

Vielhauer, Trina

From: Phillips, Cindy
Sent: Monday, March 07, 2005 9:15 AM
To: Vielhauer, Trina
Subject: FW: CF Industries response to request for additional information about alternate monitoring plan

fyi...

-----Original Message-----

From: Dennis, Ron [mailto:DennisR@epchc.org]
Sent: Monday, March 07, 2005 8:29 AM
To: Woodard, Sterlin; Lee, Diana; Harman, Alice; Watson, Alain
Cc: Phillips, Cindy
Subject: FW: CF Industries response to request for additional information about alternate monitoring plan

We must respond as soon as possible to CFI's response to our questions. Due to the March 15th meeting, we need to get our response to Cindy by the end of this week.

I will give each of you a copy of CFI's response today. We should try to meet by Thursday, March 10th, at the latest to draft our response to Cindy.

Ron

From: Phillips, Cindy [mailto:Cindy.Phillips@dep.state.fl.us]
Sent: Thursday, March 03, 2005 4:29 PM
To: Page.Lee@epamail.epa.gov
Cc: Dennis, Ron; Vielhauer, Trina; Pichard, Errin; Beason, Doug
Subject: CF Industries response to request for additional information about alternate monitoring plan

Lee, our Division Director, Michael Cooke, is meeting with CF Industries on March 15th to discuss the Draft Stipulated Settlement for incorporating the Phosphoric Acid and Phosphate Fertilizer MACTs into their Title V permit. I know that you received this week CFI's response to your questions concerning their proposed alternate monitoring plan. It would be very helpful for us to know, prior to that meeting, if CF Industries has adequately responded to your questions and whether or not you plan to approve their proposed alternate monitoring plan. Please let us know as soon as possible.

Thanks for your (expedited) assistance,

Cindy

3/8/2005

Hopping Green & Sams

Attorneys and Counselors

February 15, 2005

Douglas Beason, Esquire
Department of Environmental Protection
Office of General Counsel
3900 Commonwealth Blvd.
Mail Station 35
Tallahassee, FL 32399-3000

Re: CF Industries, Inc.
HF MACT - Stipulated Settlement
OGC Case No. 02-0587

Dear Doug:

CF Industries, Inc. (CFI) has reviewed the latest draft of the Stipulated Settlement, and proposes the changes set forth in the attachments. (One of the attachments is in strike-through/underscore format, the other a "clean copy").

Several of CFI's proposed edits simply reflect an effort to achieve greater clarity. Our primary substantive concerns are as follows:

- Construction Permit No. 057005-020-AC is not implicated in this settlement.
- We thought it would be appropriate to specify that the "A" granulation plant is on stand-by status at the present time, and address how it will comply with the Stipulated Settlement and applicable monitoring requirements at such time as it recommences operations.
- CFI does not have control over EPA's timing in ruling on the alternate monitoring plan proposal. It is essential that the deadlines applicable to monitoring in the Stipulated Settlement run from the date of EPA's decision. Otherwise, CFI would potentially be relinquishing the potential benefits of EPA approval of the alternate monitoring plan.
- Note that we have proposed that paragraph A.3. begin as follows: "In the event that EPA issues a final order denying CFI's application for an alternate monitoring plan...." The point here is that the deadlines for CFI's obligations should not begin to run until after there has been an opportunity for administrative or judicial review of an EPA denial. We are confident that DEP will agree that it

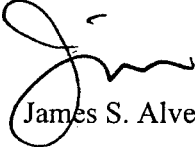
Douglas Beason
February 15, 2005
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is appropriate for CFI to retain whatever available recourse it has if it receives a denial from EPA.

- Regarding Paragraph C., we have proposed deleting the reference to total fluorides and referring to "site-specific" testing at the facility that is subject to this Stipulated Settlement

Thank you for considering these proposed changes.

Very truly yours,



James S. Alves

cc: Tom Edwards, CFI

Hopping Green & Sams

Attorneys and Counselors

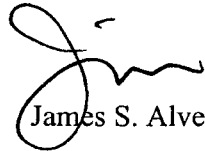
Douglas Beason
February 15, 2005
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James S. Alves

cc: Tom Edwards, CFI

Hopping Green & Sams

Attorneys and Counselors

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STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CF INDUSTRIES, INC.
PLANT CITY PHOSPHATE COMPLEX

v. OGC Case No. 02-0587
Permit No. 0570005-007-AV

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

STIPULATED SETTLEMENT

The Florida Department of Environmental Protection ("Department") and CF Industries, Inc. (CFI) hereby enter into this Stipulated Settlement resolving all of the matters relating to Permit Revision No. 050005-016-AV (OGC Case No. 02-0587) and Permit Revision/Renewal No. 0570005-017-AV.

