



STATEMENT OF THE CASE

This case is an appeal under Section 380.07, Florida Statutes, by Estech General Chemicals Corporation (Estech), to the Florida Land and Water Adjudicatory Commission (Adjudicatory Commission) of a development order issued by the Manatee County Board of County Commissioners.

On August 16, 1979, the Manatee County Board of County Commissioners adopted a resolution denying Estech's Application for Development Approval for a Development of Regional Impact (D.R.I. #10), denying Estech's Application for Approval of a Special Exception (SE-1120), and denying Estech's Application for Approval of a Master Mining and Reclamation Plan.

On September 24, 1979, Estech appealed to the Adjudicatory Commission pursuant to Chapter 380.07, Florida Statutes. The appeal was referred to the Division of Administrative Hearings and assigned to a hearing officer. The Department of Community Affairs and the Tampa Bay Regional Planning Council joined the appeal as intervening parties. Sarasota County was granted "provisional status" as an intervenor.

The Hearing Officer conducted de novo hearings, over Petitioner's objection, on March 17-21 and May 19-23, 1980. On July 31, 1980, a Recommended Order issued containing findings of fact, conclusions of law, and conditions for development approval. The Hearing Officer recommended that the Florida Land and Water Adjudicatory Commission grant Estech permission to develop its property in Manatee County in the manner provided in the Applications filed with the County subject to various Conditions for Development Approval which were attached to the Recommended Order as Exhibit B.

ORDER

1. The Hearing Officer's Findings of Fact, as set forth in the Recommended Order dated July 31, 1980, are hereby adopted and incorporated by reference herein with the following changes: (New language is underlined.)

a. Finding of Fact number 15b is corrected to read:

"b. The water in Lake Manatee is similar to that found in the streams on the Estech property. The water in Lake Manatee generally falls into Class IA standards for a potable water supply."

Law No. 8. The following language is substituted:

"Evidence was presented to show that the dam design and construction will meet State Department of Environmental Regulations standards as set forth in Chapter 17-9, Florida Administrative Code. These rules set the minimum requirements for construction and surveillance of dams."

"However, the Commission concludes that the use of sand-clay mix is called for under the circumstances. The use of a sand-clay mix as recommended by one of Estech's consulting engineers is both warranted and justified in this case, even though this will be a more expensive procedure."

"The sand-clay mix would reduce harm in the event of a dam break. While the possibility of a dam break may be remote, due to the fact that the immediate health of the citizens of the area would be endangered vis-a-vis their potable water supply, the requirement of the sand-clay mix in the initial settling area is feasible."

"Additionally, the attributes of a sand-clay mix; i.e., reduction of normal adverse effects of the settling on slime ponds; reduced demand on water; and reduced reclamation time; all clearly support the conclusion that the sand-clay mix is a more desirable method of waste clay disposal."

3. The Conditions for Development Approval (Exhibit B to the Recommended Order) are hereby adopted and incorporated by reference herein, with the following changes:

a. Condition for Development Approval No. 11b is modified to conform with the following provision from the Draft Development Order:

"In connection with determining the existing conditions of these forested wetlands, Estech shall perform one baseline transect and at least one other transect to confirm the validity of the first transect in the hardwood swamp area."

b. The following requirement is included as paragraph 3d on page 4 of the Hearing Officer's Conditions for Development Approval:

"d. The 480-acre above-grade clay settling area shall be filled with a sand-clay mixture and/or water rather than dilute clays as originally proposed by Estech. Nevertheless, dilute

B. Finding of Fact number 26b and Condition 11d should be changed to read:

Estech, prior to mining the hardwood swamps which are designated for restoration, shall demonstrate the company's or the industry's ability to successfully recreate those areas and that Estech has full access to the technology necessary to recreate those areas. This demonstration may be done on property other than the Duette site so long as the soil and conditions at the site of the demonstration project are similar to the soils and conditions on the Duette site.

These changes to the Findings of Fact are made to correct the order to conform with the record and stipulations entered into by the parties to this cause. Counsels for the parties have no objection to these corrections. These changes correspond to Exception 1 and Exception 2 filed by Estech in its Exceptions to the Recommended Order dated August 18, 1980. In addition to reasons set forth above, the Commission adopts the rationale provided in Estech's Exception 1 and Exception 2.

The Hearing Officer's Conclusions of Law, as set forth in the Recommended Order dated July 31, 1980, are hereby adopted and incorporated by reference herein except as follows:

The Commission accepts the first three sentences of Conclusion of Law No. 6 in the Hearing Officer's Recommended Order as amended below:

A major controversy in this proceeding was concerned the earthen dam designed to contain the wastes in the initial clay settling area. It is manifest that failure of the dam would have a devastating impact upon the Manatee River watershed and Lake Manatee Reservoir. The evidence also showed that the use of a sand and clay mixture in the settling area instead of clay wastes only, with a consequent increased cost of some several million dollars would be a most desirable method of minimizing the impact upon Lake Manatee and would produce no significant long-term adverse impacts upon the upper reaches of the Manatee River. The 480-acre above-grade clay settling area proposed by Estech. Nevertheless, dilute

clays may be temporarily placed in the initial clay settling area in the event of an emergency caused by operational problems associated with the waste disposal systems. If such emergency usage continues longer than 72 hours, Estech shall notify the " " County Engineer. Estech shall proceed with all due haste to correct any operational problems."

c. The following requirements are included in the Conditions for Development Approval as paragraph 2h:

"h. If Estech applies to the Southwest Florida Water Management District for an increase in their existing consumptive use permit which allows 12,960,000 gpd average annual withdrawal, Estech shall provide a copy of its SWFWMD application to Manatee County, Sarasota County, the Tampa Bay Regional Planning Council and the Department of Community Affairs at the time of filing."

"Manatee County shall make a determination as to whether or not the proposed water-use change is a substantial deviation to an approved Development of Regional Impact pursuant to §380.06(17), Florida Statutes."

"If a request is approved by SWFWMD for increased water consumption exceeding 1,944,000 gpd, then Estech agrees that such a modification is a substantial deviation as defined in §380.06(17), and shall be subject to further review by Manatee County pursuant to §380.06, F.S."

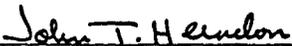
4. The Hearing Officer's recommendation contained in the July 31, 1980, Recommended Order is accepted and the Commission hereby grants permission to Estech General Chemicals Corporation to develop its property located in Manatee County in the manner provided in the applications, as amended and described in the statement of the case, and subject to the conditions adopted by and set forth in this order.

5. Exceptions to the Recommended Order were filed by Estech, Manatee County and Sarasota County. Manatee County filed a second List of Exceptions on September 16, 1980, which was objected to by Estech.

a. Estech's objection to the second set of exceptions filed by Manatee County is granted and the exceptions are denied.

b. The parties' exception to the Recommended Order are rejected to the extent they are inconsistent with the findings and conclusions contained in this order.

Entered at Tallahassee, Florida, by the Florida Land and Water Adjudicatory Commission through the Secretary to the Commission this 15th day of October, 1980.

  
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JOHN T. HERNDON  
Secretary to the Land and Water  
Adjudicatory Commission

Copies to:

Members of the Commission  
Counsel of Record  
Board of County Commissioners, Manatee County  
Board of County Commissioners, Sarasota County  
Department of Community Affairs,  
Bureau of Land and Water Management

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ESTECH GENERAL CHEMICALS CORPORATION, )  
formerly SWIFT AGRICULTURAL CHEMICALS )  
CORPORATION, )  
 )  
 ) Petitioner, )  
 ) Case No. 79-1994  
vs. )  
 )  
 )  
MANATEE COUNTY, a political subdivision )  
of the State of Florida, et al., )  
 )  
 ) Respondent. )  
 )  
\_\_\_\_\_ )

CONDITIONS FOR DEVELOPMENT APPROVAL

1. GENERAL

a. These conditions incorporate by reference the representations, terms, and conditions set forth in Estech's Application. The representations, terms, and conditions set forth herein shall supercede any inconsistent representations, terms, or conditions in the Application.

b. Definitions and matters contained in Chapter 380, Florida Statutes, shall control the construction of any defined terms and matters appearing in the Development Order.

c. The conditions and representations set forth in the application shall be effective for a period of thirty-five years from the date of the Final Order herein. The effective period may be extended by the Board of County Commissioners of Manatee County upon a showing of good cause. The duration requirements and provisions of Section VI, Paragraph 2, of the Manatee County Zoning Ordinance are hereby superceded in order to permit Estech to follow the schedule of mining and reclamation described in the Application. However the Development Order shall become ineffective seven years after the date of final approval by all appropriate local, state and federal permitting agencies unless the mine is capable of 50 percent production at that time.

2. SURFACE HYDROLOGY

a. Standards

Estech shall cause no disturbance or

incompatible land use activity within any 25-year flood plain designated by Estech to be preserved except that which is shown either to be essential to and unavoidable for the mining operations or in the overriding public interest.

b. Pit Dewatering

To promote the maintenance of the functional aspects of 25-year flood plains, water stress caused by pit dewatering shall be limited to only one side of the 25-year flood plain at a time, and mining of the opposite side of the 25-year flood plain shall be delayed until mined portions have been recreated to design elevations, whenever feasible, and ground water levels have recovered, unless mining of the opposite side is specifically authorized by Manatee County. Surface recharge ditches shall be constructed and maintained by Estech as necessary to minimize ground water table stress adjacent to 25-year flood plains.

c. Land Use in New Flood Plains

Estech shall insure that no development or land use activity (grazing, farming, tree harvesting, etc.) will be allowed within any newly established 25-year flood plain that would in any way inhibit the growth and development of native vegetation associations appropriate for that flood plain during the mining period.

d. Post Reclamation Study

After reclamation is complete in each affected drainage basin, Estech shall conduct a detailed study to define final flood frequency elevations, delineate the extent of each, and determine the quantity, rate, and quality of surface water leaving the site during high rainfall events. This information shall be transmitted to all appropriate local, regional, state and federal agencies involved in flood plain management and flood plain delineation so that downstream flood elevations and management mechanisms can be appropriately modified.

e. Peak Discharge Controls

If the hydrologic studies indicate that the peak flows of any affected drainage basin have been increased over pre-mining conditions, Estech shall increase the retention capacity of the recreated land such that the peak flows of the affected drainage basin are equal to or less than that which existed before mining. Increases in retention capacity shall be accomplished, without the use of control structures, by modifying or regrading the final topography of the basin in question.

f. Transfer of Freshwater Reservoir

After mining is completed, the proposed storage reservoir and its attendant control structures shall be dedicated to Manatee County - if at that time the Manatee County Board of County Commissioners deems said reservoir necessary to the operation of the Manatee County Utilities System.

9. Stream Augmentation

In the event Manatee County initiates a program of stream flow augmentation in the East Fork of the Manatee River from well fields or other sources, Estech shall modify its fixed weir to prevent such stream augmentation from entering Estech's fresh water reservoir, if found to be necessary by the Manatee County Board of County Commissioners and the Southwest Florida Water Management District after due notice and hearing.

3. CLAY SETTLING AREA - EMERGENCY PROCEDURES

a. Prior to operation of the clay settling area dams, Estech shall establish, in conjunction with the Manatee County Utilities System, a comprehensive emergency notification and action plan in the event of failure of such dams.

b. Proof Testing

Prior to the commencement of active mining operations, Estech shall "proof test" the dam surrounding the initial 480-acre clay settling area by filling the settling area with water to a depth of approximately 15 feet.

c. Monitoring

Before the "proof testing" of the initial clay settling area, Estech shall place piezometers and other appropriate instruments in or around the dam surrounding the initial clay settling areas as appropriate. These instruments shall be monitored on a regular and frequent basis throughout the active life of the settling area. The instruments shall be augmented with additional instrumentation if necessary. The dam shall be inspected at least three times each day by trained company personnel and at least once each month by the design engineer throughout the first year of active mining operations.

4. WATER QUALITY

a. Monitoring Stations

All surface water quality monitoring stations shown in Figure 11 of the addendum to the Estech Mining Plan shall be sampled, provided that water is present in the streams.

b. Reporting

All data resulting from water quality sampling activities shall be collected and provided to the Manatee County Health Department on a monthly basis. In addition, data collected from sampling activities in the surface water storage reservoir shall be provided to the Manatee County Health Department on a quarterly basis.

c. SWFWMD Reports

Copies of the data generated as a result of Exhibit 1, Page 5, Item i and Page 5, Item o of the consumptive use permit issued by the Southwest Florida Water Management District, dated 9-6-78, for Estech shall be submitted to the Manatee County Health Department at the same time those data are sent to the Southwest Florida Water Management District.

d. Lake Depths

All of the lakes on Estech's property (except the reservoir and wilderness area) shall be no deeper than 25 feet and shall have a littoral zone as described in paragraph 8b hereof.

e. Easements

Pursuant to Estech's stated consent, Estech shall provide to Manatee County easements or other legal interest, including fee title, as necessary for the permitting, authorization, construction, and

operation of the proposed Beker Reservoir, if built, limited to the land lying below the 100-year flood plain of the reservoir, itself and lying approximately at the 87.5 foot contour line (above mean sea level) on the East Fork of the Manatee River.

f. Section 208 Requirements

Estech shall comply with any applicable reservoir protection ordinance or regulation Manatee County may lawfully adopt in accordance with the Section 208 Areawide Water Quality Plan.

RADIATION

a. Monitoring

Estech shall provide copies to the Manatee County Health Department of all reports on radiation required to be prepared or filed by Estech under federal, state, or local laws and regulations. Estech shall establish an air monitoring program, which shall include monitoring for all sources of radiation which are associated with any of its emissions, including levels of Radium 226.

b. Reclamation

Upon completion of reclamation of any mining areas, roads, drainage channels, the plant site, or other disturbed or mined areas, Estech shall provide a detailed radiological analysis of the reclaimed land to the Manatee County Health Department. The acceptability of radiation levels encountered in such analysis shall be determined pursuant to state or federal standards subject to review of the data by Manatee County. If an area has unacceptable radiation levels, Estech agrees to cover the area with lower value materials such as may be found in overburden or sand tailings and clay by-products.

c. Modification of Order

Manatee County shall have the right to modify the terms and conditions herein to require additional measures or more restrictive standards to reduce exposure to any radiation resulting from Estech's operations, if, upon due notice and hearing, pursuant to Chapter 120, Florida Statutes, its Board of County Commissioners find such modification(s) necessary to protect the public health, safety, or welfare.

6. AIR QUALITY

Monitoring

The data provided by the ambient air monitoring program shall be made available on a continuing basis to the Environmental Protection Agency, Florida Department of Environmental Regulation, and the Manatee County Health Department.

7. WILDLIFE RESOURCES

a. Sand Pine Community

Estech shall be allowed to mine the 23 acre sand pine stand, provided that the remaining sources of sand pine community in the southeastern quarter of Section 17 in R22E, T34S, are left undisturbed by the mining operations.

b. Reclamation

The southwestern quarter of Section 17 in R22E, T34S, which envelops the 23 acre community to be mined shall be reclaimed to wildlife and passive recreation/open space use.

c. Wildlife Area

Pursuant to Estech's stated consent, the wildlife areas designated to remain unmined south of the East Fork Manatee River, Section 16 and 17, T34S, R22E, shall be dedicated to Manatee County by Estech for the life of the mining project, in no event less than 10 years, and, at the end of the mine life, the property will be conveyed to an appropriate entity for the purpose of creating a wildlife sanctuary and passive recreation area in which motorized recreational vehicles shall be excluded.

8. WILDERNESS AREA RESTORATION

The approximately 100 acre site designated to be a wilderness area after restoration shall be restored in accordance with the following criteria:

- a. Estech shall arrange the islands such that wind mixing of the surrounding waters will occur to the maximum extent possible regardless of wind direction.
- b. Estech shall top and slope the islands in conformance with the Manatee County ordinance applicable at the time of construction.
- c. Estech shall spread top soil from mined wetlands along the shoreline of the spoil islands so that desirable wetland species can begin to stabilize.
- d. In compliance with the drainage plan described in the Application, Estech shall utilize suitable available material in the vicinity of the wilderness site; and to the maximum extent possible reduce the depths of the water surrounding the islands to 25 feet or less.

