STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FINR II, INC.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 11-6495
	)	
CF INDUSTRIES, INC., AND DEPARTMENT OF ENVIRONMENTAL PROTECTION,	)	
	)	
Respondents.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, this matter was heard before the Division of Administrative Hearings by its assigned Administrative Law Judge, D. R. Alexander, on March 26-28, 2012, in Tallahassee, Florida.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue is whether CF Industries, Inc. (CF), has provided reasonable assurance that its proposed mining and reclamation of the South Pasture Extension (SPE) mine in Hardee County can be conducted in a manner that complies with applicable statutes and rules so that an Environmental Resource Permit (ERP), SPE conceptual reclamation plan (CRP), South Pasture Wetland Resource Permit (WRP) Modification, and South Pasture Conceptual Reclamation Plan Modification should be issued by the Department of Environmental Protection (Department).

PRELIMINARY STATEMENT

On November 21, 2011, the Department issued proposed agency action approving an application by CF for the SPE ERP, SPE CRP, South Pasture Wetland Resource Permit Modification, and South Pasture Conceptual Reclamation Plan Modification. On December 12, 2011, FINR II, Inc. (FINR or Petitioner), which owns property adjacent to CF's property, timely filed a Petition challenging the proposed agency action. The matter was referred by the Department on December 29, 2011, to the Division of Administrative Hearings (DOAH) to be set for hearing. On January 3, 2012, CF filed a Notice of Request for Summary

Hearing pursuant to section 378.205(3), Florida Statutes. An Order approving that request was issued on January 4, 2012, and the matter was scheduled for final hearing on March 26-30, 2012, in Tallahassee, Florida. On March 12, 2012, the Department issued revised proposed agency action incorporating a new modeling report prepared by CF which provides further support for the Department's proposed action.

At the final hearing, FINR presented the testimony of Steve Freeley, Vice-President; Nicolas Katzaras, General Manager of CF; Phillip R. Davis, President of SDI Environmental, Inc. (SDI), and accepted as an expert; John E. Palmer, a hydrogeologist with SDI and accepted as an expert; Robert W. Burelson, a professional engineer with Water & Air Research, Inc., and accepted as an expert; and Dr. Jorge J. Villalba, Chief Medical Officer and Director of FINR and accepted as an expert. Also, it offered FINR Exhibits 1-9, 42-49, 52, 129 (pages 1-4 only), 130 (except pages 6-11), 131-135, 135A, 137-147, 149-151, 151A, 152-156, 159, 162, and 164-166. All were received except exhibit 52, upon which a ruling was reserved. The objection to that exhibit is overruled. FINR also submitted a written proffer on matters previously excluded by Order dated February 16, 2012. That Order granted CF's Motion to Strike and Motion in Limine.[1] CF presented the testimony of Gary Blitch, Senior Environmental Affairs Specialist; Dr. Douglas J. Durbin,

Technical Director and Senior Principal/Manager of Cardno Entrix and accepted as an expert; Dr. John Kiefer, a professional engineer with AMEC Environmental and Infrastructure, Inc. (AMEC), and accepted as an expert; Scott C. Wuitschick, a professional engineer with AMEC and accepted as an expert; and Jeffrey A. Beriswill, a professional engineer with AMEC and accepted as an expert. Also, it offered CF Exhibits 4, 6, 7, 14-17, and 19 which were received in evidence. The Department presented the testimony of Matt Wilson, an Environmental Specialist II; Orlando E. Rivera, Program Administrator of the Mandatory Phosphate Section and accepted as an expert; and Dr. Owete S. Owete, Program Administrator-Technical Support Section and accepted as an expert. Also, it offered Department Exhibits 1 and 2, which were received in evidence. Finally, CF and the Department jointly offered Joint Exhibits 1A, 1B, 2, 3, 4A, 4B, 5-7, 8A (Tabs 1-47, 49-53, and 55-79), 8B (Tabs 86-91, 93-98, 105, and 106), and 15-22, which were received in evidence.

A Transcript of the hearing (six volumes) was filed on March 29, 2012. Proposed Findings of Fact and Conclusions of Law were filed by Petitioner and jointly by Respondents on April 12, 2012, and they have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

A. The Parties

1. CF is a Delaware corporation authorized to do business in the State of Florida and is the applicant in these proceedings. CF has applied for permits to conduct phosphate mining, reclamation, and associated activities on property in Hardee County known as the South Pasture Extension tract. These activities are referred to as the "Project," and the South Pasture Extension tract property is referred to as the "Project site."

2. The Department is a state agency with jurisdiction over ERP permitting under Part IV, chapter 373, for phosphate mining activities, and jurisdiction over phosphate mining reclamation under Part II, chapter 378. Pursuant to that authority, the Department reviewed the ERP, CRP, WRP Modification, and CRP Modification applications for the Project.

3. Petitioner is a Florida corporation in good standing, doing business in the State of Florida. Petitioner owns approximately 875 acres of land east of County Road 663 and immediately south of and adjacent to the Project site, which it leases to two affiliated companies, Florida Institute of Neurological Rehabilitation, Inc. (FINR I, Inc.) and FINR III, LLC. FINR I, Inc., operates the Florida Institute of Neurological Rehabilitation, which is a post-acute, state-

licensed inpatient rehabilitation facility accredited by the Commission on Accreditation of Rehabilitation Facilities. It specializes in the treatment of children and adults who have sustained brain injury or some other form of neurologic trauma.

4. The facility currently consists of 238 beds offering three levels of care and has approximately 135 to 140 inpatient clients, of which 115 reside on the property. The property has been used as a neurological rehabilitation center since 1986.

5. Among other things, patients participate in organized and individual recreational activities on the property, including fishing, nature walks, baseball, and basketball games. Outdoor activities are critical to patient care, especially those with frontal lobe damage.

6. The facility is only accessible by Vandolah Road (from the south) and that roadway serves as its only evacuation route. If the Project were to cause flooding on its property, as Petitioner alleges, it could reasonably be expected to prevent Petitioner from leasing its land to the related companies because the facility's employees or outside medical personnel could not enter the facility or evacuate the patients; it could interfere with the generators or electrical components required for patient care; it could deny the patients use of outdoor areas; and it could impede FINR I, Inc.'s ability to develop and expand facilities on the undeveloped part of the property.

