



TECHNICAL SOLUTIONS  
NORTH AMERICA  
April 8, 2011

Mr. Jim Byer  
Department of Environmental Protection  
Northwest District Office  
160 Governmental Center  
Pensacola, FL 32501-5794

RE: Veolia ES Technical Solutions, L.L.C.  
342 Marpan Lane  
Tallahassee, FL 32305  
EPA ID# FL0000207449  
Permit#: H037-82472-004

Dear Mr. Byer:

Veolia ES Technical Solutions, L.L.C. (Veolia) would like to thank you for taking the time to meet with us March 24, 2011. During this meeting you presented the position of the Florida Department of Environmental Protection (DEP) and a proposed penalty associated with the alleged violations identified within the February 21, 2011 Warning Letter.

This letter is intended to address the following items:

1. Confirm our understanding of the DEP position regarding each of the alleged violations,
2. Provide a response to each alleged violation and proposed penalty assessment, where applicable,
3. Provide a proposal for the settlement of the alleged violations.

To address each of these items, this letter contains a listing of the initial penalty determination prepared by the DEP. A summary of the discussions and the resulting proposed revisions to the penalties contained in the initial determination and Veolia's response to the proposed penalty and alleged violations.

#### **DEP Proposed Penalty**

Below is a copy of the Penalty Determination table that was provided by the DEP to Veolia at the March 24, 2011 meeting.

**RECEIVED**

**APR 11 2011**

**NORTHWEST FLORIDA  
DEP**

**Part I – Penalty Determination**

Violation Type	ELRA Schedule	Potential for Harm	Extent of Deviation	Matrix Amount	Multi-day	Adjustments	Total
1. 40 CFR 264.1(b), 403.727(1)(a) F.S.S., 62.737.800(9) F.A.C. Storage/Permit Violation #UW-58		Moderate	Major	\$14,580	Multiple Violations see violation #4. Gravity-based Penalty determined at top of range		\$14,580
2. 40 CFR 261.11 #HW-16		Moderate	Major	\$13,500			\$13,500
3. 40 CFR 264.51(b) #HW-178		Moderate	Major	\$14,580	Multiple violations see violation #5. Gravity-based Penalty determined at top of range		\$14,580
4. 40 CFR 262.34(a)(2), 40 CFR 268.50(a)(2)(i), 62.737.800(9) F.A.C. #HW-23/164		Minor	Moderate	\$1,400			\$1,400
5. 40 CFR 264.171 and 264.173(a) and 403.727(1)(a) F.S.S. #HW-29-31		Minor	Major		Incorporated into violation #1, per RCRA Civil Penalty Policy Revised 23Jun2003. Section VII Penalties for Multiple Violations (A)(2) Compression		
6. 40 CFR 264.51(b) #HW-178		Minor	Major		Incorporated into violation #3, per RCRA Civil Penalty Policy Revised 23Jun2003. Section VII Penalties for Multiple Violations (A)(2) Compression		
						<b>Total =</b>	<b>\$44,060</b>

**DEP Revisions to Proposed Penalty as discussed March 24, 2011**

Violation #2: Based on the information contained in Veolia's March 21, 2011 letter to the DEP, this violation is being vacated.

Violation #5: Based on a review of the plan of operations for the facility which addresses the removal of excess packaging material and plastic coating on intact lamps within this portion of the building, this violation is being vacated. The DEP has however requested that additional information be included within the renewal application further describing these activities.

**Violation #6:** Based on a review of the facility contingency plan, which contains procedures for the clean up of small spills from routine facility operations which do not require full implementation of the contingency plan, this violation is being vacated

**Violation #1:** Since alleged violation #5 was included in the penalty computation for this alleged violation, the proposed penalty for this violation is being reduced to \$13,500.

**Violation #3:** Since alleged violation #6 was included in the penalty computation for this alleged violation, the proposed penalty is being reduced to \$13,500.

