

RESOLUTION RENDERING AN AMENDED AND RESTATED DEVELOPMENT ORDER

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY, FLORIDA, AMENDING A DEVELOPMENT ORDER WITH CONDITIONS FOR A DEVELOPMENT OF REGIONAL IMPACT KNOWN AS THE IMC PHOSPHATES COMPANY NEW WALES GYPSUM STACK EXPANSION, ON PROPERTY DESCRIBED HEREIN, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 380.06, FLORIDA STATUTES; SETTING FORTH FINDINGS OF FACT, CONCLUSIONS OF LAW, AND CONDITIONS OF APPROVAL; PROVIDING FOR SUBSTANTIAL DEVIATIONS; PROVIDING FOR LOCAL MONITORING; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 380.06, Florida Statutes, the Board of County Commissioners of Polk County, Florida, hereafter referred to as "the Board", considered and approved in 1990 the application for development approval for the New Wales Gypsum Stack Expansion Development of Regional Impact (DRI) to be developed in the manner described in applications filed by IMC Fertilizer, Inc., and heard comments from interested persons at a public hearing convened on June 5, 1990; and

WHEREAS, the Board considered the report and recommendations of the Central Florida Regional Planning Council, hereafter referred to as "the CFRPC", the Polk County Planning Division and Zoning and Codes Division staff, and the documents and comments upon the record made before the Board; and

WHEREAS, the Board approved a Notice of Proposed Change ("NOPC") addressing conditions A 8 and B 5 of the 1990 Development order, at a public hearing on July 20th, 1993, which was properly noticed under the provisions of section 380.06, Florida Statutes (the "First NOPC"); and

WHEREAS, the Board considered an NOPC submitted by IMC Phosphates on September 11, 2001 (the "Second NOPC"), which addresses the legal description for the Phase II area, Finding of Fact 13 (stack height), modifications to non contact storm water routing, and conditions 7.3, 7.5 and 7.6 of the 1990 Development Order as amended by the First NOPC in 1993; and

WHEREAS, the Board received a report from CFRPC and correspondence from the Florida Department of Community Affairs ("DCA") concerning the Second NOPC ; and

WHEREAS, the Board, after due consideration, hereby makes the following Findings of Fact and Conclusions of Law which address the project

as described in exhibits and in the NOPC; and as set forth in the DRI documents more fully identified below:

### FINDINGS OF FACT

1. IMC Phosphates Company, Inc. , hereafter referred to as "the Applicant" or "the Company", owns and operates the New Wales Operation in Polk County, Florida. New Wales is located approximately one mile south of State Route 640 and five miles southwest of the City of Mulberry.
2. Operations at the New Wales facility include the production of phosphoric acid and other phosphate-related fertilizer and animal feed products. Phosphate rock from the Company mines is delivered to the plant where it is first ground into a water slurry and then combined with sulfuric acid to produce phosphoric acid. The production of phosphoric acid generates calcium sulfate as a by-product. Calcium sulfate is a solid granular substance more commonly known as gypsum or phosphogypsum. About 5 tons of gypsum are produced for every ton of phosphoric acid (as P205) made.
3. Gypsum is in slurry form when it leaves the phosphoric acid plant. From the plant, it is pumped to a storage area (stack) where the solid gypsum settles out and the water from the slurried gypsum is decanted into a cooling pond to be circulated through channels for use in plant operations. The settled gypsum is handled by earth-moving equipment to build up the diked area around the edges of the gypsum stack to allow for further deposition and storage. The gypsum stack is a pyramid-shaped facility with water ponded on top for additional cooling and evaporation. The use of the stack for water storage and cooling functions is critical for maintaining water balance objectives for plant operations.
4. The initial gypsum stack covers a land area on the order of 430 acres, and the cooling pond and channels occupy a water surface area of 281 acres (with the main cooling pond accounting for about 247 acres).
5. New Wales operates as a zero discharge facility. In the unlikely event that the cooling pond maximum operating level is exceeded, siphon spillways are activated to discharge excess pond water into the 90-acre Emergency Holding Pond (EHP). Water in this pond can either be pumped back into the cooling pond after water levels have subsided, or reused in the plant. Excess pond water has never been discharged to the EHP.
- 6(a) A 345-acre (water surface) clay settling area (A-11) resulting from prior mining operations is located adjacent to New Wales on the east side of the complex. This area is used by New Wales for non-contact non-process water circulation. Excess water in Settling Area A-11 is decanted and diverted to the nearby Kingsford Mine circulation system.

6.(b) Non-contact rainfall runoff from around the perimeter of the east, south, and west sides of the Phase I and Phase II gypsum stack expansions will drain into a below grade storm water retention area on the south and east sides of the Phase II gypsum stack expansion. Storm water from the retention area will either be: (i) transferred to the Kingsford Mine water recirculation ditch system via a pump station for discharge through reclamation lakes to the east of the expansion area; or (ii) following completion of reclamation of lands to the south of the Phase II gypsum stack expansion, discharged by gravity to the south to the lake proposed as part of the reclamation of mined lands.

7. Data collected by the Company and impact analyses indicate potential impacts from the continued use of the existing stack and cooling pond in connection with the new gypsum storage area. Accordingly, the proposed development plan calls for the construction of slurry walls on the west and north sides of the plant to contain shallow seepage from the stack. Furthermore, proposed monitoring and mitigation requirements are designed to address groundwater concerns associated with the cooling pond.

8. At the projected production rate of phosphoric acid, the existing stack was expected to reach maximum height in May, 1992. In order to continue operating, New Wales must activate additional phosphogypsum storage capacity.

9. To provide for additional phosphogypsum storage capacity, the Applicant submitted an Application for Development Approval (ADA) entitled "IMCF New Wales Gypsum Stack Expansion DRI", hereafter referred to as "the Application", to the Board, said Application with exhibits being incorporated and made part of this Development Order by reference.

