian Beals' letter dated April 13, 1993.
- o Motion to Dismiss Petitions done and ordered on January 27, 1994, by the DOAH Hearing Officer.
- o Final Order done and ordered by Secretary Virginia B. Wetherell on March 9, 1994.
- o Final Determination dated March 25, 1994.

Based on the closing of OGC Cases 93-0913, 93-1065, 93-1066 and 93-1067, it is recommended that the construction permit, No. AC 17-223343 and PSD-FL-200, be issued as drafted, with the above referenced attachments incorporated.

2-9-94

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JACQUELINE M. LANE, FRED GARTH,
NELSON BETHUNE, THORNTON GARTH,
and PERDIDO BAY ENVIRONMENTAL
ASSOCIATION, INC.,

Petitioners,

vs.

CHAMPION INTERNATIONAL
CORPORATION and STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL
REGULATION,

Respondents.

OGC Case Nos. 93-0913
93-1065
93-1066
93-1067
DOAH Case Nos. 93-2053
93-2054
93-2055
93-2056
93-2057

FINAL ORDER

On January 27, 1994, a Hearing Officer from the Division of Administrative Hearings submitted an Order which the Department of Environmental Protection ("Department"), previously known as the Department of Environmental Regulation, treats as a Recommended Order. A copy of the Recommended Order is attached as Exhibit A. On February 4, 1994, Petitioner JACQUELINE M. LANE filed exceptions to the Recommended Order. On February 21, 1994, Respondent CHAMPION INTERNATIONAL CORPORATION ("Champion") filed responses thereto. The matter thereupon came before me as Secretary of the Department for final agency action.

BACKGROUND

On or about March 10, 1993, the Department gave notice of its intent to issue an air construction permit to Champion for construction of modifications to an existing pulp mill located in

Cantonment, Escambia County, Florida. The permit application was filed in concert with a Consent Order entered by the Department on December 1, 1989. The Consent Order was the subject of a formal administrative hearing which resulted in the entry of a Final Order governing the Consent Order and other permits and variances pertaining to the construction, operation and modification of Champion's pulp mill. As a result of the Final Order, the Department issued Temporary Operating Permit ("TOP") #IT 17-156163 to Champion for operation of a wastewater plant and for discharge of treated effluent to waters of the state. Champion currently operates the pulp mill under the terms of the Consent Order and TOP. In accordance with the Consent Order, the proposed air construction permit authorizes construction of a new No. 6 Power Boiler, the modification of the existing Lime Kiln's mud handling system, the modification of the existing A and B Bleach Plant Lines and their operations, the modification of the No. 2 Multiple Effect Evaporator set by adding new effects, the construction of a new methanol storage tank, and the surrender of the operation permits for the existing Nos. 1 and 2 Power Boilers.

On March 23, 1993, Petitioner JACQUELINE M. LANE ("Lane") filed a petition challenging the issuance of the proposed permit. On March 26, 1993, Petitioners FRED GARTH ("F. Garth"), NELSON BETHUNE ("Bethune"), THORNTON GARTH ("T. Garth") and PERDIDO BAY ENVIRONMENTAL ASSOCIATION ("PBEA") filed their petitions challenging the issuance of the proposed permit. The individual Petitioners Lane, F. Garth, Bethune and T. Garth are the owners

of property in the vicinity of the mill. The Petitioner PBEA is a non-profit corporation incorporated in the State of Alabama to preserve property around Perdido Bay, in the vicinity of the mill.

Following receipt of the petitions for formal administrative proceedings, the matter was referred to the Division of Administrative Hearings for assignment of a Hearing Officer. Champion subsequently filed motions in opposition to the petitions based in large part on the grounds that Petitioners did not substantially comply with the requirements for a petition for administrative hearing as set forth in Rule 17-103.155(4), Florida Administrative Code. After a hearing on Champion's motions, the Hearing Officer entered an Order on May 14, 1993 consolidating the five related cases and dismissing all of the petitions with leave for the Petitioners to file amended petitions. The Petitioners served their amended petitions on June 2, 1993.

On June 28, 1993, Champion filed motions in opposition to the amended petitions alleging the continued deficiency of the petitions. Following a motion hearing and consideration of several post-hearing submissions by Lane, Champion and the Department, the Hearing Officer entered an order on August 8, 1993 dismissing the petitions with leave for the Petitioners to file second amended petitions. The Hearing Officer's Order incorporated detailed instructions to the Petitioners explaining the specific pleading requirements to establish standing to initiate formal proceedings before the Division of Administrative Hearings.

In August of 1993, Petitioners timely filed second amended petitions. Champion subsequently filed motions in opposition to the second amended petitions. A hearing on Champion's motions was held on November 29, 1993. Upon consideration of the motions and responses thereto and oral argument of the parties, the Hearing Officer concluded that, despite being afforded three opportunities over a period of six months, the Petitioners had failed to demonstrate that they have substantial interests which will be affected or injured by the activity proposed to be permitted different from the interests of the general public. Accordingly, the Hearing Officer entered an Order dismissing the second amended petitions, with prejudice.

RULINGS ON EXCEPTIONS

Exception No. 1

In Lane's first exception to the Recommended Order, she contends that the Hearing Officer erred in finding that "much of the content of the petitions amounted to speculation regarding potential harmful effects which will result from granting the proposed permits." Lane contends that there is ample scientific evidence to support the Petitioners' allegations.

Lane's exception is based on the erroneous conclusion that the Hearing Officer's statement amounts to an evidentiary determination. Rather, the Hearing Officer, in addressing the motions to dismiss, found that as a matter of law the statements themselves failed to establish a proper basis for standing and therefore the Petitioners were ineligible for a hearing on the factual evidence.

Lane apparently misunderstands the purpose of the proceedings on the motions to dismiss, which is to test the sufficiency of the Petitioners' allegations regarding standing. I concur with the Hearing Officer's finding that the allegations of harm in the petitions do not constitute specific factual allegations concerning particular harm caused to these Petitioners as required by Rules 17-103.155, 28-5.103 and 60Q-2.004(3), Florida Administrative Code. Absent the requisite allegations of standing, the Hearing Officer properly dismissed the petitions. The exception is denied.

Exception No. 2

Lane's second exception alleges that the Hearing Officer erred in finding her not to be a substantially affected party. Lane specifically contends that the Hearing Officer ignored statements of the Petitioners that they were affected substantially more than the general public, and that Rules 17-210.350(2)(h) and 275.800(2), Florida Administrative Code, provide that anyone who lives within a 100 kilometer radius of the mill would be a substantially affected party.

Lane's exception is another attempt to reargue the allegations of harm which the Hearing Officer continuously found inadequate. In determining that the Petitioners failed to establish standing in this matter, the Hearing Officer applied the two-prong test set forth in Agrico Chemical Co. v. DER, 406 So. 2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So. 2d 1359 (Fla. 1982). The Agrico test requires a petitioner to show:

- 1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and 2) that his

substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury.

Agrico, 406 So. 2d at 482. The Hearing Officer also explained that, to meet the Agrico test, the Petitioners must allege special injury that is different, more specific, and greater than that to be experienced by the public generally. See Florida Home Builders Association v. Department of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982). I concur with the Hearing Officer's finding that the Petitioners' allegations of injury fail in this regard. Much of the content of the petitions amounts to speculation regarding potential harmful effects the Petitioners fear will result to the general public from the proposed permit, rather than specific factual allegations concerning harm particular to these Petitioners. The Hearing Officer properly found that Petitioners were not "substantially affected" parties entitled to an administrative proceeding in this matter.

Further, the provisions cited by Lane have no relevance to these proceedings and Lane's reliance on them is misplaced. Rule 17-175.800(2), Florida Administrative Code, describes those federally designated Class I areas outside of Florida but within 100 kilometers of the state. Rule 17-210.350(2)(b), Florida Administrative Code, provides for notice to the EPA and to the Federal Land Manager of any construction application for a proposed new or modified source which would be located within 100 kilometers of any Federal Class I area or whose emissions may affect any Federal Class I area. These rules do not designate a

"zone of interest" for the purpose of instituting an administrative proceeding and therefore do not confer standing on the Petitioners. Lane's second exception is denied.

Exception No. 3

In Lane's final exception, she contends that the Hearing Officer's decision denies the Petitioners due process because this is the last point of entry into these proceedings. It is, of course, well established that persons whose substantial interests may be affected by agency action must be provided a clear point of entry to file petitions for formal proceedings. See, e.g., Florida Optometric Association v. Department Professional Regulation, Board of Opticianry, 567 So. 2d 928 (Fla. 1990). Petitioners were afforded a point of entry to contest the subject permit prior to its issuance, and Petitioners have, in fact, availed themselves of such point of entry. The procedural history of this case is that in addition to the original petitions, the Petitioners were granted two additional opportunities to adequately allege standing in this matter. In the second order dismissing the petitions herein, the Hearing Officer went to the extent of offering extensive instructions as to the matters needed to be included in petitions for formal administrative proceedings. However, the petitions continued to be deficient.

I conclude that, under the circumstances presented, the Petitioners were afforded due process. The Petitioners were given ample opportunity to properly establish standing to challenge the proposed permit. It is not a lack of due process, but rather Petitioners' failure to meet the requirements for

establishing standing which precludes the Petitioners from proceeding to hearing. For this reason, Lane's third exception is denied.

Accordingly, it is

ORDERED:

1. The Recommended Order of the Hearing Officer is adopted in its entirety and is incorporated herein by reference.

2. The Second Amended Petitions filed by Petitioners are hereby dismissed with prejudice.

3. The application of CHAMPION INTERNATIONAL CORPORATION for air construction permit AC 17-223343; PSD-FL-200 is GRANTED. The Department's Bureau of Air Regulation is directed to issue the permit upon the terms and conditions set forth in the Department's Intent to Issue and draft permit issued March 10, 1993.

Any party to this Order has the right to seek judicial review of the 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 Clerk of the Department in the Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400; 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 (30) days from the date this Order is filed with the Clerk of the Department.

DONE AND ORDERED this 9th day of March, 1994, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

FILING AND ACKNOWLEDGEMENT

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

Mis A. Little 3/09/94
Clerk Date

Virginia B. Wetherell
VIRGINIA B. WETHERELL
Secretary

2600 Blair Stone Rd
Tallahassee FL 32399-2400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. Mail to the following:

Jacqueline M. Lane
10738 Lillian Hwy
Pensacola FL 32506

Thornton Garth
P O Box 424
Lillian AL 36549

Fred Garth
14110 Perdido Key Dr
Pensacola FL 32507

Thomas O. Bear, Esq.
P O Box 1238
Foley AL 35536

Nelson Bethune
7 South Warrington Rd
Pensacola FL 32507

Segundo J. Fernandez, Esq.
Oertel, Hoffman, et al.
P O Box 6507
Tallahassee FL 32314-6507

and by Hand Delivery to:

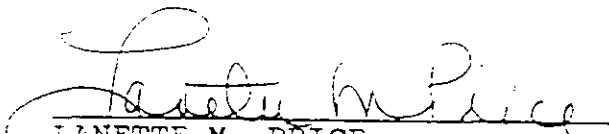
P. Michael Ruff
Hearing Officer
Division of Administrative
Hearings
The DeSoto Bldg
1230 Apalachee Pkwy
Tallahassee FL 32399-1550

Jefferson M. Braswell, Esq.
Assistant General Counsel
Department of Environmental
Protection
2600 Blair Stone Rd
Tallahassee FL 32399-2400

Ann Cole, Clerk
Division of Administrative Hearings
The DeSoto Bldg
1230 Apalachee Pkwy
Tallahassee FL 32399-1550

this 10th day of March, 1994.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


LANETTE M. PRICE
Assistant General Counsel
2600 Blair Stone Rd
Tallahassee FL 32399-2400
(904) 488-9314

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JACQUELINE M. LANE,

Petitioner,

vs.

CASE NO. 93-2053

CHAMPION INTERNATIONAL
CORPORATION and DEPARTMENT OF
ENVIRONMENTAL REGULATION,

Respondents.

FRED GARTH,

Petitioner,

vs.

CASE NO. 93-2054

CHAMPION INTERNATIONAL
CORPORATION and DEPARTMENT OF
ENVIRONMENTAL REGULATION,

Respondents.

NELSON BETHUNE,

Petitioner,

vs.

CASE NO. 93-2055

CHAMPION INTERNATIONAL
CORPORATION and DEPARTMENT OF
ENVIRONMENTAL REGULATION,

Respondents.

THORNTON GARTE,

Petitioner,

vs.

CASE NO. 93-2056

CHAMPION INTERNATIONAL
CORPORATION and DEPARTMENT OF
ENVIRONMENTAL REGULATION,

Respondents.

