

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

RINKER MATERIALS CORPORATION
REQUEST PURSUANT TO
FLORIDA ADMINISTRATIVE CODE
RULE 62-701.310

SWAP 99-7

CASE NO. AP-STTF0051

ORDER GRANTING APPROVAL OF

ALTERNATIVE PROCEDURES AND REQUIREMENTS

This cause comes before me upon receipt of a January 18, 2000 request by Blank, Rigsby and Meenan on behalf of Rinker Materials Corporation for the approval of an alternative procedure, pursuant to Rule 62-701.310, Florida Administrative Code (F.A.C.). This alternative procedure request is to allow for the routine thermal treatment of petroleum contaminated soil with concentrations of arsenic above the established cleanup target level and use of the treated soil for a dedicated purpose that will provide an equivalent level of protection to human health and the environment.

FINDINGS OF FACT

1. The stationary soil thermal treatment facility for which this exception is sought is Rinker Materials Corporation, 1200 Northwest 137th Avenue, Miami, Florida, 33182. The Rinker facility operates under a general permit granted by Chapter 62-775, F.A.C., and is authorized to accept and treat petroleum

contaminated soil and soil with low concentrations (less than 10 ppm) of PCBs. Additionally, through a previously issued alternative procedure order, Rinker has been authorized to treat soil-like, petroleum contaminated media as described in the previously issues alternative procedure order AP-STTF0036.

2. Chapter 62-713, F.A.C., the Soil Treatment Facilities Rule, was promulgated by the Department on August 5, 1999. The applicant requests that exemptions be granted from Rules 62-713.300(1)(b), 62-713.520(2)(a) and 62-713.520(4), F.A.C. These provisions require that, as of February 1, 2000, all treated soil produced by soil treatment facilities must meet specific requirements to be considered "cleaned soil." The rules provide that treated soil which does not meet these requirements may be managed by use of one of several specific options. These rules apply to all soil treatment facilities, whether continuing to operate under a general permit previously issued pursuant to Chapter 62-775, F.A.C., or a operating under an individual permit in accordance with Chapter 62-713, F.A.C.,

3. Rinker Materials Corporation has examined historical operating records of concentration of chemicals of concern for soil previously treated at their facility. This information indicates that untreated soil commonly has concentrations of arsenic above the "cleaned soil" level of 0.8 mg/kg. The

concentrations of arsenic in the soil greater than the "cleaned soil" level are not generally related to the petroleum contamination but rather are due to background conditions, either naturally occurring or due to other anthropogenic activities not associated with the petroleum contamination. Soil thermal treatment facilities effectively remove volatile organic chemicals from contaminated soil but are relatively ineffective at removal or reduction of concentrations of inorganic chemicals, including arsenic. The concentrations of arsenic in thermally treated soil will generally be similar to the concentrations in the soil prior to treatment. Therefore, Rinker expects that a significant amount of the soil to be treated will not meet the "cleaned soil" level for arsenic after being treated.

4. Rinker Materials Corporation has historically used most or all of the soil treated at the thermal treatment facility for feedstock in the manufacture of portland cement. The Department has not previously mandated the soil be used in this manner because under the provisions of Chapter 62-775, F.A.C., Rinker has been required to achieve the "clean soil criteria" for unrestricted disposal. The manufacture of portland cement is considered to be an encapsulation process, which immobilizes contaminants and prevents the normal routes of exposure through dermal contact, ingestion, or leaching to groundwater. Rinker

proposes to establish a process whereby all of the petroleum contaminated soils and other petroleum contaminated media which Rinker is authorized to treat under its Chapter 62-775 general permit will be incorporated into the portland cement manufacture process. The request also includes treatment and disposal of other soil-like petroleum contaminated media which Rinker has been authorized to treat under a previously issued alternative procedure order (AP-STTF0036).

