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Executive Director
Richard D. Garrity, Ph.D.

ENVIRONMENTAL PROTECTION COMMISSION of Hillsborough County

FAX Transmittal Sheet

DATE: 10-07-03

TO: TRINA VIELHAUER, BUREAU CHIEF, BAR

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FROM: RAMA MER / STERLIN WOODARD

(Circle applicable section below)

Air Division

-Compliance

-Monitoring/Toxics

-Enforcement/Analysis

-Permitting

SPECIAL INSTRUCTIONS: EMAIL OF SAME HAS BEEN SENT TO YOU.



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 1410 N. 21st Street • Tampa, FL 33605

MEMORANDUM

DATE: October 7, 2003

TO: Trina Vielhauer

FROM: Rama Iyer, P.E. *Ri* Thru: Sterlin Woodard, P.E. *SW*

SUBJECT: CF/FDEP Settlement Stipulation

I have reviewed the above settlement stipulation, OGC Case No. 02-0587, and have the following comments.

1. In item I.A.1, the word fugitive needs to be omitted as miscellaneous fugitive emissions is mentioned in page 8 and is assumed to be one-tenth of the combined sum of annual HF emissions from the process ponds and stacks. The testing is to quantify total HF emissions from the facility per se.
2. In item I.A.2.(a), it is not enough that CFI submit a contractor *familiar* with the described methodology. It would be better to say a *contractor with proven experience in applying FTIR / TDL methodology to measure stack and pond HF emissions*.
3. In item I.A.2.(b), it states that the HF emission factor that will be determined needs to be accuracy to factor of 2. You've given an example, for a value of 5 tpy, it would represent a range of 2.5 to 10 tpy. We do not have a problem with including an accuracy requirement in the Settlement Stipulation, however, the plus or minus factor of 2 appears to be excessive. A more appropriate number should be an accuracy of say 2 to 5 % of the value, which is more in line with the accuracy of other analytical methods. Even EPA Method 5 is accurate to within plus or minus 10 %.

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CF/FDEP Settlement Stipulation
Page 2

4. In item I.A.3.(b), representativeness of steady state condition is ambiguous and needs to be defined, otherwise it needs to be deleted. The operational parameters that will be measured during testing can be evaluated by the regulatory agencies to determine their representativeness.
5. Item I.B.3.(b)(i) on the inclusion of an explanation of how reference spectra were obtained or if they were produced by personnel not affiliated with the vendor of the FTIR equipment *should also* apply to the pond emission test results. The HF reference spectra need to be developed to ensure that it representative of the HF conditions that exists in the stacks and above the ponds.
6. HCEPC needs to be copied in on all notices, test reports, test schedules, test protocols and other communications relating to the comprehensive hydrogen fluoride emissions testing program.
7. Item C. Miscellaneous Fugitive Emissions says that for the purpose of total annual emissions, the Department shall assume miscellaneous fugitive emissions are equal to one-tenth (1/10) of the combined sum of annual HF emissions from the process ponds and stacks. We can accept this provided that the Settlement Stipulation includes language that states "should inspections or testing prove that fugitive emissions are greater than 1/10 of the combined stack and pond emissions, the emissions calculations shall be revised. In addition, if C.F. Industries accepts the 1/10 provision, then they shall take all necessary steps to achieve 90% capture of all emissions".
8. Item I.A.1 requires CF to initiate testing of the process ponds within 60 days of the execution of this Settlement Stipulation. This would mean that CF would be testing the process ponds for HF emissions around winter, and our concern is that worst case emissions are in the summer. The Settlement Stipulation should therefore also require that the process ponds be tested for HF emissions during the summer time in order to better estimate potential emissions.
9. We would also like to voice our concern that the testing protocol delineated in the Settlement Stipulation is a one time snap shot type determination that would then be used to calculate annual potential emissions in order to determine NESHAP applicability. It is our belief that all relevant test data should be used to develop a worst case emissions factor in order to estimate potential emissions in accordance with Rule 62-210.200(203), F.A.C.

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State of Florida

Department of Environmental Protection
OFFICE OF GENERAL COUNSEL
Waste-Air Section

3900 Commonwealth Blvd. - MS35
Tallahassee, FL 32399-3000
facsimile: 850-921-3000



FACSIMILE TRANSMITTAL
January 5, 2004

To: TRINA VIELHAUER

Fax: 921-9533

From: Lisa Light

pages including cover sheet
Original ___ will ~~*~~ will not follow
via ___ US Mail ___ Federal Express

Phone: 245-2276

RE: CF Proposed Settlement Stip

Doug asked me to fax this over to you for your review & comments.