PERDIDO BAY ENVIRONMENTAL)
ASSOCIATION, INC.,)
)
Petitioner,)
)
vs.)
)
CHAMPION INTERNATIONAL)
CORPORATION and DEPARTMENT OF)
ENVIRONMENTAL REGULATION,)
)
Respondents.)
_____)

CASE NO. 93-2057

ORDER

THIS CAUSE comes before the undersigned upon Motions to Dismiss the above-named Petitioners' Second Amended Petitions filed in this cause pursuant to Order of the Hearing Officer granting a second Motion to Dismiss each of the Petitions and giving the Petitioners a second opportunity to amend their Petitions. The procedural history of this case is as outlined in the Motions in Opposition to Amended Petitions, culminating in the filing of the subject motions, responses thereto, and the conduct of oral argument by the Hearing Officer on November 29, 1993 in Tallahassee, Florida.

The Hearing Officer has carefully considered the motions, responses thereto, and the oral argument of the parties in support of and in opposition to the motions. Despite being accorded three opportunities over a period of approximately six (6) months after this case was filed with the Hearing Officer, the Perdido Bay Environmental Association, Inc., Thornton Garth, Fred Garth, Nelson Bethune, and Jacqueline M. Lane have failed to establish sufficient substantial interests affected by the application and the project proposed to be permitted which are

sufficient to invoke a right to a formal administrative proceeding in this forum. The allegations of the Petitioners upon this third opportunity to submit Petitions which might demonstrate entitlement to a formal proceeding involve a misapplication of rules, a misapprehension of the import of certain rules, and still fail to establish that the Petitioners will suffer any substantial injury peculiar unto themselves and different from any condition which the general public is or will be exposed to by the subject project sought to be permitted. Much of the content of the Petitions amounts to speculation regarding potential harmful effects the Petitioners fear will result from the proposed permits grant, rather than specific factual allegations concerning particular harm caused to these Petitioners by alleged violations of the statutes and rules pertaining to the subject matter of the application. The Petitioners' Second Amended Petitions, as was the case with the original and the First Amended Petitions, fail to satisfy the requirements of Rules 17-103.155, 28-5.103, and 60Q-2.004(3), Florida Administrative Code, which provide detailed advice as to matters required to be included in such Petitions for formal proceedings.

The Petitioners, in order to show that their substantial interests will be affected by the agency action proposed, must show that an injury, in fact, will be suffered which is of such sufficient immediacy to entitle the Petitioners to a hearing and that the Petitioners' substantial injuries alleged are of a type and nature which a Section 120.57(1),

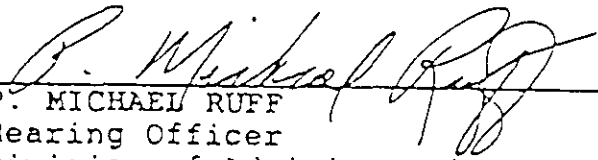
Florida Statutes, proceeding dealing with the substantive law embodied in Chapter 403, Florida Statutes, and related rules, contained in Title 17, Florida Administrative Code, is designed to protect. Agrico Chemical Co. v. DER, 406 S.2d 478 (Fla. 2d DCA 1981). Moreover, such Petitions must contain allegations of an injury or injuries that are different, more specific, greater than, and peculiar to the Petitioners, such that their injuries rise to a different level and are more specific to them than those merely expected to be experienced by the public generally. See, Florida Home Builders Association v. Department of Labor and Employment Security, 412 S.2d 351 (Fla. 1982).

Upon the Hearing Officer determining that the original Petitions and the First Amended Petitions failed to meet these requirements for establishing standing to initiate a formal proceeding before the Division of Administrative Hearings, the Hearing Officer entered a quite detailed Order on August 9, 1993 providing extensive instructions to the Petitioners, explaining in detailed fashion the specific pleading requirements for establishing substantial injury within the zone of interest involved in the putative proceeding and providing examples of how such specific 'substantial interest-zone of interest' standing pleading could be accomplished. Despite these detailed instructions and after three opportunities, the Petitioners have failed to file Petitions which persuade the Hearing Officer that they have substantial interests which will be affected or injured by the activity proposed to be permitted different from the interests of the general public. The Department itself is

charged by statute with protecting the interests of the general public through its regulation and review of such jurisdictional activities as those proposed by the applicant, which may not be the basis for standing of individual, private Petitioners situated as the subject Petitioners.

The Petitioners have not persuaded the Hearing Officer that their interests are different from that of the general public merely by the fact that they live a certain number of miles from the mill and proposed installation. The mileage of Petitioners' residence proximate to the mill was not definitely related to a specific rule or rules which might assist in establishing their standing and substantial interests to be more specific than that of the general public, even had the totality of their allegations otherwise shown specific injury to substantial interests, which they did not. In accordance with the remaining arguments raised in the Motions to Dismiss the Second Amended Petitions and the Respondent's oral arguments in support thereof, all of which are more persuasive and adopted herein, it is, therefore, concluded after long and careful reflection, since the motion hearing of November 29, 1993, that the Second Amended Petitions must be dismissed with prejudice.

DONE AND ORDERED this 27th day of January, 1994, at Tallahassee, Leon County, Florida.


P. MICHAEL RUFF
Hearing Officer
• Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the Division of Administrative Hearings this 27th day of January, 1994.

Copies furnished to:

Jacqueline M. Lane
10738 Lillian Highway
Pensacola, FL 32506

Fred Garth
14110 Perdido Key Drive
Pensacola, FL 32507

Nelson Bethune
7 South Warrington Road
Pensacola, FL 32507

Thornton Garth
P.O. Box 424
Lillian, AL 36549

Thomas O. Bear, Esq.
P.O. Box 1238
Foley, AL 36534

Jefferson M. Braswell, Esq.
Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Segundo J. Fernandes, Esq.
OERTEL, HOFFMAN, ET AL.
P.O. Box 15507
Tallahassee, FL 32314-1550

DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF GENERAL COUNSEL
JAN 29 1994

DEAN



Florida Department of Environmental Protection

Lawton Chiles
Governor

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

Virginia B. Wetherell
Secretary

PERMITTEE:

**Champion International
Corporation
375 Muscogee Road
Cantonment, FL 32533**

**Permit Number: AC 17-223343
PSD-FL-200
Expiration Date: Dec. 31, 1995
County: Escambia
Latitude/Longitude: 30°36'30"N
87°19'13"W
Project: Mill Modification**

This permit is issued under the provisions of Chapter 403, Florida Statutes (F.S.); Florida Administrative Code (F.A.C.) Chapters 17-210 thru 17-297 and 17-4; and, 40 CFR (July, 1991 version). The above named permittee is hereby authorized to perform the work or operate the facility shown on the application and approved drawings, plans, and other documents attached hereto or on file with the Department and made a part hereof and specifically described as follows:

For the permitting of a mill modification in concert with the mill's wastewater Consent Order, to include the construction of a new natural gas fired No. 6 Power Boiler (PB), the surrendering of the operation permits for the existing Nos. 1 and 2 Power Boilers, modification to both the A and B Bleach Plants, construction of a new methanol storage tank, modification of the No. 2 Multiple Effect Evaporator set by installing new effects, and modification of the Lime Kiln's mud handling system. The UTM coordinates of the existing facility are Zone 17, 469.0 km East and 3386.0 km North.

The Standard Industrial Codes are:

- o Major Group No. 26 - Paper and Allied Products
- o Industry Group No. 2611 - Pulp Mills

The facility shall be constructed/modified in accordance with the permit application, plans, documents, amendments and drawings, except as otherwise noted in the General and Specific Conditions.

Attachments to be incorporated:

1. Application to Construct/Modify Air Pollution Sources, DER Form 17-1.202(1), received 12/21/92.
2. Technical Evaluation and Preliminary Determination (TE&PD) dated 2/25/93.
3. Comments received on 3/4/93, in a meeting.
4. Comment received 3/8/93, via FAX.
5. Revised TE&PD dated 3/8/93.
6. Proof of Publication of the Department's Intent to Issue in the Pensacola News Journal issue of 3/13/93.

PERMITTEE:

**Permit Number: AC 17-223343
PSD-FL-200**

Champion International Corp. Expiration Date: Dec. 31, 1995

Attachments cont.:

7. Verified Petition for a Formal Hearing pursuant to Section 120.57, F.S., received 3/23/93, by the Department's OGC.
8. Mr. Brian Beals' letter dated 4/13/93.
9. Motion to Dismiss Petitions done and ordered on 1/27/94, by the DOAH Hearing Officer.
10. Final Order done and ordered by Secretary Virginia B. Wetherell on 3/9/94.
11. Final Determination dated 3/25/94.

GENERAL CONDITIONS:

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, F.S. 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.
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, exhibits, specifications, or conditions of this permit may constitute grounds for revocation and enforcement action by the Department.
3. As provided in Subsections 403.087(6) and 403.722(5), F.S., the issuance of this permit does not convey any 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 of 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.
4. This permit conveys no title to land or water, does not constitute State recognition or acknowledgement 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.
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 F.S. and Department rules, unless specifically authorized by an order from the Department.
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

PERMITTEE:

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Champion International Corp. Expiration Date: Dec. 31, 1995

GENERAL CONDITIONS:

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.

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 any 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.

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.

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.

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 F.S. or Department rules, except where such use is proscribed by Sections 403.73 and 403.111, F.S. Such evidence shall only be used to the extent it is consistent with the Florida Rules of Civil Procedure and appropriate evidentiary rules.

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10. The permittee agrees to comply with changes in Department rules and F.S. after a reasonable time for compliance, provided, however, the permittee does not waive any other rights granted by F.S. or Department rules.

11. This permit is transferable only upon Department approval in accordance with F.A.C. Rules 17-4.120 and 17-30.300, as applicable. The permittee shall be liable for any non-compliance of the permitted activity until the transfer is approved by the Department.

12. This permit or a copy thereof shall be kept at the work site of the permitted activity.

13. 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 for 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:

- The date, exact place, and time of sampling or measurements;
- The person responsible for performing the sampling or measurements;
- The dates analyses were performed;
- The person responsible for performing the analyses;
- The analytical techniques or methods used; and,
- The results of such analyses.

14. This permit constitutes compliance with:

- a. New Source Performance Standards (NSPS), 40 CFR 60, Subparts Db and Kb;
- b. Prevention of Significant Deterioration; and,
- c. Best Available Control Technology (BACT).

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GENERAL CONDITIONS:

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.

SPECIFIC CONDITIONS:

A. No. 6 Power Boiler (PB)

1. The No. 6 PB may operate continuously (i.e., 8760 hrs/yr).
2. The No. 6 PB is permitted to fire natural gas only, with a maximum heat input of 533 MMBtu per hour, yielding a maximum steam product of 385,000 lbs/hr (2-hour average).
3. The No. 6 PB will be an ABB/CE boiler.
4. The Source Classification Code (SCC) is:
1-02-006-01 Ext. Combustion Boiler-Industrial 10⁶ ft.³ Burned
5. The No. 6 PB is subject to all applicable standards of 40 CFR 60, Subpart Db (July, 1991 version).
6. The No. 6 PB is subject to all applicable standards of F.A.C. Rule 17-296.405(2).
7. The No. 6 PB's pollutant emissions shall not exceed:

NOx*	0.06 lb/MMBtu (32.0 lbs/hr, 140.1 TPY)
CO*	0.1 lb/MMBtu (53.3 lbs/hr, 233.5 TPY)
PM/PM ₁₀	2.67 lbs/hr, 11.7 TPY
SO ₂	Not Applicable: Natural gas usage (for PSD tracking purposes: 2.2 TPY projected potential emissions)
VOC*	0.01 lb/MMBtu (5.33 lbs/hr, 23.4 TPY)
VE	≤ 20 % opacity (6-min avg), except for one 6-min period/hr @ ≤ 27% opacity

* 24-hour average

8. Any required compliance testing shall be conducted using the following test methods in accordance with F.A.C. Rule 17-297 and 40 CFR 60, Subpart Db and Appendix A (July, 1991 version):

- a) EPA Method 5, Determination of Particulate Emissions from Stationary Sources.

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SPECIFIC CONDITIONS:

- b) EPA Method 7D or 7E, for Determining Nitrogen Oxide Concentrations at Fossil Fuel Fired Steam Generators.
- c) EPA Method 9, Visual Determination of the Opacity of Emissions from Stationary Sources.
- d) EPA Method 10, Determination of Carbon Monoxide Emissions from Stationary Sources.
- e) EPA Method 25A, Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer.
- f) Upon initial start-up, testing shall be conducted for NO_x, CO, VOC, and VE.

Note: Other reference methods may be used with prior written approval received from the Department in accordance with F.A.C. Rule 17-297.620.