B. General Background

7. Phosphorus is an essential element for plant and animal nutrition and is one of the primary nutrients necessary for plant growth. Phosphate rock is one, if not the only, known significant source of phosphorus, and there are no synthetic substitutes. Continued mining of phosphate rock is therefore critical to the agriculture industry as well as to the general population, both in the United States and globally. See § 378.202(1), Fla. Stat.("[t]he extraction of phosphate is important to the continued economic well-being of the state and to the needs of society").

8. CF has been mining in northwest Hardee County for decades. CF first began mining for phosphate in 1978 at what was then known as the North Pasture mine. Mining operations at the North Pasture mine concluded in the mid 1990s, and the lands associated with that mine have been completely reclaimed.

9. Pursuant to local, state, and federal permits, CF relocated its beneficiation plant (which separates the phosphate ore matrix into phosphate rock, waste clay, and sand) to its present location south of State Road 62 in 1993, and began operation of its South Pasture mine in 1995. The South Pasture mine encompasses about 15,390 acres.

10. After the startup of the South Pasture mine, CF acquired three additional land parcels totaling approximately

7,512.8 acres with mineable reserves contiguous to and immediately south of the South Pasture mine. These parcels are collectively referred to as the South Pasture Extension tract or the Project site. The Project site is bisected by County Road 663, which runs north and south through the Project site, generally in a southeasterly direction. Immediately to the west is Mosaic Fertilizer, LLC's (Mosaic's) permitted Ona Fort Green Extension and to the south is Mosaic's Ona mine, for which applications for mining approvals are currently pending regulatory approval.

11. CF currently extracts phosphate rock at its South Pasture mine at a rate of 3.6 million tons per year. If the applications are approved, the Project will extend the life of the current South Pasture mine and beneficiation plant by ten years, permitting mining to continue at this same average rate through 2035.

12. CF has an excellent record of compliance with respect to permits issued under chapters 373 and 378. Petitioner has raised no enforcement or compliance issues relative to CF's operation of its mining activities.

13. In 1986, New Medico, Petitioner's predecessor in interest, established the neurological rehabilitation center on a 298-acre campus at the center of Petitioner's property and began accepting patients that same year. Petitioner actually

acquired the Hardee County property in 1996, after mining activities began on the South Pasture mine.

14. CF and Petitioner share a common boundary on three sides. The historic headwaters of Troublesome Creek are located within the Project site and along this common boundary, as well as within Petitioner's property, and they have been heavily ditched and degraded by agricultural activities. Troublesome Creek itself (as opposed to its headwaters) begins on the southeastern portion of the Project site, east of Petitioner's property, and has been reduced to a narrow, fairly incised conveyance flowing intermittently south-southeast to the Peace River.

15. Since 1995, when CF began mining operations at its South Pasture mine, and until the present time when Petitioner filed its Petition challenging CF's Project, the parties' respective operations have co-existed and are currently approximately a half mile apart.

C. Project Logistics

16. Over the last five years CF has relied upon a team of experts from several different consulting firms and disciplines to assist it with preparing and supporting its application.

17. CF will integrate materials handling on both the existing South Pasture mine and the Project site. Specifically, mining and reclamation operations at the Project site will

employ the same methods currently approved by the Department for use at the South Pasture mine, and will utilize the existing operational facilities and workforce.

18. The existing beneficiation plant at the South Pasture mine will separate the phosphate ore matrix mined at the Project site into phosphate rock, sand, and clay. Waste clays from the Project will be disposed of within existing clay settling areas (CSAs) at the South Pasture mine and new CSAs proposed for the Project site. The Project's mine water recirculation system will also be integrated with the South Pasture mine's recirculation system.

19. As it has done at the South Pasture mine, which is located only one-half mile north of Petitioner's property, CF must install a perimeter ditch and berm system (which includes a recharge ditch system) along the Project site's boundaries prior to any clearing to contain Project water within the CF site and to protect adjacent properties during mining operations. The ditch and berm system is installed approximately six months to one year prior to the extraction of material within a particular mine block.

20. Pursuant to Specific Condition 14 of the ERP, the recharge ditch system, which serves to provide groundwater recharge to preserved and off-site wetlands and surface waters during mining to avoid potential adverse impacts, must be

constructed before mining activities can occur within 1,800 feet of any preserve or property boundary. The recharge ditch systems in each mine block adjacent to such boundaries will be designed based upon additional site-specific hydrogeologic testing and analysis and installed prior to mining after the Department has approved the final design.

21. Specific Condition 14 also requires development and implementation of an Environmental Management Plan consistent with the requirements of that condition and with Appendix 14 of the ERP at least four years prior to mining of the Project site. Pursuant to this condition, CF must also conduct detailed baseline monitoring for at least four years prior to mining and conduct continuous during-mining monitoring, visual inspections, water table and stream flow analysis, and if necessary, implement hydrologic mitigative or remedial measures, to ensure that the recharge systems function as intended to protect unmined wetlands and other surface waters from adverse impacts by mining operations. These activities must continue until the area within 1,800 feet of the preserve or property boundary is backfilled and CF has documented that subsurface flows have achieved conditions hydrologically equivalent to those described in the Integrated Modeling Report (IMR) prepared for the Project.

22. CF's mine plan indicates the sequence of mining on the Project site. Preparatory mining activities are scheduled to begin in 2017, with actual mining scheduled to begin in 2019, but are not scheduled to begin adjacent to Petitioner's property until 2027, progressing along CF's shared property boundary with Petitioner in a counterclockwise fashion, and west of County Road 663 through 2031. Piezometer wells and rainfall gauges must be installed along all preserves and property boundaries at least four years prior to initiating mining of the Project site, allowing for collection of an ample amount of baseline reference data before mining begins adjacent to Petitioner's property.

23. As mining progresses within each mine block, backfilling with sand tailings and initial revegetation will follow mining almost immediately (three months) after mining, including in the vicinity of Petitioner's property. As each mine block is backfilled, within approximately three to five years after mining, the entire area will be completely backfilled, contoured, and revegetated. Within the same approximate timeframe, once the entire area is stabilized and following one year of water quality monitoring, the ditch and berm system will be dismantled and the area reconnected to its watershed.

24. CF has sufficient water available from multiple water inputs, including very clean water from its Aquifer Recharge and

Recovery Project (ARRP) on the South Pasture mine to support the proposed mining and reclamation activities on the Project site.