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Permit No. 0570005-020-AC

The permitting decision at issue in OGC Case. No 02-0587 is the Draft Title V Air Operation Permit Revision (0570005-016-AV) that CFI received on April 19, 2002. The principal issue in dispute is the applicability of 40 CFR Part 63, Subparts AA and BB, (the "Phosphate MACT") to CFI's Plant City Phosphate Complex (facility).

In order to resolve all issues in dispute in this case, the parties stipulate and agree that:

A. Within 10 days of the effective date of this agreement, the Department shall incorporate into the Draft Title V Air Operation Permit Revision/Renewal (0570005-017-AV) a compliance plan as set forth in paragraphs 1 through 3, below. The compliance plan shall provide as follows:

1. Upon the effective date of the Stipulated Settlement, CFI shall be in compliance with all applicable emission limits contained in the Phosphate MACT.

2. In the event the EPA approves CFI's application for an alternate monitoring plan, the following deadlines will apply:

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2005

a. Within 120 days of the EPA's approval, CFI shall install the monitoring devices provided for in the approved alternate monitoring plan in all

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operating plants (A and B Phosphoric Acid, X, Y, and Z Granulation Plants). CFI shall provide written notice to the Department confirming such installation.

b. Within 30 days subsequent to the installation of the monitoring devices provided for in the approved alternate monitoring plan, CFI shall initiate data collection into electronic storage for all the approved monitoring parameters and have in operation a data management and reporting system for all required components of its approved alternate monitoring plan. CFI shall provide written notice to the Department confirming such data collection, management and storage;

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c. Within 30 days subsequent to CFI having in operation a data management and reporting system for all required components of its approved alternate monitoring plan, CFI shall conduct initial performance testing to establish ranges of the approved monitoring parameters;

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d. Within 20 days subsequent to CFI conducting initial performance testing to establish ranges of acceptable scrubber operation, CFI shall submit a report of the initial performance testing to the Department and EPA.

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e. Thereafter, CFI shall submit semiannual reports required by the Phosphate MACT as applied to the alternate monitoring plan.

3. In the event that EPA issues a final order denying CFI's application for an alternate monitoring plan, as of the deadline for initiating administrative or judicial review (or upon completion of such administrative or judicial review, if such a proceeding is initiated by CFI and EPA's denial is upheld), the following deadlines will apply:

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a. Within 180 days, CFI shall install the monitoring devices as required by the Phosphate MACT in all operating plants (A and B Phosphoric Acid, X, Y, and Z Granulation plants). CFI shall provide written notice to the Department confirming such installation.

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b. Within 30 days subsequent to the installation of the monitoring devices

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required by the Phosphate MACT, CFI shall initiate data collection into electronic storage for all MACT monitoring parameters and have in operation a data management and reporting system for all required components of the Phosphate MACT. CFI shall provide written notice to the Department confirming such data collection, management and storage;

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c. Within 30 days subsequent to having in operation a data management and reporting system for all required components of the Phosphate MACT, CFI shall conduct initial performance testing to establish acceptable ranges of the monitoring parameters;

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d. Within 20 days subsequent to conducting initial performance testing to establish ranges of acceptable scrubber operation, CFI shall submit a report of the initial performance testing to the Department and EPA.

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e. Thereafter, CFI shall submit semiannual reports required by the Phosphate MACT.

4. The "A" granulation plant is temporarily idle and is on stand-by status as of the date of this Stipulated Settlement. At such time as a business decision is made to operate this unit, CFI shall install monitoring devices and undertake monitoring, as applicable, consistently with either paragraph A.2. or A.3., above. Under either scenario, CFI shall provide for data collection into electronic storage for all the required monitoring parameters before starting the "A" granulation plant. CFI shall provide written notice to the Department confirming such installation and data collection, management, and storage capability. Thereafter, CFI shall accomplish the tasks and meet the deadlines required under either paragraph A.2 or A.3, above, depending on which applies.

B. In addition to the compliance plan described above, the draft Title V Air Operation Revision/Renewal (0570005-017-AV) will incorporate:

1. The terms of the draft Title V Air Operation Permit Revision (0570005-016-AV) (Subject to the compliance plan described above in A. Moreover, in the event that the Department approves CFI's pending application for a construction permit revision,

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requesting deletion of all parametric monitoring not required by the Phosphate MACT, the revised Title V Air Operation Permit shall be consistent with those changes).