9. Emission monitoring for nitrogen oxides shall be in accordance with 40 CFR 48b (July, 1991 version).

10. Reporting and recordkeeping requirements shall be in accordance with 40 CFR 60.46b (July, 1991 version).

B. Lime Kiln - Mud Dryer System (LK-MDS)

1. Operation permit No. AO 17-181738 is incorporated by reference except for the following changes and/or additions:

- a. the LK-MDS may operate continuously (i.e., 8760 hrs/yr);
- b. a new lime mud drier system will be constructed as an addition to the existing lime kiln operation;
- c. the pollutant emissions from the LK-MDS will be vented to a new electrostatic precipitator, which will be vented in series to a modified packed column wet scrubber using NaOH as the scrubbing media;
- d. after construction/modification is completed, Champion will develop a testing protocol which includes a proposed test schedule to establish scrubber operating parameters and monitoring methods to meet the applicable SO₂ and TRS limits for the LK-MDS.
- e. the test protocol will be submitted to the Department's Northwest District office prior to conducting the test program; and,
- f. the maximum allowable operating rate of lime product (90% CaO) will be increased from 13.67 to 20.83 tons per hour.

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SPECIFIC CONDITIONS:

g. the pollutant emissions from the LK-MDS shall not exceed:

NOx*	No. 6 fuel oil: 200 ppmvd @ 10% O ₂ (49.3 lbs/hr, 215.9 TPY)
	Natural Gas: 175 ppmvd @ 10% O ₂ (43.1 lbs/hr, 188.8 TPY)
PM/PM ₁₀	10.9 lbs/hr, 47.7 TPY
CO*	45 ppmvd @ 10% O ₂ (6.75 lbs/hr, 29.6 TPY)
VOC*	104 ppmvd @ 10% O ₂ (as propane) (24.5 lbs/hr, 107.3 TPY)
TRS**	8 ppmvd @ 10% O ₂ (1.46 lbs/hr, 6.4 TPY)
SO ₂	6.49 lbs/hr, 28.4 TPY
VE	< 20% opacity

* 24-hour average

** 12-hour average

Note: o Maximum of 500 tons/day lime product (90% CaO);
o Maximum sulfur content of the No. 6 Fuel Oil is 1.0%, by weight; and,
o Concentration limits and allowable pound per hour emission rates are based on a maximum design volumetric flowrate of 34,383 dscfm.

h. while firing No. 6 fuel oil, initial and subsequent annual compliance tests shall be conducted using the following test methods in accordance with F.A.C. Rule 17-297 and 40 CFR 60, Appendix A (July, 1991 version):

- 1) EPA Method 5, Determination of Particulate Emissions from Stationary Sources.
- 2) EPA Method 7D or 7E, for Determining Nitrogen Oxide Concentrations at Fossil Fuel Fired Steam Generators.
- 3) EPA Method 8, Determination of Sulfuric Acid Mist and Sulfur Dioxide Emissions from Stationary Sources; or, EPA Method 6C, Determination of Sulfur Dioxide Emissions from Stationary Sources, may be used;
- 4) EPA Method 9, Visual Determination of the Opacity of Emissions from Stationary Sources.
- 5) EPA Method 10, Determination of Carbon Monoxide Emissions from Stationary Sources.
- 6) EPA Method 25A, Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer.

Note: Other reference methods may be used with prior written approval received from the Department in accordance with F.A.C. Rule 17-297.620.

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SPECIFIC CONDITIONS:

- i. while firing natural gas, initial and subsequent compliance tests shall be conducted using the following test methods in accordance with F.A.C. Rule 17-297 and 40 CFR 60, Appendix A (July, 1991 version):
 - 1) EPA Method 5, Determination of Particulate Emissions from Stationary Sources.
 - 2) EPA Method 7D or 7E, for Determining Nitrogen Oxide Concentrations at Fossil Fuel Fired Steam Generators.
 - 3) EPA Method 8, Determination of Sulfuric Acid Mist and Sulfur Dioxide Emissions from Stationary Sources; or, EPA Method 6C, Determination of Sulfur Dioxide Emissions from Stationary Sources, may be used.
 - 4) EPA Method 9, Visual Determination of the Opacity of Emissions from Stationary Sources.
 - 5) EPA Method 10, Determination of Carbon Monoxide Emissions from Stationary Sources.
 - 6) EPA Method 25A, Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer.

Note: Other reference methods may be used with prior written approval received from the Department in accordance with F.A.C. Rule 17-297.620.

C. Chlorine Dioxide (ClO₂) Generator

1. Operation permit No. AO 17-219596 is incorporated by reference except for the following changes and/or additions:
 - a. the existing chlorine gas handling system will be eliminated;
 - b. the generating process will be modified from a R3H process to a R8/R10 process, which will use methanol, sulfuric acid, and sodium chlorate to generate ClO₂;
 - c. the maximum allowable operating rate will be increased from 16 tons/day ClO₂ to 37.4 tons/day;
 - d. a third ClO₂ storage tank will be installed and the existing chlorine absorption towers will be converted to ClO₂ absorption towers;
 - e. the ClO₂ storage tanks will vent to the existing two ClO₂ storage tank chilled water scrubbers;

PERMITTEE:

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SPECIFIC CONDITIONS:

f. the existing two ClO₂ storage tank scrubbers will be vented to the tail gas scrubber, which will be modified by adding an additional 10 feet of tower and the scrubbing media will be changed from sodium hydroxide to white liquor (sodium hydroxide and sodium sulfide);

g. a new 21,880 gallon methanol storage tank and handling system will be installed and is subject to all applicable standards pursuant to 40 CFR 60, Subpart Kb (July, 1991 version); for PSD tracking purposes, the projected potential VOC emissions are 2.2 TPY; also, the tank will be nitrogen blanketed and equipped with a conservation vent;

SCC: 4-07-008-15 Meth. Tank-Breathing Loss 10³ gals. storage cap.
4-07-008-16 Meth. Tank-Working Loss 10³ gals. storage cap.

h. the existing salt unloading and storage system will be shut down and dismantled;

i. the pollutant emissions shall not exceed:

R8/R10 ClO₂ Generator: 37.4 TPD

Tail Gas Scrubber

Cl₂ 0.1 lb/hr, 0.44 TPY

ClO₂ 0.25 lb/hr, 1.1 TPY

j. initial compliance testing on the Tail Gas Scrubber for chlorine and chlorine dioxide will be conducted using NCASI (EPA Modified Method 6) test protocols.

Note: A post-test evaluation for rule applicability will be conducted to see if additional emissions evaluation is required.

D. A and B Bleach Plant Lines

1. Operation permit No. AO 17-219600 is incorporated by reference except for the following changes and/or additions:

a. both lines may operate continuously (i.e., 8760 hrs/yr);

b. the bleaching sequence will be changed from CED to DED;

c. a storage and handling system for the enzyme xylanase may be installed;

d. a storage and handling system for hydrogen peroxide will be installed;

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SPECIFIC CONDITIONS:

e. the existing chlorine gas handling system will be eliminated;

f. the pollutant emissions shall not exceed:

1) A-Line Bleach Plant: 888 air dried tons per day, maximum

a) E_o Washer CHCl₃ 0.038 lb/hr, 0.16 TPY

b) A-Line Scrubber Cl₂ 1.45 lbs/hr, 6.4 TPY

ClO₂ 0.45 lb/hr, 2.0 TPY

CHCl₃ 0.34 lb/hr, 1.5 TPY

2) B-Line Bleach Plant: 830 air dried tons per day, maximum

a) E_o Washer CHCl₃ 0.038 lb/hr, 0.16 TPY

b) B-Line Scrubber Cl₂ 1.0 lb/hr, 4.38 TPY

ClO₂ 0.45 lb/hr, 2.0 TPY

CHCl₃ 0.34 lb/hr, 1.5 TPY

3) A-Line and B-Line Bleach Plants: average 1500 air dried tons per calendar day, maximum combined total

h. after construction/modification is completed, a meeting to establish the testing protocol shall be held with the Department, at which the following information shall be provided:

1) identification of all sources and their associated waste streams to be evaluated;

2) proposed sampling procedures/methods and analysis for determining CHCl₃; and,

3) proposed testing dates.

Note: A post-test evaluation for rule applicability will be conducted to see if additional emissions evaluation is required.

i. after construction/modification is completed, initial compliance testing on the Bleach Plant Scrubbers (A-Line and B-Line) and E_o Washers for chlorine and chlorine dioxide will be conducted using NCASI (EPA Modified Method 6) test protocols.

Note: A post-test evaluation for rule applicability will be conducted to see if additional emissions evaluation is required.

E. Nos. 1 and 2 Multiple Effect Evaporator (MEE) Sets, Batch and Continuous Digester Systems, and Foul Condensate Steam Stripper System

1. Operation permit No. AO 17-212422 is incorporated by reference except for the following changes and/or additions:

PERMITTEE:

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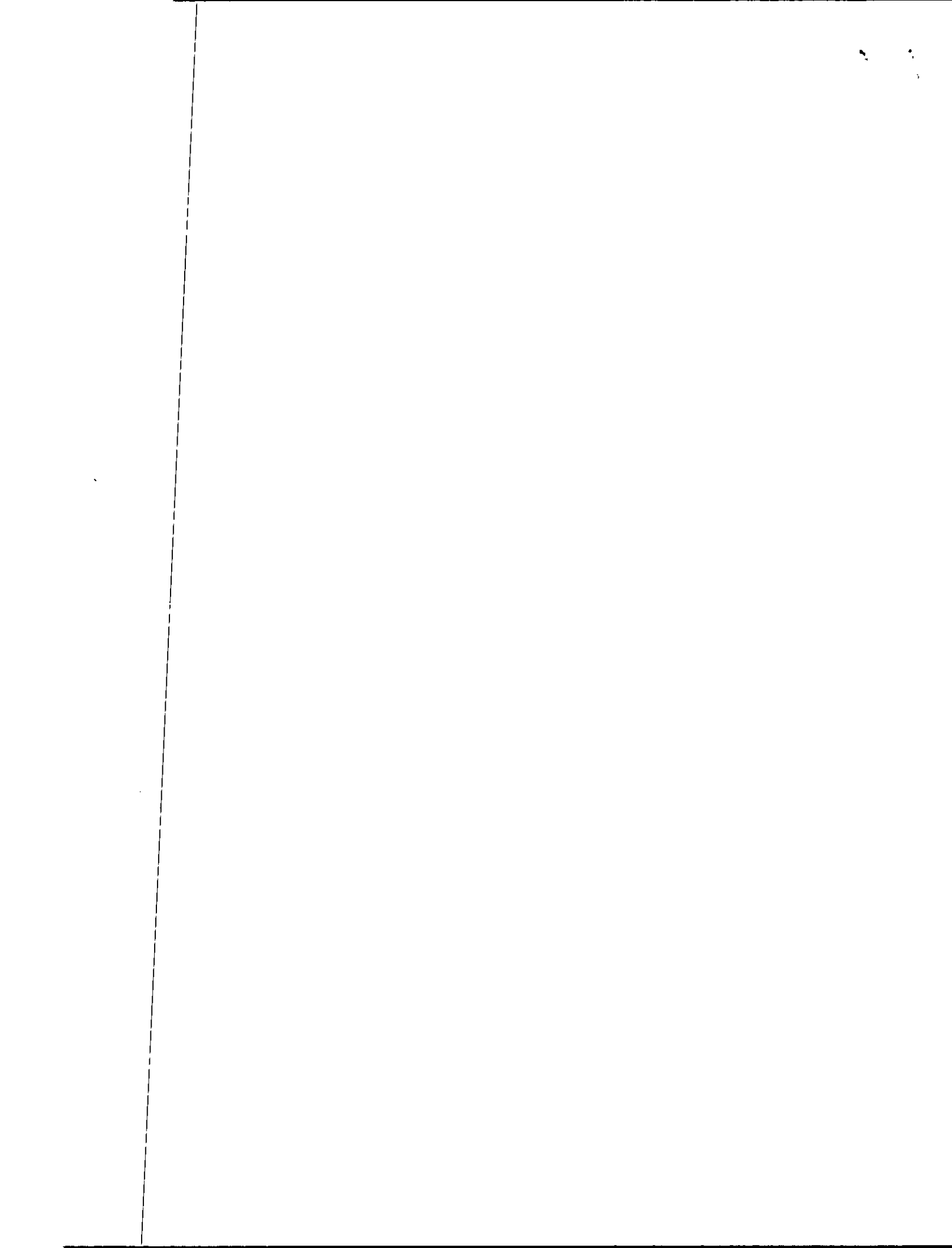
Champion International Corp. Expiration Date: Dec. 31, 1995

SPECIFIC CONDITIONS:

- a. the No. 2 MEE set will be modified to include the addition of new effects, which will be vented to the non-condensable gas (NCG) handling system, which will increase the allowable maximum operating rate from 97,000 to 181,000 lbs/hr dry BLS (black liquor solids) and determined by measuring solids and flow into the system; however, the following operational scenarios are applicable to both of the Nos. 1 and 2 MEE sets:
- 1) when the Nos. 1 and 2 MEE sets are operated simultaneously, the maximum operating rate shall be 278,000 lbs/hr as a total combined input to them (24-hour average) and determined by measuring solids and flow into the systems;
 - 2) when only one MEE set is in operation, the maximum operating rate shall be 181,000 lbs/hr dry BLS and determined by measuring solids and flow into the system (24-hour average); and,
 - 3) actual total annual dry BLS from the Nos. 1 and 2 MEE sets, as determined by measuring solids and flow into the systems, shall not exceed the average for the years 1991 and 1992 (see AORs).
- b. a storage and handling system may be installed for water-transported anthraquinone, an organic catalyst, which may be used in both the batch and continuous digester systems; both systems vent to the NCG handling system; and,
- c. an additional foul condensate steam stripper will be installed and will be vented to the lime kiln or calciner for incineration.

