

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of:)	Permit No.: 1050055-013-AC
)	
Mosaic Fertilizer, LLC)	
)	
Petitioner.)	File No.: 05-J-AP

ORDER ON REQUEST
FOR
ALTERNATE PROCEDURES AND REQUIREMENTS

Pursuant to Rule 62-297.620, Florida Administrative Code (F.A.C.), Mosaic Fertilizer located in Polk County, has petitioned for approval of an alternate sampling procedure for monitoring the deposition of sulfur particulate at its South Pierce facility. The Petitioner requested approval to transfer the sample from the copper collection jar of the Nipher Gauge into a polypropylene or HDPE container to be sent offsite for analysis. The basis for this request is the Petitioner's assertion that shipping the Nipher Gauge collection jar to a laboratory is not practical. In addition, Petitioner requests permission to use an alternate collection jar if the copper jar is unavailable.

Having considered Petitioner's written request and all supporting documentation, the following Findings of Fact, Conclusions of Law, and Order are entered:

FINDINGS OF FACT

1. On October 4, 2005, the Department received Petitioner's request for approval to alter the sample collection requirement of Rule 62-212.600(2)(c), F.A.C., to allow the transfer of the water and solid particulate contents from the copper collection jar of the Nipher Gauge into a polypropylene or HDPE container for shipping, and to allow the use of a glass collection jar in lieu of the copper collection jar.
2. Petitioner requested "approval of an alternate procedure under provisions of Rule 62-297.620, FAC, for collecting and conveying a sample from a modified Nipher Gauge to a laboratory for analysis."
3. In addition, Petitioner requested approval for "the use of a glass collection jar of the same dimensions if the copper jar is unavailable due to any unforeseen circumstances."
4. Petitioner stated that, "The alternate procedure would involve the transfer of the water and solid particulate contents from the copper collection jar of the Nipher Gauge into a plastic (polypropylene or HDPE) container by using a triple distilled water rinse. The container will be sealed, the liquid level marked and sent off for analysis."
5. Further, Petitioner stated that, "As suggested by FDEP, a pH measurement and a measurement of the volume of water in the Nipher Gauge (to the nearest milliliter) will be conducted prior to the distilled water rinse."

6. Petitioner also stated, "Only qualified laboratory-trained personnel will conduct the sample transfer. A record will be kept of the sample pH value, the volume of distilled water rinse along with a Chain of Custody form."

7. As justification for the use of the proposed alternate sampling procedure, Petitioner stated, "The Nipher Gauge, available only by custom order from the Canadian government, has a single copper collection jar. Shipping the jar to a laboratory is not practical in this instance as the jar has no fitting lid; it is extremely heavy; and, it would be very difficult to replace if lost or damaged in transit."

8. Rule 62-212.600(2)(c), F.A.C., states, "No attempt shall be made to remove collected particulate sample from the modified Nipher Gauge jar at the field site. The modified Nipher Gauge deposition collection jar shall be covered and taken to the laboratory for analysis of the contents."

9. It is standard laboratory practice to use specialized shipping containers in order to protect the integrity of a sample during storage and handling. Shipping samples in glass containers risks breakage of the container and loss of the sample. Plastic containers are less prone to breakage and decrease this risk. The type of plastic selected is dictated by the need for the container to remain inert when exposed to the sample to minimize contamination of the sample.

CONCLUSIONS OF LAW

1. The Department has jurisdiction to consider Petitioner's request pursuant to Section 403.061, Florida Statutes (F.S.), and Rule 62-297.620, F.A.C.

2. Petitioner has provided reasonable justification that it may not be practical to ship the Nipher Gauge copper collection jar to an offsite lab for analysis of the contents, and that an alternate method is acceptable. The use of plastic (polypropylene or HDPE) shipping containers to minimize contamination of the sample is practical. The Department's conclusion is based upon review of standard laboratory procedures and dialogue with established laboratory professionals.

