



Department of Environmental Protection

Jeb Bush
Governor

Northwest District
160 Governmental Center
Pensacola, Florida 32502-5794

Colleen Castille
Secretary

June 27, 2006

**CERTIFIED MAIL
RECEIPT REQUESTED**

Mr. Greg S. Newton
Environmental Health & Safety Manager
Onyx Environmental Services, L.L.C.
5736 West Jefferson Street
Phoenix, Arizona 85043

SUBJECT: Short Form Consent Order
Proposed Settlement of Onyx Environmental Services, L.L.C.
OGC File No.: 06-1307-37-HW

Dear Mr. Newton:

The purpose of this letter is to complete the resolution of the matters previously identified by the Department in a Warning Letter dated October 13, 2005, at the Onyx Environmental Services facility located in Tallahassee, Florida. Thank you for meeting with us December 14, 2005 to discuss an amicable resolution of the matters, which are specifically outlined in the attached Warning Letter. If you agree to the terms outlined in this letter, please have the appropriate individual sign the last page where it states, "For the Respondent."

The corrective actions required to bring your facility into compliance have been performed. The Department finds that you were in violation of the rules and statutes cited in the attached Warning Letter. The civil penalties are apportioned as follows:

- \$33,937 for violation of Section 403.727(1) Florida Statutes, Rule 62-737.800(10) Florida Administrative Code, and Permit HO37-82472-004 General Condition #2;
- \$1,787 for violation of Section 403.727(1) Florida Statutes, and Permit HO37-82472-004 Specific Condition Part I - #2;
- \$2,613 for violation of Section 403.727(1) Florida Statutes, Rule 62-737.800(11) Florida Administrative Code, and Permit HO37-82472-004 Specific Condition Part I - #18; and
- \$2,613 for violation of Section 403.727(1) Florida Statutes, Rule 62-737.860(2) Florida Administrative Code, and Permit HO37-82472-004 Specific Condition Part II - #3.

In order to resolve the matters identified in the attached Warning Letter, you are assessed civil penalties in the amount of \$40,950, along with \$1,500 to reimburse the Department costs, for a total of \$42,450.

The Department acknowledges that the payment of these civil penalties by you does not constitute an admission of liability. This payment must be made payable to the Department of Environmental Protection by cashier's check or money order and shall include the OGC File

Number assigned above and the notation "Ecosystems Management and Restoration Trust Fund." Payment shall be sent to the Department of Environmental Protection, District Director, Northwest District, 160 Governmental Center, Pensacola, Florida 32502-5794, within 60 days of your signing this letter.

By signing this letter you are accepting the Department's offer to resolve this matter on these terms. If you elect to sign this letter, please return it to the Department at the address indicated above. The Department will then countersign the letter and file it with the Clerk of the Department. When the signed letter is filed with the Clerk, the letter shall constitute final agency action of the Department which shall be enforceable pursuant to Section 120.69 and 403.121, Florida Statutes.

If you do not sign and return this letter to the Department at the District address by July 20, 2006, the Department will assume that you are not interested in settling this matter on the above described terms, and will proceed accordingly. None of your rights or substantial interests are determined by this letter unless you sign it and it is filed with the Department Clerk.

Sincerely,



Michael S. Kennedy, P.G.
Program Administrator
Waste Management

FOR THE RESPONDENTS:

I, _____ on behalf of _____, **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: _____
Date: _____

.....
FOR DEPARTMENT USE ONLY

DONE AND ENTERED this _____ day of _____, 2006.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Michael S. Kennedy, P.G.
Program Administrator
Waste Management

Onyx Environmental Services, L.L.C.
OGC #06-1307-37-HW
Page 3 of 4

FILED, on this date, pursuant to §120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Clerk

Date

Encl: Warning Letter dtd 10/13/05
cc: FDEP Office of General Counsel
Linda Dunwoody, Onyx Tallahassee
Jack Price, FDEP HW Management, Tallahassee

NOTICE OF RIGHTS

Persons who are not parties to this Consent Order but whose substantial interests are affected by this Consent Order have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing on it. The Petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. A copy of the Petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information:

(a) The name, address, and telephone number of each petitioner; the Department's Consent Order identification number and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of the Consent Order; (c) A statement of how each petitioner's substantial interests are affected by the Consent Order; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Consent Order; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order; and (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.



Jeb Bush
Governor

Department of Environmental Protection

Northwest District
160 Governmental Center
Pensacola, Florida 32502-5794

Colleen Castille
Secretary

October 13, 2005

CERTIFIED RETURN RECEIPT REQUESTED

WARNING LETTER

Mr. Phillip Ditter
Environmental, Health & Safety Manager
Onyx Environmental Services, L.L.C.
342 Marpan Lane
Tallahassee, Florida 32305

Dear: Mr. Ditter:

The purpose of this letter is to advise you of possible violations of law for which Onyx Environmental Services, L.L.C. (Onyx) may be responsible, and to seek your cooperation in resolving the matter. Onyx's September 20, 2005 letter to the Department, outlining the circumstances of Onyx's Tallahassee facility storage of mercury containing materials in excess of the permitted capacity, indicates that violations of the Resource Conservation and Recovery Act; Chapters 376 and 403, Florida Statutes (F.S.), and Permit # H037-82472-004 may exist. These possible violations include:

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

The 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.

b) **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. Pursuant to 40 CFR 264.54 (c) the contingency plan must be reviewed, and immediately amended, if necessary whenever: 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.

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

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.

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

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 permit application. The permit limits storage of mercury containing lamp and devices 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).

The activities identified in your correspondence and any other activities at your facility that may be contributing to violations of the above-described statutes, rules or permit conditions may involve potential liability for civil penalties and should be ceased. Operation of a facility in violation of state statutes or rule may result in liability for damages and restoration as set forth in Section 403.727, Florida Statutes.

You are requested to contact Jim Byer at telephone (850) 595-8360 extension 1253 within 15 days of receipt of this warning letter to arrange a meeting to discuss this matter. The Department is interested in reviewing any facts you may have that will assist in determining whether any violations have occurred. You may bring anyone with you to the meeting that you feel could help resolve this matter.

Please be advised that this Warning Letter is part of an agency investigation, preliminary to agency action in accordance with Section 120.57(5), Florida Statutes. We look forward to your cooperation in completing the investigation and resolution of this matter. If you have any other questions, please contact Jim Byer at telephone (850) 595-8360, extension 1253.

Sincerely,



Charles F. Goddard
Program Administrator
Waste Management

CFG:jbI