25. CF will also construct a reroute ditch adjacent to Petitioner's property. The purpose of the reroute ditch is to reroute existing surface water flow in the Troublesome Creek headwater ditches off of Petitioner's property, around active mining operations, and then into Troublesome Creek as it exits the Project site to the southeast. To specifically address Petitioner's concerns regarding flooding, CF submitted conceptual designs for a reroute ditch to the Department prior to final hearing in this matter, and the Department modified its ERP accordingly. Like the recharge system, the final design of the reroute must be based on an additional site-specific assessment conducted pursuant to the ERP, prior to actually severing flow.

26. CF's South Pasture mine has two permitted National Pollutant Discharge Elimination System (NPDES) outfalls located on Shirttail Branch and Doe Branch, both of which flow into Payne Creek, which is a tributary to the Peace River. While these existing NPDES outfalls will continue to meet all of CF's discharge needs for Project mining operations due to integration of the mine recirculation system, CF may obtain additional outfalls on the Project site to provide flexibility to supplement stream flows during mining in preserved and off-site

streams. One such potential discharge point was identified on the northern boundary at Petitioner's property, as "S-1."

D. Petitioner's Allegations

27. Conflicting testimony was presented by the parties on the issues raised by Petitioner. These conflicts have been resolved in Respondents' favor, who submitted the more credible and persuasive evidence. Where a specific allegation is not addressed in this Recommended Order, it has been considered and found to be without merit.

28. Petitioner alleges, on the one hand, that the Project will either cause flooding on its property so as to adversely impact its and its lessees' use and enjoyment of the property, and, on the other, will cause dewatering of its property so as to adversely affect its wetlands and other water resources.

29. While the undersigned did grant CF's Motion to Strike, Petitioner was permitted to pursue its water resource and environmental impact issues and expressed its concerns regarding the Project's impact on Petitioner's property and development potential as well as on the health, safety, and welfare of residents or inhabitants of Petitioner's property. These concerns were addressed by Steve Freeley, FINR II, Inc.'s former director of marketing and now a Vice President, and Dr. Jorge Villalba, FINR I, Inc.'s medical director.

30. Mr. Freeley, a fact witness, summarized Petitioner's concerns, as he understood them, to be the Project's potential for flooding, dewatering, and well contamination on Petitioner's property, particularly how these events might affect Petitioner's pocketbook and the future development potential of Petitioner's property. However, Mr. Freeley admitted that he had no knowledge of the Project application or supporting materials, had never been to the South Pasture mine, and had no familiarity with phosphate mining.

31. Dr. Villalba testified primarily on behalf of FINR I, Inc., patients at the rehabilitation facility, in particular his concerns regarding his patients' specific sensitivity to environmental stimuli. Dr. Villalba has no legal affiliation or association with Petitioner, being solely an employee of, and the medical director for, FINR I, Inc. Dr. Villalba also testified regarding the need to internally relocate some patients due to flooding caused by hurricanes in 2004. More specifically, Dr. Villalba testified that in 2004 residential cabins on-site experienced water levels rising up to the steps of the elevated residential facilities. Like Mr. Freeley, he admitted he had no knowledge of the application materials, phosphate mining, CF's South Pasture mine operations, or the materials submitted in support of the proposed agency action.

32. For all of the following reasons, the adverse environmental and water resource-related concerns of Petitioner are determined to be without merit and are therefore not credited.

E. Analysis of Hydrology

33. CF and the Department thoroughly investigated the Project's potential for causing adverse flooding and dewatering impacts on adjacent properties.

34. Event-based stormwater runoff modeling provided reasonable assurance that peak discharge rates and outflow volumes at exit points from the Project site under post-reclamation conditions would not cause adverse offsite flood impacts. The results of CF's flood modeling are summarized in a flood modeling report (FMR). The FMR demonstrated that the proposed post-reclamation land use, topography, and soil distributions will not result in any adverse changes in the peak discharge comparison to pre-mining conditions for flood flows; peak flood values will be maintained or improved by the reclamation design; and post-reclamation peak flood values along Petitioner's shared property boundary with CF will be lower than pre-mining conditions.

35. Three standard rainfall events were evaluated: (a) the mean annual 2.33-year, 24-hour event, (b) the 25-year, 24-hour event, and (c) the 100-year, 24-hour event. These storm events

are part of a standard suite of engineering design storms that the Department commonly relies upon to assess pre-mining versus post-reclamation flooding. CF utilized a one-dimensional surface water computer model, MIKE 11, to prepare the flood modeling report. MIKE 11 uses the Natural Resources Conservation Service's (formerly the United States Soil Conservation Service's) TR-55 based approach and applies a 1-D hydraulics component that represents Florida landscape conditions well. This modeling, and the resultant FMR, which is a part of the application, were not contested. It demonstrated that the proposed post-reclamation condition will not result in any adverse flooding. In fact, local flood hazards will likely be reduced due to the lowering of peak flood values.

36. CF also developed an integrated surface and groundwater model for the Project. Integrated modeling assesses long-term hydrologic conditions to ensure that the Project will result in hydropatterns that restore and sustain reclaimed wetlands and waterbodies on the Project site. The MIKE SHE model was used to perform the hydrologic simulations; the modeling results are contained in CF's IMR, as part of the application. It was also used to establish the normal seasonal high and seasonal low ranges for wetlands and surface waters that were used in other portions of the application, such as the Recharge Modeling Report (RMR). There was no objection to the

use of this model or its results. The IMR indicates that the proposed reclamation will restore on-site wetland functions, promote the maturation of on-site wetlands, and result in an overall water balance that maintains or improves regional hydrology. Off-site stream flows to Troublesome Creek will be enhanced, which will improve that system's capacity to support aquatic fauna.

F. During-Mining Hydrologic Analysis

37. In addition to performing pre-mining and post-reclamation condition hydrologic analyses, CF and the Department evaluated the Project's potential for causing adverse flooding and dewatering impacts on adjacent properties during mining. The existence of several factors inherent to the mining process, discussed below, typically makes during-mining flood event modeling unnecessary to provide reasonable assurances. See Lee Cnty. v. Mosaic Fertilizer, LLC, Case No. 08-3886, 2008 Fla. ENV LEXIS 171 (Fla. DOAH Dec. 18, 2008), adopted, OGC Case No. 08-1852, 2009 Fla. ENV LEXIS 14 (Fla. DEP Jan. 30, 2009).