F. General

1. The facility shall be in compliance with all applicable standards/limitations of F.A.C. Rules 17-210 thru 297, 17-4, and 40 CFR (July, 1991 version).
2. The permittee is subject to the applicable provisions of F.A.C. Rules 17-4.130: Plant Operation-Problems; 17-210.650: Circumvention; and, 17-210.700: Excess Emissions.
3. Objectionable odors shall not be allowed off plant property in accordance with F.A.C. Rule 17-296.320(2).



PERMITTEE:

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Champion International Corp. Expiration Date: Dec. 31, 1995

SPECIFIC CONDITIONS:

4. The Department's Northwest District office shall be notified in writing at least 15 days prior to source testing pursuant to F.A.C. Rule 17-297.340. Written reports of the tests shall be submitted to the Department's Northwest District office within 45 days of the test completion in accordance with F.A.C. Rule 17-297.450.

5. Any change in the method of operation, raw materials, equipment, operating hours, etc., pursuant to F.A.C. Rule 17-212.200, Definitions-Modification, the permittee shall submit an application and the appropriate processing fee to the Department's Bureau of Air Regulation (BAR) office.

6. The permittee, for good cause, may request that this construction permit be extended. Such a request shall be submitted to the Department's BAR prior to 60 days before the expiration date of the permit (F.A.C. Rule 17-4.090).

7. An application for an operation permit must be submitted to the Department's Northwest District office at least 90 days prior to the expiration date of this construction permit. To properly apply for an operation permit, the applicant shall submit the appropriate application form, fee, certification that construction was completed noting any deviations from the conditions in the construction permit, and compliance test reports as required by this permit (F.A.C. Rules 17-4.055 and 17-4.220).

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Virginia B. Wetherell
Virginia B. Wetherell
Secretary

Memorandum

Florida Department of
Environmental Protection

TO: Virginia B. Wetherell *VBW*
FROM: Howard L. Rhodes *HLR*
DATE: March 25, 1994
SUBJECT: Approval of Air Construction Permit
AC 17-223343 and PSD-FL-200
Champion International Corporation

Attached for your approval and signature is an air construction permit No. AC 17-223343 (PSD-FL-200), which will allow the company to modify the existing pulp mill. The proposed modification was prepared by the Department's Bureau of Air Regulation.

The existing facility is a pulp mill located in Cantonment, Escambia County, Florida. The mill processes hardwood and softwood chips into a pulp through a digester process, which is then further processed and subjected to a bleaching process to meet product specifications. The proposed modifications were applied for in concert with the mill's wastewater Consent Order. The proposed modifications include the construction of a new natural gas fired No. 6 Power Boiler, modification of the existing Lime Kiln's mud handling system, modification of the existing A and B Bleach Plant lines and their operations, modification of the existing No. 2 Multiple Effect Evaporator set by adding new effects (evaporator columns), and construction of a new methanol storage tank. Also, there is a requirement to surrender the Operation Permits for the existing Nos. 1 and 2 Power Boilers.

During the Public Notice period, petitions were filed for an administrative hearing and were later dismissed by Order of the Hearing Officer; and, a Final Order was issued by the Department, which directed the Department's Bureau of Air Regulation to issue the proposed draft permit as Public Noticed and described in the Intent to Issue package. Therefore, all pending hearings have been resolved and the proposed permit has been finalized.

I recommend your approval and signature.

HLR/BM/rbm

Best Available Control Technology (BACT) Determination
Champion International Corporation
Escambia County

PSD-FL-200

The applicant proposes to modify its existing pulp mill, which includes the installation of a natural gas fired power boiler rated at a maximum heat input of 533 MMBtu/hr [385,000 lbs/hr steam (2-hour average)] and the modification of the existing lime kiln and the A and B Bleach Plants. The steam will be used in the processes undergoing modifications in concert with the mill's wastewater Consent Order.

The applicant has indicated the maximum annual tonnage of regulated air pollutants emitted from the facility based on 100 percent capacity and type of fuel fired to be as follows:

<u>Pollutant</u>	<u>Emissions (TPY)</u>	<u>PSD Significant Emission Rate (TPY)</u>
NO _x	138.8	40
SO ₂	28.2	40
PM/PM ₁₀	-1.3	25/15
CO	189.0	100
VOC	85.5	40
TRS	-1.9	10

Florida Administrative Code (F.A.C.) Rule 17-212.400(2)(f) requires a BACT review for all regulated pollutants emitted in an amount equal to or greater than the significant emission rates listed in the previous table.

Date of Receipt of a BACT Application

December 21, 1992

BACT Determination Requested by the Applicant

<u>Source</u>	<u>Pollutant</u>	<u>Determination</u>
#6 Power Boiler	NO _x *	0.06 lb/MMBtu (32.0 lbs/hr, 140.1 TPY)
	CO*	0.1 lb/MMBtu (53.3 lbs/hr, 233.5 TPY) Combustion Control
	VOCs*	0.01 lb/MMBtu (5.33 lbs/hr, 23.4 TPY) Combustion Control
Lime Kiln-Mud Dryer	NO _x *	#6 fuel oil: 200 ppmvd @ 10% O ₂ (49.3 lbs/hr, 215.9 TPY)
		Natural Gas: 175 ppmvd @ 10% O ₂ (43.1 lbs/hr, 188.8 TPY)
	CO*	45 ppmvd @ 10% O ₂ (6.75 lbs/hr, 29.6 TPY)
	VOCs*	104 ppmvd @ 10% O ₂ (as propane) (24.5 lbs/hr, 107.3 TPY)

* 24-hour average

BACT Determination Procedure

In accordance with Florida Administrative Code Chapter 17-212, Stationary Sources - Preconstruction Review, this BACT determination is 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. In addition, the regulations state that in making the BACT determination the Department shall give consideration to:

- (a) Any Environmental Protection Agency determination of Best Available Control Technology pursuant to Section 169, 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).
- (b) All scientific, engineering, and technical material and other information available to the Department.
- (c) The emission limiting standards or BACT determinations of any other state.

BACT Determination

Champion International Corporation: PSD-FL-200

Page 3

- (d) The social and economic impact of the application of such technology.

The EPA currently stresses that BACT should be determined using the "top-down" approach. The first step in this approach is to determine for the emission source in question the most stringent control available for a similar or identical source or source category. If it is shown that this level of control is technically or economically infeasible for the source in question, then the next most stringent level of control is determined and similarly evaluated. This process continues until the BACT level under consideration cannot be eliminated by any substantial or unique technical, environmental, or economic objections.

The air pollutant emissions from the No. 6 Power Boiler can be grouped into categories based upon what control equipment and techniques are available to control emissions from these facilities. Using this approach, the emissions can be classified as follows:

- o Combustion Products (e.g., particulates). Controlled generally by efficient combustion of clean fuels.
- o Products of Incomplete Combustion (e.g., CO). Control is largely achieved by proper combustion techniques.
- o Acid Gases (e.g., NOx). Controlled generally by gaseous control devices.

Grouping the pollutants in this manner facilitates the BACT analysis because it enables the equipment available to control the type or group of pollutants emitted and the corresponding energy, economic, and environmental impacts to be examined on a common basis. Although all of the pollutants addressed in the BACT analysis may be subject to a specific emission limiting standard as a result of PSD review, the control of "nonregulated" air pollutants is considered in imposing a more stringent BACT limit on a "regulated" pollutant (i.e., particulates, sulfur dioxide, fluorides, sulfuric acid mist, etc.), if a reduction in "nonregulated" air pollutants can be directly attributed to the control device selected as BACT for the abatement of the "regulated" pollutants.

Combustion/Incomplete Combustion Products

The projected emissions of carbon monoxide and volatile organic compounds from the proposed modification to Champion International Corporation's facility exceed the significant emission rates given in Florida Administrative Code Table 17-212.400-2.

CO and VOCs:

For CO and VOCs, the data base does not list any sources incorporating any add-on controls for these type of sources. Due to the interrelationship between these combustion related pollutants, it is generally acceptable to utilize good combustion practices and process controls to minimize these pollutants. Therefore, the limits requested are considered reasonable as BACT.

Acid Gas Products

The projected emissions of nitrogen oxides from the proposed modification to Champion International Corporation's facility exceed the significant emission rates given in Florida Administrative Code Table 17-212.400-2.

NOX:

For NOx, the proposed BACT limits for both the No. 6 Power Boiler and the Lime Kiln-Mud Dryer System are within the range of similar sources in the BACT/LAER clearinghouse data base.

For the No. 6 Power Boiler, there have been limited cases of SCR impositions, but the cost evaluation of such technology is prohibitive for this project. Costs and process parameters rule out the use of other technologies, such as Selective Catalytic Reduction (SCR), Selective Noncatalytic Reduction (SNCR), and Flue Gas Denitrification (FGDN). The proposal to use Coen low-NOx burners together with flue gas recirculation to the combustion zone for minimizing NOx emissions is considered as BACT. However, available space will be made for the potential retrofit of a control system to control NOx.

For the Lime Kiln-Mud Dryer, the application of SCR, SNCR, or FGDN, have never been applied to a lime kiln system due to process variables. Therefore, the proposal to use good operational practices and proper combustion, along with the proposed emission limitations, is considered BACT.

Adverse Environmental Impact Analysis

The predominant adverse environmental impacts associated with the potential use of add-on control technology (SCR, SNCR or FGDN) are the emissions of other pollutants (i.e., ammonia, urea, hazardous waste from catalysts, etc.) used in the process for NO_x control. Although the use of add-on controls do have some positive environmental benefits, the disadvantages may outweigh the benefits provided by reducing NO_x emissions.

From the evaluation of natural gas combustion, toxics are projected to be emitted in very small amounts. Although the emissions of toxic pollutants could be controlled by particulate control devices, such as a baghouse or scrubber system, the amount of emission reductions would not warrant the added expense. Consequently, the Department does not believe that the BACT determination would be affected by the emissions of the toxic pollutants associated with the firing of natural gas.

BACT Determination by DEP

NO_x Control

For the No. 6 Power Boiler, the information that the applicant presented indicates that the incremental cost of controlling NO_x is high compared to the guidelines. Based on the information presented by the applicant and the evaluation conducted, the Department believes that the use of add-on controls NO_x control is not justifiable as BACT. Therefore, the Department will accept the Coen low-NO_x burners together with flue gas recirculation to the combustion zone as NO_x control when firing natural gas.

For the Lime Kiln-Mud Dryer, there has not been an application of NO_x add-on controls for this type of source contained in the data base. Therefore, there will not be any add-on controls required for NO_x for this source.

CO and VOC Control

For CO and VOCs, the data base does not list any sources incorporating any add-on controls for these type of sources. Due to the interrelationship between these combustion related pollutants, it is generally acceptable to utilize good combustion practices and process controls to minimize these pollutants. Therefore, there will not be any add-on controls Required for CO or VOCs for both the No. 6 Power Boiler and the Lime Kiln-Mud Dryer.

I N T E R O F F I C E M E M O R A N D U M

Date: 30-Mar-1993 07:13am EST
From: Dea Wahlen TAL
WAHLEN D
Dept: Office General Counsel
Tel No: (904)488-9730
SUNCOM: 278-9730

TO: Susan Brice PEN
TO: Patty Adams TAL

(BRICE_S)
(ADAMS_P)

Subject: Champion International

On March 29, 1993, we received another third party petition for administrative hearing concerning Champion International's AC17-223343. Petitioner this time is Perdido Bay Environmental Association, Inc., represented by Thomas O. Bear, Esquire.

I N T E R O F F I C E M E M O R A N D U M

Date: 29-Mar-1993 08:55am EST
From: Dea Wahlen TAL
WAHLEN D
Dept: Office General Counsel
Tel No: (904)488-9730
SUNCOM: 278-9730

TO: Susan Brice PEN
TO: . Patty Adams TAL

(BRICE_S)
(ADAMS_P)

Subject: Champion International

On March 26, 1993, we received a third party petition for administrative hearing from Nelson Bethune, a second similar petition from Thornton Garth, and a third similar petition from Fred Garth, concerning Champion International's AC17-223343.

I N T E R O F F I C E M E M O R A N D U M

Date: 23-Mar-1993 04:05pm EST
From: Dea Wahlen TAL
WAHLEN_D
Dept: Office General Counsel
Tel No: (904)488-9730
SUNCOM: 278-9730

TO: Susan Brice PEN
TO: Patty Adams TAL

(BRICE_S)
(ADAMS_P)

Subject: Petition for hearing

On March 23, 1993, we received a third party request for hearing from Jacqueline M. Lane concerning AC17-223343, Champion International Corporation, applicant.

