


Memorandum

Florida Department of Environmental Protection

TO: File
FROM: Jim Byer 
DATE: June 15, 2006

SUBJECT: **Application of:
FDEP Directive 922, Incentives for Self-evaluation by the
Regulated Community and
USEPA Policy, Incentives for Self-Policing, Federal Register
19618-19627 of April 11, 2000.**

In the case of ONYX Environmental Services, L.L.C. letter of September 20, 2005 outlining the facts concerning discovery of unpermitted storage of mercury containing materials at the Onyx facility in Tallahassee, Florida.

Conditions:

1. Systematic Discovery

Does not meet the criteria of a discovery of the violation through an environmental audit or a compliance management system. Discovery resulted from an internal to the company whistleblower.

2. Voluntary Discovery

Does meet the criteria as the discovery was voluntary and not through a monitoring, sampling, or auditing procedure that is required by statute, regulation, permit, judicial or administrative order or consent agreement.

3. Prompt Disclosure

Does meet the criteria as notification by phone was one day after discovery and written notification (e-mail) was four days after discovery. Notification was within the FDEP 10-day and USEPA 21-day notification requirements.

4. Discovery or Disclosure Independent of Government or Third Party Plaintiff

Does meet the criteria of independent discovery and disclosure. An internal to the company whistleblower disclosed the information to Onyx management. Onyx management discovered and identified the violation before any government agency would have identified the problem thru an inspection or thru information provided by a third party.

5. Correction and Remediation

Does meet the criteria of correcting the violation expeditiously. Onyx management personally immediately assessed the scope of the violation and implemented corrective measures within a five day period. All mercury containing materials at unpermitted storage location were properly transported to other Onyx facilities permitted to store and recycle these materials. Completion and notification of these activities was completed within 12 days of discovery, within the 60-day USEPA requirement.

6. Prevent Recurrence

Does meet the criteria as new Onyx management at the facility took steps immediately to prevent a recurrence. Onyx representatives at the December 7, 2005 enforcement meeting provided constructive permit and procedural modification proposals for incorporation into the facilities permit application due in March 2006.

7. No Repeat Violations

Does meet the criteria as no violation or closely related violation has occurred within the facility within the previous three years and no similar violations at Onyx recycling facilities throughout the U.S. within the last five years. USEPA's Echo database was checked for similar violations.

8. Other Violations excluded

Does meet the criteria as the violation did not result in any actual release to the environment or endangerment to human health. A voluntary limited contamination assessment of the unpermitted storage location was completed by the facility in February of 2006. A LCAR was submitted to the Department on February 16, 2006. FDEP concurred with the findings of the assessment which concluded no apparent release of mercury had occurred.

9. Cooperation

Does meet the criteria as Onyx corporate personnel provided immediate and complete information for all requests of records or access to personnel or the facilities.

Conclusion: In accordance with U.S. EPA policy (pg 19620) the gravity-based penalties will be reduced by 75 % where the disclosing entity does not detect the violations through systematic discovery but otherwise meets all other Policy conditions.