38. The application contains during-mining water balance analyses that specifically evaluated the biological integrity of on-site and off-site preserved areas, streams, and wetlands during mining and after reclamation. CF prepared a mine and production plan (MPP) describing general mine planning and scheduling, as well as its proposed integration with the South

Pasture mine, that contained an operational during-mining water balance showing recirculation system inputs and outflows. The primary sources of water input into the mine recirculation system for the Project will continue to be direct rainfall capture, groundwater from existing permitted wells, water content of the mined matrix and overburden, and reclaimed water from the City of Wauchula. The primary sources of water consumption will be evapotranspiration and net waste clay entrainment; CF recycles and reuses 95 percent of its water. As described in the MPP, the primary sources of water discharge will be through its existing two (and possibly additional) permitted NPDES outfalls.

39. There will be no substantial change in the during-mining water balance as a result of the extension of mining into the Project site. Moreover, the application, past practices and experience, and evidence presented at hearing all indicate that CF has more than sufficient amount of water available to conduct the Project while simultaneously maintaining or improving the biological integrity of downstream systems.

40. CF has the demonstrated ability to manage large amounts of water within its mine recirculation system and store or discharge water as required to maintain downstream flows or reduce flooding potential. During mining, CF can either discharge stormwater treated to meet state water quality

standards, or store it in its recirculation system, depending on downstream conditions. Thus, even without a reroute ditch, the risk of adverse flooding during mining is minimal. CF has never caused any flooding of neighboring property in over 30 years of mining.

41. As noted earlier, upon construction of the perimeter ditch and berm system along its shared property boundary with Petitioner, CF will reroute existing water flow around active mining operations and the berm system to reconnect flow with Troublesome Creek.

42. CF's expert witness testified that, from an engineering perspective, a reroute ditch is not difficult to design or construct, and that CF has successfully constructed similar reroutes in the past and without causing flooding. Nevertheless, in light of Petitioner's concerns, CF directed its consultants to model the potential impacts from a reroute ditch to assist in sizing the reroute ditch and associated structures. The design objective was to ensure that no off-site increases in peak flows or stages would occur during mining as compared to existing conditions as a result of the Project during high rainfall events.

43. CF and Petitioner's consultants used the Interconnected Pond Routing (ICPR) model to evaluate the reroute ditch. CF analyzed the 25-year, 24-hour and the 100-year,

24-hour storm events. The model indicated that in many areas, where the presence or absence of a reroute ditch would not make a significant difference, water levels would remain unchanged, and that in some areas closest to the proposed reroute ditch, potential flood levels would actually be decreased by two-tenths of a foot. This would actually reduce the likelihood of localized flooding during significant storms over existing conditions, which has posed a concern to Dr. Villalba for his patients' safety during prior hurricane events.

44. The modeling results were summarized in a Troublesome Creek Reroute Ditch Modeling and Conceptual Design Report (RDMR). Dr. John Kiefer, the co-author of the RDMR, as well as Dr. Owete, a Department expert, opined that the Project, including implementation of the proposed reroute ditch, would not cause adverse flooding or water quantity impacts on Petitioner's property during mining. Dr. Kiefer subsequently identified and corrected some minor errors in the RDMR. These changes had no effect on his ultimate opinion or this finding.

45. According to Dr. Owete, the modeling was not necessary to provide the requisite reasonable assurances. In fact, the reroute ditch design drawings themselves were not requested by the Department to provide reasonable assurances, but were offered by CF as additional assurances in light of the concerns raised by Petitioner during these proceedings. This testimony

was echoed by Dr. Kiefer, who testified regarding the various intrinsic protections against during-mining flooding that are inherent to the Project. Further, the record establishes that the design and the model are very conservative. The 100-year event, for which the reroute ditch was designed, has only a one percent likelihood of occurring in any given year within a 100-year period.

46. The RDMR recommends that additional modeling be conducted immediately prior to implementation to confirm the design. The ERP specifically requires that the RDMR be implemented. This is similar to conditions throughout the ERP that require additional data gathering modeling or other analysis and revised designs based on this additional analysis. The ERP can provide for post-permit activities to be performed as part of reasonable assurances. See Fla. Admin. Code R. 62-4.070(3).

47. Petitioner's expert, Mr. Robert Burleson, opined that the Project will cause flooding of Petitioner's property during mining due to the construction of the perimeter berm. However, Mr. Burleson used a starting water elevation on Petitioner's property to run his model that was already commensurate with a 100-year flood elevation and then added a 100-year event to that elevation. Mr. Burleson's model also assumed that no reroute ditch would be constructed, and additionally assumed

artificially high surface water conditions caused by the recharge system which, conversely, Petitioner's expert, Mr. Davis, opined would not prevent dewatering. Therefore, his opinion on flooding is not credited.

48. Mr. Burleson also opined that flooding would nonetheless occur because of the construction of the perimeter berm across Lettis Creek headwater wetlands, notwithstanding the fact that there is no "stream" at this location, the landscape is relatively flat, and County Road 663 and the railroad line would lie between Petitioner's property and the perimeter berm. However, Mr. Burleson's modeling assumed that County-maintained culverts between the properties would be blocked during mining. Even under this assumed condition, his modeling showed only a slight increase in stage durations during significant 25-year and 100-year events. However, CF has committed to maintain flow from Petitioner's property onto the Project site at Lettis Creek through existing culverts under County Road 663.

49. Mr. Burleson also testified that in his view flooding occurs "if there's an increase in water levels above what has historically or naturally [occurred] for a given condition." Tr. 522. However, Mr. Burleson did not know whether the FINR property had ever been inundated in the way inundation was depicted in the figures he provided and did not know whether the inundation in the figures he provided could be a natural

condition for the property. Thus, Mr. Burleson could not testify, whether historically or naturally, the amount of water depicted on his figures would occur. It was established that the historic headwaters in this area have been heavily ditched and altered from their historic or natural condition.

50. CF assessed the potential that the reroute ditch could result in dewatering during non-flood events. To address this concern, CF designed the reroute ditch with a bottom elevation that would match the bottom elevation of the existing ditch, meaning the water table will intersect the reroute ditch in the same manner it currently intersects the Troublesome Creek ditch. Adjacent to Wetland 10E-40 in the southeast corner between Petitioner's property and the Project property, however, the reroute ditch received special design consideration because the reroute ditch bottom will be below the bottom of the wetland at that location. There, the reroute ditch will be armored, an overland weir will regulate flow, and an impermeable geotextile liner will be installed.