10. The Applicant modified its original Application by filing with the Board a Supplemental ADA, hereafter referred to as "the Supplemental Application", said Supplemental Application with exhibits as well as sufficiency review responses being incorporated and made part of this Development Order by reference.

11. In the Supplemental Application, the Applicant proposes to construct expanded storage capacity in an 873-acre area south of the existing cooling pond described in the Supplemental Application and further described as shown in the attached Exhibit "A".

11. (a) Applicant further proposes to connect the gypsum storage expansion area directly to the existing cooling pond, which currently serves the New Wales complex for numerous water-management functions as well as cooling capacity. The area encompassing the cooling pond and the gypsum storage expansion area is described in Exhibit "B" of this order, and shall constitute the DRI/ADA boundary of this project

11. (b) The cooling pond will continue to serve existing functions but will be modified to accommodate the gypsum storage expansion area (described in Exhibit "A"). For example, operating levels for water in the cooling pond and ditches may be adjusted to assure continuation of "zero discharge" practices.

11. (c) The existing gypsum stack is included in this order for purposes of mitigation, as a condition of approval of the gypsum storage expansion area. The existing gypsum stack is depicted in Exhibit "C" hereof. The existing gypsum stack area is not included in the legal descriptions described in Exhibits 'B' and 'A' as described above.

12. The natural geology under the overall site includes a natural clay-like barrier 100 feet to 125 feet thick which protects the water producing zones of the underlying aquifers from any seepage from the stack. In addition, the Company has installed a 60 mil thick high density polyethylene (HDPE) synthetic liner to enhance groundwater protection.

13. The gypsum stack will be raised in two phases to an average height of 300 feet. Gypsum slurry will be transported from the plant to the stack via a pipeline and the gypsum will be allowed to alternately settle in compartments of the expansion area.

14. The proposed gypsum stack expansion is not projected to have an adverse impact on groundwater and surface water resources.

15. The Applicant provided to CFRPC a series of technical reports addressing issues and concerns relating to the design, construction and operation of the proposed expansion project, said reports with exhibits identified below and incorporated and made part of this Development Order by reference

Recharge Well Location Certainty	Ardaman & Associates February 22, 1989
Compatibility Testing of Candidate High Density Polyethylene Synthetic Liners and Polyester and Polypropylene Filter Fabrics	Ardaman & Associates March 2, 1990
Estimate of Leakage through Liner	Ardaman & Associates February 20, 1990
Groundwater Impact from Gypsum Stack Expansion	Ardaman & Associates March 12, 1990

Groundwater Impact from  
Existing Facilities

Ardaman & Associates  
March 12, 1990

16. Air monitoring of fluoride and airborne radon emissions shall be conducted by the Company to determine any air quality impacts associated with the expansion project.

17. The development will have positive economic impacts in the form of construction employment and expenses relating to the expansion project itself, as well as the direct and indirect economic benefits associated with the continued operation of the New Wales operation.

18. The Gypsum Stack Expansion DRI as proposed can be implemented in a manner consistent with the Comprehensive Regional Policy Plan and the State Comprehensive Plan.

19. The request for rezoning of the expansion site from Rural Conservation to General Industrial was unanimously approved by the Polk County Zoning Advisory Board on March 14, 1990 and forwarded to the Board for final action concurrent with final DRI approval.

20. Conceptual reclamation plans submitted to the Florida Department of Natural Resources have been approved by the Governor and Cabinet.

21. In November, 1989 the Florida Department of Environmental Regulation (DER) issued an Intent to Issue a construction permit for the gypsum stack expansion. The proposed issuance of the permit was challenged by a third party, and the matter was subsequently referred to a hearing officer of the Division of Administrative Hearings (DOAH) for an independent review. On May 23, 1990, the hearing officer recommended to DER Secretary Twachtman that this permit be approved.

22. The Company has obtained from the Southwest Florida Water Management District a surface water management permit for the gypsum stack expansion project dated December 7, 1989.

23. At the conclusion of the May 9, 1990 public hearing on the DRI, the CFRPC voted unanimously to recommend approval of the project, with conditions, to the Polk County Board of County Commissioners.

24. The information and data contained within The Application and the Supplemental Application were sufficient for the Board to review it as required by Section 380.06, Florida Statutes.

25. On June 5, 1990, the Board conducted the required public hearing and received the report and recommendations of the CFRPC and the report and recommendations of the Polk County Planning and Zoning Codes Divisions.

26. The development is consistent with the report and recommendations of the CFRPC submitted pursuant to Chapter 380, Florida Statutes.

27. In September of 1992, the Company determined that concentrations of indicator parameters described by Condition A 8 hereof were being detected in a plant production well, which penetrates into the Floridan aquifer. Concentrations of sulfate, one of the indicators, were above the 90% level. While sulfate is a valid indicator parameter, it is also a naturally occurring constituent and is not normally considered to be a health risk. It is listed as a "secondary" (aesthetic) drinking water standard.

28. The Company has conducted extensive studies of the alternatives for correcting the increase in indicator parameters. Several old recharge wells have already been located (within the pond), accessed, and re-plugged under current standards.

29. The Company has expressed concern about the two-year pond closure requirement imposed by the original Development Order and submitted an NOPC in May of 1993 to modify this portion of the Development Order and related provisions contained in condition 8 thereof. The changes generally refine the response actions required and the timing thereof to reflect current knowledge. Additional monitor wells were added to monitor the Floridan Aquifer.

30. Flexibility is added to allow suspension of remedial action if the Company's efforts are successful, and to allow modification of the sampling program if deemed necessary based on circumstances at the time.

31. A detailed "action plan" is adopted to address the current elevations in monitoring parameters (attached hereto as exhibit "E"). Amendments to the generally applicable Development Order language are also proposed to address any future, unforeseen situations.

32. CFRPC and its consultant have conducted extensive review of the current situation and the changes to the Development Order as requested by the Company. On April 28, 1993, the CFRPC Board approved the NOPC Request, including the amendments to the language of the original Development Order.