5. Rinker asserts that encapsulation of contaminants in concrete products provides an equivalent level of protection as land disposal of treated soils that meet the soil cleanup target levels and additionally will provide a beneficial use for the treated soil. Rinker will continue to comply with all other provisions of its current general permit for storage, handling, sampling and analysis, and recordkeeping of treated and untreated soil.

CONCLUSIONS OF LAW

Rule 62-701.310, F.A.C., authorizes the approval by the Secretary or the Secretary's designee of alternative procedures and requirements concerning the provisions of Chapter 62-701, F.A.C., or Chapters 62-702 through 62-720, F.A.C. The Department concludes that the applicant has adequately demonstrated that the proposed alternative procedure provides a substantially

equivalent degree of protection for the lands, surface waters, and groundwaters of the State as the established requirements in Chapter 62-713, F.A.C., and that the alternative procedure is at least as effective as the established requirements.

Upon consideration of the foregoing it is therefore ORDERED that the request of Blank, Rigsby and Meenan for an alternative procedure and requirement for the Rinker Materials Corporation thermal treatment facility located at 1200 Northwest 137th Avenue in Miami, Florida is GRANTED, subject to the following conditions.

CONDITIONS

1. All of the treated soil or other material produced by Rinker's soil thermal treatment facility will be incorporated into the portland cement manufacture process.
2. Rinker will continue to comply with all other provisions of its current general permit for storage, handling, sampling and analysis, and recordkeeping of treated and untreated soil.
3. This Approval will be valid for the life the the existing general permit, unless otherwise modified or revoked by the Department. If and when Rinker applies for an individual permit pursuant to Chapter 62-713, F.A.C., the permit application may include a request for alternate procedures in accordance with Rule 62-713.220, F.A.C.

NOTICE OF RIGHTS

The Department's Order Granting Approval of Alternate Procedures and Requirements will be considered final unless a timely petition for an administrative hearing is filed under sections 120.569 and 120.57 of the Florida Statutes 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 Department's 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 by the applicant or any of the parties listed below must be filed within twenty-one days of receipt of this written notice. Petitions filed by other persons must be filed within twenty-one days of publication of the notice or receipt of the written notice, whichever occurs first. The 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 of the Florida Statutes, or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion 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, address, and telephone number of each petitioner, the applicant's name and address, the Department File Number and the county in which the project is proposed;

(b) A statement of how and when each petitioner received notice of the Department's action or proposed action;

(c) A statement of how each petitioner's substantial interests are or will be affected by the Department's action or proposed action;

(d) A statement of all material facts disputed by petitioner or a statement that there are no disputed facts;

(e) A statement of the ultimate facts alleged, including a statement of the specific facts which the petitioner contends

warrant reversal or modification of the Department's action or proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the Department's action or proposed action; and

(g) A statement of the relief sought by the petitioner, stating precisely the action the petitioner wants the Department to take with respect to the Department's action or proposed action.

A petition that does not dispute the material facts on 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 have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

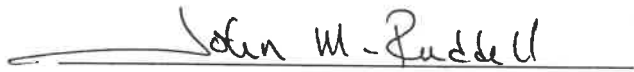
Mediation is not available in this proceeding.

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 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 of appeal must be filed within thirty days after this order is filed with the clerk of the Department.

DONE AND ORDERED this 28th day of January, 2000 in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


John M. Ruddell, Director
Division of Waste Management
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

CERTIFICATE OF SERVICE

I, the undersigned Clerk of the Department, HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by United States Mail to Mr. Mike Vardeman, CSR-Rinker Materials Corporation, 1200 NW 137th Avenue, Miami, Florida 33182, on this 31st day of January, 2000, in Tallahassee, Florida.

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to §120.52(11), Florida Statutes, with the designated Department clerk, receipt of which is hereby acknowledged.

Patricia Lanfer
(Clerk)

1/31/00
(date)

Copies furnished to:

Goeff Smith
Chris McGuire
Tom Conrardy
✓ Richard Tedder