51. Several intrinsic factors, relating to both the reroute ditch design and the overall Project design, provide further assurances that adverse flooding will not occur on Petitioner's property during mining. Once CF constructs the perimeter ditch and berm system, the area of the drainage basin contributing flow to Petitioner's property will be reduced by

approximately one-half, resulting in significantly less water flowing onto Petitioner's property during flood events because the ditch and berm system will divert stormwater that normally reports to Troublesome Creek into CF's recirculation system. The conveyance capacity of the reroute ditch will be equivalent to or greater than that of the existing ditch that it would replace. The reroute ditch will be installed in concert with the ditch and berm system, which as noted above will reduce peak flood flows in Troublesome Creek, meaning a lower tailwater condition can be expected in Troublesome Creek downstream of its confluence with the reroute ditch.

52. CF thoroughly assessed the ability of the recharge ditch to maintain recharge to wetlands and adjacent properties during active mining of the Project. Specifically, CF evaluated the seepage characteristics of the areas scheduled to be mined and provided site-specific recommendations regarding recharge system design in variable subsurface conditions. CF evaluated the efficacy of treatment options that might be necessary to incorporate in the recharge ditch design in certain subsurface conditions to prevent potential adverse impacts. The goal of the recharge ditch design was to maintain the water table during mining operations, within the normal range of seasonal high and seasonal low water table elevations along preserve and property boundaries, including Petitioner's property. The normal

seasonal range used to develop the RMR was obtained from the IMR analysis.

53. In order to appropriately evaluate subsurface permeabilities at the Project site, CF's consultants first engaged in a rigorous geotechnical exploration program: they reviewed available prospect borings and design reports; they developed subsurface profiles along wetland and property boundaries within the study areas based on prospect boring data; they completed four Standard Penetration Test borings at locations selected based on the subsurface profiles; they installed a deep, intermediate, and shallow piezometer at each of the borehole locations; and they completed in-situ hydraulic conductivity tests in each of them.

54. This information resulted in a detailed subsurface profile that ran along the entire border of the mining areas and identified a range of subsurface conditions site-wide, with both low and high permeability values, consistent with regional data and Petitioner's findings.

55. Next, CF's consultant developed 14 design sections, including cross sections at each of the locations specifically requested by the Department, two adjacent to Petitioner's property, and conducted seepage analyses for each. For the two design sections nearest to Petitioner's property, no continuous layer of highly-permeable limestone or other high permeability

strata were encountered that were reasonably likely to affect performance of the recharge ditch, and thus no particular "add on" hydrologic mitigative measures to the recharge ditch appear reasonably likely to be needed. Nonetheless, the efficacy of those additional measures in higher permeability soils was fully evaluated.

56. Results of the seepage analyses on the 14 design cross sections are summarized in the RMR. The RMR concludes that, in most mine areas, sufficient recharge will be provided to preserved wetlands and adjacent properties during mining using a recharge ditch designed as proposed in the RMR. Nine of the 14 cross sections did not have a continuous highly permeable limestone layer, including the two near Petitioner's property; and a recharge ditch with the water level maintained at ground level was sufficient to maintain an adequate groundwater level in off-site and preserved wetlands at these nine cross sections, to the center of the wetland.

57. Only five of the 14 design cross sections contained a continuous, permeable limestone layer within the matrix layer. For areas where such high permeability layers do exist, additional hydrologic mitigative measures were recommended in addition to the recharge ditch, such as recharge wells, permeable trenches, localized grouting, and soil-bentonite cutoff walls, in order to maintain groundwater levels. In the

event a permeable limestone layer is encountered within the matrix layer, the RMR concludes that the utilization of recharge wells, sand trenches, or other treatment options will be effective in maintaining the normal range of seasonal groundwater levels. Pursuant to the RMR recommendations, decisions regarding which specific mitigative measure is appropriate to use to address a specific subsurface condition will be made based upon more detailed, site-specific data and design modifications determined through field investigations, to include additional test borings, piezometers, field measurements of hydraulic conductivities, and additional seepage analyses. These additional measures are required by the ERP conditions and the final design must be approved by the Department.

58. While the RMR did not assume the existence of a reroute ditch, Mr. Beriswill, a professional engineer, subsequently evaluated the potential impact of a reroute ditch on the RMR's recommendations and conclusions. Based upon this subsequent evaluation, Mr. Beriswill concluded that no significant changes in the design of the recharge ditch were necessary to account for the ditch, although he and other consultants did agree that addition of an impermeable geotextile liner to a portion of the reroute ditch would reduce the potential for dewatering adjacent to Wetland 10E-40 and should be implemented.

59. The RMR also evaluated the stability of the mine cut face seal embankment (construction of which is common in the industry) and provided recommendations to maintain adequate and stable slopes during mining activities. Based upon these analyses, CF's consultants recommended a one-foot (vertical) to five-foot (horizontal) (1:5) slope to ensure a 1.3 factor of safety for slope stability, which is within industry standards.

G. Water Quality Impacts

60. In addition to the above analyses, CF and the Department also thoroughly evaluated potential on-site and off-site water quality issues associated with the Project.

61. As noted earlier, discharges will occur only through permitted NPDES outfalls. Additional water quality protection for adjacent undisturbed surface waters and wetlands will be provided by the perimeter ditch and berm systems and other proposed best management practices (BMPs), such as silt fences and stormwater collection systems. During mining and reclamation, these practices will preclude uncontrolled releases of water to adjacent unmined and downstream areas. There are also detailed requirements in the ERP for monitoring water quality during mining and reclamation activities. All of these measures will be effective in preventing violations of water quality standards, and will ensure that the water quality of

preserved on-site systems will be protected during mining activities at the Project site.

62. A Stormwater Pollution Prevention Plan (SPPP) was prepared to identify BMPs and controls for the Project during land preparation, mining, backfilling, and reclamation. The SPPP also incorporates by reference other documents already in place on the South Pasture mine pursuant to CF's NPDES permit for the South Pasture mine. Among these documents are a Best Management Practices/Pollution/Prevention (BMP3) Plan that generally describes BMPs for waste management, spill reporting and response, and other specific measures to prevent pollution, and a memorandum of agreement (MOA) between CF and the Department that describes general design and construction BMPs. The MOA has also been attached to the ERP. The BMP3 Plan, which is updated annually, must be maintained on-site during mining operations.