☺ LISA

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12-31-03
TD: Doug Beards
from: Jim Alves
Doug: let's discuss
after you've had
a chance to
look at this.
Jim Alves

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CF INDUSTRIES, INC.,
(Plant City Phosphate Complex),

Petitioner,

v.

OGC Case
Permit No.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Respondent.

SETTLEMENT STIPULATION

Petitioner, CF Industries, Inc. ("CFI"), and Respondent, State of Florida Department of Environmental Protection ("Department"), hereby enter this Settlement Stipulation with respect to the disposition of the above-styled litigation:

REGULATORY FACTS

Whereas, on June 10, 1999, the Environmental Protection Agency (EPA) promulgated National Emission Standards for Hazardous Air Pollutants (NESHAP) for new and existing Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants (40 C.F.R. Part 63, Subparts AA and BB including Appendix A to Subpart AA); The rule requirements apply to specified "affected sources" at Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants that are "major sources" of hazardous air pollutants. 40 C.F.R. §§ 63.600, 63.620, 63.2. The intended outcome under the rule was that affected sources would be the primary emitters of hydrogen fluoride air emissions.

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~~Whereas, in 2.~~ In April 2002, the Department issued to CFI an Intent to Issue Revision to the Title V Air Operation Permit for CFI's Plant City Phosphate Complex;

~~Whereas, the 3.~~ The Department's Intent to Issue Revision to Title V Air Operation Permit was predicated upon the Department's determination unsubstantiated assumption that the Plant City Phosphate Complex was a major source of hydrogen fluoride emissions (a hazardous air pollutant) subject to 40 CFR 63, Subparts AA and BB;

4. The Department's Intent to Issue Revision to Title V Air Operation Permit would result in, inter alia, the imposition of fluoride emission limitations (as a surrogate for hydrogen fluoride) for existing affected sources at the Plant City Phosphate Complex under 40 C.F.R. §§ 63.602 and 63.622, as well as operating requirements under 40 C.F.R. §§ 63.604 and 63.624 and monitoring and performance test requirements under 40 C.F.R. §§ 63.605, 63.606, 63.625, and 63.626. The fluoride limitations under Parts AA and BB are equivalent to existing fluoride limitations already applicable to the affected sources at the Plant City Phosphate Complex.

5. The Plant City Phosphate Complex, as configured and permitted as of, prior to, and since EPA's promulgation of Subparts AA and BB continuously has complied with the Subparts AA and BB emission limitations applicable to affected sources as set forth in 40 C.F.R. §§ 63.602 and 63.622. Moreover, the CFI granulation plant pollution control system includes freshwater fluoride abatement scrubbers in addition to the phosphoric acid and process water scrubbers typically used throughout the phosphate industry.

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6. Total annual hydrogen fluoride air emissions from all of the affected sources at the Plant City Phosphate Complex (i.e., those components of the plant specified in the rules and subject to emission limitations, operating requirements, and monitoring requirements are significantly lower than the major source threshold of 10 tons per year. The monitoring and operational requirements applicable to affected sources under Subparts AA and BB were established based on EPA's assumption that hydrogen fluoride emissions from the "affected sources" at a major source would meet or exceed the major source threshold of 10 tons per year. The critical air emissions variable which determines whether Subparts AA and BB are applicable at the Plant City Phosphate Complex is unregulated fugitive hydrogen fluoride emissions from the plant's pond system. The pond system is not an "affected source" under 40 C.F.R. §§ 63.600 and 63.620. No definitive methodology has been established by rule for quantifying fugitive hydrogen fluoride emissions from phosphate plant pond systems.

7. The Department and CFI have reached different conclusions in their efforts to date to quantify fugitive hydrogen fluoride emissions from the Plant City Phosphate Complex pond system. The methodology utilized by the Department indicates that pond system hydrogen fluoride emissions exceed the 10 tons per year major source threshold; the methodology relied on by CFI indicates that pond system hydrogen fluoride emissions do not necessarily exceed that threshold. Existing reported studies provide a wide range of potential hydrogen fluoride flux factors and annual emissions. CFI additionally determined that pond system hydrogen fluoride emissions, combined with affected source and other fugitive emissions, do not exceed the 10 tons per year major source threshold.