9. MINING IN THE EAST FORK OF THE MANATEE RIVER

a. East Fork

No mining shall be permitted in the East Fork of the Manatee River.

b. Reservoir Segment

If Manatee County receives all applicable state and federal permits and construction of the proposed Beker Reservoir is authorized, and subject to prior approval of Manatee County and Tampa Bay Regional Planning Council, Estech may modify its approved Application to the extent necessary to allow Estech to mine the land lying within the areas to be regularly inundated by the reservoir. Such modification shall provide for protection of water quality, surface hydrology, vegetation, wildlife, and all other factors considered in the approval of Estech's original Application, as determined by Manatee County and the Tampa Bay Regional Planning Council.

c. Reservoir Protection

The creation of the Beker Reservoir shall not deprive Estech of its right to mine properties outside of the reservoir which are otherwise authorized to be mined by this Development Order so long as they lie more than 200 feet outside of the 100-year floodplain of the reservoir. The 100-year floodplain of the reservoir is expected to be located at or about 87.5 foot contour line above mean sea level on the East Fork of the Manatee River.

10. WETLANDS PROTECTION

EPA Requirements

Estech will comply with the Environmental Protection Agency's wetland designation system. Class I wetland areas will be preserved; Class II wetland areas will be mined and restored. The Class I and Class II wetland areas on Estech's property are identified on a map which is attached hereto as Attachment A.

11. HARDWOOD SWAMP RECREATION PILOT PROJECT

- a. The hardwood swamp areas designated for restoration shall be reclaimed after mining as hardwood swamp areas in a manner which will allow the reestablishment of forested wetlands. The hardwood swamp areas designated for restoration are those hardwood swamp areas in Class II wetlands that are identified on the map attached hereto as Attachment B.
- b. In connection with determining the existing conditions of the reforested wetlands, Estech shall perform one baseline transect and at least one other transect to confirm the validity of the first transect in the hardwood swamp areas. The information to be gathered in these transects shall include relative topographic contours, soil profiles and condition and vegetative communities.
- c. The top soil shall be removed before mining and utilized for top dressing on reclamation areas.
- d. Estech, prior to mining the hardwood swamps which are designated for restoration, shall demonstrate its ability to successfully recreate those areas and that it has full access to the technology necessary to recreate those areas. This demonstration

may be done on property other than the Duette site so long as the soil and conditions at the site of the demonstration project are similar to the soils and conditions on the Duette site.

- e. The hardwood swamp demonstration plan shall be submitted to Manatee County and the Department of Community Affairs prior to initiation of the demonstration project for review and evaluation of the acceptability of results from the demonstration project. The TBRPC also will be given an opportunity to review and submit written comments on the proposed hardwood swamp demonstration plan.

The demonstration area must:

- (1) achieve the design hydrologic regime which will approximate the normal hydrologic regime of the natural system to be restored;
  - (2) establish native woody plant species characteristic of the natural system model being used for the area being restored;
  - (3) be suitable for fish and wildlife habitat; and
  - (4) have water quality similar to that in streams on the Estech property prior to mining.
- f. The demonstration project will commence within one year after the commencement of construction pursuant to the development order. A demonstration project must be conducted for at least 5 years to be considered valid. A demonstration project will be deemed successful if, at the end of the 5 year period, the project site has a healthy, developing system with more than 50% dominance of woody plant species characteristic of a hardwood swamp or the same species as those found in the transects done

in the hardwood swamp or the species described in the natural system model. Transects similar to those conducted to characterize the swamps prior to mining shall be conducted in the fifth year and thereafter at three year intervals for a maximum of 15 years. Manatee County and the Department of Community Affairs will use this data and site inspections to determine the success of the establishment of the model natural system pilot project. If either the pilot project or the actual recreating of the hardwood swamps identified on Attachment B fail to develop as expected, then disturbance of other hardwood swamps identified on Attachment B. shall cease.

12. DRAGLINE CROSSING SITES

- a. The Class I wetlands designated for preservation as shown in the attached Attachment A shall not be disturbed or encroached upon by Estech in any manner, except as provided herein. Because of the configuration of Estech's property and the location, size, and shape of the preservation areas, there are several locations, as shown in Attachment C and herein referred to as "Preferred Crossings," where access or movement across preservation areas may be necessary. "Alternate Crossings" as marked on the attached Attachment C are to be used only if the preferred crossing is unobtainable. The locations of any crossing shall be staked in the field prior to any encroachment of the preservation areas. One railroad crossing and power line site shall be designated at a later date by Estech and shall be subject to approval by the DCA, DER and Manatee County.

b. The width of any crossings shall be no more than 200 feet. The width of the crossing shall be reduced where the crossing will not be used for all of the following:

- (1) dragline;
- (2) slurry and return water lines;
- (3) access roads; and
- (4) power lines.

The crossings at the stream or water course shall be perpendicular to the flow of the stream. In addition, prior to any construction involving the crossings of preservation areas, the plans for these crossings shall be submitted to the Department of Community Affairs for approval to insure that the plans are consistent with the terms and conditions hereof. Width of the crossings is to be determined.

- c. Estech shall cooperate in seeking to use preferred crossing sites for crossing the preservation areas.
- d. Estech shall maintain a vegetative cover on the approaches to the crossing sites to minimize erosion and prevent sedimentation.
- e. Access roads within the crossings shall be no more than 15 feet wide and use of these access roads shall be limited.
- f. After particular uses, such as dragline crossings, pipeline crossings and access, have terminated, the areas shall be restored to a condition equal to or, at Estech's election, better than the condition that existed prior to mining.
- g. In designing the crossings and the facilities to be located with the crossings, measures shall be

taken to minimize adverse environmental impacts during construction, operations, and maintenance. Such measures include, but are not limited to:

- (1) elevated pipelines;
- (2) maximizing the distance between the stream and the structures supporting the overhead powerlines;
- (3) minimize runoff within the crossing, so as to prevent the degradation of water quality;
- (4) transmission of recirculation water, tailings and slurry in high-strength or double walled pipelines within the preservation area; and
- (5) minimizing the disruption of the natural drainage within the crossings.

h. Pipeline, Dragline Crossings

The disturbance to 25-year flood plains necessitated by pipeline construction and moving of draglines shall be conducted during dry periods. All applicable best management practices for erosion control shall be utilized throughout the entire period of the disturbance. Immediately after such a disturbance is terminated, Estech shall remove all structures, restore the area in question to original grade elevations and reforest and replant the area.

i. Pipeline Inspections

Estech shall provide for a special program of frequent and regular inspection of all pipelines in or near any 25-year flood plain.

13. CULTURAL RESOURCES

The archaeological site identified as the "Carruther's Mound" shall be excavated under the supervision of an individual or agency approved by the Florida Division

of Archives, History and Records Management prior to mining, unless recommended for preservation by EPA.

RECLAMATION

a. Best Management Practices

Best management practices and techniques including revegetation, reforestation, erosion control, etc. shall be utilized by Estech in recreation of all land designed to support forested and unforested wetland vegetation associations.

b. Wetland Buffers

Natural, recreated and revegetated wetlands shall be utilized as functional biological filters and buffers to the maximum extent possible to mitigate the potential increases in pollutant loading into the tributaries of the Lake Manatee Reservoir.

c. Wetland Vegetation

Best management practices shall be utilized by Estech to accelerate the natural development of those areas that are intended to support native forested and unforested wetland vegetation associations.

d. Land Recreation Criteria

Land recreation shall not be considered complete until all of the following criteria are met:

1. Soil Moisture. The land area designated as recreated wetlands can maintain the design soil moisture regime (frequency and duration) as correlated to water year, rainfall event and antecedent conditions without the manipulation of available water quantities by man.

2. Bank Stabilization. All banks and slopes are stabilized with self-sustaining vegetation.

3. Erosion. No evidence of excessive erosion exists.

4. Channels. No evidence of unplanned channel development exists.

5. Ground Cover. Complete ground cover vegetation has been established that is healthy and self-sustaining.

6. Native Wetland Grasses. The presence of healthy and self-propagating native wetland grasses and other herbs within the recreated wetland has been demonstrated.

7. Native Wetland Trees. The reforestation of native wetland trees has been successfully completed.

Wetland and Flood Plain/Flood Prone Area Regulation

After mining and reclamation is complete, all recreated wetlands and flood plain/flood prone areas shall be subject to all the rules, regulations and policies of local, state and federal agencies governing wetland and flood plain/flood prone areas.

5. TRANSPORTATION

a. Intersection Improvements

Estech shall provide all necessary intersection improvements to SR 62 and Duette Road. Estech shall coordinate with the Florida Department of Transportation to determine the exact intersection design. Estech shall construct the improvements according to Florida Department of Transportation standards.

b. Rail Crossings

Estech will provide assurance to Manatee County that all necessary improvements for at-grade rail crossings which cross SR 62 between SR 37 and SR 39 will be built in conformance with all applicable local and state standards. Estech shall coordinate with the Department of Transportation to design the rail crossings.

c. Transportation Master Plan

Estech will cooperate and participate with governmental and private interests in the development of a Transportation Master Plan that will facilitate the orderly development of those areas of the region projected to be utilized for phosphate mining.

d. Rail Service

Rail service as proposed in the Application shall be installed prior to the initiation of mining.

e. Duette Road

Upon completion of the construction phase, Estech shall repair and restore Duette Road to its condition prior to construction. Thereafter, Estech shall restore Duette Road to this condition whenever damage to Duette Road is caused by Estech's operations.

f. Use of County Roads

Not less than one working day prior to commencing a period of continual truck shipment of phosphate off premises over Manatee County roads, including Duette Road, whether in connection with a rail strike, short-term contract, or other purpose, Estech shall provide written notification to the Manatee County Engineer of the shipment period,

shipment schedule, maximum load per truck, and intended routes in Manatee County. The County Engineer may establish a reasonable trucking schedule for such shipment in order to minimize conflict with peak traffic patterns in the intended route.

16. REPORTS AND STUDIES

a. Environmental Impact Assessment

Estech shall utilize and adhere to any new rules and regulations which are otherwise applicable resulting from the Central Florida Phosphate Environmental Impact Assessment when finalized by the U.S. Environmental Protection Agency.

b. Regional Phosphate Mining Impact

Estech shall cooperate and provide assistance in any regional studies of the aggregate impact of phosphate mining.

c. Annual Report

Estech shall provide Tampa Bay Regional Planning Council with a copy of the annual DRI report of development activity presented to Manatee County.

d. A Florida registered professional engineer commissioned by Estech shall certify in a written annual report that the project is being developed and operated according to the conditions set forth in the development order. These reports shall be submitted to and reviewed by the Manatee County Engineer, who is hereby designated as the local official responsible for assuring that this development complies with the development order.

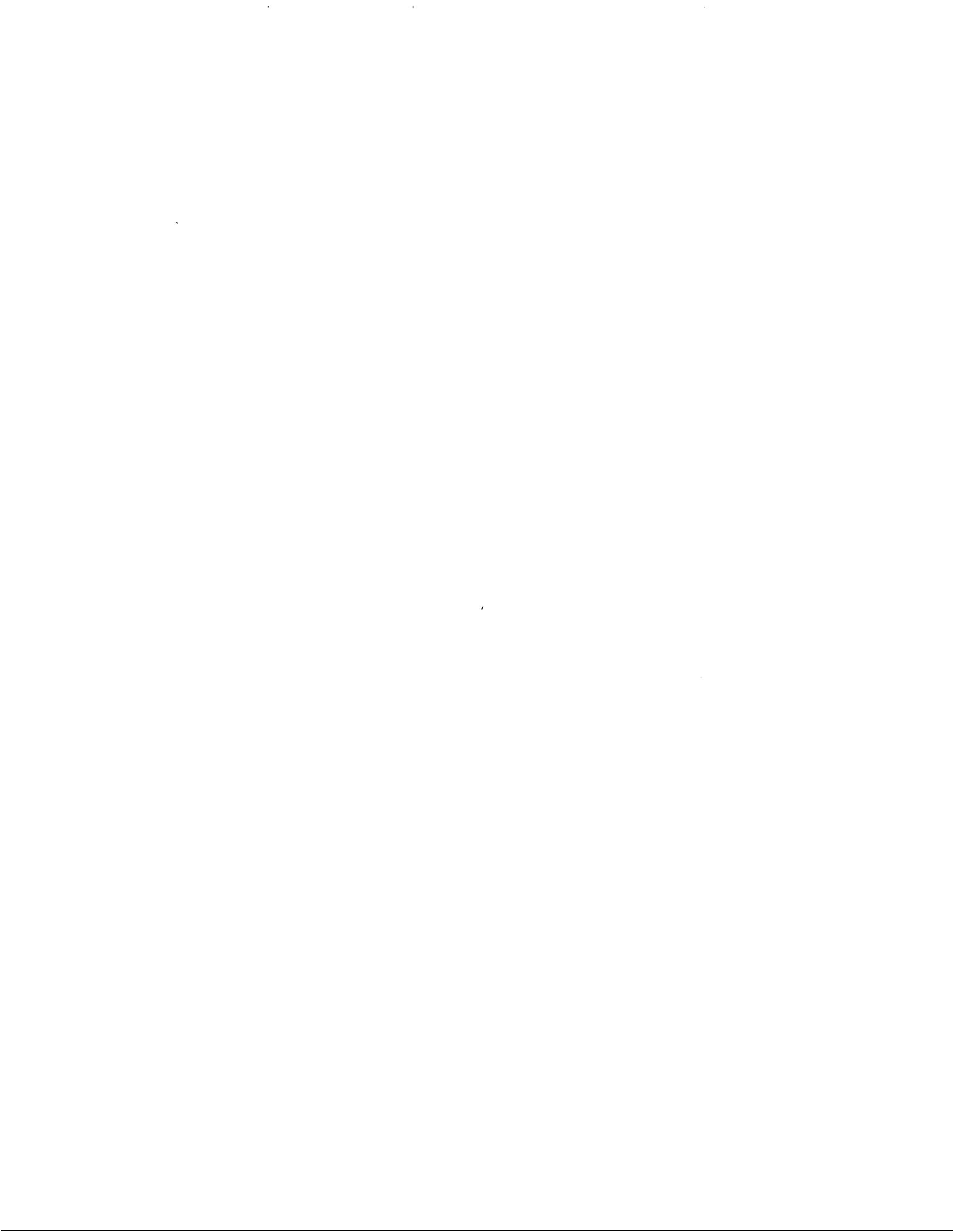
- e. Estech shall file on or before February 15 of each year a written report with the Board of County Commissioners of Manatee County, the Tampa Bay Regional Planning Council and the Department of Community Affairs. Such report shall comply with the minimum information requirements in the first rules adopted by the Department of Community Affairs to implement Section 380.06(14)(c), (16).
17. Estech shall meet all applicable governmental standards and conditions to obtain the various permits required for the construction and operation of its proposed development.
18. Estech shall comply with the requirements set forth in the Manatee County Zoning Ordinance. Under the Manatee County Zoning Ordinance, Estech must submit an application for and obtain an operating permit before commencing mining operations. [Section VI, Paragraph 16, 3.3]
19. Estech shall establish and maintain evidence of financial responsibility sufficient to indemnify Manatee County and others for any damages sustained as a result of any violation of Section 9 of the mining ordinance. [Section VI, Paragraph 16, 3.3(d)] Section 9 of the mining ordinance states:

"9.2 No person or organization holding an operating permit under this ordinance shall pollute land or water, or damage aquatic or marine life, wildlife, birds, public or private property or allow any extraneous matter to enter or damage any mineral or fresh water-bearing formation. If pollution or damage occurs (other than such pollution or damage specifically authorized by the Operating Permit to occur on the Master Plan area) from the operations of any person or organization holding an operating permit under this ordinance and damages or threatens to damage human, animal or plant life, public or private property, or any mineral or water-bearing formation, said person or organization shall be liable for all costs of clean up or other damages incurred by Manatee

County and for damages resulting from injury to others. In any suit to enforce claims of Manatee County under this ordinance, it shall not be necessary for Manatee County to plead or prove negligence in any form or manner on the part of the person or organization holding an operating permit under this ordinance; Manatee County need only plead and prove the fact of the prohibited damage or polluting condition and that it occurred at the facilities of the person or organization conducting operations pursuant to an operating permit issued under this ordinance."