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2. The terms of two recent final Air Construction Permits (0570005-018-AC and 0570005-019-AC); and

3. The following statement regarding the applicability of the Phosphate MACT to the facility's draft Title V Revision/Renewal:

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The Department has determined that this facility is a major source of hazardous air pollutants (HAPs), based upon its estimation of emissions of hydrogen fluoride. If additional testing and modeling demonstrate 1) that the facility is not and has never been a major source of hazardous air pollutants since at least June 10, 2002, or 2) if prospective changes to Subparts AA and BB warrant such an outcome, the permittee shall have the right to request that the Department revise the determination of major source status and revise this permit to remove all requirements and conditions based on 40 CFR Part 63.

C. For purposes of reconsideration of major source status as described herein, CFI shall: (1) submit a quantification of all hazardous air pollutants reasonably believed, on the basis of either previous testing or process knowledge, to be emitted in significant quantities from the facility and (2) conduct representative stack and pond testing and modeling (if modeling is required for quantification of fugitive emissions) for hydrogen fluorides with sufficient samples to meet a data quality objective that accounts for the variability of test data and provides for confidence in the mean measured value. Although this reconsideration does not require that past testing for fluoride and/or hydrogen fluoride was conducted, the Department reserves its right to request and evaluate the results of any such past site-specific testing at the CF Industries Plant City Phosphate Complex. As part of this reconsideration, the Department reserves its right to base its determination upon hydrogen fluoride and/or total HAP emissions specific to the site.

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D. The parties acknowledge that this determination of Phosphate MACT applicability made pursuant to this settlement agreement is based upon the Department's estimation of hydrogen fluoride emissions. CFI does not concur with that determination, but acquiesces to it for the purposes of concluding the processing of the Title V Operation Permit Revision/Renewal (0570005-017-AV) and agrees to

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abide by those requirements as set forth herein.

- E. Within 10 days of receipt of the draft Title V Operation Permit Revision/Renewal (0570005-017-AV), as revised in accordance with the terms of this Stipulated Settlement, CFI agrees to publish the "Public Notice of Intent to Issue Air Construction Permit and Title V Air Operation Permit" in the legal advertisement section of a newspaper of general circulation in the area affected by this project.

In the event the EPA approves CFI's alternate monitoring plan prior to the Department issuing the draft Title V Operation Permit Revision/Renewal (0570005-017-AV), such alternate monitoring plan will be incorporated therein. In the event that EPA approves CFI's alternate monitoring plan after the Department issues the draft Title V Operation Permit Revision/Renewal (0570005-017-AV), within 14 days of receipt of notification from EPA that the alternate monitoring plan has been approved, CFI will apply to the Department for a revision to the final permit to incorporate such alternate monitoring plan.

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- F. The following specific provisions are made with respect to compliance and enforcement:

1. The Department agrees that no civil penalties or sanctions associated with the application of the Phosphate MACT prior to the effective date of this Stipulated Settlement will be imposed or sought by the Department. This is conditioned upon CFI's compliance with all of the terms and timeframes of this Settlement Stipulation.
2. The Department will consider the facility to be in compliance with monitoring requirements for the Phosphate MACT in the future so long as the facility meets all Phosphate MACT emissions limits and complies with this stipulated settlement, any final, approved, monitoring plan, and all provisions of the Title V Revision/Renewal's compliance plan.
3. The Department reserves the right to pursue civil penalties and/or sanctions in the event all of the terms and timeframes contained in this Settlement Stipulation and/or the Title V Revision/Renewal's compliance plan are not met.

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4. The Department and CFI may agree that changes are appropriate to the timeframes in this Settlement Stipulation, including the schedules in Paragraph A. The Department may use its enforcement discretion to allow for such changes where caused by factors beyond CFI's direct control and CFI is continuing in good faith to complete the work. CFI shall have the burden of proving the delay was or will be caused by factors beyond the direct control of CFI and could not have been or cannot be overcome by CFI's due diligence. Economic circumstances shall not be considered circumstances beyond the control of CFI, nor shall the failure of a contractor, subcontractor, material man or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of CFI, unless the cause of the contractor's late performance was also beyond the contractor's control.

G. Each party shall bear its own attorneys' fees and litigation costs.

CFI and the Department hereby execute this Stipulated Settlement on this _____ day of February, 2005.

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For the Department of
Environmental Protection

For CF Industries, Inc. Plant City
Phosphate Complex Facility

Name and Title

Name and Title

Date

Date