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

PERDIDO BAY ENVIRONMENTAL
ASSOCIATION, INC.,

PETITIONERS

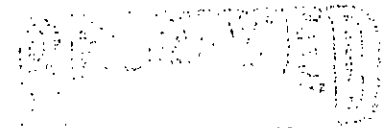
VS.

DEPARTMENT OF ENVIRONMENTAL
REGULATION AND CHAMPION
INTERNATIONAL, INC.,

RESPONDENTS

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*
*
*
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*
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DOAH CASE NO.
DER NOS:



MAR 20 1993

Dept. of Environmental Reg.
Office of General Counsel

PETITION FOR ADMINISTRATIVE HEARING

Comes now Perdido Bay Environmental Association, Inc. and pursuant to Section 120.57 Florida Statutes requests a hearing to challenge the Notice of Intent to Issue a Permit to Champion International, Inc. (AC 17-223343) and to further challenge the Department of Environmental Regulation's Intent to Issue a variance to said facility which variance will be necessitated by the proposed application by Champion and as grounds for such request, Petitioner states as follows:

1. The Department of Environmental Regulation is the Agency whose interests are affected by this Challenge. The file numbers involved in this challenge are, on information and belief, AC 17-223343 and are seeking to circumvent the prevention of significant deterioration regulation as set forth in its legal notice published in the Pensacola News Journal. Any other file numbers involved in this challenge will be amended later as soon as same are available and if there are such additional files due to previous filings before this Department by Champion International, Inc. concerning similar variances.

2. Perdido Bay Environmental Association, Inc. (PBEA) is a non-profit corporation incorporated in the State of Alabama. Its address is P.O. Box 573, Lillian, Alabama 36549. PBEA has approximately 100 members, some of whom are residents of Florida and some of whom are residents of Alabama. Perdido Bay is located in between Florida and Alabama and discharges into the Bay effect residents of both States. Numerous members own property on Perdido Bay and use the Bay for recreational purposes and others permanent residence is on the Bay. There are some who are commercial fishermen. Other PBEA members are scientists and have an educational and research interest in Perdido Bay. The livelihood of the commercial fishermen and the economic status of most members are directly effected by the preservation of water quality in the Bay in that property values are effected and many members have their entire life savings invested in their property. Other members are real estate developers whose livelihood depends upon marketing properties which ability to so market would be effected by what PBEA considers an adverse operation of Champion's Cantonment plant to being adverse to the quality of the water. Additionally, the same described persons are effected by air quality in that those permanent residents, many of whom are senior citizens and have respiratory vulnerability, are directly effected by any deterioration of the permit as it pertains to air pollution standards. Furthermore, the marketability of property of any owner of property by a PBEA member is directly effected by deterioration of air quality which would result from the proposed permit of Champion and the proposed intent to issue by FDER. The By-Laws of

PBEA authorize action to preserve the property around the Bay for the health, safety and welfare including economic welfare of its members and the public in Baldwin County, Alabama and Escambia County, Florida. The organization has been active in trying to protect the Bay, the air quality surrounding the area, and in participating in the governmental process to prevent further degradation of land values, water quality, air quality, and other aspects of the environment which are highly sensitive to pollutants. Petitioners received notice of the proposed agency action via newspaper notice dated March 13, 1993.

3. Champion International, Inc. applied on December 21, 1992 to the Department of Environmental Regulation for permits to be allowed to make modifications to the existing pulp mill in concert with the mill's wastewater Consent Order, including the construction of a new No. 6 Power Boiler, the modification of the existing Lime Kiln's mud handling system, the modification of the existing A and B Bleach Plant Lines and their operations, the modification of the No. 2 Multiple Effect Evaporator set by adding new effects, the construction of a new methanol storage tank, and the surrender of the operation permits for the existing Nos. 1 and 2 Power Boilers. The existing pulp mill is located at 375 Muscogee Road, Cantonment, Escambia County, Florida.

4. Perdido River is classified by the State of Florida as an Outstanding Florida Water pursuant to Section 17-3.041(4)(i), Florida Administrative Code. Eleven-Mile Creek backflows up the Perdido River. The Perdido River is therefore affected by the quality of water flowing from Eleven-Mile Creek.

5. Perdido Bay is an estuarine water body which borders Escambia County, Florida and Baldwin County, Alabama. It has naturally poor flushing conditions.

6. Respondent Champion International, Inc.'s pulp mill is not entitled to an operating permit because it will violate state water quality standards as follows:

a) The discharge from the plant will create objectionable odor and color problems in such an amount as to create a nuisance in violation of §17-3.051(1)(c), F.A.C.

b) The components of the discharge will be in such high amounts as to cause carcinogenic, mutagenic and/or teratogenic effects to significantly locally occurring aquatic species in violation of §17-3.051(1)(e), F.A.C. Inter alia, the discharge contains components that mimic hormones that cause fish and other aquatic life to undergo changes in their sexual characteristics. The chlorine combines with organics to form carcinogenic compounds which adversely effect aquatic life. The effluent by-products contain dioxin, a potent mutagen and carcinogen.

c) The discharges will violate state water quality standards for zinc, iron, transparency and specific conductance in violation of §17-3.121(15), (28) and (29), F.A.C. and §17-3.061(1)(o), F.A.C. Champion has already admitted that its plant will violate these four parameters and thus has applied for a variance.

d) In addition, the discharges will also violate DER standards for BOD (§17-3.061(2)(b), F.A.C.) turbidity (§17-3.061(2)(r), F.A.C.), dissolved oxygen (§17-3.061(2)(g) and 17-

PERDIDO BAY ENVIRONMENTAL ASSOCIATION, INC.,
Petitioner,
vs.
CHAMPION INTERNATIONAL CORPORATION and DEPARTMENT OF ENVIRONMENTAL REGULATION,
Respondents.

CASE NO. 93-2057

ORDER

THIS CAUSE comes before the undersigned upon Motions to Dismiss the above-named Petitioners' Second Amended Petitions filed in this cause pursuant to Order of the Hearing Officer granting a second Motion to Dismiss each of the Petitions and giving the Petitioners a second opportunity to amend their Petitions. The procedural history of this case is as outlined in the Motions in Opposition to Amended Petitions, culminating in the filing of the subject motions, responses thereto, and the conduct of oral argument by the Hearing Officer on November 29, 1993 in Tallahassee, Florida.

The Hearing Officer has carefully considered the motions, responses thereto, and the oral argument of the parties in support of and in opposition to the motions. Despite being accorded three opportunities over a period of approximately six (6) months after this case was filed with the Hearing Officer, the Perdido Bay Environmental Association, Inc., Thornton Garth, Fred Garth, Nelson Bethune, and Jacqueline M. Lane have failed to establish sufficient substantial interests affected by the application and the project proposed to be permitted which are

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JACQUELINE M. LANE,

Petitioner,

vs.

CASE NO. 93-2053

CHAMPION INTERNATIONAL
CORPORATION and DEPARTMENT OF
ENVIRONMENTAL REGULATION,

Respondents.

FRED GARTH,

Petitioner,

vs.

CASE NO. 93-2054

CHAMPION INTERNATIONAL
CORPORATION and DEPARTMENT OF
ENVIRONMENTAL REGULATION,

Respondents.

NELSON BETHUNE,

Petitioner,

vs.

CASE NO. 93-2055

CHAMPION INTERNATIONAL
CORPORATION and DEPARTMENT OF
ENVIRONMENTAL REGULATION,

Respondents.

THORNTON GARTH,

Petitioner,

vs.

CASE NO. 93-2056

CHAMPION INTERNATIONAL
CORPORATION and DEPARTMENT OF
ENVIRONMENTAL REGULATION,

Respondents.

EXHIBIT A

Department of Environmental Regulation
Routing and Transmittal Slip

To: (Name, Office, Location)

- 1. *Bruce Mitchell*
- 2.
- 3.
- 4. *AKR*

Remarks:

*Bruce -
Let me know
when we issue this
permit!
4/20/02*

From

Holly Burnham

Date

3/21

Phone

Department of Environmental Regulation

Routing and Transmittal Slip

To: (Name, Office, Location)

1.	Ms. Jackie Lane
2.	10738 William Hwy
3.	Pensacola, FL 32506
4.	

Remarks: 904-453-5488

Dear Ms. Lane:

I am sorry that you have experienced some difficulty in obtaining text from the Champion International Corporation Site. Thanks for pointing this ^(missing text) out to us. However, it seems quite bizarre to have had this occur.

I hope the enclosed information will satisfy your needs. If there are any questions, please give me a call.

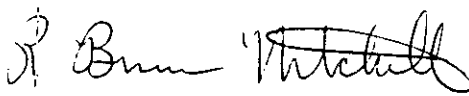
Sincerely,

including toxic and hazardous

ive that is technically and
erall control of all pollutants.

te Implementation Plan limits

mounts that exceed the PSD
h a net emissions increase in
ge in the method of operation
CHAMPION Pensacola mill
, carbon monoxide (CO), and
ng of the sources required to
ented below:

From: 	Date 4-22-95
	Phone 904-488-1344

- Carbon Monoxide
- Volatile Organic Compounds

Florida Statutes, proceeding dealing with the substantive law embodied in Chapter 403, Florida Statutes, and related rules, contained in Title 17, Florida Administrative Code, is designed to protect. Agrico Chemical Co. v. DER, 406 S.2d 478 (Fla. 2d DCA 1981). Moreover, such Petitions must contain allegations of an injury or injuries that are different, more specific, greater than, and peculiar to the Petitioners, such that their injuries rise to a different level and are more specific to them than those merely expected to be experienced by the public generally. See, Florida Home Builders Association v. Department of Labor and Employment Security, 412 S.2d 351 (Fla. 1982).

Upon the Hearing Officer determining that the original Petitions and the First Amended Petitions failed to meet these requirements for establishing standing to initiate a formal proceeding before the Division of Administrative Hearings, the Hearing Officer entered a quite detailed Order on August 9, 1993 providing extensive instructions to the Petitioners, explaining in detailed fashion the specific pleading requirements for establishing substantial injury within the zone of interest involved in the putative proceeding and providing examples of how such specific "substantial interest-zone of interest" standing pleading could be accomplished. Despite these detailed instructions and after three opportunities, the Petitioners have failed to file Petitions which persuade the Hearing Officer that they have substantial interests which will be affected or injured by the activity proposed to be permitted different from the interests of the general public. The Department itself is

sufficient to invoke a right to a formal administrative proceeding in this forum. The allegations of the Petitioners upon this third opportunity to submit Petitions which might demonstrate entitlement to a formal proceeding involve a misapplication of rules, a misapprehension of the import of certain rules, and still fail to establish that the Petitioners will suffer any substantial injury peculiar unto themselves and different from any condition which the general public is or will be exposed to by the subject project sought to be permitted. Much of the content of the Petitions amounts to speculation regarding potential harmful effects the Petitioners fear will result from the proposed permits grant, rather than specific factual allegations concerning particular harm caused to these Petitioners by alleged violations of the statutes and rules pertaining to the subject matter of the application. The Petitioners' Second Amended Petitions, as was the case with the original and the First Amended Petitions, fail to satisfy the requirements of Rules 17-103.155, 28-5.103, and 60Q-2.004(3), Florida Administrative Code, which provide detailed advice as to matters required to be included in such Petitions for formal proceedings.

The Petitioners, in order to show that their substantial interests will be affected by the agency action proposed, must show that an injury, in fact, will be suffered which is of such sufficient immediacy to entitle the Petitioners to a hearing and that the Petitioners' substantial injuries alleged are of a type and nature which a Section 120.57(1),

DONE AND ORDERED this 27th day of January, 1994, at Tallahassee, Leon County, Florida.

P. Michael Ruff

P. MICHAEL RUFF
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the Division of Administrative Hearings this 27th day of January, 1994.

Copies furnished to:

Jacqueline M. Lane
10738 Lillian Highway
Pensacola, FL 32506

Fred Garth
14110 Perdido Key Drive
Pensacola, FL 32507

Nelson Bethune
7 South Warrington Road
Pensacola, FL 32507

Thornton Garth
P.O. Box 424
Lillian, AL 36549

Thomas O. Bear, Esq.
P.O. Box 1238
Foley, AL 35536

Jefferson M. Braswell, Esq.
Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Segundo J. Fernandez, Esq.
OERTEL, HOFFMAN, ET AL.
P.O. Box 6507
Tallahassee, FL 32314-6507

DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF GENERAL COUNSEL
JAN 28 1994
BRASWELL

charged by statute with protecting the interests of the general public through its regulation and review of such jurisdictional activities as those proposed by the applicant, which may not be the basis for standing of individual, private Petitioners situated as the subject Petitioners.