20. Estech shall provide a reclamation bond payable to Manatee County in an amount equal to \$500.00 per acre for the area for which Master Plan approval has been received. The bond shall be used to insure the reclamation of the Estech property in accordance with the provisions of the Master Mining Plan and the Manatee County Zoning Ordinance. [Section VI, Paragraph 16, 3.3(c)]
- ... A Florida registered professional engineer commissioned by Estech shall certify in a written annual report that the project is being developed and operated according to the conditions set forth in the approved Master Mining Plan and operating permit. These reports shall be submitted to and reviewed by the County Engineer in the Manatee County Health Department. [Section VI, Paragraph 16, 4.1]
22. a. Estech shall file on or before February 15 of each year a written report with the Manatee County Board of County Commissioners reviewing the reclamation progress for the preceding calendar year. The report shall identify lands which have been reclaimed, lands which will be mined, and lands which will be reclaimed during the current year. The annual report shall include current aerial photographs of the same type and scale as the photographs admitted with the application for an operating permit. [Section VI, Paragraph 16,

b. Estech shall apply for and obtain the Board's approval of the acceptability of its reclaimed lands. Approval of completion of reclamation requirements for the operating permit shall be issued by the Board when the required acreage has been accepted by the Board. [Section VI, Paragraph 16, 6.3]





For Intervenor  
Sarasota County: Richard E. Nelson and  
Richard L. Smith, Esquires  
Nelson, Hesse, Cyril, Weber, Smith  
and Widman  
2070 Ringling Boulevard  
Sarasota, Florida 33578

For Intervenor  
Department of  
Community Affairs: C. Laurence Keeseey, Esquire  
Department of Community Affairs  
Room 204, Carlton Building  
Tallahassee, Florida 32304

For Intervenor  
Tampa Bay  
Regional Planning  
Council: Roger L. Tucker, Esquire  
9455 Koger Boulevard, Suite 209  
St. Petersburg, Florida 33702

#### ISSUE PRESENTED

Whether permission should be granted to Petitioner, pursuant to Chapter 380, Florida Statutes, to develop land in Manatee County by phosphate mining operations, as set forth in the petition.

#### PRELIMINARY MATTERS

1. This case involves an appeal under Section 380.07, Florida Statutes, by Petitioner to the Florida Land and Water Adjudicatory Commission from a development order issued by the Manatee County Board of County Commissioners on August 16, 1979, which denied Petitioner's application for development approval under Chapter 380, Petitioner's application for a special exception to the Manatee County Zoning Ordinance, and its request for approval of a master mining plan.

2. The case was referred to this Division for hearing by the Florida Land and Water Adjudicatory Commission pursuant to Section 380.07 on September 28, 1979. Various preliminary matters were determined at three prehearing conferences held on October 25 and December 17, 1979, and February 15, 1980. As a result of these conferences, the following pertinent matters were determined:

(a) The Department of Community Affairs and Tampa Bay Regional Bay Planning Council were accorded status as intervening parties. Sarasota County was accorded provisional status as an intervening party.

(b) The final hearing was conducted as a de novo proceeding over Petitioner's objection because "a full and complete hearing" was not held by the local government (Manatee County) at the time it held a public hearing pursuant to Section 380.06(7). Specifically, the Manatee County public hearing consisted primarily of Petitioner's presentation of testimonial and documentary evidence, testimony from members of the public, and county exhibits relative to the application. It was determined that the matters presented before the Manatee County Commission were insufficient upon which to base an informed disposition of the application. However, the parties to this proceeding stipulated to accept the sworn testimony of witnesses and exhibits received in evidence at the public hearing on January 10-11, 1979, as evidence in this proceeding. Such record has been received in evidence herein as Exhibits 1 through 10.

(c) A Stipulation of Facts primarily consisting of procedural matters was accepted and is incorporated in the Findings of Facts hereinafter.

(d) A Stipulation of Legal Issues to be considered in this proceeding was accepted by the Hearing Officer. It was determined that the issue of Petitioner's use of water resources was not properly in issue due to the fact that a prior consumptive water use permit had been issued to Petitioner by the Southwest Florida Water Management District on September 6, 1978, pursuant to a public hearing. (Exhibit 7) Although such final agency action was considered dispositive generally

as to matters involving water quantity, the parties were not precluded from addressing the issue of whether the development would efficiently use or unduly any public water facilities in the region, other than those under the purview of the Water Management District, as specified in Section 380.06(8)(c), Florida Statutes. Additionally, various other issues proposed by the Petitioner concerning legal aspects of the prior action taken by the Manatee County Board of County Commissioners on the application were rejected by the Hearing Officer in light of the fact that this proceeding is de novo in nature. Further, Petitioner's proposed issue as to whether the County denial constituted an unconstitutional taking of property without just compensation was rejected as being beyond the scope of administrative proceedings. However, Petitioner was permitted to proffer evidence concerning this question at the final hearing.(H.O.Ex.1

3. The stipulated issues were as follows:

(a) Whether Estech has, from the time of its purchase of the Manatee property up to the present, used the property for agriculture purposes.

(b) Whether Estech's proposed 480 acre, above grade .lay settling pond, based upon the impacts arising from potential dam failures,

(1) is or is not compatible with surrounding uses, including the Lake Manatee Reservoir,

(2) is or is not suitably buffered from surrounding uses, including the Lake Manatee Reservoir,

(3) would have a favorable or unfavorable impact upon the environment and natural resources of the region.

(c) Whether Estech's proposed pipelines, based upon the impacts arising from potential pipeline failures:

(1) are or are not compatible with surrounding uses, including the Lake Manatee Reservoir,

(2) are or are not suitably buffered from surrounding uses, including the Lake Manatee Reservoir,

(3) would have a favorable or unfavorable impact upon the environment and natural resources of the region.

(d) Whether Estech's proposed phosphate rock drying facility:

- (1) is or is not compatible with surrounding uses,
- (2) is or is not suitably buffered from surrounding uses,
- (3) would have a favorable or unfavorable impact upon the environment, economy and additional demand for energy in the region.
- (e) Whether the mining and reclamation impacts

of the Estech project upon the quality of the area surface and groundwater resources:

- (1) is or is not compatible with surrounding uses, including the Lake Manatee reservoir,
- (2) will have a favorable or unfavorable impact upon environment and natural resources of the region.
- (f) Whether increases in radiation levels at the

surface of the land, in surface and ground water, and in the air caused by the Estech project:

- (1) are or are not compatible with surrounding uses,
- (2) are or are not suitably buffered from surrounding uses,
- (3) would have a favorable or unfavorable impact upon the economy and environment of the region.
- (g) Whether the Estech project, when considered

with the cumulative impact of other existing uses, including other already approved phosphate mines, upon road transportation, air quality, water quality, and radiation levels:

- (1) is or is not compatible with the surrounding uses,
- (2) is or is not suitably buffered from surrounding uses,
- (3) will efficiently use or unduly burden public transportation facilities,
- (4) will favorably or unfavorably impact the environment and natural resources of the region,
- (5) will favorably or unfavorably impact the economy of the region.

(h) Whether a special exception under the Manatee County zoning ordinance, master mining plan approval and the development of regional impact application for the Estech project, subject to the conditions imposed by the Manatee County Planning Commission and the Tampa Bay Regional Planning Council:

- (1) is or is not compatible with surrounding land uses,
- (2) is or is not suitably separated and buffered from adjacent uses,
- (3) is or is not in compliance with local land use regulations, and
- (4) is or is not in compliance with the report and recommendations of the Tampa Bay Regional Planning Council.

(i) The overall environmental impact of Estech's proposed mining and reclamation program on the natural resources of the region.

(j) The Estech project's impact on employment opportunities, tax revenues, and the regional economy.

4. Motions for continuance of the final hearing filed by Sarasota County and Manatee County were denied for failure to show adequate cause therefor.

5. Final hearing was initially scheduled for the period March 17 - 21, 1980, based on representations by the parties that such a period would be adequate. An additional two days the following week were reserved for use in the event the hearing could not be completed on March 21st. It became apparent at the close of the first week of proceedings that a significant additional amount of time was necessary to conclude the hearing in the case, and therefore the case was continued and concluded during the period May 19-23, 1980. Eleven witnesses testified at the final hearing for Petitioner and eight witnesses testified for Manatee and Sarasota counties who conducted a combined presentation. Six public witnesses testified at the final hearing. (Hearing Officer's Exhibit 2)

No witnesses were presented by the Tampa Bay Regional Planning Council or the Department of Community Affairs. Sixty-four exhibits were received in evidence at the hearing, as shown at Exhibit A hereto.

6. During the course of the hearing, Petitioner objected to complying with a Notice to Produce records and reports concerning core samples previously taken on the property in question by Petitioner, on the ground that such disclosure involved trade secrets or proprietary information. The parties thereafter stipulated to a procedure whereby a limited number of core samples were taken during the interim period between hearing sessions at pro-rata expense to the parties.

7. At the conclusion of the hearing, the parties agreed to submission of briefs or proposed recommended orders within three weeks after receipt of the transcript of the hearing by the Hearing Officer, and that a period of thirty days thereafter would be provided for submission of this recommended order. The hearing transcript was received on June 10, 1980. Thereafter, Manatee County, without objection by the parties, requested and was granted an extension of time for the filing of proposed orders to July 7, 1980, with the understanding that the time for submission of the recommended order to the Florida Land and Water Adjudicatory Commission would be extended to a thirty day period thereafter.

#### FINDINGS OF FACT

1. Estech General Chemicals Corporation (Estech) is a Delaware corporation. It was formerly Swift Agricultural Chemicals Corporation, but the corporate name was changed on August 1, 1979. The application was filed in the name of Swift Agricultural Chemicals Corporation, but Estech is the

corporate successor to Swift's interests. (Stipulation)

2. In 1965-66, Estech purchased approximately 10,393 acres of land in Manatee County as a potential phosphate mining site. Estech has been actively mining phosphate rock in Florida for over fifty years, and purchased the Manatee County property because large deposits of phosphate rock lie under the surface of land. Phosphate rock is a valuable mineral resource and is an ingredient in fertilizers. (Stipulation)

3. The property is classified as a general agricultural district under the Manatee County Zoning Ordinance. Mining is authorized in such a district by "special exception" as provided in the ordinance. Additionally, Manatee County requires approval of a master mining plan for any mining operations. Such approval is granted through a two-step process. First, an applicant must obtain approval for a special exception, its master mining plan, and development of regional impact (DRI). Thereafter, the applicant must obtain an operating permit in the manner described in the zoning ordinance. Prior to granting a special exception, the County Planning Commission and Board of County Commissioners (Board) must find that the proposed use will be reasonably compatible with surrounding uses, and that any nuisance or hazardous feature involved is suitably separated and buffered from adjacent uses. The ordinance specifies detailed information to be contained in applications for exceptions, including a conceptual reclamation plan, reclamation bond, and evidence of financial responsibility after master plan approval and prior to issuance of any operating permit. It further provides for regular inspection of constructed facilities, reports, and compliance by the applicant with

regulations as to matters such as dam construction, water withdrawals, water quality, and the like. Manatee County does not yet have a finally approved land use plan under the Comprehensive Planning Act of 1975, but a draft thereof is now pending before the Board. (Stipulation, testimony of Rile, Exhibit 20)

4. In the past, Manatee County has granted other applications of special exceptions, DRI development orders and master mining plan approval for mining phosphate rock, subject to conditions and limitations, as follow:

(a) On January 28, 1974, the Board granted approval to Beker Phosphate Company for phosphate mining on approximately 10, 970 acres of land adjacent to Estech's southern and western borders.

(b) On December 27, 1977, the Board granted approval to W. R. Grace and Company for phosphate mining on approximately 5,050 acres of land adjacent to Estech's northern and eastern borders.

(c) By approving these applications, the Board has authorized phosphate mining by W. R. Grace and Beker on large tracts of land adjacent to Estech's property, subject to conditions and limitations.

(d) Additionally, on July 7, 1976, the Board granted approval to Phillips Petroleum Company for phosphate mining on approximately 6500 acres of land in southeastern Manatee County. On September 14, 1978, the approval was rescinded by an amended development order pending the submission of additional evidence and testimony at a new hearing.

(e) None of the above mining developments are currently conducting mining operations. (Stipulation)

5. On August 3, 1977, before the approval of the W. R. Grace and Company mine, Estech filed an application with the Southwest Florida Water Management District for a consumptive use permit authorizing the use of water for mining operations.

On September 6, 1978, the consumptive use permit was issued pursuant to Order No. 78-75 of the District Governing Board. (Stipulation, Exhibit 1)

6. On May 5, 1978, Estech filed an application for special exception with Manatee County. A master mining plan and all required documents were also filed with the application. Review of the application was made by the staff of the County Planning Department which recommended development approval subject to certain conditions. (Stipulation, Exhibit 3, 6)

7. On May 9, 1978, Estech filed a DRI application with the Tampa Bay Regional Planning Council (TBRPC) and with Manatee County. On November 13, 1978, the governing board of the TBRPC held a public hearing to consider Estech's application for DRI approval. At the close of the hearing, the governing board of the TBRPC adopted the report recommending approval of Estech's application subject to conditions. (Stipulation, Exhibit 4-5, 6)

8. On January 10 and 11, 1979, a public hearing was held jointly by the Board and the County Planning Commission on the various applications. The parties to the hearing were Estech, Manatee County, and Sarasota County who entered the proceeding as an intervenor. Also represented were Manatee County Planning and Development Board and the TBRPC. Notice of the hearing was provided to the public and the Department of Community Affairs (DCA). On February 22, 1979, the Manatee County Planning Commission unanimously adopted a Recommended Development Order recommending that the Board approve the development of regional impact, the master mining plan and special exception with conditions. (Stipulation, Exhibits 1-10)

9. On August 9, 1979, the Board approved a motion denying the Estech special exception, and on August 16, the Board adopted a resolution denying the special exception, master mining and reclamation plan, and the application for development approval. The stated reasons for denial cited the Manatee County Zoning Ordinance and stated that (a) "the use contemplated by the development is not reasonably compatible with surrounding uses," and (b) "nuisances or hazardous features are involved in the development and same are not suitably separated and buffered from adjacent uses." The Board therefore determined, pursuant to Section 380.06(11), F.S., that:

" A. The development is not located in an area of critical state concern.

B. The State of Florida has not adopted a land development plan applicable to this area.

C. The development is not consistent with local land development regulations.

D. The report and recommendations of the Tampa Bay Regional Planning Council on file in these proceedings recommended approval of the development subject to stated modifications and conditions and the development as described in the application and the presentations made in these proceedings is not consistent with the report and recommendations of said regional planning agency." (Stipulation, Hearing Officer's Exhibit 3)

10. Estech presently operates the Watson and Silver City Mines in southwestern Polk County. The proposed project is to replace depletion of reserves in the 1980's from those mines. The land in question is located in northeastern Manatee County in a rural agricultural area. Most of the acreage is now being utilized as grazing land for cattle.

Approximately 78 percent of the total area is unimproved due to the low productivity of the soils. Most of the tract lies in the watershed of the Manatee River and is bisected by the river's north and east forks. The topography of the land is relatively flat, with over 5,000 acres of native range that was once long-leaf pine flatwoods. However, logging, grazing, and other influences have all but eliminated the pine over-story and impacted adversely on the under-story. The land has been over-grazed, reducing the extent of native forage species while encouraging the growth of wire grass and saw palmetto. About 18 percent of the tract is composed of various types of wetlands, such as swamp forest, marsh and grassy ponds, and an 18 acre cypress dome. The north and east forks of the Manatee River join about four miles southwest of the site, and drain into Lake Manatee approximately eight to ten miles downstream. Lake Manatee drains into the Manatee River and ultimately into the Gulf of Mexico. Lake Manatee is the primary potable water supply serving the majority of the population in Manatee County and a significant portion of Sarasota County. An earthen dam is located at the lake, and the Manatee County water treatment plant is also at that location. (Testimony of Cornwell, Zimmerman, Lincer, Exhibits 4, 6, 12, 39)

11. The mining operation is planned to produce approximately three million tons of phosphate annually for a period of twenty-one years. About 6600 acres of the site are deemed mineable. Estech proposes to use equipment and design generally available and practiced by presently operating mines. The major components of operation are large walking draglines, hydrologic ore transportation via pipeline to a central washer, a feed preparation and flotation plant, wet rock storage and drying, and shipment via rail.