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~~Whereas, the 8.~~ The Department's Intent to Issue Revision to Title V Air Operation Permit afforded CFI a point-of-entry to petition for a formal administrative hearing under Chapter 120, F.S., to challenge the Department's proposed agency action;

~~Whereas, 9.~~ CFI filed a timely request for an extension of time to file a petition for administrative hearing to challenge the Department's determination that the Plant City Complex is a "major source" of hydrogen fluoride emissions subject to 40 CFR 63, Subparts AA and BB;

~~Whereas, the 10.~~ The Department continues to maintain that the CFI Plant City complex is subject to the requirements of 40 CFR 63, Subparts AA and BB on account of unregulated pond system emissions while, CFI maintains that the Department cannot demonstrate that pond system hydrogen fluoride emissions exceed 10 tons per year and that these regulatory requirements do not apply to at the Plant City Complex; CFI also maintains that no environmental policy rationale would be served by imposing additional operating and monitoring requirements on affected sources that have insignificant hydrogen fluoride emissions on account of estimated hydrogen fluoride emissions from the unregulated pond system.

~~Wherefore, the 11.~~ The purpose of this Settlement Stipulation is to: (a) provide for the implementation of a comprehensive pond emissions testing program to allow CFI an opportunity to demonstrate generate information relevant to the issue of whether the Plant City Complex is not a major source of hydrogen fluoride emissions on account of fugitive emissions from the pond system; (b) provide CFI an opportunity to obtain an

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alternative means to demonstrate compliance with 40 CFR 63, Subparts AA and BB monitoring requirements; in the event the Plant City Complex is determined to be a major source of hydrogen fluoride emissions due to fugitive emissions from the pond system; and (c) revise CFI's Title V Air Operation Permit to incorporate the provisions of this Settlement Stipulation, ~~as part of a Compliance Plan.~~

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STIPULATIONS

Wherefore, the ~~The~~ Department and CFI hereby stipulate and agree to the following:

I. COMPREHENSIVE HYDROGEN FLUORIDE EMISSIONS TESTING PROGRAM**A. PROCESS POND EMISSIONS**

1. Testing for Process Pond Emissions: The Department believes that both wind and temperature affect emissions from the process ponds. Therefore, testing may be required during both winter and summer seasons. ~~Within 60 days of the execution of the times set forth below in this Settlement Agreement,~~ CFI shall complete testing to quantify hydrogen fluoride emissions from the ~~process plant ponds system~~ (gypsum and cooling ponds). CFI shall provide the Department's Division of Air Resource Management ["Division"] and Hillsborough EPC with written notice of the date on which the testing is to be ~~performed~~ initiated. This notice shall be provided a minimum of 14 days prior to the date on which the testing is to be ~~performed~~ initiated.

2. Testing Protocol for Process Pond Emissions: CFI ~~shall submit~~ submitted to the Department on June 5, 2003 a proposal from a contractor experienced with Optical Remote Sensing using Fourier Transform Infrared (FTIR) ~~or~~ and Tunable Diode Laser (TDL) techniques, ~~as described in the joint project by the U.S. EPA, the U.S. Air Force,~~

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~~and ARCADIS⁺ within 4 days of the execution of this settlement agreement to the Division for approval and to Hillsborough EPC. The proposal shall include an Within 30 days after the entry of this Settlement Stipulation CFI shall specify to the Department which specific pond(s) in addition to the cooling ponds are to be tested, and provide the contractor's estimate of the likely accuracy of the proposed methodology. That The estimated accuracy shall be acceptable if it is no more than a factor of two, or one order of magnitude. The Department shall review the proposed test plan and shall provide to CFI either a written approval of the plan or a written request for revisions to the plan. CFI shall respond to a request for additional information within 14 days of receipt of such written request unless it provides good cause that additional time is required.~~

(a) ~~CFI shall conduct the approved testing substantially in conformance with the approved testing protocol. In the event CFI does not substantially follow the approved testing protocol, the test results will be deemed invalid and CFI shall comply with 40 CFR 63, subparts AA and BB, within 30 days of notification from the Division that the tests are invalid, unless CFI provides an adequate rationale for any variations.~~

~~(a)~~

(b) The length of the testing shall be at least one week and extended as needed to ensure that the HF emission factor determined will, in the opinion of the contractor, be accurate to plus or minus a factor of 2 (or lower).

~~⁺ Sullivan, Patrick D., et al. Development of Optical Remote Sensing Protocol for the Measurement of Area Sources. Proceedings of Air and Waste Management Association 95th Annual Conference and Exhibition. Baltimore, Maryland. June 2002.~~

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3. Process Pond Test Report:

(a) Within 60 days of completion of testing [~~i.e. 90 days from execution of the Settlement Agreement~~], a process ponds emissions test report shall be submitted to the Division and Hillsborough EPC. The test report shall include HF emission factors for the process specified portions of the pond(s) system in terms of pounds per acre-day at the facility and a single, numerical estimate [i.e. not a range] of total annual pond HF emissions in tons per year (TPY) based on the measurements and acreage of the pond areas. The annualized pond HF TPY and emission factors will be accepted and not corrected to account for the accuracy of the methodology identified in paragraph I.A.2.a., above.