The Petitioners have not persuaded the Hearing Officer that their interests are different from that of the general public merely by the fact that they live a certain number of miles from the mill and proposed installation. The mileage of Petitioners' residence proximate to the mill was not definitely related to a specific rule or rules which might assist in establishing their standing and substantial interests to be more specific than that of the general public, even had the totality of their allegations otherwise shown specific injury to substantial interests, which they did not. In accordance with the remaining arguments raised in the Motions to Dismiss the Second Amended Petitions and the Respondent's oral arguments in support thereof, all of which are more persuasive and adopted herein, it is, therefore, concluded after long and careful reflection, since the motion hearing of November 29, 1993, that the Second Amended Petitions must be dismissed with prejudice.

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION

JACQUELINE M. LANE,

Petitioner,

vs.

DER File No.:
CASE NO.:

STATE OF FLORIDA, DEPARTMENT
OF ENVIRONMENTAL REGULATION
and CHAMPION INTERNATIONAL
CORPORATION,

Respondents.

RECEIVED
APR 1 1993

Dept. of Environmental Reg.
Office of General Counsel

MOTION IN OPPOSITION TO PETITION

Respondent, CHAMPION INTERNATIONAL CORPORATION, files this Motion in Opposition to Petition pursuant to Section 17-103.010 and Section 28-5.205, Florida Administrative Code, and states as follows:

I. Background Information and Factual Predicate
for the Instant Proceeding

A. The following background information pertains to the subject proposed permit and the circumstances leading up to the filing of Champion's request for permit.

1. Respondent, Champion International Corporation ("Champion"), is the applicant for permit in DER Files Nos. AC17-223343/PSD-FL-200, Escambia County.

2. The subject permit is to be issued under and governed by the provisions of Chapter 403, Florida Statutes, and more particularly, Chapter 17-210 through 17-297 and 17-4, Florida Administrative Code, and 40 CFR (July, 1991 version), the

Department's Air Pollution Control Program rules.

3. On March 10, 1993, the Department entered its Intent to Issue an Air Construction Permit to Champion pursuant to Rule 17-210.300(1), Florida Administrative Code. A copy of the Intent to Issue and supporting documents is attached hereto as Exhibit "1."

4. As required by Section 403.815, Florida Statutes and Rule 17-103.150, and Rule 17-210.350, Florida Administrative Code. On March 13, 1993, Champion published in the Pensacola News Journal, the Department's Notice of Intent to Issue Permit, which also provided a thirty (30) day period for submittal of public comments and opportunity to request a public hearing. A copy of the Public Notice is attached hereto as Exhibit "2."

5. The subject permit request was filed in concert with Consent Order OGC File No. 87-1398 entered by the Department on December 1, 1989. A copy of the Consent Order is attached hereto as Exhibit "3."

6. The Consent Order was the subject of a formal administrative hearing pursuant to Section 120.57(1), Fla. Stat., which resulted in the entry of a Final Order governing the Consent Order and other permits and variances pertaining to construction operation, and modification of Champion's pulp mill in Cantonment, Florida. A copy of that Final Order is attached hereto as Exhibit "4."

7. As a result of the Final Order, the Department issued to Champion TOP #IT 17-156163 for operation of the

wastewater plant and for discharge of treated effluent to waters of the state. Champion continues to operate to date under the terms of the Consent Order and TOP. A copy of the TOP is attached hereto as Exhibit "5."

II. Motion to Dismiss

B. Champion hereby moves the Department to dismiss Petitioner's request for a hearing for the following reasons:

1. Champion received a copy of the "Request for Hearing Challenging the Legality of the Intended Construction Permit Issued to Champion International Corporation" served by Petitioner, Jacqueline M. Lane ("Lane"), on March 24, 1993. Champion specifically opposes the Department's granting of the request for hearing for the reasons stated below.

2. Rule 17-103.155(4), Florida Administrative Code, specifically provides that the Department shall issue an order dismissing a petition which does not substantially comply with the requirements of Subsection (2) of that rule. Petitioner has failed to comply with the requirements for a petition in several important respects:

a. The statement of how the Petitioner's substantial interests are affected by the Department's proposed action is deficient; first, in Paragraphs 4(a) and (c) of the Petition, Petitioner states that she is a substantially affected person because she owns property on Perdido Bay, and uses the Bay for recreational purposes, and that Champion's effluent discharge has been degrading the water quality and causing a nuisance along the

property owned by the Petitioner. The proposed construction permit is an air construction permit issued pursuant to the Department's air rules and not an industrial waste permit issued pursuant to the Department's industrial wastewater/water quality rules. Petitioner's statements pertaining to water quality impacts are irrelevant in this proceeding, where proposed agency action does not affect whatever permit requirements Champion may be required to meet for its wastewater effluent.

b. Secondly, Petitioner has stated in Paragraph 4(b) of the Petition that she lives approximately 15 miles south of Champion and "can see and smell the air emissions from the mill." The mere statement contained in Paragraph 4(b) of the Petition, quoted above, fails to state how Petitioner's substantial interests are affected by the Department's proposed action, or for that matter, how her interests are different from those of the public at large.

3. The Petition does not contain a statement of material facts which are disputed by Petitioner. "Material facts" are defined in Rule 17-103.155(2)(d), Florida Administrative Code, as "those facts upon which the Department's action or proposal is based." Petitioner, in Paragraphs 5, 6, and 7, makes allegations that might arguably be relevant in a permitting proceeding for the wastewater permit or permits that Champion may require, but not for proposed agency action on an air construction permit.

4. Paragraph 8 of Petitioner's request for hearing alleges that Rule 17-210.350, Florida Administrative Code,

requiring a thirty (30) day comment period, is being violated. Petitioner alleges that "the Intent to Issue only gives the public a fifteen (15) day period of comment" and that "the Department does not have at its District Office a complete copy of the modelling program which was required to evaluate the impact of the sufficient increase in certain air emissions." In fact, these allegations are incorrect, as a review of the Public Notice, attached hereto as Exhibit "2," will reveal, for, in its very last paragraph, the Notice states that:

Any person may send written comments of the proposed action to Mr. Preston Lewis, at the Department's Tallahassee address. All comments received within thirty (30) days of the publication of this Notice will be considered in the Department's final determination. Further, a public hearing can be requested by any person. Such request must be submitted within thirty (30) days of this Notice.

5. As to the modelling which Petitioner claims was not made available, Respondent would note that the Public Notice also states that the applications for permits are available for public inspection during normal business hours at the Department of Environmental Regulation's Tallahassee Office, Bureau of Air Regulation, and at the Department's Northwest District Office in Pensacola, Florida. The results of all air quality modelling are contained in the permit application documents which are and have been available for inspection during the required public notice period.

6. In Paragraph No. 9 of the Petition, Petitioner makes

the bare allegation that Champion has been violating certain requirements of the Florida Administrative Code, specifically Rule 17-296.320(2) [release of obnoxious odors] and 17-210.650 and 17-210.700(4) [by "operating the plant in an irresponsible manner so as to release excessive air emissions and cause harm to the public health"]. Petitioner has failed to identify specific facts on which the Department based its permitting decision ("material facts") that it disputes. The sections which Petitioner has cited in Paragraph 9 of her Petition pertain to operational requirements to which Champion has been subject under its current permits and will be subject to in future permits issued pursuant to these rules.

7. Paragraph 9 of the Petition clearly amounts to a bare conclusion of law ("Champion has violated these rules") without alleging any underlying fact (when, where and how and to what extent) or even identifying and disputing any fact related to these rules on which the Department based its decision and which Petitioner disputes.

8. Likewise, the Petition fails to comply with Rule 17-103.155(2)(f), in that it fails to identify the rules or statutes which Petitioner contends require reversal or modification of the Department's action or proposed action. As previously noted, Petitioner's arguments as to the permitting criteria appear to deal primarily with industrial waste/water quality issues which are not the subject of this proceeding. The one possible exception is Petitioner's identification of a "violation" of Rule 17-210.350(2),

Florida Administrative Code concerning the thirty (30) day public comment period, which assertion is patently mistaken, as can be readily ascertained from a review of the Public Notice attached hereto as Exhibit "2."

9. Petitioner's confusion as to the nature of this proceeding and the inappropriateness of the Petition is more fully revealed in the request for relief that is included in the Petition. The first request for relief pertains to construction permits for wastewater treatment improvements that may be required to insure that the Mill's industrial wastewater effluent will not violate State Water Quality Standards. This request is totally inappropriate in an air permitting proceeding which deals only with the air pollution regulation rules of the Department and which result in the issuance of only an air permit.

10. The second request for relief is that the Department reissue its statement of intent allowing for the thirty day public comment and review, and that the Department make available to the public all information concerning how a determination was made, including the air dispersion model as required by the air rules. As noted above, Petitioner is mistaken on both counts and the Department has complied with the requirements for public notice and public inspection.

11. The third request for relief is entirely irrelevant to any of the issues raised in the preceding paragraphs, lacks any factual predicate, and is a request for a Department investigation, and not a permit-related issue cognizable under the rules purusant

to which the air construction permit has been processed and under which the permit is to be issued.

12. The fourth request for relief is likewise not supported by any specific allegation of fact or law raised in the request. There is no factual predicate laid to enable the Department or the Applicant to respond to this request for relief.

13. In summary, Petitioner's Request for Hearing on the subject air construction permits should be dismissed because:

a. the Request does not comply with the requirements of Rule 17-103.155;

b. the Request raises water quality issues which are not cognizable in an air construction permit proceeding;

c. the Request raises issues about the public notice which are plainly and ascertainably incorrect.

III. Motion in Opposition to the Granting of the Request for a Formal Proceeding.

C. In the alternative, Respondent Champion opposes the granting of a Section 120.57(1), Florida Statutes formal proceeding and suggests that the Department grant a Section 120.57(2), Florida Statutes, informal proceeding, for the following reasons:

1. Petitioner's Request does not specifically ask for a Section 120.57(1), Florida Statutes proceeding. The only instance where a suggestion that a formal proceeding is sought is found in the first sentence of Petitioner's Request wherein the word "formal" appears.

2. Both the issues raised by Petitioner and the request for relief outlined suggest that there are no disputed issues of

material fact, but rather, disputed issues of law, principally, whether an air construction permit may be issued when there are outstanding industrial wastewater/water quality issues that may need to be addressed in permit proceedings under applicable water quality rules.

3. The "Reasons Which Make this Construction Permit Illegal," Paragraphs 7, 8 and 9 of Petitioner's Request, are the issues which Petitioner has raised to be considered in this proceeding. A discussion of these is found in Champion's Motion to Dismiss, above.

4. Section 120.57(1), Florida Statutes, applies only whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed by all the parties, Section 120.57(2), Florida Statutes, applies in all other cases.

5. Champion specifically does not agree that a Section 120.57(1), Florida Statutes, would be appropriate, because the Request does not raise disputed issues of material fact. If a proceeding is to be granted, a Section 120.57(2), Florida Statutes, proceeding would be the only appropriate forum in which to consider the legal issues raised by Petitioner.

6. Additionally, time is of the essence in the resolution of the issues raised by Petitioner's Request. An informal proceeding before the agency, on legal issues particularly within the expertise of the Department, would be the most expeditious way of assuring that Champion's compliance with the terms of the Consent Order is least interrupted.

IV. Necessity for an Expeditious Resolution of the Proceeding Initiated by Petitioner's Request.

1. Consent Order OGC File No. 87-1398 contains an extensive compliance schedule, specifically in Paragraphs 13 through 22, governing wastewater treatment and water quality impacts.

2. The in-mill improvements which are the subject of the air construction permit at issue in this proceeding are components common to any compliance plan which will be reviewed under the terms of the Consent Order and future industrial wastewater/water quality permits that may be required under the terms of the Consent Order.

3. Department action on the subject air construction permit will not prejudice future Department action on industrial wastewater/water quality permit applications, nor will it prejudice or pre-determine the choice of compliance plan to be submitted to the Department pursuant to the Consent Order.

4. The air construction permit application was filed many months ahead of the schedule required in the Consent Order for wastewater/water quality compliance plans because of the long lead time required to order and construct the component parts of the project which is the subject of the air permit. The subject permit covers activities which are an integral part of Champion's compliance efforts and which entail numerous steps in the mill to recycle rather than discharge various waste streams. Certain modifications to the lime dryer system would also enable a reduction in loading to the wastewater treatment facility. In

addition, the project includes a modification to increase chlorine dioxide generation which is an integral part of Champion's program for the elimination of the use of elemental chlorine at its facility. Because of the need to schedule mill outage times well in advance of certain critical construction dates, and the lead time involved in the ordering and delivery of parts and in actual construction, a delay in these improvements may affect Champion's ability to meet the Department's specified deadlines as required by the Consent Order.

5. Pursuant to Paragraph 33 of the Consent Order, Champion is required to advise the Department of any event which causes a reasonable likelihood of delay in the achievement of the requirements of the Consent Order. In accordance with that provision, Champion specifically advises the Department and the Petitioner that any delays in the permitting of the in-mill improvements covered by the air construction permit, as a result of Petitioner's institution of this proceeding, will likely affect Champion's ability to meet the industrial wastewater/water quality compliance dates in the Consent Order.

