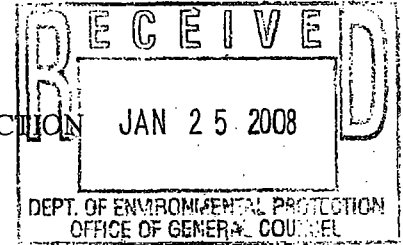


STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION



CF Industries, Inc..

Petitioner,

OGC Case No. 07-2746

DEP Draft Permit No. 0570005-023-AC

vs.

CF Industries Plant City Phosphate Complex

Best Available Retrofit Technology Project

State of Florida, Department of
Environmental Protection,

Hillsborough County, Florida

Respondent.

PETITION FOR FORMAL ADMINISTRATIVE HEARING

Pursuant to Sections 120.569 and 120.57, Florida Statutes (F.S.), and Rule 28-106.201, Florida Administrative Code (F.A.C.), Petitioner, CF Industries, Inc. (CF), hereby submits its Petition for a Formal Administrative Hearing to challenge certain conditions in Proposed Draft Air Construction Permit No. 0570005-023-AC (and associated documents) issued by the State of Florida, Department of Environmental Protection (Department), regarding a "Best Available Retrofit Technology" (BART) determination for CF's Plant City Phosphate Complex. In support of its Petition, CF states as follows:

Identification of Parties

1. The agency affected and its file number are as follows:

State of Florida
Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399

Office of General Counsel Case No. 07-2746
Department Draft Permit No. 0570005-023-AC

2. The Petitioner's name, address, and telephone number are as follows:

CF Industries, Inc.
CF Industries Plant City Phosphate Complex
Attention: Herschel Morris, Vice President Phosphate Operations
and General Manager of Plant City Phosphate Complex
Post Office Drawer L
Plant City, Florida 33564
(813) 364-5601

3. The name, address, and telephone number of Petitioner's representative
(for purposes of service during the course of the proceeding) are as follows:

Angela Morrison Uhland
Hopping Green & Sams, P.A.
Post Office Box 6526
Tallahassee, Florida 32314
(850) 425-2258
Fax (850) 224-8551
auhland@hgslaw.com

Receipt of Notice

4. On or about December 24, 2007, the State of Florida, Department of Environmental Protection (Department) issued a Written Notice of Intent to Issue Air Permit, a Public Notice of Intent to Issue Air Permit, a Technical Evaluation and Preliminary Determination, and a Proposed Draft Air Construction Permit (Permit No. 0570005-023-AC) pursuant to Rule 62-296.340, F.A.C. (BART), for CF's Plant City Phosphate Complex located in Hillsborough County, Florida. For purposes of this Petition, these documents will collectively be referred to as the "Draft Permit."

2. The Department sent the Draft Permit to CF by electronic mail on December 24, 2007. CF's offices were closed on December 24 and 25, 2007. CF received the electronic mail version of the Draft Permit when it reopened its offices on December 26, 2007. CF sent to the Department an electronic mail reply confirming receipt of the Draft Permit on December 26, 2007.

3. On January 7, 2008, CF, by and through undersigned counsel, timely filed a Request for Extension of Time with the Department, requesting an extension of time to and including February 11, 2008, in which to file a Petition for Administrative Proceeding.

4. The Department denied CF's requested extension of time to file a petition by order dated January 10, 2008. The Department sent a copy of the order via facsimile to CF's representative (undersigned counsel) on January 10, 2008. This order provided that CF had fifteen days from the date set forth in the certificate of service (January 10, 2008) within which to file a petition in this matter, or January 25, 2008.

5. This petition is being timely filed with the Office of General Counsel, Department of Environmental Protection, on January 25, 2008.

Petitioner's Substantial Interests Affected

6. CF owns and operates a phosphate fertilizer facility known as the Plant City Phosphate Complex, located in Plant City, Hillsborough County, Florida. This facility includes manufacturing operations for the production of diammonium phosphate (DAP), monoammonium phosphate (MAP), and sulfuric acid. At this facility, CF operates four DAP/MAP units, referred to as DAP/MAPs A, X, Y, and Z, and four sulfuric acid plant (SAP) units, referred to as SAPs A, B, C, and D. These eight units, in addition to two shipping units, referred to as Shipping Units A and B, are considered "BART-eligible" emissions units (as defined under 40 Code of Federal Regulation (CFR) 51.301, adopted and incorporated by reference at Rule 62-204.800, F.A.C.) and subject to the provisions of the Department's BART Rule, Rule 62-296.340, F.A.C.