33. On September 11, 2001, the Company submitted the Second NOPC, which addresses the need for correction of a portion of the legal description for Phase II of the gypsum stack expansion, an increase in stack

height from 200 feet to 300 feet, revision of the Development Order conditions addressing factor of safety and inspection requirements, relocation of certain groundwater monitoring wells from the Phase II area to locations downgradient of the outside boundary of the Phase II gypsum stack expansion, and modification of the noncontact storm water drainage plan outside the expansion area to take advantage of future reclamation plans for the Kingsford mining area. These changes are consistent with the FDEP Phase II Construction and Operation Permit Application.

34. Evidence submitted in support of the Second NOPC demonstrates that the requested changes are consistent with good engineering practice and the conditions at the site, and otherwise are consistent with the terms and conditions of this Development Order and all applicable review criteria.

35. CFRPC and its consultants have conducted extensive review of current conditions and the requested changes to the Development Order, as set forth in the Second NOPC.

### **CONCLUSIONS OF LAW**

1. The Board's review of the proposed DRI and NOPC has been conducted pursuant to and is in compliance with the provisions of Chapter 380, Florida Statutes.
2. The DRI as submitted complies with the requirements of Section 380.06, Florida Statutes, and Chapter 9J-2, Florida Administrative Code.
3. The development as proposed and conditioned by this order is consistent with the Polk County Comprehensive Plan and local land development regulations.
4. The rights and obligations set forth in this Development order shall inure to the benefit of and be binding upon the Applicant, any subsequent property owners affected by this Order, and their successors, assignees, and grantees.
5. Modifications to structural characteristics or operating practices for the existing cooling pond and associated ditches, culverts, spillways and other customary facilities are within the scope of this order provided such modifications are consistent with plans for the gypsum storage expansion area (Exhibit "A") or are required for the continued operation of the existing New Wales plant facilities.
6. The changes to the original Development Order as requested in the First and Second NOPC's do not constitute a substantial deviation as defined by section 380.06, Florida Statutes.

NOW, THEREFORE, BE IT RESOLVED BY THE Polk County Board of County Commissioners, in regular session duly assembled this 5th day of December, 2001, that the New Wales Gypsum Stack Expansion DRI/ADA as amended by the NOPC submitted in May of 1993 and September 11, 2001 is hereby ordered approved subject to the following conditions:

A. ENVIRONMENT AND NATURAL RESOURCES

1.0 Soils

The soils in the expansion area have been disturbed or will have been disturbed by mining and related activities. The area between the overburden spoil piles contains phosphate clay waste and other soft soil materials. The Company shall remove the soft soils and clays and prepare a proper base for the gypsum stack and other areas which shall require lining.

2.0 Air Quality

Air quality around gypsum stacks and chemical plants has been of concern to many. There is the potential for airborne fluoride and radon gas emission from the proposed operations. Therefore, air sampling shall be required.

2.1 Sampling Locations: The Company shall sample for fluoride and Radon-222 at the existing air monitoring station on Keysville Road approximately three quarters of a mile south of State Road 640. The grass sampling for fluoride shall be conducted at the six (6) established monitoring sites. The Company shall sample trees, shrubs and crops by a qualified plant physiologist within a three (3) mile radius of the New Wales Complex.

2.2 Parameters/Sampling; Techniques/Frequency: The chemical and physical parameters shall be measured at each of the sampling sites as appropriate.

2.2.1 The fluoride sample shall be dual filter and be operated for a 24-hour period every sixth day on the schedule established for the National Air Monitoring System.

2.2.2 Radon-222 sampling shall be conducted with an Electrotech or equivalent monitor. The monitor shall be analyzed twice monthly to determine airborne Radon-222 levels for the six (6) month period of April through September and the six (6) month period of October through March.

2.3 Best Available Technology: The monitoring of fluoride and airborne radon emissions is recognized as difficult and a developing technology. The

Company shall be required to implement the best available monitoring technology for fluoride and radon emissions.

### 3.0 Surface Water

Since the quantity and quality of surface water flow leaving the project site is an important regional consideration, the following conditions are required:

3.1 Sampling Locations: Three sampling locations are recommended.

3.1.1 Just northeast of the existing stack at the crossing under the railroad south of 640; and

3.1.2 Sampling of Mizelle Creek in the vicinity of the southeast corner of Section 36 and in the northwest corner of 36.

3.2 Sampling Parameters: The chemical and physical parameters to be measured at each of the three (3) sampling sites are to include the following parameters:

#### Field Measurements

pH (a)  
Specific Conductance  
(umhos/cm)  
Air Temperature (° C)  
Water Temperature (° C)  
Dissolved oxygen (mg/l)

#### Major Constituents and Nutrients (mg/l)

Total Dissolved Solids, TDS  
Total Suspended Solids, TSS  
Calcium, Ca  
Magnesium, Mg  
Sodium, Na  
Potassium, K  
Silica, Si  
Sulfate, SO<sub>4</sub>  
Chloride, Cl  
Fluoride, F

#### Trace Metals

Arsenic, As  
Barium, Ba  
  
Beryllium, Be  
Cadmium, Cd  
Chromium, Cr  
Copper, Cu  
Cyanide, CN  
Iron, Fe  
Lead, Pb  
Manganese, Mn  
Mercury, Hg  
Nickel, Ni  
Selenium, Se  
Silver, Ag  
Zinc, Zn

#### Radionuclides (pCi/l)

Gross Alpha Particle  
Activity

Phosphate, PO<sub>4</sub> as P

Ortho

Total

Nitrogen, N

Ammonia

Ammonia (un-ionized)

TKN

Nitrate

Nitrite

Total

Other Parameters

Hardness, CaCO<sub>3</sub> (mg/l)

Turbidity (NTU)

Acidity, CaCO<sub>3</sub> (mg/l)

Alkalinity, HCO<sub>3</sub> as

CaCO<sub>3</sub> (mg/l)

Color (Cobalt Units)

Total Organic Carbon (mg/l)

Biochemical Oxygen Demand,

BOD<sub>5</sub>, (mg/l)

Oil and Grease (mg/l)

Laboratory pH

3.3 Frequency: Sampling shall be conducted at each site on a quarterly basis. If it exceeds the Class III Surface Water Quality Criteria or significant changes in values measured are recognized by the Company, CFRPC, or Polk County Water Resources personnel, monthly sampling shall be conducted until such time as the value is reduced below the MCL or CFRPC and Polk County agree to an alternate sampling schedule.

