

1. Rinker Materials operates a soil thermal treatment facility at 1200 Northwest 137th Avenue, Miami, Florida, 33182, in Miami-Dade Co. This facility operates under permit number 0133892-002-SO, issued in accordance with Chapter 62-713, F.A.C., and is permitted to accept and treat petroleum-contaminated soils

and also soils 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 in the manufacturing of Portland cement.

2. The applicant requests that relief be granted from Rule 62-713.510(6), F.A.C. This subsection requires the permittee to sample and analyze treated soils to ensure that the facility is achieving the requirements for evaluation and use of treated soils in Rule 62-713.520, F.A.C., which reference the cleanup target levels for direct exposure and leachability in Chapter 62-777, F.A.C.

3. Rinker Materials Corporation has been approved for two other alternate procedures relating to post-treatment soils. AP-STTF001, approved April 1, 1991, granted relief from the requirement to sample and analyze treated soil and instead required the sampling and analysis of clinker, the intermediate product from a cement kiln. AP-STTF051, approved January 31, 2000, allowed the use of treated petroleum-contaminated soils that exceeded the cleanup target level for arsenic as a feedstock in the Portland cement manufacturing process.

4. Rinker proposes to establish a process whereby all of the treated soils and media produced at the facility will be used as feedstock in the manufacture of Portland cement. The use of Portland cement in the making of concrete 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. This also provides a second thermal treatment of the soil, as part of the fine milled raw material stream going to the cement kiln pyroprocessing system.

5. Rinker acknowledges that the treated soil produced by its facility will sometimes contain contaminants that exceed the criteria specified for "cleaned soil" in Rule 62-713.520(2), F.A.C. However, Rinker has demonstrated that encapsulation of contaminants in concrete products provides an equivalent level of protection as does land disposal of treated soils that meet the soil cleanup target levels. Rinker thus argues that performing post-treatment analysis of the soils is unnecessary if all of the treated soil is used in concrete products.

#### CONCLUSIONS OF LAW

Rule 62-713.220, F.A.C., authorizes the approval by the Department of alternate procedures and requirements concerning solid waste management facilities. Based upon the above findings and the information contained in the Request for Alternate Procedures the Department concludes:

1. That the applicant has demonstrated a sufficient basis for the exception from the established requirements;

2. That the applicant has adequately demonstrated that the alternate procedures provide an equal degree of protection for the public and the environment as the established requirements;

and,

3. That the alternate procedures are at least as effective as the established requirements.

Upon consideration of the foregoing it is therefore ORDERED that the request for alternate procedures and requirements from Rule 62-713.510(6), F.A.C., is GRANTED, subject to the following condition:

1. This Order will become effective only when the Miami-Dade Department of Environmental Resources Management, on behalf of the Florida Department of Environmental Protection, issues the renewal operating permit number 0133892-003-SO for the soil treatment facility. This Order and supporting documentation will be incorporated into that permit and will be reviewed in conjunction with the facility permit renewal and any subsequent facility permit applications. However, unless the Department takes affirmative action to revoke or modify this Order, it will have unlimited duration and will be incorporated into the facility permit and all subsequent facility permits for the soil treatment facility.

#### NOTICE OF RIGHTS

Pursuant to Section 403.815, F.S., and Rule 62-110.107, F.A.C., you are required to publish at your own expense the enclosed Notice of Proposed Agency Action. The notice shall be published one time only within 30 days in the legal ad section of a newspaper of general circulation in the area affected. For the purpose of this rule, "publication in a newspaper of general

circulation in the area affected" means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031, F.S., in the county where the activity is to take place. Where there is more than one newspaper of general circulation in the county, the newspaper used must be one with significant circulation in the area that may be affected by the permit. If you are uncertain that a newspaper meets these requirements, please contact the Department at the address listed below. You must provide proof of publication to the Department of Environmental Protection, Solid Waste Section, MS#4565, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, as soon as practical after publication.

In the alternative, you may include the following language in the public notice for permit number 0133892-003-SO provided that that public notice allows 21 days for the filing of any petition:

The Department of Environmental Protection also gives Notice of its Intent to grant approval of alternate procedures pursuant to Rule 62-713.220, Florida Administrative Code (F.A.C.) to Rinker Materials Corporation. This approval provides an exemption from Rule 62-713.510(6), F.A.C., which requires testing of treated soils, provided that all treated soils are used as feedstock in the manufacture of Portland cement at the Rinker Materials Miami Soil Thermal Treatment

Facility at 1200 Northwest 137th Avenue, Miami, Florida in Miami-Dade County. 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 requirements for filing a petition relating to the proposed approval are the same as those set forth herein relating to the proposed permit, except that the petition must be filed (received) within 21 days of receipt of this notice in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

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, 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 Department's proposed agency action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. 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, F.S., 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, F.A.C.

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, F.A.C.

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



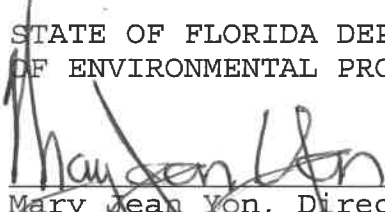
Department have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

In accordance with Section 120.573, F.S., the Department advises that mediation is not available in this case under the provisions of that statute. This does not prevent any interested parties from agreeing to other forms of alternate dispute resolution.

Any party to this order has the right to seek judicial review of it under Section 120.68, F.S., by filing a notice of appeal under Rule 9.110, 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 24<sup>th</sup> day of April, 2007, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

  
Mary Jean Yon, Director  
Division of Waste Management  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by United States Mail to Mr. Mike Vardeman, Rinker Materials Corporation, 1200 NW 137<sup>th</sup> Avenue, Miami, Florida 33182, on this 24<sup>th</sup> day of April, 2007, 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.

  
(Clerk)

4/24/07  
(date)

Copies furnished to:

Chris McGuire, DEP/OGC  
Hardeep Anand, P.E., Miami-Dade DERM  
Richard Tedder, P.E., DEP/Tallahassee  
Steve Cullen, Koogler and Associates

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
NOTICE OF PROPOSED AGENCY ACTION

The Department of Environmental Protection gives Notice of its Intent to grant approval of alternate procedures pursuant to Rule 62-713.220, Florida Administrative Code (F.A.C.), to Rinker Materials Corporation, to be exempt from the requirements for post treatment soil sampling provided all treated soils are used as feedstock in the manufacture of Portland cement at the Rinker Materials Corporation Miami Soil Thermal Treatment Facility in Miami-Dade County. The applicant has requested an exception from Rule 62-713.510(6), F.A.C., which requires a soil treatment facility to provide post treatment soil sampling to ensure the facility is achieving the requirements for evaluation and use of treated soils in Rule 62-713.520, F.A.C.

The Department's file on this matter is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Division of Waste Management, Solid Waste Section, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

Persons whose substantial interests are affected by the above proposed agency action have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes (F.S.), to petition for an administrative determination (hearing) on the proposed action. The petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, within 21 days of publication of this notice. A copy of the Petition must also be mailed at the time of filing to the applicant at the address indicated. Failure to file a petition within 21 days constitutes a waiver of any right such person has to an administrative determination (hearing) pursuant to Sections 120.569 and 120.57, F.S., 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, F.A.C.

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.

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 application 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 publication of this notice in the Office of General Counsel of the Department at the above address. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Section 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 28-5.207, Florida Administrative Code.

In accordance with Section 120.573, F.S., the Department advises that mediation is not available in this case under the provisions of that statute. This does not prevent any interested parties from agreeing to other forms of alternate dispute resolution.