63. Using these measures at the South Pasture mine, CF has never had any issues with stormwater discharges causing water quality violations.

64. Petitioner failed to present any competent substantial evidence that the Project will cause adverse water quality impacts during mining. Its expert, Mr. Robert Burleson, opined only that certain requirements specified for generic stormwater permits associated with construction activities were missing

from the SPPP. However, it is unclear whether he reviewed or considered the sufficiency of the MOA or BMP3 Plan, and these contain specific BMPs to be utilized for the Project's stormwater. Additionally, Mr. Burleson admitted that he had no familiarity with preparing SPPPs for industrial facilities with NPDES permits. Dr. Durbin, a CF expert, who has such experience and reviewed all of these materials as well as South Pasture mine water quality data, opined that implementation of these practices and the existence of the NPDES permit ensure that water quality of downstream systems will be protected during mining and that no adverse water quality impacts will occur. The application is therefore consistent with applicable ERP permitting requirements. The generic stormwater permit proffered by Petitioner does not apply, and is not available, to facilities like CF that are required to obtain individual NPDES permits that address stormwater discharges. See Fla. Admin. Code R. 62-620.100(2).

H. Ecological Issues

65. The level of detail and analysis provided by CF in its application to the Department for the ERP, CRP, and WRP and CRP Modifications is more than adequate. Indeed, CF provided substantially more baseline information in terms of existing site conditions, wetland conditions, and wildlife information than is provided in typical ERPs.

66. CF expert witnesses Dr. Kiefer and Dr. Durbin both testified as to the local and regional ecological, hydrological, and wildlife benefits expected to result from the proposed reclamation. This testimony was not disputed.

67. Pursuant to section 373.414(6)(b), wetlands reclamation activities for phosphate mining undertaken pursuant to chapter 378 are considered appropriate mitigation if they maintain or improve the water quality and the function of the biological systems present at the site prior to the commencement of mining activities. CF's reclamation achieves that mitigation goal. It provides for an acre-for-acre, type-for-type, and foot-for-foot restoration, as appropriate, of the wetlands and other surface waters proposed for impact on the Project site. The application indicates that the proposed reclamation will restore on-site wetland functions and promote the maturation of on-site wetlands. Specifically, CF is proposing to enhance 126 acres of wetlands and 57 acres of uplands, create approximately 1,711 acres of wetlands and other surface waters, and grant perpetual conservation easements to permanently preserve 1,095 acres of unmined (avoided) and 1,789 acres of reclaimed habitat, including wetlands, streams, and associated native upland habitat in the Brushy Creek, Lettis Creek, and Troublesome Creek corridors on the Project. In addition, CF will grant a perpetual conservation easement to permanently

preserve an additional 915 acres of unmined wetland and native upland habitat associated with the Horse Creek and Payne Creek corridors in the South Pasture mine.

68. Ultimately, the Project will represent a substantial improvement in the Troublesome Creek headwater system, which has been degraded by ditching. Based upon the uniform mitigation assessment method analysis, the proposed mitigation plan will more than offset proposed impacts, resulting in a net increase in wetland functions on the Project site. While mining activity is temporary, this "surplus" improvement will be permanent.

69. CF considered the potential impacts to off-site wetlands from the Project both during mining and after reclamation, particularly those wetlands that straddle CF's shared property boundary with Petitioner. Wetlands on Petitioner's property are similar to nearby wetlands on the Project site, in that historically they have been impacted by agricultural activities, including ditching.

70. None of Petitioner's experts provided testimony of adverse impacts to wetlands or surface waters that would be reasonably likely to occur as a result of the Project. In contrast, Dr. Durbin testified that the wetlands on Petitioner's property are degraded and dehydrated due to the prevalence of agricultural alterations and that a modicum of additional water might actually benefit them.

71. The application indicates that the proposed reclamation will result in an overall water balance that is consistent and compatible with the region's surface and sub-surface hydrology, and the combined groundwater and surface water outflow volumes from the Project site will be similar to pre-mining conditions.

72. As noted earlier, the proposed recharge ditch system will maintain off-site water table levels within the normal range of seasonal high and seasonal low values, which is the range of fluctuation the water table level currently experiences pursuant to the IMR. Therefore, no dewatering will occur that will have an adverse ecological effect on Petitioner's wetlands. Dr. Durbin and Dr. Kiefer opined that the improvement in ecological conditions post-reclamation on the Project site can reasonably be expected to improve the ecological condition of the immediately adjacent wetlands on Petitioner's property.

73. Petitioner's expert, Mr. Davis, opined that CF failed to provide reasonable assurances that the Project would not cause dewatering of wetlands on Petitioner's property. He presented model results using those high permeabilities that purported to show that, at some distance proximate to the property boundary, some drawdown would occur with maximum predicted drawdown approximately 80 feet or less from the property boundary. However, Mr. Davis selected the high end of

the range of the subsurface permeabilities estimated in the RMR and assumed they were present continuously along the property boundary. Although the highly permeable conditions are not continuously present along the boundary line of Petitioner's property, measures to address those conditions have been identified and recommended, should they occur.

74. Moreover, Mr. Davis' modeling did not use the existing conditions established in the IMR as a baseline and did not evaluate any of the mitigative options recommended in the RMR for use if high permeability layers are encountered. Rather, his modeling looked at only two scenarios that were not recommended in the RMR in such cases, namely, the recharge ditch alone, and charging the recharge ditch five feet above ground surface. He admitted that the options recommended in the RMR for high permeability subsurface conditions were all widely-used options capable of being implemented. Mr. Davis' assertions regarding the potential for a half-foot of drawdown near the property line are based on a series of assumptions and conditions which are not supported by competent substantial evidence. Therefore, his testimony does not rebut the prima facie case of CF and the Department regarding reasonable assurances and is not credited.

75. Mr. Palmer criticized the adequacy of the monitoring contained in Specific Condition 14. However, he admitted that

monitoring of the proposed piezometers would detect any water table changes, and the ERP requires comparison against the baseline data as well as long-term rainfall records. He also acknowledged that he reviewed only a portion of the condition. Thus, Mr. Palmer's criticisms are not credited.

76. CF's reclamation also consists of a Stream Restoration Plan (SRP). Implementation of the SRP will result in replacing lower-functioning streams and lotic systems, like the ditched headwaters of Troublesome Creek, with higher quality systems post-mining pursuant to state reclamation requirements. Dr. Kiefer opined that this is reasonably likely to result in both localized and regional improvements to Troublesome Creek by restoring its headwaters to a more natural condition. This evidence was not refuted.

