

## Kothur, Bheem

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**From:** Posner, Augusta  
**Sent:** Thursday, May 06, 2004 1:11 PM  
**To:** Kothur, Bheem; Tenace, Laurie; Parker, Bill; 'pgditter@onyxsp.com'; 'jakirk@onyxsp.com'  
**Cc:** Price, John L.; Byer, James; Bahr, Tim  
**Subject:** RE: Draft for Extending the Variance

I have a few last minute minor revisions, see attached. As to the public notice, Onyx should make arrangements **now** to publish the attached announcement in the Tallahassee Democrat.



Onyx Draft Order  
5-06-04.doc



Onyx Public  
Notice.doc

CONFIDENTIAL ATTORNEY WORK-PRODUCT  
EXEMPT FROM PUBLIC DISCLOSURE PURSUANT TO  
§119.07(3)(l), F.S.

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Florida Department of Environmental Protection  
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ph (850) 245-2282 (Douglas)  
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augusta.posner@dep.state.fl.us

-----Original Message-----

**From:** Kothur, Bheem  
**Sent:** Thursday, May 06, 2004 8:09 AM  
**To:** Tenace, Laurie; Parker, Bill; 'pgditter@onyxsp.com'; 'jakirk@onyxsp.com'  
**Cc:** Price, John L.; Byer, James; Posner, Augusta; Bahr, Tim  
**Subject:** RE: Draft for Extending the Variance

Hello everyone: FYI, tomorrow is the deadline for any comments from everyone. If we do not receive any comments from the facility by the end of the day tomorrow, then Order will be finalized and ready to go for the Directors signature and will send to the facility to PN some times next week?

Augusta, what are the procedures? how you did in the past? Please let us know ASAP. Thanks.

Bheem

-----Original Message-----

**From:** Tenace, Laurie  
**Sent:** Tuesday, May 04, 2004 9:33 AM  
**To:** Parker, Bill; 'pgditter@onyxsp.com'; 'jakirk@onyxsp.com'  
**Cc:** Price, John L.; Byer, James; Kothur, Bheem  
**Subject:** RE: Draft for Extending the Variance

No comments, looks good. Jack Price suggested no changes either.

Laurie

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Laurie J. Tenace  
Environmental Specialist

Hazardous Waste Management Section  
Florida Department of Environmental Protection  
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Website: <http://www.dep.state.fl.us/waste/categories/mercury/default.htm>  
\*\*\*\*\*

Please Note: Florida has a very broad public records law. Most written communications to or from state officials regarding state business are public records available to the public and media upon request. Your e-mail is *communications* and may therefore be subject to public disclosure.

-----Original Message-----

**From:** Parker, Bill  
**Sent:** Wednesday, April 28, 2004 7:33 AM  
**To:** 'pgditter@onyxsp.com'; 'jakirk@onyxsp.com'  
**Cc:** Price, John L.; Tenace, Laurie; Byer, James; Kothur, Bheem  
**Subject:** Draft for Extending the Variance

<< File: Draft Final Order.doc >> This is the draft for extending the variance. Please review and send comments by Friday, May 7. Bheem and I will be out of the office May 3 - May 6.  
Bill Parker

**BEFORE THE STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re, Onyx Special Services, Inc.

OGC File No. 03-2171

Petition for Variance

**FINAL ORDER GRANTING PETITION FOR  
VARIANCE FROM RULE 62-737.860(4), F.A.C.**

On August 6, 2001, Superior Special Services, Inc. (SSSI) filed a petition for variance from requirements in rule 62-737.860(4) of the Florida Administrative Code (F.A.C.), under §§ 120.542 and 403.201, Florida Statutes (F.S.) and rule 28-104.002, F.A.C. The petition was assigned OGC number 01-1298 and requested a variance from the requirement of rule 62-737.860(4), F.A.C.

On January 1, 2003, SSSI changed its name to Onyx Special Services, Inc., (Onyx).

On December 3, 2003, Onyx (formerly known as Special Services, Inc.) filed a petition to modify the variance by changing the expiration date from January 1, 2004 to January 1, 2005.

The Department has jurisdiction under Chapters 120 and 403, Florida Statutes (F.S.) and Chapters 28-104, 62-110 and 62-737, Florida Administrative Code (F.A.C.)