3.4 Reporting: The results of the sampling are to be reported in writing to CFRPC and Polk County Water Resources within ninety (90) days after sample collection. A summary is to be included in the annual report.

#### 4.0 Groundwater

A program of groundwater monitoring with well placement and analyses parameters are to be submitted and approved by CFRPC within six (6) months after development order approval.

4.1 Sampling Locations: Groundwater monitoring and sampling shall be conducted at the currently identified ADA and FDER monitor wells.

4.1.1 ADA Monitor well clusters listed as:

NWC-1  
NWC-2  
NWC-3  
NWC-4  
NWC-5  
NWC-6

All the Floridan, Intermediate and surficial aquifer monitor wells are to be sampled.

4.1.2 Current FDER monitoring wells.

SF-1  
S-1  
S-2  
SA-4  
SA-5  
SA-6

4.1.3 Monitor wells to be installed by the Company as a consequence of the consent agreement and any other sampling required by FDER or any other governmental agency.

4.2 Parameters: The chemical and physical parameters to be measured at each of the monitor wells are to include the following items:

Major Constituents

Field Measurements

Specific Conductance  
pH  
Redox Potential  
Water Temperature  
Water Level

Laboratory Measurements

Calcium, Ca  
Magnesium, Mg  
Sodium, Na  
Potassium, K  
Total Kjeldahl Nitrogen, TKN as N  
Nitrate, NO<sub>3</sub> as N

Sulfate, SO<sub>4</sub>  
 Chloride, Cl  
 Fluoride, F  
 Orthophosphate, HPO<sub>4</sub> as P  
 Total Organic Carbon, TOC  
 Alkalinity, as CaCO<sub>3</sub>  
 Acidity, as CaCO<sub>3</sub>  
 Total Dissolved solids, TDS

#### Trace Metals

Arsenic, As  
 Barium, Ba  
 Cadmium, Cd  
 Chromium, Cr  
 Lead, Pb  
 Mercury, Hg  
 Selenium, Se  
 Silver, Ag  
 Iron, Fe  
 Manganese, Mn  
 Copper, Cu  
 Zinc, Zn

#### Radionuclides

Gross Alpha  
 Radium 226 If gross alpha exceeds 15 pCi/l  
 Radium 228 if gross alpha exceeds 15 pCi/l

4.3 Frequency: Samples shall be collected quarterly for all monitoring wells. For wells reporting analysis values greater than the MCLs or for values within 10% of the MCL value monitoring shall be conducted monthly unless otherwise directed by CFRPC and/or Polk County.

4.4 Reporting: The results of the sampling and analysis are to be reported to CFRPC and Polk County Water Resources within ninety (90) days after the sample collection event. A summary of the past twelve (12) months sampling results is to be included in the annual report.

#### 5.0 Site Investigations and Remedial Activities

5.1 The Company has entered into a Consent Agreement with FDER as a result of groundwater impacts at the New Wales Complex. IMCF shall provide CFRPC with any information and reports generated as a result of the studies and investigations within fifteen (15) days after the report is issued to FDER or any other agency regarding groundwater contamination and remedial actions.

5.2 The Company has incorporated the results of the FDER monitoring and the Phase I expansion monitoring into Phase II design modifications. CFRPC and Polk County staff shall review and approve such changes prior to implementation.

## 6.0 Recharge Well Capping

6.1 The Company shall properly plug all recharge wells in the expansion area.

6.2 If the Company chooses to use alternate methods to plug recharge wells other than those reviewed in this application, the Company shall seek approval from CFRPC prior to implementing these alternate methods.

6.3 An independent quality control contractor should oversee and report on the accuracy of the methods used to locate the recharge well location in the field and report on the quality of the capping methods and field procedures.

6.4 The quality control report shall be submitted to CFRPC for review and approval. CFRPC shall review field procedures and methods for recharge well capping submitted by the quality control contractor for approval before the liner is placed over the Phase I area. If the quality control of the well capping procedures is not considered adequate, those wells not meeting specifications shall require recapping.

## 7.0 Mitigation Requirements/Design Features

7.1 The Company shall construct the gypsum stack utilizing a 60-mil thick HDPE liner in order to provide the necessary groundwater protection. Two commercially available 60-mil HDPE liners are currently being tested. Prior to final approval of the construction plans for Phase I Gypsum Stack Expansion, the Company shall provide CFRPC with the data/information utilized to select the final liner for approval by CFRPC.

7.2 Ditch system Alternative II is recommended for the proposed gypsum stack and is included in the Phase I and Phase II designs.

7.3(a) Monitoring of Phase I expansion required placement of wells downgradient to detect any possible failure of the HDPE liner. . Phase II construction will require abandoning and grouting seven monitoring wells and three non-transmissive wells and installing nine new wells as detailed in the FDEP Construction/Operation Permit Application and accompanying Engineering Report. IMC will evaluate the feasibility of maintaining an existing Kingsford mine Floridan well on standby for potential use as a supplement to the monitoring plan. The monitoring plan shall be approved by CFRPC and Polk County staff prior to implementation.

7.3(b) Any damage to the liner system which has a potential for causing ground water impacts shall be reported to CFRPC and Polk County staff, and a copy of the written report of the damage and proposed corrective action to FDEP shall be provided to CFRPC and Polk County within seven days from the time existence of the damage is confirmed.