6. Champion would likewise place Petitioner on notice that it considers Petitioner's request for hearing a frivolous pleading interposed for improper purposes and subject to the sanction provisions of Section 120.57(1)(b)5, Florida Statutes.

V. Conclusion and Prayer for Relief

WHEREFORE, Respondent Champion International Corporation respectfully requests that DER:

1. Deny Petitioner's Request for Hearing;
2. Dismiss Petitioner's Request for Hearing;
3. In the alternative, determine that Petitioner has not raised disputed issues of material fact, is not entitled to a Section 120.57(1), F.S. proceeding but rather to an informal proceeding pursuant to Section 120.57(2), F.S.;

4. In the second alternative, should the Department forward this matter to the Division of Administrative Hearings, that it forward this Motion as well for oral argument before the assigned Hearing Officer and a ruling on this Motion.

Respectfully submitted,

OERTEL, HOFFMAN, FERNANDEZ
& COLE, P.A.
Post Office Box 6507
Tallahassee, Florida 32314-6507
(904) 877-0099



SEGUNDO J. FERNANDEZ
Fla. Bar ID#218391
TERRY COLE
Fla. Bar ID#133550

Attorneys for CHAMPION INTERNATIONAL
CORPORATION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail to JACQUELINE M. LANE, 10738 Lillian Highway, Pensacola, Florida 32506 and JEFF BRASWELL, Assistant General Counsel, Department of Environmental Regulation, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, this 1ST day of April, 1993.



Attorney

sjf\1171\1171:mop

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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PERDIDO BAY ENVIRONMENTAL
ASSOCIATION, INC.,

Petitioner,

vs.

Dept. of Environmental Reg.
Office of General Counsel
CASE NO.: 93-2057

CHAMPION INTERNATIONAL
CORPORATION and STATE OF
FLORIDA, DEPARTMENT OF
ENVIRONMENTAL REGULATION,

Respondents.

MOTION IN OPPOSITION TO PETITION FOR ADMINISTRATIVE HEARING

Respondent, CHAMPION INTERNATIONAL CORPORATION, files this Motion in Opposition to the Petition for Administrative Hearing filed by Perdido Bay Environmental Association, Inc., pursuant to Section 17-103.010 and Section 28-5.205, Florida Administrative Code, and states as follows:

I. Background Information and Factual Predicate for the Instant Proceeding

A. The following background information pertains to the subject proposed permit and the circumstances leading up to the filing of Champion's request for permit.

1. Respondent, Champion International Corporation ("Champion"), is the applicant for permit in DER Files Nos. AC17-223343/PSD-FL-200, Escambia County.

2. The subject permit is to be issued under and governed by the provisions of Chapter 403, Florida Statutes, and more particularly, Chapter 17-210 through 17-297 and 17-4, Florida Administrative Code, and 40 CFR (July, 1991 version), the

Department's Air Pollution Control Program rules.

3. On March 10, 1993, the Department entered its Intent to Issue an Air Construction Permit to Champion pursuant to Rule 17-210.300(1), Florida Administrative Code. A copy of the Intent to Issue and supporting documents is attached hereto as Exhibit "1."

4. As required by Section 403.815, Florida Statutes and Rule 17-103.150, and Rule 17-210.350, Florida Administrative Code. On March 13, 1993, Champion published in the Pensacola News Journal, the Department's Notice of Intent to Issue Permit, which also provided a thirty (30) day period for submittal of public comments and opportunity to request a public hearing. A copy of the Public Notice is attached hereto as Exhibit "2."

5. The subject permit request was filed in concert with Consent Order OGC File No. 87-1398 entered by the Department on December 1, 1989. A copy of the Consent Order is attached hereto as Exhibit "3."

6. The Consent Order was the subject of a formal administrative hearing pursuant to Section 120.57(1), Fla. Stat., which resulted in the entry of a Final Order governing the Consent Order and other permits and variances pertaining to construction operation, and modification of Champion's pulp mill in Cantonment, Florida. A copy of that Final Order is attached hereto as Exhibit "4."

7. As a result of the Final Order, the Department issued to Champion TOP #IT 17-156163 for operation of the

wastewater plant and for discharge of treated effluent to waters of the state. Champion continues to operate to date under the terms of the Consent Order and TOP. A copy of the TOP is attached hereto as Exhibit "5."

II. Motion to Dismiss

B. Champion hereby moves the Division to dismiss Petitioner's petition for administrative hearing for the following reasons:

1. Champion obtained a copy of the Perdido Bay Environmental Association, Inc.'s Petition for Administrative Hearing on March 31, 1993. According to information provided by Respondent, DER, the Petition was filed with the Department on March 29, 1993. The Petition did not have a certificate of service and was signed by Mr. Thomas O. Bear as attorney for Petitioner. After reasonable inquiry, it does not appear that Mr. Bear is a member of the Florida Bar. Champion specifically opposes the Department's granting of the request for hearing for the reasons stated below.

2. Rule 17-103.155(4), Florida Administrative Code, specifically provides that the Department shall issue an order dismissing a petition which does not substantially comply with the requirements of Subsection (2) of that rule. Petitioner has failed to comply with the requirements for a petition in several important respects:

a. The statement of how the Petitioner's substantial interests are affected by the Department's proposed action is

deficient. First, Paragraph 2 of the Petition recites a number of standing allegations that pertain to the PBEA members' ownership of property on or use of Perdido Bay, and the effect of water quality on their enjoyment or use of the Bay. Second, Paragraph 2 alleges that PBEA members are affected by the deterioration of air quality "which would result from the proposed permit." As noted above, the proposed construction permit is an air construction permit issued pursuant to the Department's air rules and not an industrial waste permit issued pursuant to the Department's industrial wastewater/water quality rules. Petitioner's statements pertaining to water quality impacts are irrelevant in this proceeding, where proposed agency action does not affect whatever permit requirements Champion may be required to meet for its wastewater effluent. And with regard to the adverse effect on Petitioner's members of "deterioration of air quality" Champion would point out that no where in the Petition are factual allegations made or legal issues raised pertaining to the air quality standards under which the proposed permit is being issued.

b. Petitioner has simply failed to state with particularity why issuance of this air construction permit affects its interests. Indeed, Petitioner mistakenly alleges that the proposed air construction permit authorizes further degradation and decline in Perdido Bay and that somehow a water quality "variance" is involved. Water quality impacts are neither anticipated by this proposed permit, authorized by this proposed permit, nor relevant to the standards under which this proposed permit is being issued.

3. The Petition does not contain a statement of material facts which are disputed by Petitioner. "Material facts" are defined in Rule 17-103.155(2)(d), Florida Administrative Code, as "those facts upon which the Department's action or proposal is based." Petitioner, in Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of the Petition, makes allegations that might arguably be relevant in a permitting proceeding for the wastewater permit or permits that Champion may require, but not for proposed agency action on an air construction permit.

4. Likewise, the Petition fails to comply with Rule 17-103.155(2)(f), in that it fails to identify the rules or statutes relevant to the air construction permit application evaluation, which Petitioner contends requires reversal or modification of the Department's action or proposed action. As previously noted, Petitioner's arguments as to the permitting criteria appear to deal entirely with industrial waste/water quality issues which are not the subject of this proceeding.

5. Petitioner's confusion as to the nature of this proceeding and the inappropriateness of the Petition are more fully revealed in the request for relief that is included in the Petition. The requests for operating permit denial and that "the variance be denied" pertain to industrial wastewater/water quality permits, which the subject air construction permit is not. In fact, the entire basis for this Petition appears to be matters which were the subject of DOAH Case Nos. 87-4921, 87-4922, 87-4925, 87-4926, and 88-0229, before Hearing Officer P. Michael Ruff, Final

Order entered November 14, 1989, attached hereto as Exhibit "4" and are totally unrelated to the notice of proposed agency action.

6. In summary, Petitioner's Petition for Administrative Hearing on the subject air construction permit should be dismissed because:

a. the Petition does not comply with the requirements of Rule 17-103.155;

b. the Petition raises water quality issues which are not cognizable in an air construction permit proceeding;

III. Motion in Opposition to the Granting of a Formal Administrative Hearing, and for Relinquishment of Jurisdiction.

C. In the alternative, Respondent Champion opposes the granting of a Section 120.57(1), Florida Statutes formal proceeding and suggests that at best a Section 120.57(2), Florida Statutes, informal proceeding, is appropriate, for the following reasons:

1. Petitioner's Petition does not specifically ask for a Section 120.57(1), Florida Statutes proceeding. Florida case law is clear that Chapter 120 does not require convening an unrequested formal hearing pursuant to Section 120.57(1), Florida Statutes. City of Punta Gorda v. PERC, 358 So.2d 81 (Fla. 1st DCA 1978).

2. Both the issues raised by Petitioner and the requests for relief outlined suggest that there are no disputed issues of material fact, but rather, disputed issues of law, principally, whether an air construction permit may be issued when there are outstanding industrial wastewater/water quality issues that may need to be addressed in permit proceedings under

applicable water quality rules.

3. Section 120.57(1), Florida Statutes, applies only whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed by all the parties, Section 120.57(2), Florida Statutes, applies in all other cases.

4. Champion specifically does not agree that a Section 120.57(1), Florida Statutes, would be appropriate, because the Petition does not raise disputed issues of material fact. If a proceeding is to be granted, a Section 120.57(2), Florida Statutes, proceeding would be the only appropriate forum in which to consider the legal issues raised by Petitioner.

5. Additionally, time is of the essence in the resolution of the issues raised by Petitioner's Petition. An informal proceeding before the agency, on legal issues particularly within the expertise of the Department, would be the most expeditious way of assuring that Champion's compliance with the terms of the Consent Order is least interrupted.

6. The absence of disputed issues of material fact requires that the Hearing Officer relinquish jurisdiction to the Department to dispose of this matter in a Section 120.57(2), Florida Statutes, informal proceeding.

IV. Necessity for an Expeditious Resolution of the Proceeding Initiated by Petitioner's Petition.

1. Consent Order OGC File No. 87-1398 contains an extensive compliance schedule, specifically in Paragraphs 13 through 22, governing wastewater treatment and water quality impacts.

2. The in-mill improvements which are the subject of the air construction permit at issue in this proceeding are components common to any compliance plan which will be reviewed under the terms of the Consent Order and future industrial wastewater/water quality permits that may be required under the terms of the Consent Order.

3. Department action on the subject air construction permit will not prejudice future Department action on industrial wastewater/water quality permit applications, nor will it prejudice or pre-determine the choice of compliance plan to be submitted to the Department pursuant to the Consent Order.

4. The air construction permit application was filed many months ahead of the schedule required in the Consent Order for wastewater/water quality compliance plans because of the long lead time required to order and construct the component parts of the project which is the subject of the air permit. The subject permit covers activities which are an integral part of Champion's compliance efforts and which entail numerous steps in the mill to recycle rather than discharge various waste streams. Certain modifications to the lime dryer system would also enable a reduction in loading to the wastewater treatment facility. In addition, the project includes a modification to increase chlorine dioxide generation which is an integral part of Champion's program for the elimination of the use of elemental chlorine at its facility. Because of the need to schedule mill outage times well in advance of certain critical construction dates, and the lead

time involved in the ordering and delivery of parts and in actual construction, a delay in these improvements may affect Champion's ability to meet the Department's specified deadlines as required by the Consent Order.

5. Pursuant to Paragraph 33 of the Consent Order, Champion is required to advise the Department of any event which causes a reasonable likelihood of delay in the achievement of the requirements of the Consent Order. In accordance with that provision, Champion specifically advises the Department and the Petitioner that any delays in the permitting of the in-mill improvements covered by the air construction permit, as a result of Petitioner's institution of this proceeding, will likely affect Champion's ability to meet the industrial wastewater/water quality compliance dates in the Consent Order.

6. Champion would likewise place Petitioner on notice that it considers Petitioner's Petition for hearing to be a frivolous pleading interposed for improper purposes, and that Petitioner is individually subject to the sanction provisions of Section 120.57(1)(b)5, Florida Statutes.

V. Conclusion and Prayer for Relief

WHEREFORE, Respondent Champion International Corporation respectfully requests that the Division of Administrative Hearings:

1. Deny Petitioner's Petition for Administrative Hearing;
2. Dismiss Petitioner's Petition for Administrative Hearing;

3. In the alternative, determine that Petitioner has not raised disputed issues of material fact, is not entitled to a Section 120.57(1), F.S., proceeding, but rather to an informal proceeding pursuant to Section 120.57(2), F.S., and relinquish jurisdiction to the Agency;

4. Schedule oral argument before the assigned Hearing Officer for a ruling on this Motion.

Respectfully submitted,

OERTEL, HOFFMAN, FERNANDEZ
& COLE, P.A.
Post Office Box 6507
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SEGUNDO J. FERNANDEZ
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Attorneys for CHAMPION INTERNATIONAL
CORPORATION


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail to:

Thomas O. Bear
Post Office Box 1238
Foley, Alabama 36536

Jefferson M. Braswell
Assistant General Counsel
Department of Environmental
Regulation
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

this 16th day of April, 1993.