(b) The process pond emissions test report shall include process data covering the time of the tests including recent plant operational history, usage of the process ponds, and water chemistry of streams to the gypsum stacks, to the cooling ponds, and from the cooling ponds, and in the storage ponds. The measured parameters shall include F, pH, P₂O₅, SO₄-S, NH₄-N, temperature, Si, Na, Al, Ca, K, Fe, Mg, Cl. The recent operational history of each process pond, including actual usage, circulation rates, and its representativeness or non-representativeness of steady state condition, etc., shall be included

(c) The Division shall review the test report to determine whether it is accurate and complete. In the event the Division should request additional information concerning CFI's test report, the Division shall make such request within 14 days of CFI's submittal. CFI shall respond to a request for additional information within 14 days

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of receipt of such written request, unless it provides good cause that additional time is required.

(d) Gas certifications for gases used for methodology validation, instrument calibrations, and QA spiking. An explanation of how reference spectra were obtained or if they were produced by personnel not affiliated with the vendor of the FTIR equipment. The moisture concentrations that are observed and measured when performing the validation and quality assurance testing and the effect of such on the reference spectra of HF at differing moisture concentrations. The test results shall include the concentrations and make up of samples used to prepare the reference spectra for HF with and without moisture as needed.

(e) ~~†~~ The Division shall utilize ~~the complete~~ estimated average annual pond HF emissions from the process pond emission test report, in conjunction with the HF emissions from affected sources as set forth in the stack test report (as discussed in B. below), and fugitive emissions (as discussed in C. below), to determine whether the Plant City Phosphate Complex is a major source of hydrogen fluoride emissions and shall provide written notice of its conclusions with detailed explanations of its calculations and determination to CFI. CFI expressly waives any reserves all administrative ~~or~~ and judicial rights to challenge the Division's manner of utilization of, and determination based upon, the test report. In the event the Division determines that hydrogen fluoride emissions are 10 tons per year or more based on solely upon the pond testing results, CFI may shall notify the Division and Hillsborough EPC within 10 30 days of receipt of such notice whether submittal of the pond testing report that it is electing not to proceed with a challenge to that determination or to accept major source

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~~status. testing stack emissions set forth in II, below, nor with part 2 of the pond emissions testing set forth in I.A.4, below. In that the latter event, CFI shall comply with AA and BB or an alternative monitoring plan approved pursuant to II, below, within 30-120 days of after notifying the Division.~~

4. ~~In the event the Division determines that the process pond emission test report in conjunction with the stack test report and fugitive emissions discussed in B. and C. below are less than 10 tons per year, CFI shall retest the process ponds during summer months following the same protocol outlined in paragraph I.A.1-3, above. The testing shall be completed between June 1 and August 31.~~

B. STACK EMISSIONS

1. Stack Emissions Testing: Stack emissions of HF and total fluoride were measured in production units representative of each process operated in the CFI Plant City Phosphate Complex except triple superphosphate manufacture and storage. The latter processes have not been operated since 1991 and CFI has no current plans to do so. These measurements and the total stack HF emission were reported in an October 14, 2002, CFI report to the Department. The Division shall utilize the emissions estimated in the October 14, 2002 report as the stack emissions for the determination of estimated total annual HF emissions. Within 30 days of execution of this settlement agreement, CFI shall submit to the Division and Hillsborough EPC a test protocol and a test schedule for testing stack emissions for hydrogen fluorides. The Division shall either approve, deny or request additional information regarding the test protocol within 14 days of its submittal to the Division.

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~~(a) CFI shall respond to a request for additional information within 14 days of receipt of such written request. The Division may elect to audit the tests with its own calibration gases.~~

~~(b) The stack testing shall follow the approved protocol and shall be completed within 120 [the test report for the ponds isn't due until 90 days] days of execution of the settlement agreement. In the event CFI does not follow the testing protocol the test results will be deemed invalid and CFI shall comply with 40 CFR 63, subparts AA and BB, within 30 days of notification from the Division that the tests are invalid.~~

~~2. Stack Emissions Test Protocol: At a minimum, CFI's test protocol shall include testing each stack that emits total fluoride while operating the facility between 90 and 100% of operating capacity and:~~

~~(a) EPA Method 320 shall be paired with any necessary isokinetic sampling equipment to avoid under sampling at sources emitting acid particulate matter (e.g., hydrogen halides dissolved in water droplets).~~

~~(b) All sample lines shall be sufficiently heated in order to reduce the amount of water introduced to the equipment.~~