7.4 The Company shall install three (3) concentric rings of perimeter drains over the HDPE liner as illustrated in Drawing S24B-5 of the ADA document.

7.5 The Phase I and Phase II gypsum stack system factor of safety shall comply with all applicable rules and regulations, including Rules 62-672.600, 62-672.700 and 62-672.750, FAC.

7.6 Monitoring of the slope face and at least weekly visual inspections to insure stability and safety of the side slopes is required of the Company. If movement is noted appropriate engineering examination and mitigation shall be conducted as approved by CFRPC and Polk County staff. The Company shall be required to comply with all applicable rules and regulations relating to inspection and maintenance including Rules 62-672.670 and 62-672.770, FAC.

#### 8.0 Existing Cooling Water Pond Mitigation

The existing cooling water pond is reported to have leaking recharge wells and is scheduled to remain in service for at least another twenty-five (25) years. In order to protect the groundwater resources, the following measures shall be implemented:

8.1 The Company shall install fifteen (15) additional monitoring wells, seven (7) in the I-4 zone and eight (8) in the Floridan, and monitor sodium and sulfate quarterly.

8.1.1 The Company shall provide to CFRPC for approval a Quality Control and Quality Assurance Program for drilling, sampling, and analysis.

8.1.2 The Company shall conduct annual sampling for primary and secondary drinking water constituents that are exceeded in pond water plus ortho phosphate.

8.1.3 CFRPC and Polk County Water Resources shall have the right, at applicant's cost, on 24-hour notification to collect and analyze monitor well samples.

8.2 At a confirmed (which shall mean three consecutive samples within a three month period) sodium concentration of 80 mg/l or sulfate

concentration of 275 mg/l, the Company shall increase the sampling frequency to monthly, and the Company shall begin preparation of a remedial action plan and schedule.

8.3 At a confirmed (which shall mean three consecutive samples within a three month period) sodium concentration of 128 mg/l or sulfate concentration of 325 mg/l (resulting from pond water) a remedial action plan shall be submitted and the process of obtaining necessary permits and approvals shall be initiated consistent with the plan and schedule developed under paragraph 8.2. The necessary permits and approvals shall be obtained at the earliest practicable time.

8.4 At a confirmed (which shall mean three consecutive samples within a three month period) sodium concentration of 144 mg/l or sulfate concentration of 400 mg/l (resulting from pond water) and provided the necessary permits and approvals have been obtained, action shall be started to mitigate impacts attributable to pond water, or, if no other effective alternatives exist, and if sodium continues to remain above 144 mg/l or sulfate continues to remain above 400 mg/l to take the existing cooling pond out of service. Any remediation under this paragraph shall be implemented as expeditiously as possible, consistent with the schedule under paragraph 8.2. If it becomes necessary to take the existing cooling pond out of service, such action shall be taken within two years after all necessary permits are obtained, unless the Board of County Commissioners, with input from CFRPC, determines that additional time is needed by the Company and such additional time would not create a significant risk to the public health, safety or welfare.

8.5 In the event the steps established in paragraphs 8.2 and 8.3 are bypassed (i.e. due to a sudden increase in levels of sodium or sulfate in designated monitor wells), the Company shall, as soon as practicable, submit an action plan with schedules for implementing steps 8.2, 8.3 and 8.4. Pending approval of the action plan and schedules, the Company shall take all reasonable steps necessary to avoid significant adverse impacts to public health or groundwater resources.

8.6 Action by the Company in response to the 1992 SF-1 monitoring results shall be governed by the "action plan" attached hereto as exhibit "E" and all action shall be completed by September 1, 1997.

8.7 In the event sampling results show a consistent improvement (reliable trends) in groundwater quality and the available information supports suspension of remedial activities (i.e. the cause appears to have been remedied), the Company may request that the Board, with input from CFRPC and the Department of Community Affairs, approve a Notice of Proposed Change pursuant to section 380.06 (19), Florida Statutes modifying the action plan to reduce or terminate remedial actions for the situation at issue.

## 9.0 Closure of Existing Stack

The existing gypsum stack is considered a potential source for groundwater impacts as demonstrated by the measured/documentated groundwater impacts. The Company shall as a condition of this development order: (1) Install additional slurry walls on the west and north sides of the plant site immediately to contain all shallow seepage, and (2) commence closure of the existing gypsum stack within fifteen (15) years after the start of operation of the Phase I stack and shall complete closure within 20 years.

9.1 The Company shall install three monitor well clusters downgradient of slurry wall. The well clusters shall monitor and sample the surficial aquifer, the upper confining unit (Transmissive Zones), the I-4 producing zone, and the Floridan.

9.2 These well clusters shall be monitored from the same parameters as identified in 8.1. The Company shall prepare quality control and quality assurance programs consistent with 8.1 and 8.2.

9.3 If exceedences are noted, a remedial action plan shall be developed and shall be submitted to CFRPC within one year for approval.

## B. OTHER RECOMMENDATIONS

1.0 Prior to start of operation of the new gypsum stack, the Company shall be required to submit the conceptual closure plans, cost estimate, and necessary financial responsibility documentation for the existing stack for approval by CFRPC.

2.0 The Company shall establish proof of its financial responsibility for the long-term monitoring and closure of the proposed new gypsum stack.

3.0 The Company shall continue to explore development of alternative uses for phosphogypsum consistent with federal and state regulations regarding phosphogypsum.

3.1 A report shall be submitted with the annual report to CFRPC and Polk County on industry research and applicability to the Company.

3.2 If new technology is economically and technically feasible, the Company shall utilize the newest available technology.

3.3 The Company shall implement the newest available gypsum disposal technology when such technology is available.

4.0 The Company shall conduct and support research towards reclamation technology of gypsum stacks and cooling ponds. A plan for reclamation research shall be submitted to CFRPC six (6) months after approval of the development order. Upon approval, research shall be implemented and results presented in the annual report. CFRPC would support a request by the Company for Florida Institute of Research funds to conduct said research.