Clay and sand wastes will be disposed of initially in separate areas, with subsequent mixing as backfill in reclamation. Two rock dryers are proposed for the facility to reduce moisture in the phosphate rock. A single 480 acre above-ground clay settling area is planned to receive clay wastes during the initial period of operation. The intended waste disposal plan will utilize a sand-clay mix which will be deposited in mining cuts. Water use is designed to divide the needed supply for operations between surface and ground water resources, and to provide for recharge of the Floridan Aquifer. A 200 acre surface water reservoir will be constructed for storage which will decrease ground water use. Reclamation will be accomplished by restructuring and filling of disturbed sites followed by revegetation. The end result is designed to provide improved pasture, marsh and wetland areas, a number of lakes, and a wilderness area. (Exhibits 4, 13, 11)

12. a. In 1978, the Environmental Protection Agency evaluated various impacts of phosphate mining in central Florida, and made recommendations concerning methods of operations by the phosphate industry to minimize and mitigate any adverse impacts upon the region (Areawide EIS). It was prepared to establish a basis for initiating site-specific environmental impact statements for new source mining in connection with issuance of national pollutant discharge elimination systems (NPDES) permits under the Federal Water Pollution Control Act (PL 92-500). Incident to Petitioner's application for such a permit, a draft environmental statement (Draft EIS) was issued on October 5, 1979. It had primarily been prepared by a third party contractual consultant, Conservation Consultants, Inc., upon the recommendation of Petitioner to the EPA. The consulting firm had previously done consulting work for Petitioner. However, no evidence was presented that

the assessments accepted by the EPA in its provisional adoption of the studies contained in the Draft EIS were not impartial. Many of the evaluations of the proposed project which were the subject of testimony by Petitioner's witnesses were based in part upon studies and data contained in the Draft EIS. However, testimony by the individuals who had prepared such data was not presented at the hearing. The Draft EIS document was provisionally received in evidence. It is hereby determined that the document, although not authenticated as provided by Section 90.902(4), Florida Statutes, qualifies as an exception to the hearsay rule under Section 90.803(8) as a public record, and is received under Section 120.58(1)(a), Florida Statutes, as "evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs." The data compilations contained therein are considered prima facie correct, subject to challenge. Conclusions set forth therein, of course, are not factual matters, and merely are of some persuasive value.

b. The Draft EIS for the Estech project made comparisons to the Area-wide EIS recommendations, and found that Estech's proposal deviated from the Area-wide EIS recommendations in two significant areas, i.e., construction of a rock drying facility and mining of a segment of the east fork of the Manatee River. The Draft EIS concluded that the proposed drying facility could be justified for various reasons and proposed to approve that portion of the project. However, the document agreed with the Area-wide EIS that mining should not be conducted in the east fork of the river. The EPA therefore proposed to issue the NPDES permit conditioned upon compliance by Estech with all recommendations contained in the Area-wide EIS except the one related to rock dryers.

Based upon the EPA recommendation, Estech has acknowledged that it will not pursue its original intent to mine in the east fork. (Testimony of Davis, Exhibits 8, 11, 47)

WATER HYDROLOGY

13a. The consumptive use permit issued to Petitioner by the Southwest Florida Water Management District (SWFWMD) on September 6, 1978, pursuant to Chapter 373, Florida Statutes, authorizes the average annual withdrawal of 12,960,000 gallons of water per day (gpd) for the purpose of mining and beneficiating approximately 3 million tons per year of phosphate rock. During the first three years after commencing mining operations, water withdrawal is to be from the Floridan Aquifer by means of four production wells and five standby production wells. Thereafter, Estech will divert from the east fork of the Manatee River as will fill or attempt to fill the storage basin to capacity, while maintaining minimal flows downstream. The permit requires Estech to construct a system of connector wells to recharge 3,024,000 gpd (average annual) from the unconfined surficial aquifer and/or secondary artesian aquifer to the Floridan Aquifer prior to the start of withdrawals. Other conditions attached to the permit require water quality analysis of water moving through the system of connector wells, monitoring wells, rainfall recording equipment, pumping tests, and consent from nearby property owners prior to dewatering of mining pits within 700 feet of the property, unless the water table will not be lowered more than three feet. Estech is also required, commencing with the fourth year of mining, and subject to availability of specified

quantities of surface water, to (a) limit its ground water withdrawals so as not to lower the potentiometric surface of the aquifer more than five feet at its boundary, and (b) to limit its average annual net ground water withdrawals to 7 million gallons of water per day. SWFWMD found that issuance of the permit for the stated quantities of water will be of reasonable beneficial use as defined in Sections 373.019(5), F.S., consistent with the public interest, and will not interfere with any existing legal use of water. SWFWMD further reserves from use of water by Estech in such locations and quantities as it determines may be required for the protection of fish, wildlife, and the public health and safety.

b. Estech has agreed that (a) to promote the maintenance of the 25-year flood plains, water stress caused by pit dewatering shall be limited to only one side of the flood plain at a time, and mining of the opposite side will be delayed until mined portions have been re-created to design elevations, when feasible, and ground water levels have recovered; (b) to construct surface recharge ditches as necessary to minimize ground water table stress adjacent to the flood plains; (c) to cause no disturbance or incompatible land use activity within any such flood plain except where unavoidable; (d) to insure no land use activity which would inhibit native vegetative growth for the flood plain during the mining period, and (e) to conduct a post-reclamation study as to final frequency elevations for the information of governmental agencies. If it is found that peak flows of any drainage basins have been increased over premining conditions, Estech will increase the retention capacity of the re-created land appropriately. After mining is

completed, the storage reservoir and control structures will be dedicated by Estech to Manatee County if the county governing body deems the reservoir necessary to the operation of the Manatee County utility system. (Testimony of Davis, Exhibit 6,7,26,47, Stipulation)

14. During normal mining operations, Estech's withdrawal of surface water under its consumptive use permit will reduce the flow into Lake Manatee by about 7.5 millions gallons per day (mgd). The average annual flow of water into Lake Manatee is about 75 mgd. The Manatee County Water Treatment Plant currently uses 25 mgd. During drought conditions, SWFWMD reserves the right to restrict withdrawals under the consumptive use permit. A "safe reservoir yield" means the available amount of water during the most severe drought conditions. The effect of Estech's withdrawals will reduce the Lake Manatee safe reservoir yield of 29 mgd by .75 million mgd. If the three proposed phosphate mines in the area, i.e., Estech, W. R. Grace, and Beker Phosphate Company, operate simultaneously in the future, it will reduce the flow into Lake Manatee by approximately 9.3 millions gallons per day. Estech's withdrawals of water will impact on the Lake Manatee reservoir only during periods of extreme drought at which time SWFWMD can declare a water shortage and direct cessation or restriction of withdrawals. (Testimony of Wissa, Zimmerman, Exhibit 7)

#### WATER QUALITY

15 a. Surface water quality on the Estech property is generally moderate to poor. It is highly enriched in nutrients, and moderate to poor in terms of color and dissolved oxygen. It is low in dissolved solids and slightly acidic. It has moderate levels of nitrogen, and high levels of iron and fluoride. Most streams on the property have soft water and meet most Class III standards. Water quality is considered

"mediocre" from an ecological standpoint due to the low levels of dissolved oxygen.

b. The water in Lake Manatee is similar to that found in the streams on the Estech property. It generally falls into Class IA standards for a potable water supply. The Manatee Water Treatment Plant removes the high color from the water during the process. Approximately 1.43 mgd of water will be discharged into the streams as a result of Estech's mining operations. This amount will constitute approximately one to three percent of the total amount of water flowing into Lake Manatee. Based on data from studies made of other mining operations conducted by Estech, mining discharges should not produce a significant change in the water quality of Lake Manatee. Although there will be an increase in dissolved solids and phosphorus, nitrogen will be decreased. Alkalinity will increase somewhat and this is considered to be beneficial to the Lake Manatee water supply since alkalinity levels in the lake currently are at times below recommended governmental criteria for drinking water. Use of flocculents in Estech's proposed sand-clay process will not adversely affect Lake Manatee water quality because the polymer substance will adsorb onto clay particles and other suspended matter. Polymers degrade over a period of time and the nitrogen in the polymer will not be available for plant growth in the lake. Although higher dissolved solids will cause an increase in hardness of the lake water, it will assist in removing the high color from the water during the treatment process. However, there will be some increase in treatment costs. In the opinion of water quality experts, the effluent discharged from Estech's property will be within the Federal NPDES standards and the state Class III water quality standards.

c. There will be no cumulative impact by other mining operations in the area because Estech will be the only

mine to discharge in the Manatee River or its tributaries.

d. Surface water runoff from the site will not be significantly different than it is now, and it will be subject to applicable permit limitations. Deposits of clay in the initial settling area will form a relatively impervious liner and prevent leaching pollutants into ground water. Similar effects will result in the mined out pits which are reclaimed with the proposed sand-clay mixture. The flocculents used in this process will adhere to the clay particles, thus preventing entry into the ground water system. Monitoring of ground water quality will be required by applicable permits. (Testimony of Brezonik, Davis, Bromwell, Lincer, Zimmerman, Exhibits 4, 7, 11, 26-29, 31-34, 48, 57, supplemented by Exhibits 30, 35, 45)

#### RADIATION

16a. The uranium and radium concentrations in overburden materials at the Estech site are slightly lower than those typically observed in central Florida. The depth of overburden at the site is double that normally found in the central Florida area. The phosphate ore matrix at the site contains about half the radioactivity found in the central Florida matrix. Four samples taken at the site show no evidence of a "leach" zone over the matrix, thus indicating that total radioactivity concentrations in reclaimed areas will be lower at the Estech site than has been experienced in other central Florida phosphate areas. Although ground radiation increases after reclamation, since most of the land area of Florida has extremely low levels of radioactivity in the soil compared to other areas in the nation, the increases in soil

radium concentration in reclaimed areas at the site will bring the total gamma ray exposure rate up to approximately the average for the nation, and therefore is not significant in terms of human health. A higher radium concentration is expected in the initial clay settling area which will increase the surface exposure rate by approximately one-half of the rate in other reclaimed areas. Airborne radioactive particulate emissions from the site will consist of dust released from the rock dryers and "fugitive" dust caused by vehicular traffic and other disturbances of surface soil. Both are calculated to produce approximately the same amount of radiation exposure. The projected emissions from the rock dryers will produce a maximum dose of 5.8 millirems per year at the site boundary, as compared to the EPA standard for human health of 1500 millirems per year. The increase in exposure from both sources therefore is relatively insignificant from a human health standpoint.

b. The radium 226 that would be added to surface soils by deposition from rock dryer emissions during the contemplated 21 years of mining activities will increase the soil radioactivity concentration around the site from about 50 percent to less than 51 percent of the typical soils in the nation, and therefore such change would not be statistically measurable or significant.

c. Existing concentrations of radium in surface waters at the Estech site are within the normal range of surface waters elsewhere in the nation. Mining activities will not cause any appreciable difference in radium concentrations in ground or surface waters. Although radium-226 concentrations in surface waters off-site may be elevated to some degree after reclamation, the final concentration will be much less than

the EPA drinking water standard of 5 pico curies per liter.

d. Radium concentrations in the soil of reclaimed lands will be in a normal range and not significantly different from those existing prior to mining operations. Therefore, such concentrations in food products grown in the soil and meat produced from animals who graze in the area, or in byproducts such as milk, will not be increased. Such concentrations could decrease because plants discriminate against the uptake of radium if sufficient calcium is available, as will be the case in areas reclaimed with the sand-clay mixture. Concentrations of radium in the initial clay settling area will be considerably larger than that of the other reclaimed areas and therefore will show similar increases in food products in that area. However, the concentrations should not exceed the EPA standard of 5 pico curies of radium per liter. Therefore, food products grown on the site after reclamation will present no significant radiological changes from normal dietary contributions.

e. A preliminary study conducted in lakes located on reclaimed phosphate mining land in Polk County produced preliminary data to show that the accumulation of radiation in fish at those locations is greater than that found in fish at Lake Manatee. However, as heretofore found, the ore matrix at the Estech site contains only about half the radio-activity found in the matrix in other phosphate areas of Central Florida. Most likely, the amount of radiation found in fish in Lake Manatee will approximate the amount for fish in future lakes on the Estech site because phosphatic clays were removed to construct the lake dam and matrix is exposed at the lake bottom. The radioactivity levels found in the Lake Manatee fish are relatively low, and since radiation is concentrated in the bones which are seldom consumed, there

would be no significant adverse health impacts to humans who ate fish from reclaimed lakes at Estech's site. Radioactive materials are adsorbed to any clay particles which might be discharged during mining operations and normally are not "stripped" from such particles until it reaches a salt water body. The normal water treatment process used at the Manatee County Water Treatment Plant would remove most of such clays from the water and thus dilute any residual radioactivity concentrations.

f. The reclaimed lands will have different radiological characteristics than the land before mining. These primarily are elevation of possible radiation exposure in any future residential structures and uptake of radionuclides into agricultural products. Some 68% of the land is expected to be improved pasture and a small amount will be used for citrus and row crops after the cessation of mining activities. The abundance of clay in the surface soil will produce a "discrimination" against uptake of radium by crops. The return or replacement of low activity top soil to reclaimed areas would substantially reduce potential radiation impacts. Estech does not plan to replace soil over reclaimed areas except on those where excessive radiation is found to be present. There is no state regulatory requirement for replacement of top soil in such areas at the present time. The final clay settling areas when returned to any land use will be most beneficially affected by returned top soil from the standpoint of residual radiation. However, the return of top soil to all areas would present an excessively high cost-benefit ratio in general due to the relatively low degree of matrix radioactivity. In addition, since the advisability

of replacement of top soil would depend on site specific data, in some instances return of the original soil could increase the uptake of radium in crops and make little or no difference in other radioactivity areas such as radon exposure in homes.

g. Radon-222 flux from the soil surface will be increased due to the redistribution of radium-226 in the reclaimed lands. The elevation of outdoor airborne radon-226 will not be significant. Radon exposure consists of gas emerging from ground which contains radium during the process of radium decay. No problem is ordinarily presented unless such gas is in a confined area, such as migration to a poorly ventilated house. If inhaled, it can irradiate the bronchial lining and lead to possible health problems such as lung cancer. The only area at the Estech site where it is expected that radon levels will exceed EPA standards is the initial clay settling area. Accordingly, residential development should not be conducted on that reclaimed area after termination of mining activity. This area is presently planned to be used only for pasture purposes, and it is unlikely that it would ever be suitable for housing purposes due to lack of support of the residual ground structure.

(Testimony of Morton ( Exhibit 1), Shiager, Bromwell, Upchurch, Livingston, Gamble, Exhibits 4, 7, 11, 49, 52-53)

17. Estech has agreed to establish an air monitoring program, to include monitoring for all sources of radiation associated with any of its emissions, including levels of radium 226. It also has agreed to provide a detailed radiological analysis of the reclaimed land to the Manatee County Health Department upon completion of reclamation. If an area has unacceptable radiation levels, Estech agrees to cover

the area with lower value materials such as may be found in over-burden or sand tailings and clay by-products. (Testimony of Davis, Exhibit 47)

#### AIR QUALITY

18 a. Air quality considerations include emissions from Estech's proposed rock dryers and fugitive dust. The proposed dryer system consists of two fluidized bed rock dryers for drying phosphate rock, pebble and concentrate product, using number 6 fuel oil limited to one percent sulphur content. Control devices will consist of two wet venturi-adsorber scrubber systems designed to remove 99.8 percent of particulate matter and 96.5 percent of sulphur dioxide from stack emissions.

b. Computer "modeling", using conservative assumptions, predicts that emissions from the rock dryer pollution control systems will be in compliance with local, state, and federal regulations, as well as meet the requirement of a Best Available Control Technology (BACT) determination, and all other applicable air pollution regulations, including prevention of significant deterioration (psd). On May 19, 1980, the Department of Environmental Regulation issued a construction permit for the two rock dryers to Estech pursuant to Chapter 403, Florida Statutes, and therein determined the proposed system was Best Available Control Technology. Conditions to the permit require that emissions tests be conducted for determination of compliance with applicable state air quality rules prior to application for an operating permit. (Testimony of Sholtes, Exhibits 1, 4, 7, 14, 43, 55)

19. Computer modeling of fugitive emissions at the site created by road traffic and the like would result in approximately the same impact as emissions from the rock dryers. Cumulative emissions from existing and potential air pollution sources, including consideration of eight possible future rock dryers in the vicinity of Manatee County shows that there would be a very minor impact on the Manatee County area from an air quality standpoint. (Testimony of Sholtes, Exhibit 43)

20. The 1978 EPA Area-wide Environmental Impact Statement for the Central Florida Phosphate Industry recommended that rock drying processing at beneficiation plants be eliminated and that wet rock be transported to chemical plants. The recommendation was based on consideration of greater allowable source emission rates than are now permitted by federal regulations. The EPA Draft Environmental Impact Statement prepared in connection with the Estech project pointed out this distinction, and concluded that the objective of the Area-wide EIS to protect air quality would be attained by the current system of air quality controls. The Draft EIS also found that use of the proposed rock dryers was dictated by market conditions which required the shipment of dry rock to chemical plants at other locations. Although Estech has an existing rock dryer at its Silver City Mine in Polk County, the facility there is older, less fuel efficient and does not meet current control criteria required of new facilities. Estech has reduced the originally contemplated amount of phosphate rock to be dried at the proposed facility from 3 million tons to 2,350,000 tons per year, due to the fact that it can now sell wet rock to various purchasers. (Testimony of Cape, Davis, Exhibits 8, 11)