Attorney

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

APR 28 1993

JACQUELINE M. LANE,

Petitioner,

Dept. of Environmental Reg.
Office of General Counsel

vs.

DOAH CASE NO. 93-002053

CHAMPION INTERNATIONAL
CORPORATION and
STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL REGULATION,

Respondents.

ADDITION OF MATERIAL FACTS TO
THE ORIGINAL PETITION OF JACQUELINE M. LANE

COMES NOW, JACQUELINE M. LANE ("Petitioner"), and adds
ADDITIONAL MATERIAL FACTS to her original petition for an
administrative hearing on the ISSUANCE OF AN "AIR" CONSTRUCTION
PERMIT TO CHAMPION INTERNATIONAL. The Petitioner would allege as
follows:

1. On March 22, 1993, the Petitioner filed for an
Administrative Hearing. Prior to her filing, the Petitioner
received a copy of the intended permit from the Department of
Environmental Regulation's ("Department") office in Pensacola.
Attachment 1 of the Intended Permit was only "Available Upon
Request" from the Department's Tallahassee office. Attachment 1
was Champion's Application for the Air Construction Permit ("The
Application"). The Petitioner has now received and read
Attachment 1, except for pages 6-1 to 6-24 which were missing
from the copy of the Application in the Department's office in

Pensacola. Upon reading the Application, the Petitioner would like to add additional MATERIAL FACTS as follows:

a. On Page 2-4 of The Application, Champion clearly states that "the proposed modification would not be undertaken if not for the consent order". The Consent Order referred to is the Consent Order Issued to Champion in December, 1988 (OGC FILE No.67-1398) for improvements to their wastewater treatment system. These changes in air are being undertaken to improve the wastewater, hence the improvements to the wastewater MUST be considered and certain questions be answered, specifically; (1) are these degradations in air quality necessary to improve the wastewater?; and (2) if improvements to wastewater can be achieved without degrading air quality, shouldn't these proposed process changes allowed in the INTENT TO ISSUE be denied?.

2. Under Florida Administrative Code 17-2.630, Best Available Control Technology (BACT) guidelines state that ALL scientific, engineering and technical information must be considered in a review for BACT. The Petitioner alleges that ALL was interpreted in a narrow sense only to include air impacts, and data on wastewater was not considered. The Petitioner further alleges that the BACT would be to NOI allow certain process changes but to make improvements to their wastewater treatment system, thereby preserving air quality as well.

The Petitioner respectfully requests the Hearing Officer to consider these MATERIAL FACTS while deciding the motions presented in this case.

Respectfully submitted,

Jacqueline M. Lane

Jacqueline M. Lane
10738 Lillian Highway
Pensacola, Florida 32506
904-453-5488

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed to P. Michael Ruff, Hearing Officer, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550 on this 22 day of April 1993.

With copies to:

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Jacqueline M. Lane

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JACQUELINE M. LANE, FRED GARTH,
NELSON BETHUNE, THORNTON GARTH,
and PERDIDO BAY ENVIRONMENTAL
ASSOCIATION, INC.,

Petitioners,

vs.

CHAMPION INTERNATIONAL
CORPORATION and STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL
REGULATION,

Respondents.

OGC Case Nos. 93-0913
93-1065
93-1066
93-1067
DOAH Case Nos. 93-2053
93-2054
93-2055
93-2056
93-2057

FINAL ORDER

On January 27, 1994, a Hearing Officer from the Division of Administrative Hearings submitted an Order which the Department of Environmental Protection ("Department"), previously known as the Department of Environmental Regulation, treats as a Recommended Order. A copy of the Recommended Order is attached as Exhibit A. On February 4, 1994, Petitioner JACQUELINE M. LANE filed exceptions to the Recommended Order. On February 21, 1994, Respondent CHAMPION INTERNATIONAL CORPORATION ("Champion") filed responses thereto. The matter thereupon came before me as Secretary of the Department for final agency action.

BACKGROUND

On or about March 10, 1993, the Department gave notice of its intent to issue an air construction permit to Champion for construction of modifications to an existing pulp mill located in

Cantonment, Escambia County, Florida. The permit application was filed in concert with a Consent Order entered by the Department on December 1, 1989. The Consent Order was the subject of a formal administrative hearing which resulted in the entry of a Final Order governing the Consent Order and other permits and variances pertaining to the construction, operation and modification of Champion's pulp mill. As a result of the Final Order, the Department issued Temporary Operating Permit ("TOP") #IT 17-156163 to Champion for operation of a wastewater plant and for discharge of treated effluent to waters of the state. Champion currently operates the pulp mill under the terms of the Consent Order and TOP. In accordance with the Consent Order, the proposed air construction permit authorizes construction of a new No. 6 Power Boiler, the modification of the existing Lime Kiln's mud handling system, the modification of the existing A and B Bleach Plant Lines and their operations, the modification of the No. 2 Multiple Effect Evaporator set by adding new effects, the construction of a new methanol storage tank, and the surrender of the operation permits for the existing Nos. 1 and 2 Power Boilers.

On March 23, 1993, Petitioner JACQUELINE M. LANE ("Lane") filed a petition challenging the issuance of the proposed permit. On March 26, 1993, Petitioners FRED GARTH ("F. Garth"), NELSON BETHUNE ("Bethune"), THORNTON GARTH ("T. Garth") and PERDIDO BAY ENVIRONMENTAL ASSOCIATION ("PBEA") filed their petitions challenging the issuance of the proposed permit. The individual Petitioners Lane, F. Garth, Bethune and T. Garth are the owners

of property in the vicinity of the mill. The Petitioner PBEA is a non-profit corporation incorporated in the State of Alabama to preserve property around Perdido Bay, in the vicinity of the mill.

Following receipt of the petitions for formal administrative proceedings, the matter was referred to the Division of Administrative Hearings for assignment of a Hearing Officer. Champion subsequently filed motions in opposition to the petitions based in large part on the grounds that Petitioners did not substantially comply with the requirements for a petition for administrative hearing as set forth in Rule 17-103.155(4), Florida Administrative Code. After a hearing on Champion's motions, the Hearing Officer entered an Order on May 14, 1993 consolidating the five related cases and dismissing all of the petitions with leave for the Petitioners to file amended petitions. The Petitioners served their amended petitions on June 2, 1993.

On June 28, 1993, Champion filed motions in opposition to the amended petitions alleging the continued deficiency of the petitions. Following a motion hearing and consideration of several post-hearing submissions by Lane, Champion and the Department, the Hearing Officer entered an order on August 8, 1993 dismissing the petitions with leave for the Petitioners to file second amended petitions. The Hearing Officer's Order incorporated detailed instructions to the Petitioners explaining the specific pleading requirements to establish standing to initiate formal proceedings before the Division of Administrative Hearings.

In August of 1993, Petitioners timely filed second amended petitions. Champion subsequently filed motions in opposition to the second amended petitions. A hearing on Champion's motions was held on November 29, 1993. Upon consideration of the motions and responses thereto and oral argument of the parties, the Hearing Officer concluded that, despite being afforded three opportunities over a period of six months, the Petitioners had failed to demonstrate that they have substantial interests which will be affected or injured by the activity proposed to be permitted different from the interests of the general public. Accordingly, the Hearing Officer entered an Order dismissing the second amended petitions, with prejudice.

RULINGS ON EXCEPTIONS

Exception No. 1

In Lane's first exception to the Recommended Order, she contends that the Hearing Officer erred in finding that "much of the content of the petitions amounted to speculation regarding potential harmful effects which will result from granting the proposed permits." Lane contends that there is ample scientific evidence to support the Petitioners' allegations.

Lane's exception is based on the erroneous conclusion that the Hearing Officer's statement amounts to an evidentiary determination. Rather, the Hearing Officer, in addressing the motions to dismiss, found that as a matter of law the statements themselves failed to establish a proper basis for standing and therefore the Petitioners were ineligible for a hearing on the factual evidence.

Lane apparently misunderstands the purpose of the proceedings on the motions to dismiss, which is to test the sufficiency of the Petitioners' allegations regarding standing. I concur with the Hearing Officer's finding that the allegations of harm in the petitions do not constitute specific factual allegations concerning particular harm caused to these Petitioners as required by Rules 17-103.155, 28-5.103 and 60Q-2.004(3), Florida Administrative Code. Absent the requisite allegations of standing, the Hearing Officer properly dismissed the petitions. The exception is denied.

Exception No. 2

Lane's second exception alleges that the Hearing Officer erred in finding her not to be a substantially affected party. Lane specifically contends that the Hearing Officer ignored statements of the Petitioners that they were affected substantially more than the general public, and that Rules 17-210.350(2)(h) and 275.800(2), Florida Administrative Code, provide that anyone who lives within a 100 kilometer radius of the mill would be a substantially affected party.

Lane's exception is another attempt to reargue the allegations of harm which the Hearing Officer continuously found inadequate. In determining that the Petitioners failed to establish standing in this matter, the Hearing Officer applied the two-prong test set forth in Agrico Chemical Co. v. DER, 406 So. 2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So. 2d 1359 (Fla. 1982). The Agrico test requires a petitioner to show:

- 1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and 2) that his

substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury.

Agrico, 406 So. 2d at 482. The Hearing Officer also explained that, to meet the Agrico test, the Petitioners must allege special injury that is different, more specific, and greater than that to be experienced by the public generally. See Florida Home Builders Association v. Department of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982). I concur with the Hearing Officer's finding that the Petitioners' allegations of injury fail in this regard. Much of the content of the petitions amounts to speculation regarding potential harmful effects the Petitioners fear will result to the general public from the proposed permit, rather than specific factual allegations concerning harm particular to these Petitioners. The Hearing Officer properly found that Petitioners were not "substantially affected" parties entitled to an administrative proceeding in this matter.

Further, the provisions cited by Lane have no relevance to these proceedings and Lane's reliance on them is misplaced. Rule 17-175.800(2), Florida Administrative Code, describes those federally designated Class I areas outside of Florida but within 100 kilometers of the state. Rule 17-210.350(2)(h), Florida Administrative Code, provides for notice to the EPA and to the Federal Land Manager of any construction application for a proposed new or modified source which would be located within 100 kilometers of any Federal Class I area or whose emissions may affect any Federal Class I area. These rules do not designate a

"zone of interest" for the purpose of instituting an administrative proceeding and therefore do not confer standing on the Petitioners. Lane's second exception is denied.

Exception No. 3

In Lane's final exception, she contends that the Hearing Officer's decision denies the Petitioners due process because this is the last point of entry into these proceedings. It is, of course, well established that persons whose substantial interests may be affected by agency action must be provided a clear point of entry to file petitions for formal proceedings. See, e.g., Florida Optometric Association v. Department Professional Regulation, Board of Opticianry, 567 So. 2d 928 (Fla. 1990). Petitioners were afforded a point of entry to contest the subject permit prior to its issuance, and Petitioners have, in fact, availed themselves of such point of entry. The procedural history of this case is that in addition to the original petitions, the Petitioners were granted two additional opportunities to adequately allege standing in this matter. In the second order dismissing the petitions herein, the Hearing Officer went to the extent of offering extensive instructions as to the matters needed to be included in petitions for formal administrative proceedings. However, the petitions continued to be deficient.

I conclude that, under the circumstances presented, the Petitioners were afforded due process. The Petitioners were given ample opportunity to properly establish standing to challenge the proposed permit. It is not a lack of due process, but rather Petitioners' failure to meet the requirements for

establishing standing which precludes the Petitioners from proceeding to hearing. For this reason, Lane's third exception is denied.

Accordingly, it is

ORDERED:

1. The Recommended Order of the Hearing Officer is adopted in its entirety and is incorporated herein by reference.
2. The Second Amended Petitions filed by Petitioners are hereby dismissed with prejudice.
3. The application of CHAMPION INTERNATIONAL CORPORATION for air construction permit AC 17-223343; PSD-FL-200 is GRANTED. The Department's Bureau of Air Regulation is directed to issue the permit upon the terms and conditions set forth in the Department's Intent to Issue and draft permit issued March 10, 1993.

Any party to this Order has the right to seek judicial review of the 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 Clerk of the Department in the Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400; 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 (30) days from the date this Order is filed with the Clerk of the Department.

DONE AND ORDERED this 9th day of March, 1994, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

FILING AND ACKNOWLEDGEMENT

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

[Signature]
Clerk

3/09/94
Date

Virginia B. Wetherell
VIRGINIA B. WETHERELL
Secretary

2600 Blair Stone Rd
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. Mail to the following:

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and by Hand Delivery to:


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Ann Cole, Clerk
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this 10th day of March, 1994.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


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