5.0 Sampling parameters, frequencies or locations may be modified if CFRPC staff, Polk County staff, and the Company agrees.

C. ANNUAL REPORT

As a part of this recommendation for approval, the applicant shall submit the annual report in a form and content as specified by CFRPC, and shown in the attached Exhibit "D", on or before the fifteenth day of January each year.

D. SUBSTANTIAL DEVIATION

Failure to comply with any conditions shall be determined to be a substantial deviation and thus initiate DRI review processes and potential shutdown of all development activities.

E. EXPIRATION OF AGREEMENT

The terms and conditions of this agreement shall expire in the event that development activity with Phase I does not commence at the Company Phase I expansion area within five (5) years from the effective date of the development order and demonstrates regular progress.

F. RECORDING OF DOCUMENTS

This Development Order shall be recorded by IMC Phosphates Company, Inc., in accordance with Section 380.06(15)(f), Florida Statutes, and with Section 113 of Polk County's Land Development Code within 15 days after its adoption.

G. REQUIRED REPORTS Any Documents that are required by this Development Order from December 5, 2001 forward ( the date of approval of the second NOPC) to be submitted to the CFRPC staff for any review and/or approval shall also be sent to Polk County staff for review and/or approval.

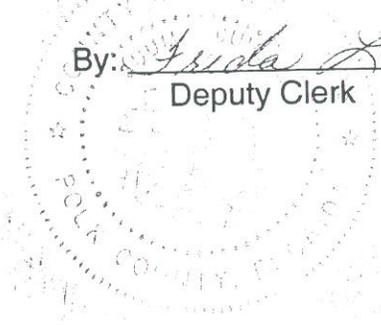
DULY PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS  
OF POLK COUNTY, FLORIDA, THIS 5<sup>th</sup> DAY OF DECEMBER, 2001.

Board of County Commissioners of Polk County

*Jack R. Myers*  
By: Jack Myers, Chairman

Attest: Richard M. Weiss, Clerk

By: *Trida L. Wade*  
Deputy Clerk



**Exhibit "A"**

## Description:

A tract of land lying within Sections 4,5,6 and 8 Township 31 South, Range 23 East, Polk County, Florida. Described as follows:

Assuming the bearing of the north boundary of Section 30, Township 30 South, Range 23 East, Polk County, Florida to be N89°46'55"E, commence at the northeast corner of said Section 30 and run S25°03'32"E 10068.80 feet; thence S41°26'06"E 945.87 feet; thence S41°11'33"E 1255.20 feet to a point on the southwesterly right-of-way line of the CSX Transportation Railroad (formerly the Seaboard Coastline Railroad) and the Point Of Beginning; thence continue along said right-of-way line S41°11'33"E 467.63 feet; thence S39°48'41"E 2348.01 feet; thence South 530.05 feet; thence S50°43'28"W 294.79 feet; thence S02°36'59"W 289.46 feet; thence S51°23'57"W 1265.01 feet; thence S54°42'20"W 1127.46 feet; thence S64°09'45"W 1311.73 feet; thence S83°36'57"W 766.25 feet; S83°01'46"W 1778.29 feet; thence N61°36'09"W 701.41 feet; thence N 57°35'37"W 967.63 feet; thence N14°31'35"W 1252.04 feet; thence N21°39'45"W 365.83 feet; thence N34°58'42"W 316.94 feet; thence N41°00'00"W 3404.21 feet; thence N19°24'35"W 277.61 feet; thence S88°12'49"E 2942.60 feet; thence S89°54'49"E 445.63 feet; thence N89°11'06"E 5049.75 feet to the Point Of Beginning.

Containing 873 Acres, more or less.

**Exhibit "B"**

## Description:

A tract of land lying within Sections 31,32,33 Township 30 South, Range 23 East and Sections 4,5,6,8 Township 31 South, Range 23 East, Polk County, Florida. Described as follows:

Assuming the bearing of the north boundary of Section 30, Township 30 South, Range 23 East, Polk County, Florida to be N89°46'55"E, commence at the northeast corner of said Section 30 and run S25°03'32"E 10068.80 feet to a point on the southwesterly right-of-way line of the CSX Transportation Railroad (formerly the Seaboard Coastline Railroad) and the Point of Beginning; thence continue along said right-of-way line S41°26'06"E 945.87 feet; thence S41°11'33"E 1722.83 feet; thence S39°48'41"E 2348.01 feet; South 530.05 feet; thence S50°43'28"W 294.79 feet; thence S02°36'59"W 289.46 feet; thence S51°23'57"W 1265.01 feet; thence S54°42'20"W 1127.46 feet; thence S64°09'45"W 1311.73 feet; thence S83°36'57"W 766.25 feet; S83°01'46"W 1778.29 feet; thence N61°36'09"W 701.41 feet; thence N 57°35'37"W 967.63 feet; thence N14°31'35"W 1252.04 feet; thence N21°39'45"W 365.83 feet; thence N34°58'42"W 316.94 feet; thence N41°00'00"W 3404.21 feet; thence N19°24'35"W 336.99 feet; thence N02°16'46"E 820.69 feet; thence N06°45'26"W 345.06 feet; thence N25°02'26"W 600.98 feet; thence S88°58'27"E 7266.68 feet to the Point Of Beginning.

