

ONYX Environmental Services, L.L.C.

Penalty Justification

Based upon Guidelines for Characterizing RCRA Violations (January 1999)

1. 403.727(1) F.S., 62-737.800(10) FAC and Permit HO37-82472-004 General Condition, #2

Un-permitted Operations

An operating permit is valid only for the specific processes and operations applied for and indicated in the approved drawings or exhibits. Owners and operators shall notify the Department prior to any modifications to the operations or equipment, which do not conform to the approved permit.

ONYX Environmental Services, L.L.C. (Onyx) stored in excess of 400 containers of mercury containing materials in excess of the facility's permitted capacity and in a location not authorized by the operating permit. The containers ranged in size from five-gallon pails to pallets, with a majority of the containers being 55-gallon drums.

(a) Potential for Harm

- Moderate

The RCRA ranking system in the Guidelines for Characterizing RCRA Violations (January 1999) for determining the Potential for Harm requires consideration of the following three categories: (1) nature of the waste, (2) volume of the waste, and (3) location of receptors of the waste.

(1) The nature of the hazardous waste in question is a **Category 2** waste and is assigned a score of "4".

(2) The volume of waste involved in the violation is **greater than twenty-five 55-gallon drums**. A score of "8" is the appropriate assignment.

(3) In regards to location of receptors of the waste, a score of "4" is assigned because the violation did involve a **potential discharge to the environment**. A score of "2" is assigned (potential exposure to people) since **between 10 and 100 people** were potentially exposed.

<u>Category</u>	<u>Score</u>
Nature of Waste	4
Volume of Waste	8
Location of receptor:	
a. Discharge to environment	4
b. Potential exposure to people	<u>2</u>
Total	<u>18</u>

When using the Guidelines for Characterizing RCRA Violations (January 1999), a **moderate** "Potential for Harm" designation is assigned a total score of 13 to 18.

(b) Extent of Deviation

- Major

The Extent of Deviation for the facility's conducting processes and operations not authorized in its operating permit is **major**.

(c) **Economic Benefit.:** Delayed cost of obtaining a permit modification.

Economic Benefit = Avoided Cost (1-Corp Tax Rate) plus **Delayed Cost (IRS Interest Rate)**
Economic Benefit = \$4,000 (.09 X 2 years) = **\$720**

(d) **Multi-day Adjustment :** Un-permitted storage of containers of mercury containing materials in excess of the facility's permitted capacity and in a location not authorized by the operating permit occurred from no later than July 12, 2004. At least forty-five 55-gallon drums of fluorescent powder allegedly processed in the retort from February 2004 to May 2004 were not located in the permitted facility at the time of two compliance inspections, July 12, 2004 and April 26, 2005. All forty-five drums were located within the 400 containers of mercury containing materials associated with the un-permitted storage area (four tractor-trailer vans).

2. 403.727(1) F.S. and Contingency Plan
Permit HO37-82472-004 Specific Condition, Part I #15 & Part V #3

The contingency plan must be reviewed periodically and immediately amended and distributed to the appropriate agencies if any criteria in 40 CFR 264.54 are met. Amendments to the plan must be approved in writing by the Department. 40 CFR 264.54 (c) The contingency plan must be reviewed, and immediately amended, if necessary whenever:
(c) The facility changes – in its design, construction, operation, maintenance, or other circumstances – in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency.

Onyx stored in excess of 400 containers of mercury containing materials in excess of the facility's permitted capacity and in a location not authorized by the operating permit and did not immediately amend its contingency plan.

(a) Potential for Harm - Moderate

The same RCRA ranking system as calculated in violation #1. When using the Guidelines for Characterizing RCRA Violations (January 1999), a **moderate** "Potential for Harm" designation is assigned a total score of **18**.

(b) Extent of Deviation - Moderate

The Extent of Deviation for the facility's failure to immediately amend its contingency plan when changes to the facility's processes and operations occurred is **Moderate**. The contingency plan did not incorporate the un-permitted storage location or quantity of material stored; and did not address plans in case of emergency or spill response which could threaten human health or the environment.

**3. 403.727(1) F.S., 62-737.800(11) FAC and
Permit HO37-82472-004 Specific Condition, Part I #18**

Operating Records

The Permittee shall keep a written operating record at the facility, which includes:
(k) the description and quantity of each hazardous waste received or generated; and (l) the location of each hazardous waste within the facility and the quantity at location.

Onyx stored in excess of 400 containers of mercury containing materials in excess of the facility's permitted capacity and in a location not authorized by the operating permit and did not maintain an accurate operating record of hazardous wastes managed at the facility. The Daily Operating Logs, Hg Reclamation Rate Logs, DME Distiller Logs, and Container Tracking Logs were determined to inaccurate and incomplete.

(a) Potential for Harm - Moderate

The same RCRA ranking system as calculated in violation #1. When using the Guidelines for Characterizing RCRA Violations (January 1999), a **moderate** "Potential for Harm" designation is assigned a total score of **18**.

(b) Extent of Deviation - Major

The Extent of Deviation for the facility's failure to maintain an accurate operating record of hazardous wastes managed at the facility is **major**.

**4. 403.727(1) F.S., 62-737.840(2) & 737.860(2) FAC and
Permit HO37-82472-004 Specific Condition, Part II #3**

Maximum Quantity Stored

The maximum quantity of processed and unprocessed material allowed at the facility at the time of daily inventory shall not exceed the limits identified in Section III of the application. The storage of mercury containing lamp and devices is limited to the following 60,000 fluorescent lamps (86 pallets), 4,000 HID lamps (6 pallets), and sixty 55-gallon drums of mercury containing devices/unprocessed powder (16 pallets) may be stored.

Onyx stored in excess of 400 containers of mercury containing materials in excess of the facility's permitted capacity and in a location not authorized by the operating permit.

(a) Potential for Harm - Moderate

The same RCRA ranking system as calculated in violation #1. When using the Guidelines for Characterizing RCRA Violations (January 1999), a **moderate** "Potential for Harm" designation is assigned a total score of **18**.

(b) Extent of Deviation - Major

The Extent of Deviation for the facility's storage of greater than 400 containers of mercury containing materials in excess of the facility's permitted capacity and in a location not authorized by the operating permit is **major**.

5. 62-737.400(3)(a) FAC

Transporter/Transfer Station Notification

Before beginning operations and annually thereafter by March 1, a transporter of spent universal waste lamps or devices shall register by notifying the Department, using DEP Form 62-737.900(1), of its intent to be transporter and certify that it has employee training procedures in place for the proper handling, emergency response, and containment and cleanup of its spent universal lamps or devices.

Onyx failed to annually notify the Department of its Transporter operations since March of 2001. Onyx has no notified the department of its Transfer Station operations conducted at the tractor/trailer parking area in the SE corner of the industrial park.

(a) Potential for Harm

- Minor

When using the Guidelines for Characterizing RCRA Violations (January 1999), paragraph 4, Notification Violations, relates and a minor "Potential for Harm" designation is assigned.

(b) Extent of Deviation

- Major

The Extent of Deviation for the facility's failure to register with the Department as a Universal Waste Transfer Station and failure to register as a Universal Waste Transporter, since 2001, is major.

