

From: Ralph DeMeo [RalphD@hgslaw.com]
Sent: Monday, December 05, 2011 11:14 AM
To: Winston, Kathy; 'Steve Obst'; 'John Jones'
Cc: Kantor, Karen E.; Lurix, Joe; Kothur, Bheem; Tripp, Anthony; Perrigan, Glen
Subject: RE: Response to 11/15/2011 letter

Kathy:

Thank you for your response; we will evaluate this quickly and get back with you asap.

Ralph

Ralph A. DeMeo | Hopping Green & Sams, P.A. | *Attorneys and Counselors* | P.O. Box 6526 | Tallahassee, FL 32314 | www.hgslaw.com | 850.222.7500 | 850.224.8551 (fax) | ralphd@hgslaw.com | Legal Assistant: Christine Bloor | christinb@hgslaw.com | *Notice:* The information contained in this e-mail message and/or its attachment(s) may be an Attorney-Client matter and may include PRIVILEGED AND CONFIDENTIAL information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify me by return mail to ralphd@hgslaw.com or by telephone at 850.222.7500 and delete this message and any attachments. Thank you.

From: Winston, Kathy [<mailto:Kathy.Winston@dep.state.fl.us>]
Sent: Monday, December 05, 2011 11:11 AM
To: 'Steve Obst'; 'John Jones'; Ralph DeMeo
Cc: Kantor, Karen E.; Lurix, Joe; Kothur, Bheem; Tripp, Anthony; Perrigan, Glen
Subject: Response to 11/15/2011 letter

Gentlemen,

The district is trying to be as flexible as possible in our negotiations; however, we must be able to justify any reductions to the penalty amount per the Department's guidelines. We are unable to change the characterization for the Extent of Deviation, as that is provided in the formal guidelines. In addition, we evaluated the factors used to calculate Potential for Harm (nature of waste, amount of waste, receptors), and were unable to identify any factors for which a modification is warranted based on your responses. We acknowledge your opinion that the Financial Assurance violation resulted in no impact to human health or the environment. However, the characterization of this violation is not based on this criteria. If you refer to the EPA's Enforcement Response Policy of May 2008, a "Significant Non-Complier" is defined as any facility that deviates substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements. It is the Department's evaluation that lack of having a mechanism in place for Financial Assurance certainly fits this description.

At this time, the facility has returned to compliance. The Department has reviewed our Enforcement Manual, and can offer to apply the ELRA equivalent penalty of \$5,000.00 (403.121(4)(a), F.S.) for the financial assurance violation, for an additional justifiable reduction to the penalty. Please refer to the tables below for the breakdown. The total, including cost and expenses, comes to \$11,000.00, with the offer of a 12-month payment schedule (one payment of \$916.74 and 11 payments of \$916.16 each), if desired.

Please advise if this offer is acceptable by December 19, 2011, and we can proceed to issue a Short Form Consent Order resolving the matter. If this offer is refused, our next required step will be referral of the case to our Office of General Counsel. The Department appreciates your cooperation and hopes to achieve an amicable and timely resolution.

New Offer

Alleged Violations	FDEP's counter offer	Justification
Failure to submit	\$3,000	ELRA amount – 403.121(3)(e)
Labels-Filters	\$500.00	ELRA amount
Labels-Used Oil	\$500.00	ELRA amount
Facility Log	\$500.00	ELRA amount – 403.121(5)
Contingency Plan	\$500.00	Unchanged (lowest applicable amount)
Financial Assurance	\$5,000.00	ELRA amount – 403.121(4)(a)
Total	\$10,000.00	
Department Cost & Expenses	\$1,000.00	

Kathy Winston
 Environmental Consultant
 Hazardous Waste Compliance/Enforcement
 (561)681-6756
 Fax (561)681-6770

Florida's Water - Ours to Protect: Check out the latest information on Florida Water Issues at <http://www.protectingourwater.org/> presented by the Florida Department of Environmental Protection.

Please take a few minutes to share your comments on the service you received from the department by clicking on this link
[DEP Customer Survey](#).

From: Ralph DeMeo [RalphD@hgslaw.com]
Sent: Wednesday, December 07, 2011 1:45 PM
To: Winston, Kathy; 'Steve Obst'; 'John Jones'
Cc: Kantor, Karen E.; Lurix, Joe; Kothur, Bheem; Tripp, Anthony; Perrigan, Glen; Satish Kastury; Paula Cobb
Subject: RE: Response to 11/15/2011 letter

Kathy:

Thank you for your reply. On behalf of my client, we accept the Department's offer to settle this matter as set forth in your below email (\$11,000 payable over 12 months as indicated). We appreciate your cooperation and assistance in reaching an amicable resolution. Will you prepare the appropriate settlement documents? Thank you.

Regards,

Ralph

Ralph A. DeMeo | Hopping Green & Sams, P.A. | *Attorneys and Counselors* | P.O. Box 6526 | Tallahassee, FL 32314 | www.hgslaw.com | 850.222.7500 | 850.224.8551 (fax) | ralphd@hgslaw.com | Legal Assistant: Christine Bloor | christinb@hgslaw.com | **Notice:** The information contained in this e-mail message and/or its attachment(s) may be an Attorney-Client matter and may include PRIVILEGED AND CONFIDENTIAL information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify me by return mail to ralphd@hgslaw.com or by telephone at 850.222.7500 and delete this message and any attachments. Thank you.

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