21. Although Sarasota County has concerns about the possible unavailability of one percent sulphur fuel in the future, Estech is limited to that sulphur content by DER permit conditions, as well as by Manatee County ordinance. (Testimony of Klier, Sholtes, Exhibits 55, 57)

22. The quality of air in Manatee and Sarasota Counties currently is relatively good. The older, retired individuals who reside in Sarasota County greatly exceed the national average of that age category, with a much higher incidence of cancer and respiratory disease. Current governmental criteria for air quality greatly exceed present Sarasota County levels and do not measure certain pollutants such as fugitive dust and radionuclides. Radionuclides emitted as a result of phosphate mining recently have been added to the list of hazardous air pollutants under the Federal Clean Air Act. However, Federal regulations have not been issued to establish standards for such emissions. (Testimony of Klier, Exhibits 44, 57)

#### WASTE DISPOSAL

23 a. The beneficiation of the phosphate ore will generate two solid waste products consisting of clay or "slimes" and sand "tailings." Traditionally, the two waste materials have been transported to separate disposal areas; i.e., clays have been impounded behind earthen dams constructed around natural ground or mined out areas, and sand tailings have been disposed of in mined out pits or, in some cases, in above-ground piles. Estech plans to use a somewhat new waste disposal technique by placing a sand-clay mixture in mined-out pits. In order to achieve a proper mixture, the clays will be treated with chemical flocculants to enhance their settling rate. The

method will mix the sand and clay in the approximate ratio of 2.5 to 1 by weight and will be placed in waste disposal areas enclosed by earthen levees or dikes averaging fourteen feet in height. The enclosed areas will be filled to an average height of nine feet above natural grade, thereby leaving a free-board of five feet to the top of the dike. It is necessary to fill above ground to some extent to allow for subsidence of the material as it dewateres and consolidates. This system is designed to enhance water recovery efficiency and provide reclaimed land with a better agricultural potential at an earlier date than would normally be the case. Over 5,000 acres are planned for sand-clay disposal, all but 200 acres of which will be in mined-out areas.

b. Since no mined out area is available initially, an earthen dam will be constructed on unmined ground covering approximately 480 acres as an initial clay settling area. The dam structure is proposed to be about 200 feet wide and thirty feet high with a circumference of approximately four miles.

c. In the past, the practice of disposing of clay wastes in above-ground areas raised the distinct possibility of potential dam failure with consequent release of the clay slimes. Prior to 1972, a large number of earthen phosphate dams in Florida failed due to inadequate design or construction. Following several serious dam failures in Florida, including the Cities Service Dam on the Peace River in 1971, minimum requirements for construction of such earthen dams were promulgated in Chapter 17-9, Florida Administrative Code. Since that time, no earthen dam constructed in Florida according to the regulatory requirements has failed. The state regulations require extensive

engineering, design and monitoring to minimize the risk of dam failure.

d. The design for the proposed Estech dam is based on extensive field investigation of soil conditions, and geological and hydrological analysis of the site. Soil borings show that there would be an adequate foundation for the dam and that "sinkholes" do not exist in the area. Soil for construction of the dam will be obtained in the immediate site area. The materials used in constructing the facility will be "zoned" in a manner designed to control seepage. Other seepage control devices will include internal gravel drains surrounding a collection pipe to lower the line of seepage through the dam and to prevent seepage from breaking out on the downstream slope. There will be three decant structures whose outlets discharge into a return water ditch along three sides of the embankment, with a surface drainage ditch on the other side to collect runoff. Although a layer of hardpan sub-soil is discontinuous and only extends for about 60 to 70 percent of the site circumference, such discontinuity is not considered critical due to other protections incorporated into the design of the structure. As the waste clay is deposited into the settling area, it will begin to consolidate with consequent decrease of permeability and form a sealer or liner along the bottom of the settling area, thus reducing the possibility of a "piping" failure through circular seepage.

e. The possibility of dam failure due to "overtopping" by reason of excessive rainfall or wind and wave action occasioned during hurricane conditions is extremely remote. Dam design provides for a five foot freeboard which can be increased during a major storm by reducing the water level through spillway structures.

Wooden booms anchored along the shoreline and vegetative growth will reduce wave action to some extent. During normal mining operations, there will be only about two feet of water over the clays in the settling area, and maximum height of storm waves would not exceed two feet. During the critical initial period, when a maximum of some twenty feet of water would be in the settling area, there would remain ten feet of freeboard to reduce the possibility of over-topping.

f. The proposed Estech dam was "over-designed" to exceed the requirements of Chapter 17-9. Conservative assumptions were made that only water would be in the settling area, and that no hardpan would be present at the site, or clay in the settling area to seal the foundation. Expert testimony established that the dam design exceeds the requirements of state regulations and that the probability of a dam failure is extremely low because the design engineers addressed the most common causes of dam failures, which include over-topping, piping, sinkholes, slope failure, and earthquakes. The evidence shows that there is little likelihood of failure due to any of those causes. This finding is based not only on the fact that the dam design meets or exceeds the specifications of Chapter 17-9 as to methods of construction and inspection prior and subsequent to operation, but also because of Estech's commitment to "proof test" the strength of the dam with clear water prior to the deposition of clay wastes to monitor piezometric levels within the dam and otherwise determine if any potential problems exist during the critical initial period of operation. Although state regulations require that a registered engineer inspect each active dam annually, Estech will insure that inspection by the design engineer will be made on a monthly basis during the first year of active operations, together with inspection by company-trained personnel at least three times a day during that period. (Testimony of Wissa, Bromwell, Balter, Exhibit 1, 3, 7, 11, 17, 21-24, 36-37, 59-61, 63)

24. Due to the fact that the Estech dam will be located in the Manatee River watershed, there would be a serious adverse impact upon the Lake Manatee reservoir in the event of dam failure at a time when the clay settling area primarily contains waste clays. The most dangerous period is during initial filling operations and, since Estech will "proof test" the dam with clear water initially, a failure at that state would be relatively minor since the higher color and suspended solids contained in the discharge would be greatly diluted. However, if a failure occurred at a time the dam contained primarily waste clays, the reservoir capacity and safe reservoir yield of Lake Manatee would be substantially reduced, and the levels of suspended solids in the reservoir would be greatly increased. Approximately six to eight thousand acre feet of clay "slimes" in excess of a billion gallons would be deposited in the reservoir by a dam failure. Although the slimes would most probably not reach the Lake Manatee dam, if an excessive amount of suspended solids reached the dam intake structure, it could well result in a cessation of water treatment plant operation for a period of seven to ten days. The clay wastes reaching the lake would coat the shoreline and therefore cause erosion and re-suspension by wave action and rain. It would be a chronic problem for the water treatment plant and require considerable additional expenditure of funds. Such a long-term problem would require time-consuming and expensive redesign of the plant with reduced output of drinking water during that period. The release of dilute clays as a result of a dam failure would cause initial turbidity of stream waters resulting in near total mortality of all aquatic animal life. However, nearly full recovery should occur in several years. Turbidities would decrease as the clay settled into the depths of Lake Manatee,

but chronic turbidity would continue for months or years. Much of the non-woody vegetation in the upper Manatee River areas would be killed directly or coated with clay residues, but this loss would have no long-term significance. Trees and woody shrubs probably would not be significantly impacted, but would be stressed. Clays would be retained in the lake on a long-term basis unless removed by dredging at great expense. An initial severe impact to the fish population of the lake would be temporary, but fishing would not return to prespill levels. The recreational use of the lake would be impaired significantly and its ecological character would be altered for many years. Dam failure would not significantly affect the radioactivity concentrations in Lake Manatee or cause the water in the lake to violate the EPA drinking water standard for radium, since most of the radioactive materials would adhere to the clays which are subject to removal by the water treatment process. (Testimony of Wissa, Brezonik, Bromwell, Cornwell, Shiager, Fishkind, Upchurch, Lincer, Zimmerman, Balter, Exhibits 11, 25, 38-39, 57)

25a. In view of concerns raised about the possibility of a dam failure, Estech considered several alternatives to an above-ground initial clay settling area. The cost of constructing the proposed above-ground impoundment is approximately 3.6 million dollars. If a below-grade settling area were to be constructed, it would eliminate the possibility of release of clay wastes. However, the clays in a below-grade area would not consolidate as easily as in a conventional settling area, and thus reclamation would be delayed for a longer period. The cost of constructing a below-grade settling pond would be almost thirty million dollars.

b. The construction of a double dam around the initial settling area would cost over fifteen million dollars and preclude the mining of some 640,000 tons of phosphate ore with an inground value of nearly one million dollars. The second dam also would be subject to the same possibility of failure as the initial dam.

c. The final alternative considered by Estech was one which would use a sand-clay mixture in the above-ground settling area rather than clay wastes only. If a dam failure occurred with such a mixture in the settling area, the impacts on Lake Manatee would be reduced considerably because the thicker sand-clay mixture would not reach the lake. Although turbid water would reach Lake Manatee in the initial surge, with consequent higher suspended solids, there would be no great impact on the ability of the water treatment plant to provide finished drinking water, although the cost of treatment would be somewhat higher. Release of the sand-clay mix would have only a negligible impact on Lake Manatee, but a major impact would result in the upper reach of the north fork of the Manatee River. The mixture would move into the north fork and proceed down stream until reaching the east fork tributary. Most vegetation, including trees, would be killed or severely stressed in the upper reach. Much of the sand-clay would be colonized by upland vegetation, but erosion and sedimentation would be slow and continue until a new channel and associated flood plain developed over a long period of time.

d. A sand-clay mix in the initial settling area would permit more rapid reclamation, but it is necessary to use chemical flocculants in order to assist in achieving a satisfactory

mix of materials. The cost of flocculents constitute the significant additional costs of some seven million dollars more than the proposed plan of constructing an above-grade settling area filled with dilute clays. A consulting engineer employed by Estech is of the opinion that the additional margin of safety by utilizing the sand-clay mixture justifies the additional expenditure, but Estech's design engineers and management personnel are of the opinion that the remote possibility of dam failure does not justify the additional cost. (Testimony of Wissa, Fishkind, Bromwell, Cornwell, Davis, Cape, Exhibits 7, 18-19, 39)

OTHER ENVIRONMENTAL CONSIDERATIONS  
AND RECLAMATION PLAN

26 a. About 72 percent of the 10,394 acre mine site will be "disturbed" during the course of mining operations. An average of 325 acres per year will be mined during the 21 years of mining. Some 690 acres will be used for the plant site, the initial clay settling area, and other support functions. About 11 to 13 percent of the property will be disrupted yearly. Each mining area will require about six years to complete land clearing, mining, and reclamation. Some 5700 acres of native range which once were pine flatwoods will be replaced primarily with improved pasture during reclamation. About 830 acres of this area will not be mined, but will be planted with pine seedlings to recreate a pine flatwoods condition. Twenty-three acres of sand-pine scrub will be mined and reclaimed to agriculture, but a 50 acre parcel will be preserved. Over 400 acres of xeric oak will be mined, but some 90 acres will be preserved. There will be an additional 58 acres of mixed forest land along established drainage swales in the reclaimed pastureland which should encourage wildlife movement and preservation. The only existing cypress swamp covers 18 acres

and will be preserved. About 384 acres of lakes will be created with littoral zone wetlands along their edge as a result of mining operations and reclamation. No lakes are presently located on the Estech site.

b. The reclamation plan provides for the most important and sensitive wetland areas on the site to be preserved, and it is planned to create a 100-acre wilderness area near the cypress head. The Estech property includes 1837 acres of wetlands which comprise about 18% of the site. These include 1219 acres of swamp forest, 600 acres of marsh ponds, and the 18 acre cypress dome. Mining will temporarily remove one third of the swamp forest and about 60% of the marshes. About 1064 acres (58%) will not be mined, and 1046 acres will be restored. The reclamation plan will result in an overall 15 percent increase in wetland acreage over pre-mining conditions. Disruption of these areas is limited as to types of wetlands as recommended in the EPA Area-wide EIS. Under this system, the most ecologically sensitive "Category I" wetlands must be preserved. "Category II" wetlands are those which may be mined if an adequate restoration program is proposed. This is the acreage for which Estech has prepared its restoration program. "Category III" wetlands, of which only 174 acres are located on the Estech site, do not require protection. Although Estech's proposed restoration of riverine hardwood swamps involves a new concept of phosphate mining reclamation, the reclamation plan and commitment by Estech includes provision for demonstration of its ability to successfully re-create those areas prior to mining. If the pilot project or actual re-creation of the hardwood swamps during a five-year project period is unsuccessful, these areas will not be mined.

c. Present wildlife use of the land at the Estech site is low due to activities such as heavy grazing and hunting. Although there will be migration of wildlife

species during mining activities, the sequential pattern of mining and reclamation should provide sufficient opportunity for wildlife to relocate as suitable habitat becomes available. The proposed preservation of wetlands and creation of more wooded areas, marshes and lakes should result in potential positive long-term effects on many of the species in the area. Two threatened wildlife species that could be adversely impacted by the mining operations are the American alligator and eastern indigo snake. Although the alligator will decline somewhat during such operations, it is expected to increase above present levels with the addition of the lakes and increase in other wetlands when reclamation is completed. The eastern indigo snake will decline in numbers with the destruction of swamps and upland habitat, but should reach their former numbers after reclamation. The United States Fish and Wildlife Service has recommended that efforts be made by Estech to have indigo snakes recovered from the work area for relocation.

d. Estech will utilize double-walled pipelines with frequent inspections and mechanical safeguards to limit any damage that might occur in the event of a pipeline break in wetland areas. In addition, it will take numerous precautions concerning dragline crossings of wetland areas to prevent excessive damage and to restore such sites.

e. As heretofore found, Estech does not plan to replace the topsoil in the majority of the reclaimed areas. It considers that a sand-clay mixture for reclamation will result in increase of soil productivity without the necessity of replacing the former topsoil. Replacement would be extremely expensive and would be of dubious value in view of the low quality of topsoil at the mine site. The reclaimed soils will be equal and in many cases superior to the native soils in terms of fertility, moisture-holding capacity, and nutrient

retention, although they will have an initially poor structure in the top layer due to the absence of organic matter and soil biota. However, forage plantings on the improved pastures will encourage the development of such organic matter and, as it accumulates, natural vegetation will develop upon the sand-clay soils. Organic topsoil from wetlands will be placed in those areas when restored, as found necessary. Soil organisms perform useful functions that facilitate nutrient uptake and are important in any natural system. Most of such biota are lost during mining. However, barren soils are often colonized by invaders from adjacent undisturbed areas. Mycorrhizae and other beneficial organisms can be introduced through vectors, air, and from preserved wetlands. In addition, transplanting of trees and direct inoculation may accelerate the introduction of such organisms. Although use of the sand-clay mix for reclamation is a new technology, there have been prior successful tests of such a system. Estech will have to comply with reclamation standards of the Department of Natural Resources and other governmental requirements. If the system proves to be unworkable, adjustments can be made such as the ratio of sand to clay to facilitate improved drainage and plant growth. (Testimony of Cornwell, Davis, Cape, Bromwell, Lincer, Gamble, Exhibits 3, 4, 6-7, 11, 15-16, 39-42, 47, 57, supplemented by Exhibits 56, 58)

#### ECONOMICS, HOUSING, AND TRANSPORTATION

27 a. Estech's mining operation is intended to replace existing operations in Polk County. The proposed mining activity will cover an approximate thirty-year time period before reclamation is completed. Annual operation expenses are estimated at approximately \$30,000,000.00, and

total expenditures for the proposed mining activity will reach almost \$650,000,000.00 in capital and operating costs. There will be some 325 permanent employees during the course of mining operations, the majority of whom will probably come from the existing Estech labor force in Polk County. Since most of these employees are expected to commute from present residences in the region, there should be minimal impact on housing facilities. A "multiplier" effect of Estech's expenditures and employment will have a greater resulting economic impact in the region. Some of Estech's employees and contractor personnel are expected to reside in Manatee county with consequent payroll income. A portion of Estech's maintenance and supply needs will undoubtedly be obtained from local businessmen in the county. The proposed project should have only a minimal impact on local governmental services since it is located in a rural area and will be self-sufficient as to water, sewer, fire and police protection.

b. Local and state tax revenues will be a direct effect of the new mining activity. Substantial payments by Estech of state sales tax, severance tax, county ad valorem tax, and corporate income tax will produce substantial benefit to government.

c. The Estech project should have only minimal impact on the road network because it plans to ship the phosphate product by rail rather than truck, except during extraordinary conditions such as a rail strike. In such a situation, Estech has agreed to notify the Manatee County engineer of its use of county roads so that a reasonable trucking schedule may be established to minimize conflict with peak traffic patterns. Although rail service is not presently available, Estech has a letter of commitment from a railroad line to provide necessary

facilities for movement of phosphate rock. Estech has agreed not to commence mining operations until rail service is provided. Estech has also agreed to make necessary road improvement and maintain and repair any damage to county roads during the course of mining operations. (Testimony of Cape, Davis, Fishkind, Exhibits 4, 6, 7, 11, 47, 54)

#### PUBLIC WITNESSES

28. Seven public witnesses testified at the original hearings before Manatee County in January 1979, and six witnesses, including one who had appeared at the County hearing, testified at the final hearing. Additionally, a group of local citizens signed a petition which set forth various environmental concerns as to the proposed project and recommended denial of the application for development approval. Although the majority of the public witnesses were opposed to phosphate mining and environmental consequences thereof, several of the witnesses were of the opposite view and believed that phosphate mining could be conducted without adverse impacts on the environment. (Testimony of Fernald, Rain, King, Kitzmiller, Haley, Burlingame, Exhibit 2 (Testimony of Rains, Werick, Quy, Doozburg, H. Greer, M. Greer, Swizzik), 10, 50)

#### CONCLUSIONS OF LAW

1. Section 380.07, Florida Statutes, provides that, when a local government development order is appealed to the Florida Land and Water Adjudicatory Commission, the Commission shall hold a hearing pursuant to the provisions of Chapter 120, Florida Statutes, and thereafter issue a decision granting or denying permission to develop pursuant

to the standards of Chapter 380, and may attach conditions and restrictions to its decision. Although statutory criteria is not provided in Chapter 380 as to determination of the merits of the application by the Commission, it is considered that, in this de novo proceeding, the criteria set forth in subsections 380.06(8) and (11) (now 380.06 (11) and (13)) which were considered by the regional planning agency and the local government, respectively, are equally applicable to the determination of this appeal to the Commission. See Estuaries Properties, Inc. v. Askew, et al, 381 So. 2d 1126 (Fla. 1st DCA 1979).