**Violation #4:** No modification to this penalty is being proposed.

#### **Veolia Response to Proposed Penalty**

**Violation #4:** Veolia concedes that one container was not marked with the accumulation start date, as required by the regulations, and does not contest the proposed penalty.

**Violation #1:** As stated in Veolia's March 21, 2011 letter to the DEP, our placement of the materials in the north yard was a temporary measure to allow for the safe movement of materials within the facility. This activity is neither expressly authorized nor prohibited within the permit application or the specific conditions of the permit. Although this activity is not specifically prohibited, Veolia concedes that the temporary staging of material in open containers in the north yard is not a best management practice and proposes that the extent of deviation should be reduced from major to moderate and the penalty reduced from \$13,500 to \$7,090. Additionally, Veolia proposes to amend the plan of operations for the facility as part of the facility permit renewal to further clarify the activities that will take place in the north yard area.

**Violation #3:** Veolia disagrees with the assertion that the contingency plan needed to be implemented for the spill of glass onto the soil in the north yard as referenced in the inspection report. In order to require the implementation of the contingency plan for a release of a hazardous waste or hazardous waste constituents, an incident must meet two requirements. First, the incident must involve the release of a hazardous waste or hazardous waste constituents to the environment. Second, the incident must pose a hazard to human health or the environment. In the case of the glass spilled in the north yard, the release may have involved the release of a hazardous waste constituent, if the glass contained mercury. (It is not certain that they did.) However, the glass that was spilled onto the ground surface on the day of the inspection did not pose a risk to human health and the environment. Assuming a worst case scenario of a two foot diameter area of glass and a thickness of one inch, the total weight of glass spilled was less than or equal to 19.5 pounds. As the drum contained unprocessed lamp glass, the concentration could have ranged from 0 mg/kg of mercury for outer globe HID glass up to 80 mg/kg of mercury for fluorescent lamp glass from older styles of lamps. Using the midpoint of 40 mg/kg, which would be equivalent to the concentration contained in currently manufactured lamps, the amount of mercury contained in the glass would be approximately 355 milligrams of mercury. This amount is equivalent to 0.078% of the federal reportable quantity for mercury. Based on the amount of mercury potentially contained within the glass, this spill did not merit a full implementation of the contingency plan.

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Veolia did clean up the spilled glass from the north yard on the same day as the spill occurred and documentation to that effect has been previously submitted to the DEP. Additionally, soil samples were collected following the clean up of the spilled glass showing that the concentration of mercury in the soil was below the residential target clean up level contained in 62.777 F.A.C. As such, Veolia proposes that this violation be vacated.

Below is a revised copy of the penalty determination table, updated to incorporate Veolia's responses to each of the violations.

Violation Type	ELRA Schedule	Potential for Harm	Extent of Deviation	Matrix Amount	Multi-day	Adjustments	Total
40 CFR 264.1(b), 403.727(1)(a) F.S.S., 62.737.800(9) F.A.C. Storage/Permit Violation #UW-58		Moderate	Moderate	\$7,090			\$7,090
40 CFR 262.34(a)(2), 40 CFR 268.50(a)(2)(i), 62.737.800(9) F.A.C. #HW-23/164		Minor	Moderate	\$1,400			\$1,400
						<b>Total =</b>	<b>\$8,490</b>

The DEP expenses contained on the original penalty determination would remain unchanged. Therefore, Veolia is prepared to resolve this matter for a payment of \$8990.

Veolia ES Technical Solutions is committed to operating all its facilities in full compliance with permits and regulations and looks forward to working with the department to resolve this enforcement action to the satisfaction of the department.

If you have any questions, or would like to discuss these issues further, please call me at

Sincerely,

VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.



Phillip Ditter, CHMM  
Environmental Health and Safety Manager

Cc: Wayne Bulsiewicz  
Linda Dunwoody  
John McShane  
Greig Siedor