Notice of the Department's intent to issue the original Final Order Granting Petition for Variance was published in Tallahassee Democrat on December 21, 2001. No comments or petitions were received by the Department in response to the published notices. Notice of the Department's intent to modify this variance was published in the Tallahassee Democrat on XXXXXX. No comments or petitions were received by the Department in response to the published notice.

The Department finds that the Petition establishes the following facts and conclusions of law on which this Order is based:

1. Onyx Special Services, Inc., ("Petitioner") has operated a mercury reclamation and mercury recovery facility since 1996. Petitioner is located at 342 Marpan Lane, Tallahassee, Florida 32305. The facility has not moved its physical location but the 911 system and postal service address has been changed from the former address of 4972 Woodville Highway, Tallahassee, Florida 32311. The facility permit number is HO37-82472-004, and the facility hazardous waste identification number is FL0000207449.

2. Petitioner processes mercury-containing devices, mainly waste fluorescent lamps, generating a phosphor powder which contains mercury. The mercury is separated from this phosphor powder by distillation in a retort unit. In the retort unit, the mercury is separated by heating the phosphor powder in a vacuum chamber which causes the mercury to vaporize. The vaporized mercury is subsequently condensed and collected for recycling.

3. The applicable rule states in pertinent part: "(f) facilities shall maintain quality control and testing records based on statistically significant and updated laboratory analyses that use an EPA-approved methodology for analyzing total mercury content as specified in the facility's operation permit issued under this Chapter, and that demonstrate at least semi-annually an effective reclamation rate of 99 % of the mercury introduced into the process, or a resulting total mercury concentration below the method detection limit." [Rule 62-737.860(4), F.A.C.]

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4. Since the mid-1990s, fluorescent lamp manufacturers have reduced the concentration of mercury in fluorescent lamps. Additionally, new lamps have become available that contain even less mercury.

5. As part of the quality control program for the facility, Petitioner has collected pre-retort and post-retort mercury concentration sample analyses of phosphor powder on a monthly basis. This analytical data confirms that the concentration of mercury contained in the phosphor powder prior to retort has dropped significantly in recent years.

6. As the concentration of mercury in the waste stream has declined, the concentration in the post-retort powder has remained essentially steady. Petitioner identified the reason for this disparity: as the concentration of mercury decreases, the amount of time required to volatilize and capture the mercury increases. Eventually a point is reached where current equipment and operating procedures are no longer technically capable of capturing 99 % of mercury in the waste stream because the initial mercury concentration of the phosphor powder is so low.

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7. Petitioner has stated that to achieve an effective reclamation rate of 99 % of the mercury introduced into the process would create a substantial hardship because there is no currently available technology to achieve this reclamation rate. Petitioner asserts it evaluated three alternatives that are not technologically viable, including: a) increase the residence time of the processed material in the retort unit, b) increase the surface area of the processed material in the retort unit, and c) increase the peak operating temperature of the retort unit. Petitioner has stated that no technologically viable alternative exists to consistently achieve a 99% reclamation rate once the concentration of the material being processed drops below a level of 750 milligrams per kilogram (mg/kg).

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8. Petitioner proposes to replace the 99 % reclamation rate with a two-part reclamation schedule based on the original concentration of mercury contained in the material to be processed. When the original concentration of mercury is greater than or equal to 1000 mg/kg the minimum reclamation rate will be 99 %. When the original concentration of mercury is less than 1000 mg/kg the maximum mercury concentration in the resulting processed material will be 10 mg/kg.

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9. The purpose of the Statute is to remove mercury from the municipal waste stream and to recover and manage the mercury in a manner that protects human health, safety, and welfare and the environment. At the time that the rules regarding the 99% reclamation rate were promulgated, no one anticipated that the concentration of mercury in fluorescent lamp phosphor powder would drop so

precipitously. The initial average concentration of mercury in the phosphor powder derived from processing fluorescent lamps in calendar years 1997 and 1998 was in excess of 2000 mg/kg. At a reclamation rate of 99%, the residual mercury remaining in the phosphor powder could have been in excess of 20 mg/kg and been in compliance with the regulations. Petitioner's actual average post-retort concentration of mercury in the phosphor powder in calendar years 1997 and 1998 was 10.35 mg/kg. The reclamation rate schedule that Petitioner is proposing in this request for amended variance would cap the final mercury concentration for low-level mercury wastes at 10 mg/kg. This schedule would provide a means for Petitioner to remain in compliance while still removing the mercury from the waste stream to the extent currently feasible, and still below levels achieved in previous years. In addition, this variance requires Petitioner to continue its efforts to reduce residual mercury concentrations to meet the state regulatory reclamation rate.