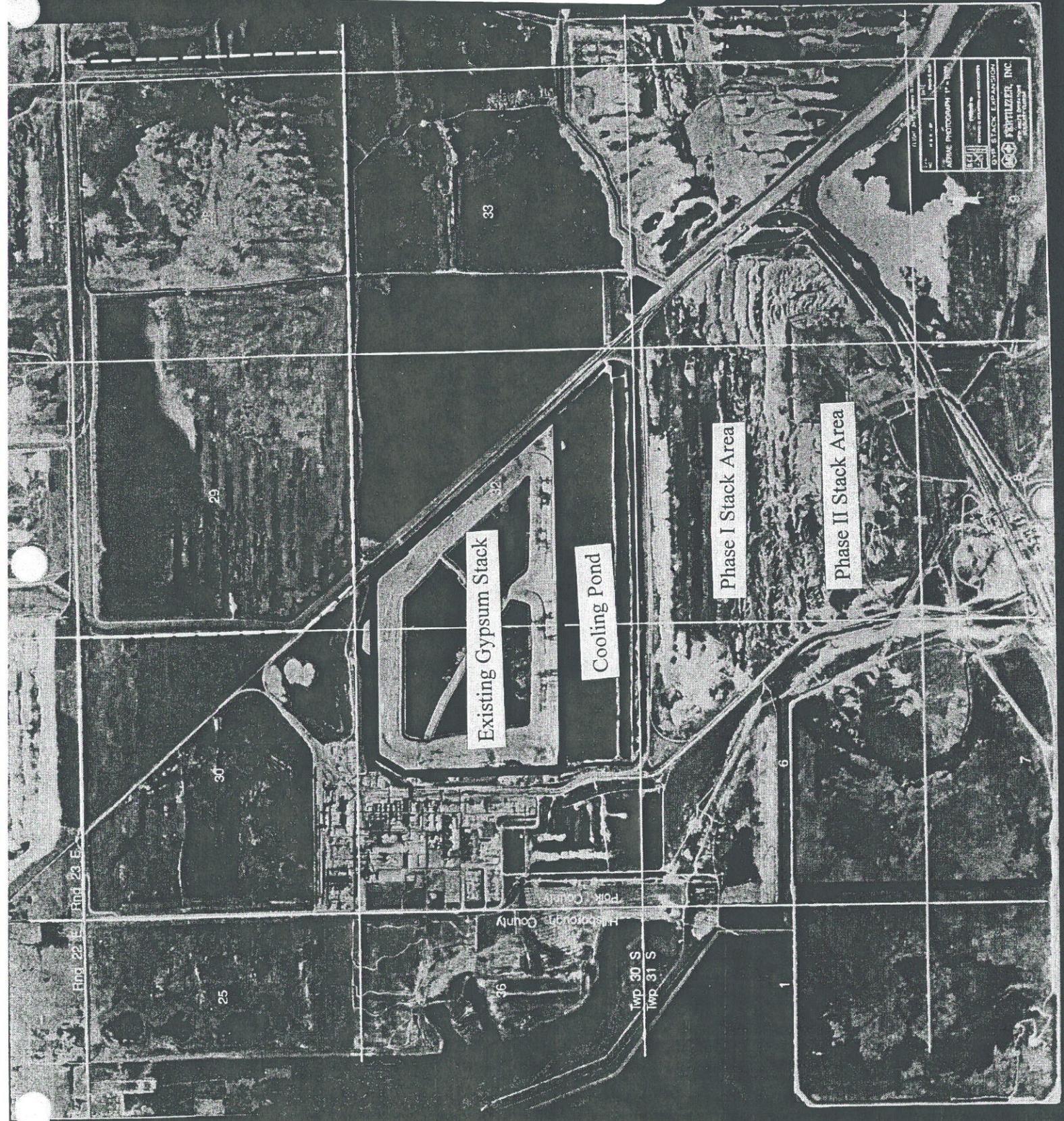
Containing 1184 Acres, more or less.

**EXHIBIT "C"**

IMC NEW WALES EXISTING GYPSUM STACK

EXHIBIT C

POLK OR BK 04913 PG 1291



Existing Gypsum Stack

Cooling Pond

Phase I Stack Area

Phase II Stack Area

AERIAL PHOTOGRAPH 1:10,000  
Scale 1:10,000  
Vertical Datum: Mean Sea Level  
Horizontal Datum: NAD 83  
Produced by: STAPLIZER, INC.  
10000 S.W. 10th St.  
Portland, OR 97219

EXHIBIT "D"

Questionnaire

DRI MONITORING REVIEW

- 1. Name of your DRI \_\_\_\_\_
- 2. Location (County) \_\_\_\_\_
- 3. Is your project under construction at present? (yes-no) \_\_\_  
Start-up date \_\_\_\_\_ Percent complete \_\_\_\_\_
- 4. Will your project be built as submitted and approved?  
Yes \_\_\_\_\_ No \_\_\_\_\_

Please Explain \_\_\_\_\_

- 5. Name of current owner/developer \_\_\_\_\_
- 6. Have you conformed to all conditions detailed at the time  
of development approval? Yes \_\_\_\_\_ No \_\_\_\_\_

Please Explain \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 7. Please note any project timing or land-use changes. Where  
appropriate you may submit site plan maps.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Please submit a current master plan map noting phasing and major changes that may have occurred since your DRI was approved. \_\_\_\_\_

9. Is your DRI project currently under a different governmental jurisdiction than the one at the time of final approval (i.e., county to city annexation)?  Yes  No  
 Please explain \_\_\_\_\_

10. If the answer to question 9 was Yes, has the new governmental jurisdiction changed any of the conditions and/or requirements of the final DRI approval?  YES  NO

11. Have any of the tracts of land initially included in the DRI been sold, or have new tracts of land been acquired? Do not list the rate of individual home sites.  YES  NO  NA

List Tract	List Buyer
1. _____	1. _____
2. _____	2. _____
3. _____	3. _____
4. _____	4. _____
5. _____	5. _____
6. _____	6. _____

Tract #	Acreage	Location
_____	_____	_____
_____	_____	_____
_____	_____	_____

12. List any lands adjacent to the initial DRI which have been obtained or purchased and include an intended land-use map for these new areas.

