

Jeb Bush  
Governor

# Department of Environmental Protection

South District  
2295 Victoria Avenue, Suite 364  
Fort Myers, Florida 33901-3881

July 28, 2006

RECEIVED

JUL 31 2006

BUREAU OF AIR REGULATION

Colleen M. Castille  
Secretary

CERTIFIED MAIL 7006 0810 0003 5373 0595  
RETURN RECEIPT REQUESTED

Mr. Terry Cole  
Oertel, Fernandez, Cole & Bryant  
301 S. Bronough Street, Suite 500  
Tallahassee, Florida 32301-1706

Re: Hendry County – AP  
U.S. Sugar Clewiston Mill  
White Sugar Dryer #2

Dear Mr. Cole:

Please consider this in response to your proposed Draft Consent Order, which we received July 13<sup>th</sup> regarding U.S. Sugar and the operation of White Sugar Dryer #2. We mutually agree that the Department alleges that Dryer #2 failed a specific emission test for particulate matter – resulting in the release of sugar grain sized particles, which were above permit limits.

Further, it is also understood that the dryer is an integral part of the overall operations at the site, and that U.S. Sugar is working to correct this problem with the manufacturer through both legal and technical means. Finally, the project is also being reviewed by our Tallahassee staff for conformance with permitting issues.

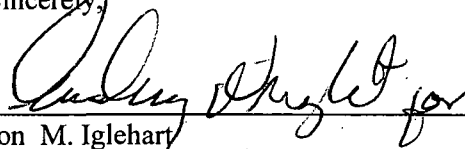
Again, as this equipment is essential to the daily operation and the financial impacts of it being shut down are disproportionate to the environmental consequences raised by its operation, we submit the following for your consideration.

As we are in basic agreement on the resolution of this issue, White Sugar Dryer #2 can continue to operate for a six-month period while the technical issues are addressed through our permitting procedures. During that period, a timetable can be developed with our permitting section, which addresses those functions and tests necessary to determine a final resolution through subsequent permits. Additionally, this will allow continued operation while the details and other administrative factors involved in the proposed Consent Order are finalized.

Mr. Terry Cole  
July 28, 2006  
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We trust the aforementioned addresses your concerns about the continued operation of this equipment. However, should you have any questions or concerns, please let us know.

Sincerely,



Jon M. Iglehart  
Director of  
District Management

JMI/RDB/jw

cc: Peter Briggs  
Don Griffin  
Trina Vielhauer  
Jeff Koerner, P.E. ✓



5. Based on the information that was provided to the Department by Respondent, the Department alleges a violation of Florida Statutes and Rules exists at the above described facility. Respondent conducted a visual emissions compliance test for Boiler No. 7 on November 16, 2005, with a reading of greater than 20%. Permit No. 0510003-14-AV, Specific Condition No. H.3.1, limits visible emissions to a maximum of 20%.

6. On December 7, 2005, a method 5 particulate matter stack test was conducted on the White Sugar Dryer No. 2. The particulate emissions average exceeded the allowable limit. The particulate matter averaged .014 grains per dry cubic foot (gr/dscf) and 9.90 pounds per hour (lbs/hr). Permit No. 051003-026-AC, Condition No. 5 limits emissions to .005 gr/dscf and 4.2 lbs/hr based on an average of three runs. This Consent Order establishes penalties assuming similar results for all times the dryer operated after that date.

7. Respondent asserts it contracted for the installation of approved air pollution control equipment which was installed and warranted. The equipment, is effective at removing small droplets, but seems to allow large droplets of sugar solution (200+ micron) to exit the stack, most of which drop out as liquid droplets on the plant buildings in the immediate vicinity. Respondent has filed a lawsuit seeking performance under the warranty by the contractor. Respondent has been diligent in seeking a fix for the problem described above.

8. Chapter 403, Florida Statutes, and Rules 62-4 and 62-212, F.A.C., require that facilities operate within the specified emission limiting standards established by the applicable permits. The Department has worked with the Respondent to address these issues.

9. The Department informed the Respondent of the Respondent's violations of Chapter 403, F.S., and applicable Department Rules by Warning Letter dated May 11, 2006 and met to discuss these matters on June 9, 2006.