~~(c) Accurate measurements of hydrogen fluoride in the plant's exhaust gases are necessary for major source determination. CFI shall use EPA Method 26A with concurrent validation with EPA Method 320 to confirm whether the plant is a major source to ensure reasonable precision in the results of the stack testing source. CFI shall use EPA Method 13B to determine total fluorides.~~

~~(d) The test protocol shall require that the stack emissions testing performed by CFI for total fluorides and hydrogen fluoride will meet the requirements of the Division's~~

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~~Data Quality Objective (DQO). The DQO requires that the width of the 2-sided 90 percent confidence interval of the mean measured value be less than or equal to 10 percent of the mean measured value. This ensures that 90 percent of the time, when the DQO is met, the actual emission value will be 5 percent of the mean measured value. The DQO is achieved when $k/x_{bar} \leq 5$ percent, where k is the distance to each endpoint of the 90 percent (2-sided) confidence interval and x_{bar} is the average measured emission value.~~

~~(e) The facility shall perform stack testing until a sufficient number of test runs are conducted to meet the DQO. The stack test protocol shall provide for a minimum of three test runs. CFI may stop testing after 12 test runs are performed even if the DQO is not met.~~

~~(f) All stack test results shall be reported and used in the DQO calculation. The stack test results should be expressed as mass emission rates, but can be expressed as mass rate per unit of production or heat input if the emissions are logically related to production rates or heat input, and such rates can be measured within 10% accuracy. The Division will supply upon request a spreadsheet with the applicable DQO requirements and calculations.~~

~~(g) CFI shall provide the Division and Hillsborough EPC with written notice of the date on which stack testing is to be performed. This notice shall be provided a minimum of 14 days prior to the date on which the testing is to be performed.~~

3. Stack Emission Test Results

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~~(a) All stack emission test results shall be submitted to the Division and Hillsborough EPC within 45 days of the completion of testing. The test results shall be submitted under the signature and seal of a Florida registered professional engineer.~~

~~(b) At a minimum, the stack test results shall contain the following information:~~

~~(i) Gas certifications for gases used for calibrations and QA spiking. An explanation of how reference spectra were obtained or if they were produced by personnel not affiliated with the vendor of the FTIR equipment. The moisture concentrations that are expected when performing Method 320 testing and the effect of such on the reference spectra of HF at differing moisture concentrations. The test results shall include the concentrations and makeup of samples used to prepare the reference spectra for HF with and without moisture as needed.~~

~~(ii) Sample line temperatures showing that all sample heating lines were sufficiently heated.~~

~~(iii) A demonstration of isokinetic sampling by the use of supporting calculations.~~

~~(iv) Production rates during testing.~~

~~(v) All raw data taken during testing.~~

~~(vi) Spike recovery rates.~~

~~(vii) Sample calculations of emission rates from raw data.~~

~~(c) The Division shall review the test results to determine whether the results are accurate and complete. In the event the Division should request additional information concerning CFI's stack test results, the Division shall make such request within 14 days of CFI's submittal. CFI shall respond to a request for additional information within 14 days of receipt of such written request.~~

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~~(d) the Division shall utilize the stack tests in conjunction with the pond test report identified in section A, previously, and the fugitive emissions identified in Section C, below, to determine whether the Plant City Phosphate Complex is a major source of hydrogen fluoride emissions. CFI expressly waives any administrative or judicial right to challenge the Department's utilization of, and determination based upon, the stack test results.~~

C. MISCELLANEOUS FUGITIVE EMISSIONS

~~For the purpose of estimating total annual emissions, additional fugitive hydrogen fluoride emissions shall include those that are not vented through pollution control equipment or emitted from the process ponds system. CFI provided a reasonable estimate of such fugitive hydrogen fluoride emissions in its October 14, 2002 and May 22, 2003 reports. The Division shall utilize the fugitive emissions estimated in the May 22, 2003 report for the determination of estimated total annual HF emissions. These fugitive emissions include leaks from vessels, valves, conveyance equipment, etc.. For the purpose of estimating total annual emissions, the Division shall assume miscellaneous fugitive emissions are equal to one-tenth (1/10) of the combined sum of annual HF emissions from the process ponds and stacks. CFI expressly waives any administrative or judicial right to challenge the Division's utilization of, and determination based upon, the fugitive emission calculations.~~

D. SUMMARY OF HF EMISSIONS

1. The Division shall utilize the estimated annual average HF emissions from the pond testing report, the estimated annual average stack HF emissions from the October

