

I N T E R O F F I C E M E M O R A N D U M

Date: 08-Aug-1996 07:18am EST
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TO: Vivek Kamath WPB
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Subject: FWD: rinker penalty

For your information about Rinker.

Paul

INTEROFFICE MEMORANDUM

Date: 07-Aug-1996 05:09pm EST
From: Luna Ergas TAL
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Tel No: 904/921-8875 GIC 735
SUNCOM:

TO: Paul Wierzbicki WPB

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Subject: rinker penalty

Hi Paul, I read the letter from Geoff Smith on his opinion why DEP should reduce the penalty assessed Rinker. I disagree with some of his interpretations of the permitting rule and our penalty policies.

1. The Self Auditing incentives do help his position somewhat but not fully. I don't know if the reason Rinker discovered the violation (expiration of permit) was through a periodic evaluation of their tracking system/ records. If no environmental audit was conducted by Rinker or systematic periodic evaluations, the DEP does not need to waive the penalties under this directive. The memo specifically states that Dep will waive the penalty only if all conditions under the "Conditions" section are met, and I am not sure that is the case here. This memo would help his argument if Rinker has evidence of conducting periodic evaluations. If that is the case, DEP can ask for this evidence from Rinker. Also, if they have been periodically reviewing their books, records, etc. why didn't they discover the upcoming expiration before the permit actually expired.

2. Permit should have been extended to 1998: I disagree with the reading given to Rule 62-4.050(7). It seems to me the rule says that a permittee has to pay the same permit fee over again when he is requesting a substantial modification to his permit. I do not believe that the rule would allow another five years to be added on to the permit, but rather uses the time distinction as the guide for the fee. I am not a permitting attorney, but I was under the impression that our permits only last 5 years and when they expire you apply for a new permit not a modification of it your old one.

3. Multi Day penalties: I also disagree with his assessment that by calculating multi day the penalty falls into the major/major cell. The original penalty was minor/minor and then it was adjusted to reflect the multitude of days Rinker was out of compliance. What we may do is lower the daily penalty from 199 to 100 since this is a case where the impact of Rinker's noncompliance is not very detrimental to the environment.

However, Rinker should have known of the upcoming expiration date and failed to eliminate it. These are two of the requirements for assessing multi day penalties and Rinker's case satisfies them. The penalty policy by Virginia which Geoff Smith quotes from also states "it is important in using daily penalties ..that the amount be sufficient to discourage the violator from continuing a violation by making it more expensive to pay the daily penalty than to come into compliance."

Let me know your opinion on this matter, and if you want me to take any action or wait until Carlos returns. Luna.