10. Having reached a resolution of the matter, the Department and the Respondent mutually agree and it is

ORDERED:

11. Within 30 days of the effective date of this Consent Order, the Respondent shall pay to the Department a CIVIL PENALTY of Fifteen thousand, three hundred dollars (\$15,300.00) and ADMINISTRATIVE COSTS of Two hundred and fifty dollars (\$250.00) in settlement of the matters addressed in this Consent Order. The penalties include \$2000 for the initial stack test failure on the dryer and \$2000 for the visible emission exceedance and daily assessments for the dryer exceedances. Payment shall be made by cashier's check or money order. The instrument shall be made payable to the Department of Environmental Protection and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the Department of Environmental Protection offices in Fort Myers, Florida.

12. ~~Respondent received a construction permit for the sugar dryer and has submitted a permit application to modify that construction permit. Respondent is authorized to operate the dryer so long as it complies with this Consent Order and conditions of any extension of the construction permit until a final agency determination is made on the application to modify the construction permit. When final action is taken on that permit, those conditions shall supersede the conditions of this Consent Order.~~

13. Based on the best available data and assuming timely performance and no delay caused by other persons or entities, the Respondent will comply with the compliance schedule that is attached as Exhibit A.

*\$ Compliance Plan attached*  
*Resp. must complete compl. plan & demand by (date). If not demand must be submitted by (date) of dryer.*  
*cease of data of permit appl.*

14. Persons who are not parties to this Consent Order but whose substantial interests are affected by this Consent Order have a right, pursuant to Sections 120.569 and 120.57, F.S., to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the Bureau of Air Regulation at the address indicated above. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S.

The petition shall contain the following information:

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

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party

to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, F.S., or may choose to pursue mediation as an alternative remedy under Section 120.573 before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation Order with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The Order must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following:

(a) The names, addresses, and telephone numbers of any persons who may attend the mediation;

- (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
- (c) The agreed allocation of the costs and fees associated with the mediation;
- (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;
- (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;
- (f) The name of each party's representative who shall have authority to settle or recommend settlement;
- (g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference; and
- (h) The signatures of all parties or their authorized representatives.

As provided in section 120.573 of the F.S., the timely agreement of all parties to mediate will toll the time limitations imposed by sections 120.569 F.S. and 120.57 F.S. for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the effective date of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of



the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 F.S. and 120.57 F.S. remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

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

16. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.161(1)(b), F.S.

17. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties up to \$10,000.00 per day per violation and criminal penalties.

18. All plans, applications, penalties, stipulated penalties, costs and expenses, and information required by this Consent Order to be submitted to the Department shall be sent to Florida Department of Environmental Protection, Fort Myers, Florida.

19. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes or the rules promulgated thereunder that are not specifically addressed by the terms of this Consent Order.

20. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Order, hereby waives its right to seek judicial imposition of damages or civil penalties for alleged violations outlined in this Consent Order. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this Consent Order. Respondent

acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, F.S., and waive that right upon signing this Consent Order. Respondent reserves its right to request a formal proceeding on any determinations made under this Consent Order.

21. Force Majeure: If an event occurs that causes delay or the reasonable likelihood of delay in the achievement of the requirements of this Consent Order, Respondent shall have the burden of proving that the delay was or will be caused by circumstances beyond its reasonable control that could not have been overcome by due diligence. Upon occurrence of such an event or upon such an event becoming likely Respondent shall within 7 days, notify the Department orally and as soon thereafter as possible in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which Respondent intends to implement these measures. If Respondent demonstrates that the delay or anticipated delay has been or will be caused by circumstances beyond its reasonable control, the time for performance hereunder shall be extended for a period equal to the delay resulting from such circumstances.

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

23. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both the Respondent and the Department.

24. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order

is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law.

25. This Consent Order is a final order of the Department pursuant to Section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F. S. Upon the timely filing of a petition this Consent Order will not be effective until further order of the Department.

FOR THE RESPONDENT:

\_\_\_\_\_  
United States Sugar Corporation

\_\_\_\_\_  
Date

FOR DEPARTMENT USE ONLY

Done and ordered this \_\_\_\_\_ day of \_\_\_\_\_, 2006 in  
\_\_\_\_\_ County, Florida.

STATE OF FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

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

\_\_\_\_\_  
CLERK

\_\_\_\_\_  
Date

cc: Larry Morgan, OGC  
Sherrill Culliver, South District