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~~14. 2002 stack testing report, and the estimated annual fugitive HF emissions calculations from the May 22, 2003 report, all as set forth in Sections A, B, and C, above, to determine the total amount of HF from the facility Plant City Phosphate Complex and shall notify CFI of its determination. In the event the Division determines the facility emits 10 tons per year or more of HF, CFI shall within 30 days of such notification, notify the Department of its intent to either challenge the Department's determination or accept the applicability of the rule requirements. CFI reserves its right to an administrative or judicial challenge of the Division's determination. Moreover, CFI reserves all of its administrative and judicial rights to contest any Department determination that additional information is required, comply with AA and BB or an approved alternate monitoring plan within 30 days of such notification. CFI may file a protective request for an extension of time to file a petition on the Division's determination solely to protect its rights in the event of a third party challenge. Within 30 days of the Department's determination and provided no third party has challenged, CFI shall dismiss any request for an extension of time filed. CFI shall only file a petition for hearing in the event a third party challenges the Division's determination and that challenge is forwarded to DOAH.~~

2. In the event the Division determines the emission of HF from the facility is less than 10 tons per year, the Division shall notify CFI, and retract the Intent to Issue Revision to the Title V Air Operation Permit. ~~reopen the Title V permit and remove the 40 CFR 63 subparts AA and BB requirements.~~

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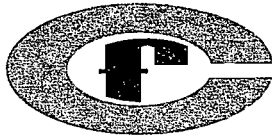
II. ALTERNATE MONITORING PLAN & TITLE V REVISION

1. ~~In the event that there is final agency action determining that the Plant City Phosphate Complex is a major source, the alternate monitoring plan attached hereto as Attachment A shall be applicable in lieu of the monitoring requirements otherwise set forth in Subparts AA and BB. Within 30 days of execution of this settlement agreement, CFI shall submit an alternate monitoring plan to the Division for approval. The Division shall either approve or deny the alternate monitoring plan or request additional information within 30 days of its submittal. CFI shall respond to a request for additional information within 30 days of receipt of such written request.~~

2. The Department shall reissue a draft, revised Title V Air Operation Permit to incorporate this Settlement Stipulation as a condition of this permit, part of a Compliance Plan, to ~~identify this facility as a major facility that is subject to 40 CFR 63 AA and BB, and incorporate changes to 40 CFR 63 AA and BB that have been finalized during the pendency of this case.~~ CFI shall publish notice of the draft, revised Title V Air Operation Permit as soon as possible after receipt thereof. CFI expressly ~~waives any~~ reserves all administrative, judicial ~~or and~~ other legal right to challenge the items stated in this paragraph in the Department's revised, draft Title V Air Operation Permit

IN WITNESS WHEREOF, CFI and the Department have executed this Settlement Stipulation this ____ of February, 2004.

P.O. Drawer L.
Plant City, Florida 33564-9007
Telephone: 813/782-1591
Fax: 813/715-0851



CF Industries, Inc.

Phosphate Operations

January 29, 2004

Mr. Errin Pichard, P.E., Administrator
Emissions Monitoring Section
Bureau of Air Monitoring and Mobile Sources
Florida Department of Environmental Protection
2600 Blair Stone Road, MS-5505
Tallahassee, FL 32399-2400

Re: Proposed Alternative Monitoring Plan; Pichard E-mail Letter of January 13, 2004.

Dear Mr. Pichard:

CF Industries, Inc., looks forward to achieving a mutually acceptable conclusion with the Department on the alternative monitoring plan and related issues.

Regarding the issue of monitoring costs relative to expected environmental benefits, such considerations are an essential feature of the NESHAP program. In fact, a court recently held that an aspect of a NESHAP rule other than the actual emissions limits – in that case a compliance schedule – cannot “impose costly obligations on regulated entities without regard to the Clean Air Act’s purpose.” In the case of Chemical Manufacturers Assoc. v. EPA, 217 F.3d 861 (D.C. Cir. 2000), EPA promulgated MACT standards that included a bifurcated compliance schedule. Sources intending to install the necessary pollution controls had three years to do so, whereas sources planning to cease the regulated activity were afforded two years (this was referred to as the “early cessation” provision). The court determined that the early cessation provision would not reduce the amount of hazardous air pollutant emissions, and therefore held that EPA’s action in imposing costly obligations on regulated entities without producing an environmental benefit was unreasonable. Chemical Manufacturers expressly required that burdens imposed by EPA be related to environmental benefits, and indicated that the application of this concept applies not only to emission standards but also to associated compliance schedules. Similarly, EPA’s expensive Subparts AA and BB monitoring requirements should also have ascertainable environmental benefits.