2. Subsection 380.06(8) required a regional planning agency to consider whether, and the extent to which

(a) the development will have a favorable or unfavorable impact on the environment and natural resources of the region.

(b) the development will have a favorable or unfavorable impact on the economy of the region.

(c) the development will efficiently use or unduly burden water, sewer, solid waste disposal, or other necessary public facilities.

(d) the development will efficiently or unduly burden public transportation facilities.

(e) the development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.

(f) the development complies with such other criteria for determining regional impact as the regional planning agency shall deem appropriate, including, but not limited to, the extent to which the development would create an additional demand for, or additional use of, energy, provided such criteria and related policies have been adopted by the regional planning agency pursuant to s. 120.54.

Subsection 380.06(11) provided that if, as here, the development is not located in an area of critical state concern, the local government, in considering whether the development

should be approved, is required to consider whether, and the extent to which:

- (a) the development unreasonably interferes with the achievement of the objectives of an adopted state land development plan applicable to the area;
- (b) the development is consistent with the local land development regulations; and
- (c) the development is consistent with the report and recommendations of the regional planning agency submitted pursuant to subsection (8) of this section.

3. The report of the Tampa Bay Regional Planning Council to the Manatee County Board of County Commissioners recommended approval of Estech's development with specified conditions designed to minimize the degree and extent of negative impacts caused by mining operations and alteration or destruction of the natural systems and environmental resources. The report stated that the application represented "a noteworthy effort on the part of Swift Agricultural Chemicals Corporation . . . in addressing and resolving many of the potential problems inherent in mining phosphate ore in this area of the Tampa Bay Region." During the course of this proceeding, Estech has agreed in a Draft Development Order (Exhibit 47) to comply with the conditions recommended by the regional planning council, which document has been substantially adopted by that agency as its proposed recommended order, except that an additional provision recommended by the agency would require Estech to use a sand-clay mix in the initial settling area. The Draft Development Order also was stipulated to and accepted by the Department of Community Affairs as satisfying all of that agency's concerns except as to radiation. In a posthearing letter, the Department adopted the Draft Development Order as its proposed recommended order in this case. (Exhibit 64)

4. The pertinent criteria of Section 380.06(8) have been addressed during the hearing process and in the foregoing Findings of Fact, primarily with respect to those contested matters placed in issue by agreement of the parties. No issue was raised as to whether or not the development would affect the ability of people to find adequate housing reasonably accessible to their places of employment or whether the proposed development would unreasonably burden water, sewer, solid waste disposal, or other necessary public facilities, other than those public water supply facilities located at Lake Manatee. The evidence, however, shows that the development will not unduly burden such public facilities because Estech will provide its own sewage and waste disposal system. The relatively small number of contemplated employees at the mining site and the likelihood that the majority of them will commute from their present residences within the region will result in a minimal impact on existing and future housing facilities.

5. The evidence shows that the development will not unduly burden public transportation facilities, provided that rail transportation becomes available for the shipment of phosphate rock from the Estech site. Otherwise, the county road network would be subjected to excessive sustained heavy loads in congested areas of primary impact. Estech has agreed to a condition for development approval that rail service as proposed in the application shall be installed prior to the initiation of mining. It has also agreed to maintaining and making certain improvements to existing roads, and to abide by any schedule proposed by the Manatee County engineer during any emergency period when rail facilities are not available. These conditions are deemed sufficient to meet the transportation criterion.

6. There is no question but that the proposed development will have a favorable impact on the economy of the region. As Estech's Polk County mines phase out, continued employment in the region and substantial tax revenue to local and state governments will accrue as a result of the new mining operation. Other economic benefits will result from the significant expenditure of funds required to construct and maintain the mining facilities in the nature of supplies and services purchased in the local area.

7. The most significant issue presented for resolution is whether the development will have a favorable or unfavorable impact on the environment and natural resources of the region. It is considered that the question of water quantity has adequately been addressed by the consumptive water use permit issued Estech by the Southwest Florida Water Management District. The conditions attached to that permit are sufficient to protect the regional resources from undue consumption or detrimental effects from the manner of use. Although Estech's operations will reduce the flow of water into the Lake Manatee Reservoir which provides the public drinking water supply for Manatee County and part of Sarasota County, the evidence shows that the reduction will not significantly impact on the availability of a sufficient supply of drinking water. Adequate controls are provided by Estech's consumptive use permit to restrict its water use during drought periods and to modify the permit during a water shortage.

Mining operation will cause increased suspended solids and several other mineral substances to be deposited in Lake Manatee. Although the cost of treating water at the Manatee Water Treatment Plant will be increased somewhat, the quality of processed drinking water will not be impaired to any appreciable extent. Various monitoring and testing

requirements imposed by state and federal permits will be sufficient to prevent mining activities from significantly degrading downstream water quality. The proposed re-created marshes of the reclamation plan will assist in filtering and providing nutrient uptake of service runoff.

The primary source of emissions with regard to air quality will be from the rock dryers used in the phosphate process. Estech will be required to meet local, state and federal standards with respect to air quality and to establish an ambient air monitoring program throughout the life of the project. The evidence shows that the rock dryers will be equipped with modern pollution control technology and that they will not pose a significant health hazard. The issuance of a permit for the rock dryers by the Department of Environmental Regulation constitutes a determination that required standards will be met by the applicant.

Sufficient evidence was presented to establish that Estech's mining operations and subsequent reclamation of the area will present no significant radiological impact to public health and safety or on the environment and natural resources of the region. Estech's air monitoring program will include evaluation of radiation associated with emissions. In addition, Estech has agreed to conditions to any development approval which will provide a detailed radiological analysis of the reclaimed land to the Manatee County Health Department and, if an area has unacceptable radiation levels, it will cover the area with lower value materials. Required testing of ground water under the consumptive water use permit includes radiation parameters. The only area where radiation levels may be of concern after reclamation is in the clay settling area.

Since Estech intends to use this site for agricultural purposes after the termination of mining operations, and there is a consequent unlikelihood that there would be residential development, it is considered that any residual radiation problem is remote.

Estech's mining operation will cause extensive change and destruction of the natural vegetation, and alteration of the topography of the mining site, with consequent initial adverse impacts upon the environment and natural resources, including wildlife destruction or disturbance. In the past, phosphate mining has caused severe adverse ecological impacts for an extended period of time until re-establishment of plant and wildlife communities gradually occurred in a natural manner. The evidence presented in this case demonstrates that Estech is committing itself to a major reclamation effort to mitigate adverse environmental effects. The creation of lakes, preservation or re-creation of wetlands and forests, and the use of the sand-clay mixture in reclaimed areas to improve soil productivity represent the application of new, and in some respects, relatively untested concepts to ameliorate the massive upheaval caused by mining. The fact that the Tampa Bay Regional Planning Council has adopted the plan, with certain conditions, as its proposed order in this proceeding, lends support to the idea that the various management techniques to be undertaken through the reclamation program are designed adequately to achieve the intended goals. Certain facets of the plan, such as restoration of riverine forest areas, the efficacy of the sand-clay mix as a suitable soil for increased agricultural productivity, and the re-creation of wetlands may be subject to some speculation as to final successful results. Nevertheless, these matters involve a certain degree of "pioneering" and are to be subject

to Estech's self-imposed conditions, such as the pilot project prior to mining to demonstrate that hardwood swamps can and will be restored through its proposed methods.

It is concluded that the initial unfavorable impacts on the environment and natural resources of the region will be balanced by favorable impacts achieved under the reclamation program.

8. A major area of controversy in this proceeding was concern over the earthen dam designed to contain the wastes in the initial clay settling area. It is manifest that failure of the dam would cause a devastating impact upon the Manatee River watershed and Lake Manatee Reservoir. The evidence also showed that the use of a sand-clay mixture in the settling area instead of clay wastes only, with a consequent increased cost of some seven million dollars, would eliminate most of the impact upon Lake Manatee, but would produce possible long-term adverse impacts upon the upper reaches of the Manatee River. One of Estech's engineering consultants recommended that such a procedure be employed by Estech despite the additional cost, to provide an increased margin of safety with respect to impacts caused by a dam failure. Although it is considered that the sand-clay concept would be advantageous from the standpoint of avoiding disastrous consequences to Lake Manatee, as would be a below-ground settling area or possibly a double dam concept, none of the alternatives is considered economically justified or required under current state regulations. The evidence is clear that the dam design and construction will more than meet State Department of Environmental Regulations standards to the extent that possibility of dam failure is extremely remote. These standards were promulgated following a number of prior phosphate dam failures and are designed to prevent such catastrophic events from occurring in the future. The stated intent of the requirements of Chapter 17-9, Florida Administrative Code, as set forth in Rule 17-9.01, is to

"establish requirements which will eliminate or reduce failures of earthen dams to the lowest possible manner." Although the rules establish only minimum requirements for construction and surveillance of such dams, Estech's plan and design have been shown to exceed the requirements in various respects. Again, Estech has agreed to the inclusion of conditions to any development approval which would provide initial tests of the dam at maximum stress prior to the deposition of clay wastes to determine the dam's adequacy, and has further agreed to more rigorous inspection requirements than those set forth in Chapter 17-9. In sum, it is concluded that there is little likelihood of dam failure and that imposition of the additional substantial expense to further modify the plan is unwarranted and would constitute an unreasonable economic burden upon the applicant.

9. The final considerations are those of Section 380.06(11) as previously set forth above. In view of the fact that the state has not adopted a land development plan applicable to the area in which the site is located, subsection (11)(a) is inapplicable. Based on the conclusions made in preceding paragraphs herein, it is determined that the proposed development conforms with subsection (11)(c) in that it is consistent with the report and recommendations of the regional planning agency submitted pursuant to subsection (8). As to the requirement of subsection (11)(b) that the development be consistent with the local land development regulations, it is necessary to consider applicable provisions of the Manatee County zoning ordinance which requires that the proposed development be reasonable compatible with and suitably separated and buffered from, adjacent and surrounding land uses. In this regard, the fact that surrounding land uses are primarily

agricultural or proposed for mining operations provides sufficient evidence that the proposed development meets the requirements of the ordinance as to compatibility. The evidence further establishes that the various aspects of the development will be sufficiently separated and buffered from adjacent uses to preclude any significant nuisance or hazardous condition. Accordingly, it is concluded that the development will be in consonance with the considerations set forth in subsection 380.06(11).

It is noted in the above respects that, although the Manatee County Board of County Commissioners denied the proposed development on the ground that it was inconsistent with local land development regulations and did not meet the requirements of its zoning ordinance, no specific reasons were cited for such determination.

10. Substantial evidence was received in this proceeding concerning the possible cumulative impacts and effects of previously permitted, but currently inoperative, other phosphate mining operations in the surrounding area. The totality of such evidence establishes that due to the location and other features of those proposed operations, the cumulative impact will not result in a significant unfavorable impact on the region as to the various statutory criteria for developmental approval.

11. In view of all the foregoing considerations, it is concluded that the proposed development will meet the statutory requirements of Chapter 380, Florida Statutes, subject to specified conditions which are set forth in Exhibit B hereto. The proposed conditions incorporate the majority of the substantive conditions to which Estech has agreed in its previously described Draft Development Order, with the exception

of those which recite conditions attached to the consumptive water use permit issued by the Southwest Florida Water Management District. It is considered unnecessary to include these existing conditions in the Final Order. Certain recitals of fact and procedural matters likewise are not included in the attached conditions because, for the most part, they are contained in this Recommended Order. It is further considered unnecessary to include those suggested conditions concerning substantial deviations to the project which may arise hereafter. The procedure for dealing with such matters is adequately covered in Chapter 380.

12. Estech filed a posthearing Addendum to its Draft Development Order recommending that certain items required for inclusion in a local government development order imposed by 1980 amendments to Chapter 380, which are not already proposed as conditions, be incorporated as additional conditions. Those deemed necessary by Estech deal with annual reports on reclamation progress to Manatee County and other agencies. Although it is not believed that the 1980 legislative amendments are applicable to this proceeding, the proposed additional conditions serve a useful purpose and, since Estech has agreed to the same, they are incorporated in the attached proposed conditions. Additional proposed conditions concerning preliminary testing of the dam at the initial clay settling area are deemed necessary for project approval. Certain other undertakings by Estech regarding a proposed "Baker Reservoir," and dedication of wildlife areas and the proposed water storage reservoir to Manatee County or other agencies, some of which were included in the recommendations of the regional planning agency, although not directly raised in this proceeding, are considered beneficial and unobjectionable. They have been

included in the attached proposed conditions.

13. The proposed recommended orders submitted by Estech and jointly by Sarasota and Manatee Counties have been fully considered and all material portions thereof have either been adopted or addressed in this Recommended Order. These proposed findings or legal conclusions that have not been adopted herein are considered to be either unnecessary, irrelevant, or unwarranted in law or fact, and are rejected.

14. Estech filed a posthearing Motion to Correct the Record to include as an exhibit the Manatee County Resolution denying developmental approval due to the denial of its admission into evidence under the misapprehension by other parties and the Hearing Officer that it was already contained in the exhibits as to proceedings before the Manatee County Board of County Commissioners. It appears that good cause exists for the motion, and further because the said resolution is the basic document which prompted the incident appeal and is attached to the Petition, it will be appended to the record as Hearing Officer Exhibit 3.

15. Sarasota County adequately established a sufficient interest in the proceeding to qualify as an intervening party.

RECOMMENDATION

That the Florida Land and Water Adjudicatory Commission issue a decision granting permission to Estech General Chemicals Corporation to develop its property located in Manatee County in the manner provided in the application for development approval, and subject to the conditions attached hereto at Exhibit B, pursuant to the provisions of Chapter 380, Florida Statutes.

DONE and ENTERED this 31<sup>st</sup> day of July, 1980  
in Tallahassee, Florida.



THOMAS C. OLDHAM  
Hearing Officer  
Division of Administrative Hearings  
101 Collins Building  
Tallahassee, Florida 32301

Copies furnished:

See attached list .