7. As required by Rule 62-296.340, F.A.C., CF submitted a permit application proposing BART requirements for the ten BART-eligible sources referenced above, DAP/MAPs A, B, C, and D; SAPs A, B, C, and D; and Shipping Units A and B, on or about February 1, 2007.

8. In response to CF's BART permit application submitted to the Department as required under Rule 62-296.340(3)(b), F.A.C., the Department proposed new requirements and provided the basis for its proposed BART determinations for CF's Plant City Complex in a proposed air construction permit, which is referred to herein as the Draft Permit and which is the subject of this request for a formal administrative proceeding.

9. The Draft Permit proposes significant new monitoring requirements, technology requirements, and air emission limitations for CF's ten BART-eligible units referenced above, DAP/MAPs A, X, Y, and Z; SAPs A, B, C, and D; and Shipping Units A and B. The conditions of the Draft Permit, once they become final and effective, would impose substantial burdens on CF. Compliance with those conditions would be detrimental and costly to CF.

Disputed Issues of Material Fact

10. Regarding Condition 3.A.15 on page 7 of 13 of the Draft Permit (requiring CF to monitor the scrubber pressure drop and liquid flow rate for SAPs A, B, C, and D once each eight-hour shift), whether the Department adequately considered or considered at all the fact that CF operates with two twelve-hour shifts per 24-hours rather than three eight-hour shifts, the fact that SAPs C and D do not utilize scrubbers, or the fact that CF is already required under its Title V Air Operation Permit for the Plant City Complex to use a Continuous Emissions Monitoring System (CEMS) to monitor sulfur dioxide (SO₂) emissions from SAPs A and B and to monitor a number of operating and performance parameters in accordance with a Sulfuric Acid Mist Prevention Plan for SAPs A and B developed previously and accepted by the Department as a more effective substitute for scrubber pressure drop and liquid flow monitoring.

11. Regarding Condition 3.B.4 on page 10 of 13 of the Draft Permit (table establishing emission limits for particulate matter and particulate matter less than 10 microns (PM/PM₁₀) of 0.18 pounds of PM/PM₁₀ per ton of P₂O₅ input for DAP/MAPs A, X, Y, and Z), whether the Department adequately considered, or considered at all, the potential impact that the proposed input-based PM/PM₁₀ limits for DAP/MAPs A, X, Y, and Z would have on visibility in the relevant Class I Areas, the costs associated with compliance with those limits, and the appropriateness of those limits in addition to mass-based emission limits (in units of pounds of PM/PM₁₀ per hour).

12. Regarding Condition 3.B.4 on page 10 of 13 of the Draft Permit (table establishing PM/PM₁₀ limits of 6.0 pounds per hour (lb/hr) for DAP/MAP A and 9.9 lb/hr for DAP/MAPs X, Y, and Z), whether the Department adequately considered, or considered at all, the potential impact that these lb/hr PM/PM₁₀ limits would have on visibility in the relevant Class I Areas (especially when compared to historical emissions from these units), the costs associated with compliance with those limits, and the appropriateness of those limits with no additional control technology being justified or required to be added as part of the BART determination.

13. Regarding Conditions 3.B.4 on page 10 of 13 of the Draft Permit (proposing PM/PM₁₀ emission limits for DAP/MAPs A, X, Y, and Z), whether the Department adequately considered, or considered at all, the fact that CF (with approval from the Department) is testing various options for operating changes for DAP/MAPs A, X, Y, and Z's secondary scrubbers (e.g., use of acid in lieu of process water) in response to U.S. Environmental Protection Agency (EPA) concerns under RCRA (Resource Conservation and Recovery Act), the fact that such operating changes could affect PM/PM₁₀ emission levels from these units, and the fact that other PM/PM₁₀ emission limits may be more appropriate as BART once sufficient emissions data becomes available following implementation of all approved operating changes.

14. Regarding Condition 3.B.4 on page 9 of 13 and Condition 3.B.9 on page 10 of 13 of the Draft Permit (requiring the use of EPA Method 201A to determine PM₁₀ emission rates), whether the Department adequately considered or considered at all the fact that the PM and PM₁₀ emissions limits are set at the same levels (e.g., PM and PM₁₀ both proposed to be limited to 9.9 lb/hr for DAP/MAPs X, Y, and Z), the fact that the PM₁₀ is a subset of PM, and the fact that use of EPA Method 5 to determine PM levels is a sufficient method for ensuring that PM₁₀ emission levels are below the permitted limits.