CF’s point is that, if the rule applies, alternative monitoring is justified in part because subparts AA and BB will otherwise impose additional costly monitoring, record-

Errin Pichard, P.E., Administrator

January 29, 2004

Page 2

keeping, and reporting requirements on the phosphoric acid and fertilizer manufacturing lines, which release only small amounts of HF emissions (less than 10 pounds per day from all point sources combined). By any reasonable metric, the environmental benefits associated with the more intensive monitoring and other requirements will be negligible. Moreover, pervasive monitoring of operational parameters associated with these process lines already is required under other existing regulations and the Title V permit. In sum, the lack of a correlation between the costs of monitoring and discernible environmental benefits supports the approval of alternative requirements as proposed by CF Industries.

Regarding the suggestion in your e-mail that CF declare itself a major source of HAPs as a pre-requisite to moving ahead on the alternative monitoring issue, CF presently is engaged in good faith negotiations with the Department to develop a Settlement Stipulation that will entail additional testing and analysis to resolve the major source issue. A feature of the current draft of that Settlement Stipulation, as proposed by CF, is that it will include as an attachment an alternative monitoring plan that will be applicable in the event that additional testing finds CF's phosphate complex to be a major source of HAPs. This is an important aspect of the settlement process to CF, and therefore we would appreciate the opportunity to proactively resolve the remaining alternative monitoring plan issues. In the interest of furthering that process, CF will shortly provide, under separate cover, the information items requested in your e-mail letter.

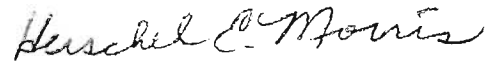
On a related matter, CF has communicated with the Department with regard to its intention, in the near future, to seek permit approval to increase the sulfuric acid production rate at the Plant City Phosphate Complex. In that respect CF has been advised that it is the Department's intention to include the HF MACT regulations as applicable requirements in the construction permit approval associated with that production rate increase. CF offers two comments with respect to that possibility.

First and foremost, we believe that it is not necessary or appropriate to address the HF MACT issue in a construction permit modification addressing an unrelated production rate increase. The HF MACT applicability issue is being addressed in good faith in the development of a Settlement Stipulation relating to the Title V permit, based on what we have understood to be mutual concurrence amongst CF and the Department that it is preferable to resolve the issue on the basis of additional and more reliable data. This logical and even-handed approach would be short-circuited by including the HF MACT rule as an applicable requirement in another permit. We hope that the Department will not withdraw from its ongoing effort with CF to develop a basis for resolving the HF MACT issue based on good science.

Second, in the event that DEP perceives that the production rate permit must contain at least an acknowledgment of the HF MACT regulations, CF requests that it simply identify the regulation and state, in a footnote or otherwise, that applicability is being determined via additional testing.

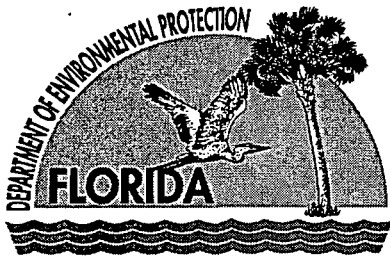
Again, we appreciate the Department's courtesy and cooperation on these matters.

Very truly yours,



Herschel E. Morris
Vice President
Phosphate Operations and
General Manager

cc: Michael Cooke, DARM
Trina Vielhauer, DARM
Al Linero, DARM
Jim Pennington, DARM
Cindy Phillips, DARM
Jerry Kissel, Southwest District
Jerry Campbell, EPCHC
J. S. Alves, HGS
Jim Sampson, CF



Florida
Department of
Environmental Protection

*fax sent 2/6/04
@ 10 35 AM
VA*

Jeb Bush
Governor

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

David Struhs
Secretary

F A X T R A N S M I T T A L S H E E T

DATE: 2/6/04

TO: Doug Beason

PHONE: _____

FAX: 245-2302

FROM: Trina Vielhauer

PHONE: 921-9503

Division of Air Resources Management

FAX: **850.922.6979**

RE: CF Industries

CC: _____

Total number of pages including cover sheet: 4

Message

If there are any problems with this fax transmittal, please call the above phone number.

"Protect, Conserve, and Manage Florida's Environmental and Natural Resources"

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Vielhauer, Trina

From: tedwards@cfifl.com
Sent: Friday, February 27, 2004 8:41 AM
To: Vielhauer, Trina
Subject: RE: site visit

Trina,

I don't think the same language will be appropriate for the Bartow facility, because their circumstances are much different from Plant City's. You will need to talk to Craig Kovach about that. His phone number is 863-533-8048 Ext. 246, and e-mail is ckovach@cfifl.com. Bartow is managed under a different corporate vice president than Plant City.

Tom

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

From: Vielhauer, Trina [mailto:Trina.Vielhauer@dep.state.fl.us]
Sent: Thursday, February 26, 2004 4:13 PM
To: tedwards@cfifl.com
Subject: RE: site visit

Tom,

Do you know if the same language we've agreed upon for Plant City will be amenable for Bartow? We are still getting the dates together- I hope to have that to you late this afternoon or first thing in the morning.