13. Please list all major regulatory permits obtained or pending for your DRI project.

Agency Permit Type Permit # Date Issued

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. With respect to question 13, were there permit activities noted in the DRI/ADA? Yes \_\_\_\_\_ No \_\_\_\_\_

Comments \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15. How long did it take you to complete the entire DRI process? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

16. This question is optional, but it would be very helpful in determining the economic impact to companies who go through the DRI process. As such, only the cost will be referenced and not the name of your company.

How much did it cost you to go through the DRI process including public hearings and meetings?

In-house staff \_\_\_\_\_

Technical Consultants \_\_\_\_\_

Legal Consultants \_\_\_\_\_

17. Where did you have the greatest difficulty during the process? Rate each category on a scale of 1-10 (10 being the worst).

- a. State Agencies \_\_\_\_\_
- b. Regional Agencies \_\_\_\_\_
- c. Local Agencies \_\_\_\_\_
- d. Public Hearings \_\_\_\_\_
- e. Citizen Participation \_\_\_\_\_
- f. Other Permits \_\_\_\_\_
- g. Time Limitations \_\_\_\_\_
- h. Fiscal Limitations \_\_\_\_\_
- i. Technical Limitations \_\_\_\_\_
- j. Economic Conditions \_\_\_\_\_
- k. Not Clear on Regulations \_\_\_\_\_

- l. Support Services \_\_\_\_\_
  - m. Public Relations \_\_\_\_\_
  - n. Other, Public Comment \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

18. Provide a list specifying each development order condition and each developer commitment as contained in the ADA and state how each condition or commitment has been complied with during the annual reporting period.

ORL1 #686214 v1

STATE OF FLORIDA )  
                                  )  
COUNTY OF POLK    )

I, Richard M. Weiss, Clerk of the Board of County Commissioners of Polk County, Florida, hereby certify that the attached is a true and correct copy of Resolution No. 01-133 adopting an Amended Development Order with Conditions for the IMC Phosphates Company New Wales Gypsum Stack Expansion Development of Regional Impact which was adopted by the said Board on December 5, 2001.

WITNESS my hand and official seal on this 21<sup>st</sup> day of December 2001.

RICHARD M. WEISS  
Clerk and Auditor

BY: *Freda L. Wade*  
Freda L. Wade  
Deputy Clerk





IMC Phosphates Company  
P.O. Box 2000  
Mulberry, Florida 33860-1100  
863.428.2500

Certified Mail 7000 1670 0005 6504 2018  
Return Receipt Requested

January 16, 2002

Ms. Chanda Bennett  
Polk County DRI Coordinator  
Polk County Planning Division  
P. O. Box 9005  
Bartow, Florida 33831-9005

**RE: Gypsum Stack Expansion DRI  
Development Order  
Notice of Proposed Change  
New Wales Plant**

Dear Ms. Bennett:

Attached is the certified copy of the Resolution No. 01-133, which adopts an Amended Development Order with Conditions for the IMC Phosphates Company New Wales Gypsum Stack Expansion Development of Regional Impact. The resolution was adopted by the Polk County Board of County Commissioners on December 5, 2001. The Notice of Adoption was recorded January 11, 2002.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. M. Prewitt".

J. M. Prewitt  
Manager  
Gypsum Stacks

JMP: oan

Attachments

cc: Roger Sims, Holland & Knight LLP

J:\jmp\nw\_bennett\_NOPC\_011602

RECEIVED

JAN 17 2002

POLK COUNTY PLANNING DIVISION

INSTR # 2002007748

OR BK 04898 PG 1970

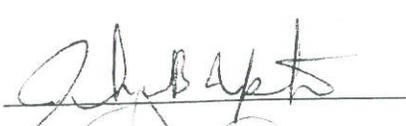
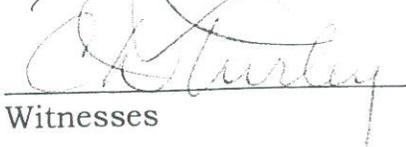
RECORDED 01/11/2002 12:57 PM  
RICHARD M. WEISS CLERK OF COURT  
POLK COUNTY  
DEPUTY CLERK N Marion

*This document was prepared by*  
**R Roger w. Sims,**  
**Holland & Knight LLP**  
**PO Box 1526, Orlando, FL. 32802-1526**

**NOTICE OF ADOPTION OF A DEVELOPMENT ORDER,  
FOR A DEVELOPMENT OF REGIONAL IMPACT KNOWN AS  
IMC-AGRICO COMPANY NEW WALES GYPSUM STACK EXPANSION**

PLEASE TAKE NOTICE that a development order approving an amendment to the previously approved IMC-Agrico Company New Wales Gypsum Stack Expansion Development of Regional Impact was adopted by Polk County, Florida at the request of the current owner, IMC Phosphates Company, on December 5, 2001 covering the land described in Exhibit "A" attached hereto and made a part hereof by reference. The development order was initially adopted June 5th, 1990 and previously amended July 20th, 1993. The development order and amendments may be examined at the office of the Polk County Planning Division, 330 West Church Street, Bartow, Florida 33830. The development order constitutes a land development regulation applicable to the land covered by the development order.

**IMC PHOSPHATES COMPANY**

Witnesses

By:   
Name: Michael A. Daigle  
Title: General Manager - New Wales

RECEIVED

POLK COUNTY PLANNING DIVISION

STATE OF FLORIDA

COUNTY OF POLK

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of January, 2002, by MICHAEL A DAIGLE, GENERAL MANAGER of IMC Phosphates Company. Such person is personally known to me.

*Kathleen L. McElroy*  
KATHLEEN L. McElroy  
Printed/Typed Name:  
Notary Public-State of Florida  
Commission Number:  
My Commission Expires:



Kathleen L. McElroy  
Commission # GC 839411  
Expires July 9, 2003  
Bonded Thru  
Atlantic Bonding Co., Inc.

After recording, return original to:

Polk County Planning Division  
P.O. Box 9005  
Bartow, Florida 33831-9005

## Exhibit "A"

## Description:

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Containing 873 Acres, more or less.