Copies furnished :

Honorable Bob Graham  
Governor, State of Florida  
The Capitol  
Tallahassee, Florida 32301

Honorable Jim Smith  
Attorney General  
State of Florida  
The Capitol  
Tallahassee, Florida 32301

Honorable George Firestone  
Secretary of State  
State of Florida  
The Capitol  
Tallahassee, Florida 32301

Honorable Bill Gunter  
State Treasurer  
State of Florida  
The Capitol  
Tallahassee, Florida 32301

Honorable Gerald A. Lewis  
Comptroller  
State of Florida  
The Capitol  
Tallahassee, Florida 32301

Honorable Doyle Conner  
Commissioner of Agriculture  
State of Florida  
The Capitol  
Tallahassee, Florida 32301

Honorable Ralph D. Turlington  
Commissioner of Education  
State of Florida  
The Capitol  
Tallahassee, Florida 32301

Department of Community Affairs  
C. Laurence Keesey, Esquire  
Room 204, Carlton Building  
Tallahassee, Florida 32301

Department of Administration  
Mr. Nevin Smith, Secretary  
435 Carlton Building  
Tallahassee, Florida 32301

Wade L. Hopping, Esquire  
Hopping, Boyd, Green and  
Sams  
Post Office Box 6526  
Tallahassee, Florida 32301

Roger Tucker, Esquire  
Tampa Bay Regional Planning  
Council  
9455 Koger Boulevard  
St. Petersburg, Florida 33701

Richard E. Nelson, Esquire  
2070 Ringling Boulevard  
Post Office Box 2524  
Sarasota, Florida 33578

Bill Fay, Jr., Esquire  
1400 4th Avenue West  
Post Office Box 959  
Bradenton, Florida 33505

Bay Harrison, III, Esquire  
325 North Calhoun Street  
Tallahassee, Florida 32301



STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ESTECH GENERAL CHEMICALS CORPORATION, )  
formerly SWIFT AGRICULTURAL CHEMICALS )  
CORPORATION, )  
Petitioner, )  
vs. )  
MANATEE COUNTY, FLORIDA, ) Case No. 79-1994  
Respondent, )  
and )  
SARASOTA COUNTY, FLORIDA, DEPARTMENT OF )  
COMMUNITY AFFAIRS, STATE OF FLORIDA, )  
and TAMPA BAY REGIONAL PLANNING COUNCIL, )  
Intervenors. )

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LIST OF EXHIBITS

Manatee County Exhibits

- EXHIBIT 1 Volume I - Transcript of proceedings held  
January 10, 1979, of the Manatee County  
Commission and Planning Commission Hearing
- EXHIBIT 2 Volume II - Transcript of proceedings held  
January 11, 1979 of the Manatee County  
Commission and Planning Commission Hearing
- EXHIBIT 3 COUNTY'S EXHIBITS  
VOLUME III
- 1 Special Exception Application  
5/5/78, Swift Agricultural Chemicals Corp
  - 2 Notification of Public Hearing, Swift  
Agricultural Chemicals Corp SE #1120, DRI #10
  - 3 Master Mining Plan with Addendum, Swift  
Agricultural Chemicals Corp SE #1120, DRI #10
- EXHIBIT 4 COUNTY'S EXHIBITS  
VOLUME IV  
Application for Development Approval 4/17/78  
Swift Agricultural Chemicals Corp SE #1120,  
DRI #10: Maps, Environment and Natural Resources,  
Economy, Public Facilities

EXHIBIT A

EXHIBIT 5

COUNTY'S EXHIBITS  
VOLUME V

Application for Development Swift Agri  
Chemical DRI #10: Transportation, Electrical  
Transmi., Mining Operations, Petroleum Storage,  
App A, B, C

EXHIBIT 6

COUNTY'S EXHIBITS  
VOLUME VI

- 5 Addendum to DRI-ADA No. 77-861, 9-27-78,  
Swift Agri Chem Corp SE 1120 DRI #10
- 6 County Staff Report 1/5/79 with DRI Report  
of Tampa Bay Regional Planning Council,  
11/12/78, DRI #10
- 7 Master Reclamation Map for the Duette Mine Tract  
7/31/78 Swift Agricultural Chemicals Corp SE  
#1120, DRI #10
- 8 Aerial Photo, Swift Agri Chem Corp, Manatee Mine  
Florida
- 9 Memo from Herman White, Asst County Eng Highway  
Dept to Charles Carrington, Director Planning  
and Develop Jan 10, 1979, Subject: Swift  
Agricultural Cehmicals Corp - Duette Mine, DRI  
#10, SE 1120
- 10 Motion to Intervene as a Full Party dated Jan 9,  
1979; Sarasota County as Petitioner and Intervenor  
(a duplicate copy)

EXHIBIT 7

APPLICANT SWIFT'S EXHIBITS  
VOLUME VII

- 1 Copy of letter from Jay T. Ahern, Staff Attorney,  
Southwest Florida Water Management District  
dated September 26, 1978 with copy of Order  
Granting Permit Pursuant to Hearing Before  
Governing Board in re: Swift Agri Chemicals  
Corp Consumptive Use Permit Application No.  
27703739 in Manatee County, Florida Order  
No. 78-75 attached

- 2 Three copies of Status of Permits
- 3 Photo - General Location Map Duette Mine
- 4 Photo - Aerial Photo Duette Mine
- 5 Photo - Ore Body Cross Section- Duette Mine
- 6 Photo-Mining Area
- 7 Photo - Process Flow Sheet Duette Mine
- 8 Photo - Mining Plan - Duette Mine
- 9 Photo-Water Use Plan Duette Mine
- 10 Photo-location of Discharge Points Duette Mine
- 11 Photo-Physical Restoration Techniques Duette Mine
- 12 Photo-Waste Disposal Plan Duette Mine
- 13 Photo-Cross Section of Restored Floodplain East Fork Manatee River
- 14 Photo-Drainage System Through Adjacent Sand-Clay Landfill
- 15 Photo-Land Use Before and After Mining Duette Mine
- 16 Photo-Land Use After Reclamation Duette Mine
- 17 Resume of Jerry J. Cape, PE Consulting Eng Mining & Minerals Processing
- 18 Professional Resume of George W. Cornwell, Consulting Ecologist and President, EcoImpact Inc Gainesville, Fla
- 19 Photo-Changes in Land Use Resulting from Reclamation
- 20 Photo-Vegetation Duette Mine
- 21 Photo-Endangered and Threatened Wildlife and their Projected Occurrence after Reclamation
- 22 Professional Resume of Robert S. Sholtes, Ph.D. P.E.
- 23 Photo-Air Quality Sampling Locations Duette Mine
- 24 Resume of Henry W. Morton
- 25 Photo-Radium 226 Profiles
- 26 Photo-Radium 226 Levels
- 27 Photo-Gamma Ray Log of a Deep Well on the Duette Site
- 28 Photo-Radium 226 Concentration in Ground Water
- 29 Resume of Anwar E. Z. Wissa, President Ardaman & Assoc
- 30 Photo-Drainage Basins
- 31 Photo-Surface Water Diversion System
- 32 Photo-Discharge East Fork Manatee River

- 33 Photo Effects on Stream Flow to Manatee River
- 34 Photo-Generalized Soil Profile
- 35 Photo-Examples of Zoned Dams
- 36 Photo-Drawdown from Mine Pit Dewatering
- 37 Resume of John E. Garlanger Ph D, P E, Principal,  
Ardaman & Associates, Inc.
- 38 Resume of William L. Gyton
- 39 Photo-Deep Test Hole 2 Geologic Logs
- 40 Photo-Specific Capacity v Open Hole Intervals
- 41 Photo-Deep Test Hole 2 Geologic Log
- 42 Photo-Depth of Highly Mineralized Water
- 43 Photo-Test and Observation Well Construction
- 44 Photo-Observation Well Response During Pilot  
Production Test
- 45 Photo-Long-Term Water Levels of Individual Production  
Zones
- 46 Photo-Potentiometric Surface of the Floridian Aquifer  
in Manatee County - 1975
- 47 Photo-9,000 GPM Withdrawal and 2,100 GPM Recharge,  
7,000 GPM Withdrawal and 2,100 GPM Recharge

EXHIBIT 8

SARASOTA COUNTY'S EXHIBITS  
VOLUME VIII

- 1. Copy of Final Environmental Impact Statement
  - Part 1: Copy of Memo from Phosphate Study Unit  
to Advisory and Steering Committee Members  
dated October 26, 1978
  - Part 2: Volume I, Final Environmental Impact  
Statement
  - Part 3: Volume II, Final Environmental Impact  
Statement
  - Part 4: Continuation of Volume II
  - Part 5: Continuation of Part 4, Volume II
  - Part 6: Copies of various letters

EXHIBIT 9

SARASOTA COUNTY'S EXHIBITS

- Part 7: Continuation of Part 6
- Part 8: Copies of various letters
- Part 9: Copy of letter from Homer Hooks, to  
John E. Hagan, III dated June 20, 1978  
w/attachment A (comments of the Florida  
Phosphate Council, Inc.)

Part 10: Responses to Public Hearing Comment:

- EXHIBIT 10                    GENERAL PUBLIC'S EXHIBITS
- 1 Copy of Gloria Rain's presentation
  - 2 Ninety-three (93) petitions from Florida residents requesting the mining application from Swift be denied
- EXHIBIT 11 Draft - U.S. EPA Environmental Impact Statement October 1979
- 1 Summary
  - 2 Archaeological and Historical Properties
  - 3 Meteorological Conditions
  - 4 Soils
  - 5 Noise
  - 6 Transportation
  - 7 Reclamation Methodology
  - 8 Radiological Environment
  - 9 Surface Water Quality
  - 10 Description of the Proposed Activity
  - 11 Air Quality
  - 12 Alternatives Evaluation
  - 13 Socioeconomics
  - 14 Biology and Ecology
- EXHIBIT 12 General Location Map - Duette Mine
- EXHIBIT 13 Conceptual Flow Diagram - Mine and Production Facilities
- EXHIBIT 14 Conceptual Dryer Unit & Exhaust Scrubber
- EXHIBIT 15 Approved Wetlands Crossing
- EXHIBIT 16 Conceptual Stream Crossing
- EXHIBIT 17 ADA Clay Impoundment
- EXHIBIT 18 Below Grade Settling Pond
- EXHIBIT 19 Double Dam
- EXHIBIT 20 Manatee County Zoning Ordinance - Excerpts

- EXHIBIT 21 Location of Test Borings for Initial Disposal Areas
- EXHIBIT 22 Typical Design Section Initial Settling Area Duette Mine
- EXHIBIT 23 Summary of Minimum Factors of Safety
- EXHIBIT 24 Initial Settling Area report by Ardaman & Assoc.
- EXHIBIT 25 Calculated Final Waste Disbribution Along Manatee River Due to Hypothetical Failure of Settling Area
- EXHIBIT 26 Regional Hydrologic Map
- EXHIBIT 27 Summary of Present Surface Water Quality Data in the Manatee River
- EXHIBIT 28 Summary of Existing Water Quality in Lake Manatee
- EXHIBIT 29 Discharge Points and Water Quality Monitoring Stations
- EXHIBIT 30 Characteristics of Process Water from Estech Watson Mine
- EXHIBIT 31 NPDES Permit Application Effluent Limitation
- EXHIBIT 32 Effects of Mining Discharges on Downstream Water Quality in the Manatee River (Prediction Based on Estimated Discharge Concentration from Process Water at Watson Mine)
- EXHIBIT 33 Effects of Mining Discharges on Downstream Water Quality in Manatee River (Predictions Based on NPDES Permit Limitations for Discharge Concentrations)
- EXHIBIT 34 Annual Loadings of Important Minerals to Lake Manatee
- EXHIBIT 35 Conservation Consultants, Inc., report and water quality analysis
- EXHIBIT 36 Typical Instrumented Test Section
- EXHIBIT 37 Flocculent- Thickener System
- EXHIBIT 38 Predicted Extent of Dilute Slimes Flow
- EXHIBIT 39 Ecological, Environmental Land Use and Reclamation Perspectives on Estech General Chemicals Corp.-- report by Dr. George Cornwell
- EXHIBIT 40 Feasibility and Guidelines for Restoring Riverine Hardwood Swamps in Manatee County -- report by Dr. George Cornwell
- EXHIBIT 41 Photographs 1-30 by Dr. G. Cornwell
- EXHIBIT 42 Terrestrial Plant and Wildlife Communities on Phosphate-mined Lands in Central Florida by Schnoes and Humphrey

- EXHIBIT 43 Report by Dr. Robert S. Sholtes
- EXHIBIT 44 Federal Register - Environmental Protection Agency  
December 27, 1979
- EXHIBIT 45 Report by Joe Davis re Water Quality Sand/Clay Mix-  
Water Quality Inside Dam Wall Memo dated 2-18-80
- EXHIBIT 46 Status of Required Permits
- EXHIBIT 47 Draft Development Order
- EXHIBIT 48 Effects of Mining Discharges on Downstream Water Quality
- 1 Table I -- East Fork Manatee River
  - 2 Table II -- North Fork Manatee River
  - 3 Table III -- Percent loading changes of important  
minerals to Lake Manatee as a result of Duette Mine
- EXHIBIT 49 Comparative Doses from Natural Radiation Sources
- EXHIBIT 50 ManaSota 88 Letter
- EXHIBIT 51
- 1 Cross Sections 8 and 9 -- Land-Pebble Phosphate  
District, Florida
  - 2 Isometric Fence Diagram, Land-Pebble Phosphate  
District, Florida
  - 3 Isopach Map of the Aluminum Phosphate Zone
  - 4 Uranium Isograde Map of the Aluminum Phosphate Zone
- EXHIBIT 52 Analysis of Estech Core Samples for Natural  
Radioactive Content, SAI Lab Report by Cine and  
Hollcroft
- EXHIBIT 53 Evaluation of Radiological Measurements and Impacts  
at the Proposed Duette Mine of the Estech General  
Chemical Corp, report by Dr. Keith Schiager
- EXHIBIT 54 Economic Perspectives on Estech, Inc, Appeal re  
Duette Mine Site, report by Dr. Henry Fishkind
- EXHIBIT 55 DER Construction Permit for the Rock Dryer -  
December 31, 1982 - 19th May 1980
- EXHIBIT 56 Department of the Army - Letter- Army Corps of Eng.  
to Rhodes from Gren
- EXHIBIT 57 A Report Prepared for the Sarasota Board of County  
Commissioners on Estech's (Formerly Swift's)  
Draft Environmental Impact Statement - Proposed  
Duette Phosphate Mine, Beneficiation Plant and Rock  
Dryer, report by Jeffrey Lincer and Russell Klier
- EXHIBIT 58 U.S. Department of the Interior, Fish and Wildlife  
Service letter from Tolman to Davis dated April 17, 1980  
and EPA letter.

- EXHIBIT 59 Overtopping (Chart)
- EXHIBIT 60 Piping (Chart)
- EXHIBIT 61 Drawdown (Chart)
- EXHIBIT 62 5 Photos by Robert Balter
- EXHIBIT 63 Dam Safety Legislation: A Solution or a Problem by  
George F. Sowers
- EXHIBIT 64 Estech - DCA Stipulation

HEARING OFFICER'S EXHIBITS

- EXHIBIT 1 Manatee County Resolution and allied documents (Taxes)
- EXHIBIT 2 List of Public Witnesses
- EXHIBIT 3 Manatee County Resolution Denying ADA, Etc.

STATE OF FLORIDA

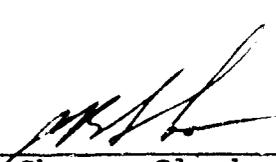
COUNTY OF MANATEE

I, R. B. Shore, Clerk of Circuit Court, in and for the County of Manatee, State of Florida, do hereby certify that the foregoing is a true copy of a RESOLUTION adopted by the Board of County Commissioners of said County in session on the 16th day of August 1979

SUBJECT:

RESOLUTION DENYING SPECIAL EXCEPTION 1120,  
MASTER MINING AND RECLAMATION PLAN (DRI-10)  
AND DENYING DEVELOPMENT ORDER

WITNESS My Hand and Official Seal this 16th day  
of August 1979 in Bradenton, Florida.

  
\_\_\_\_\_  
R. B. Shore, Clerk of Circuit Court  
Manatee County, Florida

STATEMENT OF THE CASE

This case is an appeal under Section 380.07, Florida Statutes, by Estech General Chemicals Corporation (Estech), to the Florida Land and Water Adjudicatory Commission (Adjudicatory Commission) of a development order issued by the Manatee County Board of County Commissioners.

On August 16, 1979, the Manatee County Board of County Commissioners adopted a resolution denying Estech's Application for Development Approval for a Development of Regional Impact (D.R.I. #10), denying Estech's Application for Approval of a Special Exception (SE-1120), and denying Estech's Application for Approval of a Master Mining and Reclamation Plan.

On September 24, 1979, Estech appealed to the Adjudicatory Commission pursuant to Chapter 380.07, Florida Statutes. The appeal was referred to the Division of Administrative Hearings and assigned to a hearing officer. The Department of Community Affairs and the Tampa Bay Regional Planning Council joined the appeal as intervening parties. Sarasota County was granted "provisional status" as an intervenor.