Trina

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

From: tedwards@cfifl.com [mailto:tedwards@cfifl.com]
Sent: Thursday, February 26, 2004 1:45 PM
To: Vielhauer, Trina
Subject: RE: site visit

Trina,

The Bartow facility is actively pursuing a permit renewal. They received a request for additional information in late January and are preparing the information. They are still operating the MAP/DAP storage and shipping facilities, and they want to maintain the Sulfuric Acid Plant permit. Their next submittal will address the HFMACT and CAM questions for that facility.

Tom

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

From: Vielhauer, Trina [mailto:Trina.Vielhauer@dep.state.fl.us]
Sent: Thursday, February 26, 2004 8:56 AM
To: tedwards@cfifl.com
Subject: RE: site visit

Tom,

On the process for "surrendering" the Bartow plant permit- it depends upon whether

2/27/2004

the facility was operated after September 8, 2003 [the existing permit expiration date]. Do you know if it ceased operations prior to that date?

Thanks,
Trina

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

From: Vielhauer, Trina [mailto:Trina.Vielhauer@dep.state.fl.us]

Sent: Wednesday, February 25, 2004 3:57 PM

To: tedwards@cfifl.com

Subject: site visit

Tom,

I am verifying the information for Bartow. March 5 appears to be the best date for us to visit and meet with you all. Please let me know what time you'd like to start and also directions [at least for me!] would be helpful.

Thanks,
Trina

Vielhauer, Trina

From: Pichard, Errin
Sent: Friday, March 26, 2004 11:59 AM
To: 'tedwards@cfifl.com'
Cc: Kahn, Joseph; Wider, Russell
Subject: alternate monitoring proposal

Tom-

We have been reviewing the revised table that you sent recently which describes CF's latest proposal for an alternate monitoring plan for the Plant City facility. Notable elements of the proposed plan are as follows:

1. For A-DAP/MAP, rather than monitor liquid flow rate to the final abatement scrubber and in the common header pipe that feeds the three downcomers, only monitor liquid flow in a common pipe that feeds all four scrubbers.
2. Eliminate any liquid flow monitoring requirement for all acid scrubbers because CF contends that these are mainly for product and ammonia recovery, rather than for HF control.
3. Eliminate any liquid monitoring requirement for the dust cyclonic scrubbers in the X, Y and Z granulation plants because CF contends that little, if any, HF is produced in the dust trains.
4. Monitor liquid delivery pressure on a 2-hour interval for the dryer and cooler pondwater scrubbers in the X, Y and Z granulation plants.

Regarding Item #1 above, we were not aware (and it is unclear from the schematic provided) that the three downcomer scrubbers and the final abatement scrubber are all fed by a common pipe. Nevertheless, because CF is putting much emphasis on the final abatement scrubbers and their contribution toward total HF control, and because we have already provided some relief by tentatively agreeing to allow one flow monitor in the common header feeding the three downcomer scrubbers, we feel that it is appropriate to monitor liquid flow rate being delivered directly to the final abatement scrubber.

Regarding Item #4 above, it has come to our attention that the department does not have the authority to approve this type of alternative monitoring. EPA has categorized alternatives to MACT testing and monitoring requirements into three groups – minor, intermediate and major. Florida has been delegated the authority to approve minor and intermediate alternatives, but not major alternatives. Major alternatives are defined at 40 CFR 63.90 and one example listed is the "Use of alternate averaging times for reporting purposes." After consultation with EPA, it was determined that 2-hour interval monitoring in lieu of continuous monitoring meets the definition of a "major" monitoring alternative.

Similarly, Items 2 and 3 above, i.e., no monitoring whatsoever, would definitely constitute major monitoring alternatives and must be approved by EPA. It should be noted, however, that the preamble to the MACT makes it clear that it is necessary to monitor liquid flow rate to "scrubbing devices used to control total fluorides or particulate matter." We believe that the acid scrubbers contribute significantly

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toward PM control and, thus, CF's justification for removing liquid flow rate monitoring altogether is insufficient.

It appears at this point that there are two options available to you in pursuing an alternate monitoring plan:

1. You can choose to pursue the proposed alternate monitoring plan as it is currently written. In this case, we will forward your proposal to EPA Region 4 for their review.
2. You can reconsider the "major" alternatives that you are proposing and develop a monitoring strategy that the department has the authority to review/approve. After that, we can meet again and continue to work toward developing a mutually-acceptable plan.

Please let me know how CF wishes to proceed.

Thanks,
Errin Pichard