3. Petitioner has provided reasonable justification that the use of an alternate glass collection jar of the same dimensions is adequate for determining sulfur particulate deposition. The Department's conclusion is based upon the design of the copper collection jar, and review of standard laboratory procedures and dialogue with established laboratory professionals.

4. Pursuant to Rule 62-297.310(7), F.A.C., the Department may require Petitioner to conduct quality assurance tests that identify inconsistencies with or problematic data, if, after investigation, it is believed that any applicable condition of the applicable permits is being violated.

ORDER

Having considered Petitioner's written request and supporting documentation, it is hereby ordered that:

1. Petitioner shall not be required to ship the copper collection jar of the Nipher Gauge along with the contents to the lab for analysis.

2. The copper collection jar of the Nipher Gauge shall be covered and taken to a room at the facility, which shall be assigned to function as the sample laboratory. This room must be an enclosed, clean environment suitable for sample collection.

3. A pH measurement shall be taken and recorded prior to transfer of the sample from the copper collection jar to the shipping container.

4. Following pH measurement, the sample shall be transferred to the shipping container. The remaining contents of the copper collection jar shall be transferred to the shipping container by rinsing with exactly 100 milliliters of distilled water. After the shipping container is sealed, the sample level shall be marked on the outside of the shipping container.

5. Only qualified laboratory trained personnel shall conduct the pH test and sample transfer.

6. Only polypropylene, high-density polyethylene (HDPE) or Teflon containers shall be used for the shipping container.

7. In the event that the copper collection jar is stolen or damaged beyond repair, the Petitioner may use a glass replacement collection jar of the same dimensions.

8. The Petitioner shall submit the design of the replacement glass jar for approval by the Department's Emissions Monitoring Section prior to use in the field.

9. Only borosilicate glass shall be used for the replacement collection jar.

10. This Order shall not abrogate Petitioner's obligation to comply with any periodic monitoring requirements established pursuant to the provisions of the federal Clean Air Act (42 USC 1857, et seq) as amended in 1990.

11. This Order shall expire on October 1, 2010.

PETITION FOR ADMINISTRATIVE REVIEW

The Department's proposed agency action will become final upon expiration of the petition period described below unless a timely petition for an administrative hearing is filed pursuant to Sections 120.569 and 120.57 F.S., before the deadline for filing a petition. The procedures for petitioning for a hearing are set forth below.

A person whose substantial interests are affected by the proposed agency action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida, 32399-3000. Petitions filed by the permit applicant or any of the parties listed below must be filed within twenty-one days of receipt of this notice of intent. Petitions filed by any persons other than those entitled to written notice under Section 120.60(3) of the Florida Statutes must be filed within twenty-one days of publication of the public notice or within twenty-one days of receipt of this notice, whichever occurs first. Under Section 120.60(3), however, any person who asked the Department for

notice of agency action may file a petition within twenty-one days of receipt of that notice, regardless of the date of publication. A petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57 F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention will be only at the approval of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205 of the Florida Administrative Code.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner, the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of how and when petitioner received notice of the agency action or proposed action;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts upon which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by rule 28-106.301

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that 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 such final decision of the Department on the application have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation is not available in this proceeding.

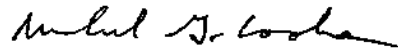
NOTICE OF APPEAL RIGHTS

Any party to this order has the right to seek judicial review of it under Section 120.68 of the Florida Statutes, by filing a notice of appeal under Rule 9.110 of the Florida rules of Appellate Procedure with the clerk of the Department of Environmental Protection in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida, 32399-3000, and by filing a copy of

the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice must be filed within thirty days after this order is filed with the clerk of the Department.

DONE AND ORDERED this 19th day of October, 2005, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



MICHAEL G. COOKE, Director
Division of Air Resource Management
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Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400
(850) 488-0114

Clerk Stamp

FILING AND ACKNOWLEDGMENT

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

Martha M. Wise October 19, 2005
(Clerk) (Date)