Ultimate Facts Alleged

15. The Department failed to consider the impact of each BART determination on visibility in the relevant Class I Areas, which is a fundamental and necessary criterion under the applicable rules; therefore the proposed determinations are arbitrary, capricious, and without a regulatory basis.

16. Additionally, the Department's Draft Permit includes several other conditions that lack regulatory justification or basis, are arbitrary and capricious, or are otherwise not in accordance with law.

17. CF's SAPs C and D do not utilize scrubbers, and a requirement to monitor scrubber parameters for these units is therefore without justification. Existing requirements for CF to monitor operating and performance parameters as specified in the applicable Sulfuric Acid Mist Prevention Plan for SAPs A and B once each twelve-hour shift and to continuously monitor SO₂ emissions provide sufficient assurances that the pollution control equipment on these units is operating properly. There is no justification or regulatory basis for the proposed new requirement to monitor scrubber parameters for SAPs A, B, C, and D once each eight hours. These proposed requirements are arbitrary and capricious.

18. The proposed emission limits for DAP/MAPs A, X, Y, and Z in units of pounds of PM/PM₁₀ per ton of P₂O₅ input are arbitrary, capricious, without regulatory

basis or justification, and provide no further improvements to visibility than the other, lb/hr PM/PM₁₀ limits would provide.

19. The proposed PM/PM₁₀ emission limits for DAP/MAPs A, X, Y, and Z in units of lb/hr are arbitrary and without a regulatory basis or justification; higher emission levels are appropriate based on the units' past operations and the fact that no additional control equipment is required or has been justified as BART.

20. The proposed PM/PM₁₀ emission limits for DAP/MAPs A, X, Y, and Z do not reflect secondary scrubber operating changes currently being tested by CF with Department approval (e.g., using acid in lieu of process water). Because these operating changes could affect PM/PM₁₀ emission levels, BART should not be established for PM/PM₁₀ for these units until after full implementation of all approved operating changes and sufficient emissions testing has been conducted to determine emission levels and the appropriate emission limits (with a 99 percent confidence factor that the limits are achievable without additional pollution control equipment being added). The proposed BART determinations for PM/PM₁₀ emissions from DAP/MAPs X, Y, and Z are therefore arbitrary, capricious and without regulatory justification.

21. The proposed requirement to test PM₁₀ emissions using EPA Method 201A in addition to a requirement to test PM emissions using EPA Method 5, considering that the proposed PM and PM₁₀ emission rates are equal and the fact that PM₁₀ is a subset of PM, lacks regulatory justification and is arbitrary and capricious.

Statutes and Rules Warranting Reversal

22. The proposed permit conflicts with Chapters 62-204 and 62-296, F.A.C., including but not limited to Rule 62-204.800 (incorporation of federal rules by reference, including 40 CFR Part 51, s. 51.308, and Appendix Y) and Rule 62-296.340 (BART, which is a requirement of the Regional Haze Program for Class I Areas). The Florida Statutes and other Department rules cited by the Department as authority for issuance of

the Draft Permit, or that could warrant reversal, include Chapters 120 and 403, F.S.; and Chapters 62-4, 62-110, 62-210, 62-212, and 62-297, F.A.C.

- a. Proposed Condition 3.A.14 (requiring the monitoring of scrubber pressure drop and liquid flow rate for SAPs A, B, C, and D) does not include a notation as to any statutory or regulatory basis. Presumably the Department's basis was Rule 62-296.340(3)(b)2, F.A.C., which provides that the Department may require an operation and maintenance plan for any control equipment required by a BART determination. Proposed Permit Condition 3.B.13, however, already requires an operation and maintenance plan for the SAP A and SAP B ammonia scrubbers to ensure that the equipment operates properly. Proposed Condition 3.B.15, apparently applicable to SAPs A, B, C, and D, is without basis under the Department's BART Rule, 62-296.340, F.A.C., nor would this condition be necessary to provide the Department with reasonable assurances that the PM₁₀ limits are met under Rule 62-4.070(3), F.A.C.,
- b. Proposed Condition 3.B.4 (establishing PM/PM₁₀ limits in units of pounds of PM/PM₁₀ per ton of P₂O₅ input and in units of lb/hr) is based on Rule 62-296.340, F.A.C., which provides that BART is to be determined using the criteria of 40 CFR 51.308(e) and the procedures and guidelines contained in 40 CFR Part 51, Appendix Y (incorporated by reference at Rule 62-204.800, F.A.C.). These criteria, guidelines, and procedures do not support the proposed input-based emission limits in addition to mass-based lb/hr limits, nor do they support the establishment of lb/hr limits that are not achievable without the addition of pollution control equipment when such pollution control equipment is not also being proposed (and justified) as BART. These criteria, guidelines, and procedures do require, however, that pollution control equipment existing at the source be considered when establishing a BART limit. In addition, when operating changes are being proposed to such pollution control equipment, such

