

Penalty Justification

Based upon Guidelines for Characterizing RCRA Violations (January 1999) and Settlement Guidelines for Civil and Administrative Penalties, DEP Directive 923 (July 17, 2007)

1. Permit Violation **Operating Permit HO37-82472-004, Part IV, paragraph 4 (16.1)**
Operating Permit HO37-82472-004, Part IV, paragraph 1, requires the Permittee to *"sample recovered material (i.e., glass, metal) daily and analyze a composite sample weekly to determine the total mercury content. These analyses must show less than three (3) ppm mercury average during the 12 week time period and less than five (5) ppm for any weekly composite."*
Paragraph 4 states: *"if the levels of mercury in Condition 1, above are exceeded, the Permittee shall: (a) Resample the subject material; (b) Reprocess the material in the crusher separator unit; and (c) Reprocess the material in the reclamation unit."*

A Value of 1.4 mg/kg was observed in Veolia's Total Hg for Aluminum and Glass Log for the aluminum sample taken in the second week of 2007. The corresponding lab reports showed that composite samples of aluminum were sent to two separate labs. The result reported by Test America was 27.6 mg/kg. The sample sent to IntraNet Lab Services was analyzed twice. The first result reported was 19 mg/kg and the second result reported was 14 mg/kg. There was no documentation of resampling or reprocessing.

This violation is not specifically addressed in the guidance cited above; however, guidance on assessing penalties for a similar violation involving failure to perform required analyses to determine how a waste should be managed use the potential for harm ranking system employed below.

(a) Potential for Harm

Minor

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 less than six 55-gallon drums. A score of "2" 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 actual discharge. 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	2
Location of receptor:	
a. Discharge to environment	4
b. Potential exposure to people	<u>2</u>
Total	<u>12</u>

When using the Guidelines for Characterizing RCRA Violations (January 1999), a minor "Potential for Harm" designation is assigned a total score of 8 to 12.

(b) Extent of Deviation	Major
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In accordance with the Guidelines for Characterizing RCRA Violations (January 1999), the extent of deviation for a similar violation involving failure to perform required analyses to determine how a waste should be managed is major. In this case the initial analysis was performed, but was entered inaccurately into the daily log and the recovered material containing mercury over the permit limits was shipped for recycle without being reprocessed or reanalyzed. A major extent of deviation is the appropriate assignment.

PENALTY COMPUTATION WORKSHEET

Violator's Name Veolia Environmental Services Technical Solutions, LLC

Waste Management Program: Hazardous Waste Section

Department Staff Responsible for the Penalty Computations: Melissa Woehle

Date: August 3, 2007

PART I - Class A Penalty Determination

<u>Violation</u> <u>Type</u>	<u>Potential</u> <u>for Harm</u>	<u>Extent</u> <u>of Dev.</u>	<u>Matrix</u> <u>Amount</u>	<u>Multi-</u> <u>day</u>	<u>Adjust-</u> <u>ments</u>	<u>Total</u> <u></u>
1. <u>Permit Violation</u>	<u>Minor</u>	<u>Major</u>	<u>\$2,900</u>	<u></u>	<u></u>	<u>\$2,900</u>
<u>Operating Permit HO37-82472-004, Part IV, paragraph 4</u>						

Total Penalties for all Violations: \$2,900



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

August 3, 2007

Date

PENALTY COMPUTATION WORKSHEET

PART II - Multi-day Penalties and Adjustments

ADJUSTMENTS

Dollar Amount

Good faith/Lack of good faith prior to discovery:

0

Justification: N/A

Good faith/Lack of good faith after discovery:

Justification: Will be considered.

History of non-compliance:

\$1,450

Justification: Three permit violations were cited during the inspection of 4-26-05. Penalties were assessed for the violations in excess of \$2,000. The penalty has been increased by 50%.

Economic benefit of non-compliance:

0

Justification: Economic benefit would be the cost of reprocessing one cubic yard of recovered aluminum and was estimated by the facility to be \$85.16 including labor, utilities, shipping and lab analysis (less than \$3,000).

Ability to pay:

Justification: N/A

Total Adjustments:

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MULTI-DAY PENALTIES

Dollar Amount

Number of days adjustment factor(s) to be applied:

Total Dollar Amount:

Justification: N/A

OR

Number of days matrix amount is to be multiplied:

Justification: N/A

Total Adjusted Penalty: \$4,350

Department Expenses: \$250

PENALTY COMPUTATION WORKSHEET

Part III - Other Adjustments Made After Meeting with the Responsible Party

ADJUSTMENTS:

Dollar Amount

Relative merits of the case: _____

Resource considerations: _____

Other justification: _____

Date

W. Richard Fancher
District Director