

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENFORCEMENT MEETING DOCUMENTATION

Attendees: Greig Siedor, Phil Ditter, John McShane, Greg Newton & Linda Dunwoody of Onyx and Doug Outlaw, Bheem Kothur, Jim Byer, and Melissa Woehle of FDEP

Location: NWD Branch Office, Tallahassee **Date:** December 14, 2005 **Time:** 9:00 A.M.

Subject: Enforcement of alleged violations at ONYX

Meeting Requested By: FDEP Warning Letter of October 13, 2005

Meeting Objectives: To discuss enforcement action being taken by DEP.

Notes:

The meeting opened with introductions of the participants. Jim Byer explained that Florida DEP has EPA-delegated authority to enforce the Resource Conservation and Recovery Act program and Florida Statutes. He further indicated that ONYX's self-disclosure of the alleged violations was an important element of this meeting. He passed out copies of USEPA and FDEP guidance on self-policing policy. EPA's Notice in the Federal Register of April 11, 2000 pages 19618 to 19625 were discussed by the participants and everyone at this meeting was familiarized with the nine requirements necessary to qualify for this incentive. Jim Byer provided an explanation of the two phases of the meeting; first to discuss contents of ONYX's self-disclosure letter of September 20, 2005, provide an opportunity to provide additional information on any circumstances regarding the case and address questions concerning any possible permit changes or added requirements that may be needed. Second is to discuss the proposed resolution to the issues determined and the possibility of a voluntary mutual settlement.

Everyone was provided with a copy of the self-disclosure letter, the Department's Warning Letter with alleged violations cited and a memo resulting from the case development inspection of October 20, 2005. Onyx representatives were given opportunity to update everyone on any conclusions reached during their investigation of the un-permitted storage activities. A discussion of the following topics followed:

- Are there any indications of any material being disposed of elsewhere? Onyx felt that their investigation indicated that all materials are accounted for and that no other storage or disposal location had been discovered or suspected.
- What motivated the former Branch Manager and co-workers to conduct these activities? No substantial or monetary motive was discovered.
- Was the regulatory requirement for 99% Hg recovery or maintenance of the retort, issues or factors in motivation? Onyx representatives said that these may have had a possible influence on the activity, but were not the direct cause.
- A review of the materials discovered in the un-permitted location (on the vans). Five shipments totaling over 450 container can be broken down into 90 drums of powder, 20 drums of crushed lamps, 175 drums of MCMD (total 285) and the

remaining were drums of debris and Universal Hg wastes. Onyx indicated that a large part of the materials were items that may not have needed retorting (carpeting, PPE from the facility) and would have been disposed of as non-hazardous if appropriately tested for Hg.

- 44 plus drums of unprocessed phosphor powder, which by the records had been processed in 2004 and were discovered, UNPROCESSED in the vans.
- Four vans (not over the road capable) held the materials in an area ½ mile from the facility at the southeast corner of the industrial park. Area not identified in the permit or as a transfer location for HW or Universal Waste. Area is 9600 feet from the nearest public drinking water well.
- The inventory and tracking records currently utilized by the facility does not allow for tracking of individual containers thru the facility's processing. This is an area Onyx feels it can improve upon. Improved training of personnel in permitted processes will also enable the staff to identify possible problems or issues that need to be addressed by management.
- Permit renewal application is due to Division staff in March of 2006, the package needs to include any changes resulting from corrective measures proposed to resolve issues discussed. Meeting for Bheem Kothur and Jim Byer with Onyx representatives in early January and February for a site visit and pre-application discussions.
- Current and possible future Universal Waste Transfer Station operations at the location of tractor/trailer parking in southeast corner of the industrial park and possible inclusion into the operating permit and discussion of registration of these activities with the Department.

The DEP permitting staff Doug Outlaw and Bheem Kothur left the meeting at this point.

The meeting then began discussions of alleged violations and a characterization for each violation with respect to potential for harm and the extent of deviation. All five violations were characterized and penalty amounts determined from the EPA \$27,500 gravity-based penalty matrix. The principal violation of un-permitted storage operations had additional multi-day penalties added to the violation. It can be determined by FDEP inspection records that material discovered in the un-permitted storage area was not in the facility's normal storage location for a July 12, 2004 or an April 26, 2005 FDEP compliance inspection. This indicates that Hg containing material containers were stored at an un-permitted location for at least the timeframe from July 12, 2004 until the discovery by Onyx Management in September of 2005. Multi-day penalties for an additional 179 days were calculated for the civil penalty.

The application of the USEPA self-policing policy discussed earlier was determined that elements 2 thru 9 of the policy had been satisfied thus far. An assessment of the un-permitted storage location for any possible releases of contaminants to the environment is still to be determined. If the assessment (and cleanup if required) meets the conditions of the self-policing policy then it was agreed that 75 percent reduction of the gravity-based civil penalty for violations one thru four would be applied. The resulting penalty of \$43,425 and Department costs of \$1,500 was determined pending results of a contamination assessment at the un-permitted storage location. The contamination assessment should be conducted in accordance with current Rule 62-780 to ensure proper procedure and process is satisfied.

The violation for failure to register with the Department for Universal Waste transporter and transfer station operations was still under discussion at the end of the meeting. Resolution of this issue is to be determined with additional input from the Department's division staff. Onyx also expressed interest in a possible SEP project option to be included in the settlement. SEPs as P2 Project and in-kind projects were briefly discussed and no decision made on this issue.

Agreements/Conclusions Reached:

DEP will evaluate a contamination assessment of the un-permitted storage location to be provided by Onyx and determine if the self-policing policy continues to be applicable.

After the contamination assessment/cleanup evaluation is completed, DEP will propose a settlement in the form of a consent order, to be sent to Onyx within 30 days.

DEP will determine if appropriate SEP opportunities are available for possible civil penalty offset in accordance with Department guidance.