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WHEREFORE, IT IS HEREBY ORDERED by the State of Florida Department of Environmental Protection that Petitioner, Onyx Special Services, Inc., is granted a variance from the 99% mercury reclamation rate in Rule 62-737.860(4), F.A.C. for its Tallahassee facility, subject to the following conditions.

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a. This variance shall expire on January 1, 2005.

b. Onyx Special Services, Inc. shall demonstrate an effective reclamation rate of the mercury introduced into the process with a two-part reclamation schedule based on the original concentration of mercury contained in the material to be processed. When the original concentration of mercury is greater than or equal to 1000 mg/kg the minimum reclamation rate shall be 99%. When the original concentration of mercury is less than 1000 mg/kg the maximum mercury concentration in the resulting processed material shall be 10 mg/kg.

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c. Onyx Special Services, Inc. shall generate data regarding the efficiency of the retort when operated with an increased surface area in relation to the volume of material processed or with other means of enhancing heat and vapor transfer. A minimum of six batches will be processed for each trial. Three or more trials will be conducted. Upon completion of these tests, and in any event no later than November 1, 2004, Onyx Special Services, Inc. will submit a test evaluation report to the Department for review.

d. Onyx Special Services, Inc. shall submit a dimensioned sketch of the phosphor powder container and any heat transfer hardware used for each trial.

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e. Onyx Special Services, Inc. shall allow all authorized representatives of the Department access to the property and facility at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes of the Department.

f. Entry of this Order does not relieve Onyx Special Services, Inc. of the need to comply with applicable federal, state or local laws, regulations or ordinances.

g. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to §120.69 and §403.121, F.S.

This Order is a final order of the Department pursuant to §120.52(7), F.S., and effective on the date filed with the Clerk of the Department. Any party to this Order has the right to seek judicial review of it under §120.68, F.S., by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department in the office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice must be filed (received) within thirty days after this order is filed with the clerk of the Department.

Issued \_\_\_\_\_

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

\_\_\_\_\_  
DOTTY DILTZ, ASSISTANT DIRECTOR  
DIVISION OF WASTE MANAGEMENT

Filing and Acknowledgment

Filed on this date, pursuant to Section 120.52, Florida Statutes, with the designated Clerk, receipt of which is acknowledged.

\_\_\_\_\_  
CLERK

\_\_\_\_\_  
DATE

This is to certify that this Final Order Granting Petition for Variance was mailed before close of business on \_\_\_\_\_  
to the persons listed below.

Copies furnished to:

John Price, Hazardous Waste Management  
Agusta Posner, OGC  
Charles Goddard, Northwest District

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
NOTICE OF INTENT TO GRANT PETITION

The Department of Environmental Protection gives notice of its taking action on a petition filed by Onyx Special Services, Inc. (Petitioner), concerning operation of its mercury reclamation facility located at 342 Marpan Lane, Tallahassee, Florida 32305. The petition requests a variance under sections 120.542 and 403.201, Florida Statutes (F.S.) from the requirement of rule 62-737.860(4), Florida Administrative Code (F.A.C.), that a 99% effective reclamation rate for mercury must be demonstrated. Specifically, the petition requested the Department grant a variance to replace the 99% reclamation rate with a two-part reclamation schedule based on the original concentration of mercury contained in the material to be processed.

In accordance with that petition, the Department intends to grant the variance subject to certain conditions.

The Department's file on this matter is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Florida Department of Environmental Protection, Northwest District Office, Hazardous Waste Section, 160 Governmental Center, Pensacola, Florida 32502-5794, Telephone: 850-595-8360; and Hazardous Waste Regulation Section, 2600 Blair Stone Road, MS 4560, Tallahassee, FL 32399, Telephone: 850-245-8766.

A person whose substantial interests are or will be affected by the Department's determination may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57, F.S., and may request an extension of time to file a petition. The petition or request for extension of time must be filed (received by the clerk) in the Department's Office of General Counsel at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000 within 14 days of publication of this notice. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that person's right to request a hearing.

Mediation under section 120.573 F.S., is not available.

A petition that disputes the material facts on which the Department's determination is based must contain the following information: (a) The name and address of each agency affected and each agency's file or identification number, if known; (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination; (c) A statement of when and how the petitioner received notice of the agency decision; (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate; (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action; and (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action; (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above. The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing with the Department.