The Hearing Officer conducted de novo hearings, over Petitioner's objection, on March 17-21 and May 19-23, 1980. On July 31, 1980, a Recommended Order issued containing findings of fact, conclusions of law, and conditions for development approval. The Hearing Officer recommended that the Florida Land and Water Adjudicatory Commission grant Estech permission to develop its property in Manatee County in the manner provided in the Applications filed with the County subject to various Conditions for Development Approval which were attached to the Recommended Order as Exhibit B.

ORDER

1. The Hearing Officer's Findings of Fact, as set forth in the Recommended Order dated July 31, 1980, are hereby adopted and incorporated by reference herein with the following changes: (New language is underlined.)

a. Finding of Fact number 15b is corrected to read:

"b. The water in Lake Manatee is similar to that found in the streams on the Estech property. The water in Lake Manatee generally falls into Class IA standards for a potable water supply."

b. Finding of Fact number 26b and Condition 11d should be changed to read:

"Estech, prior to mining the hardwood swamps which are designated for restoration, shall demonstrate the company's or the industry's ability to successfully recreate those areas and that Estech has full access to the technology necessary to recreate those areas. This demonstration may be done on property other than the Duette site so long as the soil and conditions at the site of the demonstration project are similar to the soils and conditions on the Duette site."

These changes to the Findings of Fact are made to correct the order to conform with the record and stipulations entered into by the parties to this cause. Counsels for the parties have no objection to these corrections. These changes correspond to Exception 1 and Exception 2 filed by Estech in its Exceptions to the Recommended Order dated August 18, 1980. In addition to reasons set forth above, the Commission adopts the rationale provided in Estech's Exception 1 and Exception 2.

2. The Hearing Officer's Conclusions of Law, as set forth in the Recommended Order dated July 31, 1980, are hereby adopted and incorporated by reference herein except as follows:

a. The Commission accepts the first three sentences of Conclusion of Law No. 8 in the Hearing Officer's Recommended Order as amended below.

"8. A major area of controversy in this proceeding was concern over the earthen dam designed to contain the wastes in the initial clay settling area. It is manifest that failure of the dam would cause a devastating impact upon the Manatee River watershed and Lake Manatee Reservoir. The evidence also showed that the use of a sand-clay mixture in the settling area instead of clay wastes only, with a consequent increased cost of some seven million dollars, would eliminate most of the impact upon Lake Manatee, ~~but would produce possible long-term adverse impacts upon the upper reaches of the Manatee River.~~"

The Commission rejects the remainder of Conclusion of

Law No. 8. The following language is substituted:

"Evidence was presented to show that the dam design and construction will meet State Department of Environmental Regulations standards as set forth in Chapter 17-9, Florida Administrative Code. These rules set the minimum requirements for construction and surveillance of dams."

"However, the Commission concludes that the use of sand-clay mix is called for under the circumstances. The use of a sand-clay mix as recommended by one of Estech's consulting engineers is both warranted and justified in this case, even though this will be a more expensive procedure."

"The sand-clay mix would reduce harm in the event of a dam break. While the possibility of a dam break may be remote, due to the fact that the immediate health of the citizens of the area would be endangered vis-a-vis their potable water supply, the requirement of the sand-clay mix in the initial settling area is feasible."

"Additionally, the attributes of a sand-clay mix; i.e., reduction of normal adverse effects of the settling on slime ponds; reduced demand on water; and reduced reclamation time; all clearly support the conclusion that the sand-clay mix is a more desirable method of waste clay disposal."

3. The Conditions for Development Approval (Exhibit B to the Recommended Order) are hereby adopted and incorporated by reference herein, with the following changes:

a. Condition for Development Approval No. 11b is modified to conform with the following provision from the Draft Development Order:

"In connection with determining the existing conditions of these forested wetlands, Estech shall perform one baseline transect and at least one other transect to confirm the validity of the first transect in the hardwood swamp area."

b. The following requirement is included as paragraph 3d on page 4 of the Hearing Officer's Conditions for Development Approval:

"d. The 480-acre above-grade clay settling area shall be filled with a sand-clay mixture and/or water rather than dilute clays as originally proposed by Estech. Nevertheless, dilute

clays may be temporarily placed in the initial clay settling area in the event of an emergency caused by operational problems associated with the waste disposal systems. If such emergency usage continues longer than 72 hours, Estech shall notify the Manatee County Engineer. Estech shall proceed with all due haste to correct any operational problems."

c. The following requirements are included in the Conditions for Development Approval as paragraph 2h:

"h. If Estech applies to the Southwest Florida Water Management District for an increase in their existing consumptive use permit which allows 12,960,000 gpd average annual withdrawal, Estech shall provide a copy of its SWFMWD application to Manatee County, Sarasota County, the Tampa Bay Regional Planning Council and the Department of Community Affairs at the time of filing."

"Manatee County shall make a determination as to whether or not the proposed water-use change is a substantial deviation to an approved Development of Regional Impact pursuant to §380.06(17), Florida Statutes."

"If a request is approved by SWFWMD for increased water consumption exceeding 1,944,000 gpd, then Estech agrees that such a modification is a substantial deviation as defined in §380.06(17), and shall be subject to further review by Manatee County pursuant to §380.06, F.S."

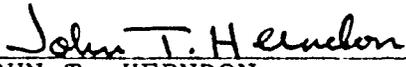
4. The Hearing Officer's recommendation contained in the July 31, 1980, Recommended Order is accepted and the Commission hereby grants permission to Estech General Chemicals Corporation to develop its property located in Manatee County in the manner provided in the applications, as amended and described in the statement of the case, and subject to the conditions adopted by and set forth in this order.

5. Exceptions to the Recommended Order were filed by Estech, Manatee County and Sarasota County. Manatee County filed a second List of Exceptions on September 16, 1980, which was objected to by Estech.

a. Estech's objection to the second set of exceptions filed by Manatee County is granted and the exceptions are denied.

b. The parties' exception to the Recommended Order are rejected to the extent they are inconsistent with the findings and conclusions contained in this order.

Entered at Tallahassee, Florida, by the Florida Land and Water Adjudicatory Commission through the Secretary to the Commission this 15th day of October, 1980.

  
\_\_\_\_\_  
JOHN T. HERNDON  
Secretary to the Land and Water  
Adjudicatory Commission

Copies to:

Members of the Commission  
Counsel of Record  
Board of County Commissioners, Manatee County  
Board of County Commissioners, Sarasota County  
Department of Community Affairs,  
Bureau of Land and Water Management

COUNTY OF MANATEE, STATE OF FLORIDA

IN RE: APPLICATION FOR DEVELOPMENT APPROVAL OF  
A DEVELOPMENT OF REGIONAL IMPACT AND  
APPLICATION FOR APPROVAL OF A SPECIAL  
EXCEPTION, TOGETHER WITH AN APPLICATION  
FOR APPROVAL OF A MASTER MINING AND  
RECLAMATION PLAN BY SWIFT AGRICULTURAL  
CHEMICALS, INC.

DRI-10  
SE-1120

CERTIFICATE OF SERVICE

It is hereby certified that a certified copy of the Resolution Denying Special Exception, Denying Master Mining and Reclamation Plan and Denying Development Order adopted by the Board of County Commissioners of Manatee County, Florida, on August 16, 1979, in the above styled proceedings was served upon the Florida Division of State Planning, Department of Administration, Room 350, Carlton Building, Tallahassee, Florida 32304, upon the Tampa Bay Regional Planning Council, 9455 Koger Boulevard, St. Petersburg, Florida 33702; upon Nelson, Hesse, Cyril, Weber, Smith & Widman, 2070 Ringling Boulevard, Sarasota, Florida 33577, as the attorneys for Sarasota County, and upon Grimes, Goebel, Parry, Blue, Boylston & McGuire, P. O. Box 1550, Bradenton, Florida 33506, as the attorneys for Swift Agricultural Chemicals Corp., by mail this the 20th day of August, 1979.

  
Mann and Fay, Chartered  
Attorneys for the County of Manatee,  
Florida  
P. O. Box 959  
Bradenton, Florida 33506  
813/747-3761

COUNTY OF MANATEE, STATE OF FLORIDA

IN RE: APPLICATION FOR DEVELOPMENT APPROVAL OF  
A DEVELOPMENT OF REGIONAL IMPACT AND  
APPLICATION FOR APPROVAL OF A SPECIAL  
EXCEPTION, TOGETHER WITH AN APPLICATION DRI-10  
FOR APPROVAL OF A MASTER MINING AND SE-1120  
RECLAMATION PLAN BY SWIFT AGRICULTURAL  
CHEMICALS, CORP.

RESOLUTION DENYING SPECIAL EXCEPTION, DENYING  
MASTER MINING AND RECLAMATION PLAN AND  
DENYING DEVELOPMENT ORDER

WHEREAS, Swift Agricultural Chemicals, Corp., hereinafter referred to as "Swift", filed an Application For Development Approval Of A Development Of Regional Impact No. DRI-10, and an Application For Approval Of A Special Exception No. SE-1120, together with a Master Mining And Reclamation Plan with the County of Manatee, a political subdivision of the State of Florida, all of which are hereinafter collectively referred to as the "application", and

WHEREAS, these proceedings relate to proposed phosphate rock mining operations upon real property apparently owned by Swift located in Manatee County, Florida, and hereinafter referred to as the "development", and

WHEREAS, the County of Sarasota, a political subdivision of the State of Florida, was made an intervening party in these proceedings upon the filing of a Petition To Intervene, and

WHEREAS, Grimes, Goebel, Parry, Blue, Boylston & McGuire appeared and participated in these proceedings as the attorneys for Swift and Nelson, Hesse, Cyril, Weber, Smith & Widman appeared and participated in these proceedings as the attorneys for Sarasota County, and

WHEREAS, upon publication and furnishing of due notice, a joint public hearing in these proceedings was held January 10 and 11, 1979, before the Board of County Commissioners of Manatee County, Florida, and the Manatee County Planning Commission, and

WHEREAS, said Board of County Commissioners and said Planning Commission heard or read the transcript of all of the oral testimony and other oral presentations, and read the reports and other documentary evidence duly submitted and made a part of the record in these proceedings, and

WHEREAS, said Board of County Commissioners having duly considered

the foregoing is fully advised and informed in the premises.

NOW, THEREFORE BE IT RESOLVED by the Board of County Commissioners of Manatee County, Florida, that the issue in these proceedings is whether the application should be approved, denied or approved subject to conditions, restrictions or limitations.

BE IT FURTHER RESOLVED by said Board of County Commissioners, as findings of fact, that:

1. A Notice Of Public Hearing in these proceedings was duly published in the Bradenton Herald, a newspaper of general circulation in Manatee County, Florida, pursuant to Section 380.06 of the Florida Statutes and the applicable provisions of the Manatee County Zoning Ordinance, and proof of said publication has been duly filed in these proceedings.

2. Swift owns at least approximately Ten Thousand Three Hundred NinetyThree (10,393) acres located in Sections 15, 16, 17 and 18, Township 34 South, Range 22 East, in Manatee County, Florida, wherein the proposed scope of mining operations involved the construction of a plant and mine, the open pit extraction of phosphate matrix by dragline, the physical separation of the phosphate product from the matrix, the shipment of the product and the recreation and reclamation of the disturbed lands.

3. Upon consideration of the matters and things prescribed in Section VI, Paragraphs 14 and 16 of the Manatee County Zoning Ordinance and other applicable provisions thereof, it is determined that:

A. The use contemplated by the development is not reasonably compatible with surrounding uses.

B. Nuisances or hazardous features are involved in the development and same are not suitably separated and buffered from adjacent uses.

4. Upon consideration of the matters and things prescribed in Section 380.06(11) of the Florida Statutes, it is determined that:

A. The development is not located in an area of critical state concern.

B. The State of Florida has not adopted a land development plan applicable to this area.

C. The development is not consistent with local land development regulations.

D. The report and recommendations of the Tampa Bay Regional Planning Council on file in these proceedings recommended approval of the development subject to stated modifications and conditions, and the development as described in the application and the presentations made in these proceedings is not consistent with the report and recommendations of said regional planning agency.

5. A motion was duly made, seconded and passed at a meeting of said Board of County Commissioners on August 9, 1979, that the Application For Approval Of A Special Exception be denied.

BE IT STILL FURTHER RESOLVED by said Board of County Commissioners, as conclusions of law, that these proceedings have been duly conducted pursuant to the provisions of Chapter 380 of the Florida Statutes and the applicable provisions of the Manatee County Zoning Ordinance, together with other applicable provisions of law; that Swift has failed to sustain and prove all of the material allegations and assertions made in the application; and that Swift is not entitled to the relief prayed and applied for in said application.

BE IT AGAIN STILL FURTHER RESOLVED by said Board of County Commissioners, as the decision in these proceedings, that:

A. The Application For Approval Of A Special Exception together with a Master Mining And Reclamation Plan, be and the same is hereby denied.

B. The Application For Development Approval Of A Development Of Regional Impact, be and the same is hereby denied for the reasons hereinabove set forth and said application may be eligible for approval or for approval subject to conditions, restrictions and limitations if the development were changed to make same consistent with the provisions of the Manatee County Zoning Ordinance, local land development regulations and the report and recommendations of the regional planning agency.

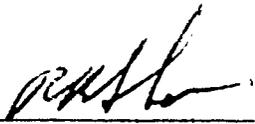
C. A certified copy hereof shall be served upon the Florida Division of State Planning, Department of Administration, Room 350, Carlton Building, Tallahassee, Florida 32304, upon the Tampa Bay Regional

Planning Council, 9455 Koger Boulevard, St. Petersburg, Florida 33702;  
upon Nelson, Hesse, Cyril, Weber, Smith & Widman, 2070 Ringling Boulevard,  
Sarasota, Florida 33577, as the attorneys for Sarasota County, and upon  
Grimes, Goebel, Parry, Blue, Boylston & McGuire, P. O. Box 1550, Bradenton,  
Florida 33506, as the attorneys for Swift.

ADOPTED, with a quorum present and voting this the 16th day of  
August, 1979.

ATTEST: R. B. Shore  
Clerk of the Circuit Court

BOARD OF COUNTY COMMISSIONERS  
OF MANATEE COUNTY, FLORIDA

  
\_\_\_\_\_

By:   
Chairman

STATE OF FLORIDA  
LAND AND WATER ADJUDICATORY COMMISSION

*SW*  
*WO*  
*Mack*  
*SB* ✓

*this is the final*  
*order file*  
*with DAT*

ESTECH GENERAL CHEMICALS )  
CORPORATION, formerly )  
SWIFT AGRICULTURAL CHEMICALS )  
CORPORATION, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
MANATEE COUNTY, a political )  
subdivision of the State of )  
Florida, et al., )  
 )  
Respondents. )  
\_\_\_\_\_ )

DOAH CASE NO. 79-1994

FINAL ORDER

This case came before the Land and Water Adjudicatory Commission for final determination on September 23, 1980, in Tallahassee, Florida. Oral arguments were presented and various interested citizens provided public comment. The parties were represented by:

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|---|---|
| For Petitioner:   | Wade L. Hopping and<br>David S. Dee, Esquires<br>Hopping Boyd Green & Sams<br>Post Office Box 6526<br>Tallahassee, Florida 32301<br>-and-<br>Walter D. Turner, Esquire<br>Estech, Inc.<br>30 North LaSalle Street<br>Chicago, Illinois 60602                                  |
| For Respondent:   | E. N. Fay, Jr., and<br>Allen Hardy Prather, Esquires<br>Mann and Fay, Chartered<br>1400 4th Avenue, West<br>Bradenton, Florida 33505<br>-and-<br>Baya Harrison III, Esquire<br>Fuller and Johnson<br>The Bowen House<br>325 North Monroe Street<br>Tallahassee, Florida 32301 |
| For Intervenor<br>Department of<br>Community Affairs:     | C. Laurence Kersay, Esquire<br>Department of Community Affairs<br>Room 204, Carlton Building<br>Tallahassee, Florida 32304  |
| For Intervenor<br>Tampa Bay Regional<br>Planning Council: | Roger S. Tucker, Esquire<br>9455 Koger Boulevard, Suite 209<br>St. Petersburg, Florida 33702  |
| For Intervenor<br>Sarasota County:                        | Richard E. Nelson and<br>Richard L. Smith, Esquires<br>Nelson, Hesse, Cyril, Weber,<br>Smith & Widman<br>2070 Ringling Boulevard  |