77. Petitioner provided no testimony regarding the ecological effect of the Project on Petitioner's wetlands and water resources. FINR witnesses Burleson, Davis, and Palmer claimed no expertise as ecologists. In fact, Mr. Davis admitted that he normally provides his modeling reports to others with expertise regarding whether a modeled water level drop could actually be expected to cause harm. This was not done here. There was no credible testimony that adverse environmental or water resource impacts would result to Petitioner's property from the Project.

I. Materials

78. CF has analyzed whether it will have sufficient materials available to it to accomplish the objectives within the CRP, and sufficient capacity in existing South Pasture mine and proposed Project site CSAs to dispose of waste clays generated by the phosphate matrix processing.

79. For this purpose CF prepared a Life of Mine Backfill Plan (LOMBP). The LOMBP describes how on-site materials will be utilized by CF, during both mining and reclamation activities, over the life of the mine.

80. Based upon CF's calculations as reflected in the LOMBP, information contained in the MPP, and testimony from CF's expert witness, CF will have sufficient materials to achieve its mining and reclamation objectives, and sufficient capacity to dispose of waste clays in existing CSAs located on the South Pasture mine and proposed CSAs on the Project site. CF will be able to accomplish the mining and reclamation as proposed.

81. Petitioner's expert, Mr. Palmer, opined that CF had not provided reasonable assurances of sufficient overburden to create the overburden soil slopes on mine faces discussed in the RMR. For the following reasons, his testimony is not credited. He admitted no experience with mining, dragline booms, how draglines cast overburden, or how cast overburden slopes are created, and he mistakenly assumed CF was limited in the

transport of overburden to a distance of 330 feet, a figure not supported by the record. Additionally, Mr. Palmer incorrectly assumed that CF would be mining to an average depth of 73.3 feet, when in fact as reflected in the MPP, CF will be mining to an average depth of 40.4 feet, which means the average overburden thickness will be 18.9 feet, far greater than the 11.5 feet he assumed in his calculations.

82. On the other hand, CF witness Wuitschick testified that there would be sufficient overburden to create the overburden seals called for in the RMR. Mr. Blitch, a CF employee with extensive mining experience and familiarity with the Project, testified that transportation of overburden is not limited to 330 feet and confirmed that CF will have more than enough overburden to create the overburden slopes, which are needed only along preserve and property boundaries and the ability to move it where it is required.

J. Rules Requirements

83. With respect to the ERP criteria contained in section 373.413 and rule 40D-4.301, CF has demonstrated, by a preponderance of the evidence, reasonable assurances that the Project:

a. Will not cause adverse water quantity impacts to receiving waters and adjacent lands.

b. Will not cause adverse flooding to on-site or off-site property.

c. Will not cause adverse impacts to existing surface water storage and conveyance capabilities.

d. Will not adversely impact the value of functions provided to fish and wildlife, and listed species including aquatic and wetland dependent species, by wetlands, other surface waters and other water related resources.

e. Will not adversely affect the quality of receiving waters such that the water quality standards will be violated.

f. Will not cause adverse secondary impacts to the water resources.

g. Will not adversely impact the maintenance of surface or ground water levels or surface water flows.

h. Is capable, based on generally accepted engineering and scientific principles, of being effectively performed and of functioning as proposed.

i. Will be conducted by an entity with financial, legal, and administrative capability of ensuring that the activity will be undertaken in accordance with the terms and conditions of the permit, if issued.

84. For the reasons expressed in Finding of Fact 64, a contention by Petitioner that the SPE mine application must be denied because CF failed to submit at hearing a separate document entitled "Construction Surface Water Management Plan" is rejected. This is because this requirement does not apply to facilities like CF that are required to obtain individual NPDES permits that address stormwater discharges. Assuming arguendo that it did apply, the Southwest Florida Water Management District Basis of Review for Environmental Resource Permit Applications (BOR) criteria are designed to be flexible, and other methods can be used to meet the rule objectives. Here, CF submitted numerous reports and studies which have been accepted as being the most persuasive on these issues, and collectively they show that reasonable assurances have been provided that all rule criteria have been satisfied.

85. With respect to the additional public interest and other criteria contained in section 373.414 and rule 40D-4.302 for the protection of water resources and which are applicable to projects located "in, on, or over wetlands or other surface waters," CF has provided, by a preponderance of the evidence, reasonable assurances that the Project will:

a. Not adversely affect the public health, safety, or welfare or the property of others.

b. Not adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats.

c. Not adversely affect the flow of water.

d. Not adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity.

e. Be temporary in nature.

f. Not adversely affect the current condition and relative value of functions being performed by areas affected by the Project.

g. Not cause unacceptable cumulative impacts.

h. Will maintain or improve the water quality and the function of the biological systems present at the Project site prior to the commencement of mining activities.

86. The primary goal of the BOR is to meet District water resource objectives of ensuring that the permit will not authorize activities that are harmful to water resources or inconsistent with the public interest. As noted above, however, the criteria are designed to be flexible, and other methods of meeting those objectives will be considered. See BOR §§ 1.1 and 1.3.

87. With respect to phosphate mining reclamation criteria contained in chapter 378 and rule 62C-16.0051, CF has provided, by a preponderance of the evidence, reasonable assurances that the Project will meet the reclamation criteria contained in the rule.

88. The prima facie case provided by CF and the Department at hearing of CF's entitlement to the ERP for the Project was not successfully refuted, as discussed in the foregoing Findings of Fact.

89. The prima facie case provided by CF and the Department at hearing of CF's entitlement to the CRP for the Project was unrefuted. No evidence concerning the reclamation criteria was presented by Petitioner.

90. As set forth in the Order Granting the Motion to Strike and Motion in Limine issued on February 16, 2012, the Petition contained no factual allegations relative to the compliance with applicable regulatory requirements regarding, or potential for harm resulting from, the South Pasture Modifications (as opposed to the ERP or CRP for the Project). Therefore, the allegations relating to the South Pasture Modifications were stricken. The prima facie case provided by CF and the Department at hearing of CF's entitlement to the associated WRP and CRP Modifications for the South Pasture mine (South Pasture Modifications) was not refuted, and Petitioner

made no proffer relative to the South Pasture Modifications prior to the close of the evidentiary proceedings. The ruling at hearing to receive in evidence the permit application and the Department's proposed agency action on these two items is reaffirmed.