operating changes and implications for expected emission levels should be considered when establishing BART limits.

- c. As authority for requiring the use of EPA Method 201A to determine PM₁₀ emission levels, the Department cites to Rule 62-297.100, F.A.C., which is a general purpose and scope paragraph. This rule does not mandate the use of specific test methods. The use of EPA Method 5 to determine PM levels is sufficient to ensure compliance with PM₁₀ emission limits because the PM and PM₁₀ limits are equal and PM₁₀ is a subset of PM. The requirement to use EPA Method 5 to determine PM emission levels is appropriate in this situation to provide reasonable assurances of compliance with the PM₁₀ limits under 62-4.070(3), F.A.C.
- d. The criteria of 40 CFR 51.308(e) and the procedures and guidelines in 40 CFR 51 Appendix Y require that each BART determination take into consideration the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. The Department's proposed BART determinations do not include an analysis as to Class I visibility improvements expected to be realized through such determinations.

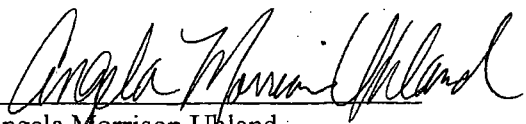
Relief Sought

- 23. For the foregoing reasons, Petitioner prays that
 - a. the Draft Permit be revised as follows:
 - (i) revise Condition 3.A.15 to provide that the permittee monitor and record the operating and performance parameters specified in the Sulfuric Acid Mist Prevention Plan for SAPs A and B (rather than scrubber pressure drop and liquid flow rate for all SAP units), and only once every 12-hour shift rather than once every 8-hour shift;

- (ii) revise Condition 3.B.4 to eliminate the PM/PM₁₀ emission limits proposed in units of pounds of PM/PM₁₀ per ton of P₂O₅ input for DAP/MAPs A, X, Y, and Z;
 - (iii) revise Condition 3.B.4 to provide that BART emission limits for PM/PM₁₀ will be established for DAP/MAPs A, X, Y, and Z after all Department-approved operating changes to the units' secondary scrubbers become fully operational and sufficient emissions testing data is available; and that such BART limits are to be established at levels appropriate to ensure that the new limits can be achieved (using a 99 percent confidence factor) without additional PM/PM₁₀ control technology being added;
 - (iv) revise Conditions 3.B.4 and 3.B.9 to eliminate any requirement to use EPA Method 201A to determine PM₁₀ emission levels;
- b. the Division of Administrative Hearings conduct a formal administrative hearing; and
 - c. such other relief as may be proper.

Respectfully submitted this 25th day of January, 2008.

By:

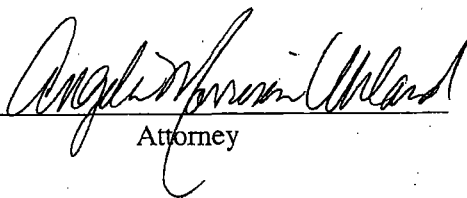


Angela Morrison Umland
Florida Bar No. 0855766
E-mail: auhland@hgslaw.com
Hopping Green & Sams, P.A.
P.O. Box 6526
Tallahassee, FL 32314
850-222-7500
850-224-8551 (fax)

Attorney for CF Industries, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PETITION FOR FORMAL ADMINISTRATIVE HEARING was sent this 25th day of January, 2008, by U.S. Mail, postage prepaid, to the following: Ronda L. Moore, Assistant General Counsel, Department of Environmental Protection, 3900 Commonwealth Boulevard—MS 35, Tallahassee, Florida 32399.



Attorney

274089