CONCLUSIONS OF LAW

91. Petitioner has standing to participate in this proceeding. Although Petitioner did not prevail on the merits of its claims, it presented evidence to prove that its substantial interests could reasonably be expected to be affected by the agency's action. See, e.g., St. Johns Riverkeeper, Inc. v. St. Johns River Water Mgmt. Dist., 54 So. 3d 1051, 1054 (Fla. 5th DCA 2011).

92. Section 120.569(2)(p), as amended in 2011, is applicable to this case. It establishes a new order of presentation and burden of proof in permit challenge cases. Permit cases under chapters 373, 378, and 403 now proceed in three phases: Phase I is the submittal by the applicant and agency of the application, notice of intent to approve the permit, and other relevant material submitted to the agency which constitute a prima facie case demonstrating entitlement to the proposed permits; Phase II is the submittal by the challenger of evidence supporting the challenge of the proposed permits; and Phase III is the submittal by the applicant and

agency of any rebuttal evidence demonstrating that the application meets the conditions of issuance.

93. The burden of proof in permit challenge cases is now on the challenger, who has the "burden of ultimate persuasion and has the burden of going forward to prove the case in opposition to the [permit] by competent and substantial evidence." § 120.569(2)(p), Fla. Stat.

94. Section 120.569(2)(p) provides that CF can make a prima facie case of entitlement to the permits by entering the applications, materials supporting the applications, and the proposed Department approvals. CF and the Department submitted these materials and presented additional factual and expert opinion testimony and evidence to supplement the prima facie case.

95. Because this is a de novo proceeding, and not merely a review of the prior agency action, the parties may present additional evidence not included in the permit application and other documents previously submitted to the Department during the permit application review process. See, e.g., Hamilton Cnty. Bd. of Cnty. Comm'rs v. State Dep't of Envtl. Reg., 587 So. 2d 1378, 1387 (Fla. 1st DCA 1991); Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 785 (Fla. 1st DCA 1981). Thus, what CF did or failed to do during the process of the agency review of the applications is not the dispositive issue

in these de novo proceedings. The dispositive issue is whether the evidence presented at the hearing provides reasonable assurance that CF's proposed activities on the Project site will comply with applicable environmental and phosphate mine reclamation standards. See McDonald v. Dep't of Banking and Fin., 346 So. 2d 569, 584 (Fla. 1st DCA 1977); Clarke v. Melton, Case No. 89-6051, 1990 Fla. ENV LEXIS 186 (Fla. DOAH Oct. 16, 1990), adopted, OGC Case No. 89-1250 (Fla. DER Nov. 30, 1990); Peace River/Manasota Reg. Water Supply Auth. v. IMC Phosphates Co., Case No. 03-0791, 2005 Fla. Div. Adm. Hear. LEXIS 736 (Fla. DOAH May 9, 2005, R.O on Remand, June 16, 2005), adopted, OGC Case No. 03-0205 (Fla. DEP July 31, 2006).

96. Petitioner has failed to meet its burden of showing that the permits should not be issued. Conversely, by a preponderance of the evidence, CF has demonstrated that reasonable assurances have been given that all applicable permitting criteria have been met. Reasonable assurances means "a substantial likelihood that the project will be successfully implemented." See Metro. Dade Cnty. v. Coscan Fla., Inc., 609 So. 2d 644, 648 (Fla. 3d DCA 1992). It does not require absolute guarantees that the applicable conditions for issuance of the permit have been satisfied. See, e.g., Crystal Springs Recreational Pres., Inc. v. S.W. Fla. Water Mgmt. Dist., Case No. 99-1415, 2000 Fla. ENV LEXIS 41 at *98 (Fla. DOAH Jan. 27,

2000, SWFWMD Feb. 23, 2000). Speculations of future harm, of what "might" occur, and a party's subjective beliefs, are not sufficient to carry the burden of presenting contrary evidence or to demonstrate material facts to support its claim. See Chipola Basin Protective Grp., Inc. v. Dep't of Envtl. Reg., Case No. 88-3355, 1988 Fla. Div. Adm. Hear. LEXIS 4765 (Fla. DOAH Nov. 14, 1988), adopted, OGC Case No. 88-0587, 1988 Fla. ENV LEXIS 112, (Fla. DER Dec. 30, 1988)(petitioner cannot carry the burden of presenting contrary evidence by mere speculations concerning what "might" occur). See also Hoffert v. St. Joe Paper Co., Case No. 89-5053, 1990 Fla. ENV LEXIS 194 (Fla. DOAH Oct. 26, 1990), adopted, OGC Case No. 89-1304 (Fla. DER Dec. 6, 1990); Menorah Manor, Inc. v. Agency for Health Care Admin. 908 So. 2d 1100, 1104 (Fla. 1st DCA 2005)(conclusory allegations of speculative future harm are insufficient to demonstrate that a party's substantial interest will be affected).

97. In sum, a preponderance of competent substantial evidence, including the entirety of the application, engineering studies and reports, scientific testimony, and a voluminous application, all support the Department's determination of reasonable assurance of entitlement to the approvals at issue.

98. Finally, as set forth in undersigned's Order Granting CF's Motion in Limine and Motion to Strike, Petitioner's assertions regarding Hardee County's quarter-mile setback

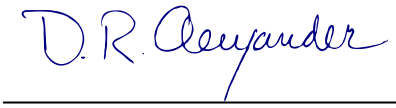
requirement had no legal basis in any environmental factors that are cognizable under the ERP or CRP permitting programs. Nonetheless, as noted above, Petitioner offered no credible evidence of adverse environmental or water resources impacts that would occur to Petitioner's property as a result of mining or reclamation within the footprint authorized by the ERP or CRP.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Environmental Protection enter a final order approving the applications of CF Industries, Inc.

DONE AND ENTERED this 30th day of April, 2012, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of April, 2012.

ENDNOTE

1/ On March 12, 2012, FINR filed a Petition for Writ of Prohibition and/or Review of Non-Final Agency Order with the First District Court of Appeal seeking a review of that Order. See FINR II, Inc. v. CF Indus., Inc., Case No. 1D12-1308. The Petition for Writ of Prohibition was denied on March 14, 2012. The Petition for Review of Non-Final Agency Order remains pending as of the date of this Recommended Order.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.