



Florida Department of Environmental Protection

Central District
3319 Maguire Boulevard, Suite 232
Orlando FL 32803-3767

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

April 3, 2008

EMAIL ADDRESS

tdepaola@aercrecycling.com

Ms. Tracy DePaola
AERC Recycling Solutions
4317-J Fortune Place
West Melbourne, FL 32904

OCD-HW-E-08-088

Brevard County – HW
AERC Recycling Solutions FLD984262782
Proposed Long Form Consent Order Letter

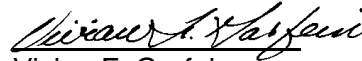
Dear Ms. DePaola:

A Hazardous waste compliance inspection was conducted at your facility on May 24, 2007. This inspection was conducted under the authority of Section 403.091, Florida Statutes, and Chapter 403, Part IV, Florida Statutes and is designed to determine the compliance status of your facility with 40 CFR 260-268, adopted in Florida Administrative Code Chapter 62-730, and 40 CFR 279, adopted in Florida Administrative Code Chapter 62-710.

Enclosed is a copy of a Long Form Consent Order (LFCO) for your review and signature. This includes information for performing an In-Kind Project as settlement. Please return the signed original within 10 days of receipt of this letter to Danielle Bentzen at the Central District office.

If you have any questions, please contact Ms. Bentzen by telephone at (407) 893-3323 or by e-mail at Danielle.Bentzen@dep.state.fl.us.

Sincerely,


Vivian F. Garfein
Director, Central District

VFG/db

Enclosures: Long Form Consent Order

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

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

IN THE OFFICE OF THE
CENTRAL DISTRICT

Complainant,

vs.

OGC FILE NO. 07-2193
FLD984262782

AERC Recycling Solutions

Respondent.

_____ /

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Protection (“Department”) and AERC Recycling Solutions (“Respondent”) to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and the Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to administer and enforce the provisions of the Florida Resource Recovery and Management Act, Sections 403.702, et seq., Florida Statutes (“Fla. Stat.”), and the rules promulgated thereunder, Florida Administrative Code (“Fla. Admin. Code”) Chapter 62-730. The Department has jurisdiction over the matters addressed in this Consent Order.
2. Respondent is a “person” within the meaning of Sections 403.031(5) and 403.703(4), Fla. Stat.

3. Respondent, AERC Recycling Solutions, is an active for profit business formed under the laws of the state of Florida on or about November 1993, which operates a permitted mercury recycling facility on a parcel of real property located at 4317-J Fortune Place, West Melbourne, FL 32904 (“Facility”). Respondent is an “operator” as defined in Rule 62-730.020, Fla. Admin. Code.

4. Respondent, AERC Recycling Solutions, currently leases the property located at 4317-J Fortune Place, West Melbourne, FL 32904 from Fortune Cookie Park Inc.

5. Respondent’s facility was inspected by the Department on May 24, 2007. Respondent’s violations and operations are described in Exhibit I, Warning Letter, OWL-HW-07-027, and RCRA Inspection Report, attached and incorporated herein. The Department finds that the following violations occurred:

a) Regulation: 40 CFR 262.40 (a) – Recordkeeping

Under 40 C.F.R. § 262.40(a), “[a] generator must keep a copy of each manifest signed in accordance with § 262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.” At the time of the May 24, 2007 inspection, AERC had failed to obtain and could not produce the original manifests for manifest numbers 452559, 452565, 452547.

b) Regulation: 40 CFR 264.15 – General Inspections

Under 40 C.F.R. § 264.15, the AERC facility must comply with the inspection plan of its current permit, Part II – Operating Conditions 20 (f). At the time of the May

24, 2007 inspection, AERC had failed to document the daily container count log since February 15, 2007.

c) Regulation: 40 CFR 264.16 (c)/265.16 (c) – Personnel Training

Under 40 C.F.R. §§ 264.16(c) and 265.16(c), AERC facility personnel must take part in an annual review of their initial training. At the time of the May 24, 2007 inspection, AERC had not provided training in hazardous waste management procedures for facility personnel as specified in Part II – Operating Conditions 2 of its current permit.

d) Regulation: 40 CFR 264.35/265.35 – Container Aisle Space

Under 40 C.F.R. § 264.35 and 265.35, AERC is required to maintain adequate aisle space between containers of hazardous waste to allow for inspection of the condition and labels of the individual containers. At the time of the May 24, 2007 inspection, AERC was not providing proper aisle space for containers of hazardous waste.

e) Regulation: 40 CFR 265.54 (d) – Amendment of Contingency Plan

Under 40 C.F.R. § 265.54(d), AERC's contingency plan "must be reviewed and immediately amended whenever the list of emergency coordinators changes." At the time of the May 24, 2007 inspection, AERC had failed to amend the contingency plan when Heath Clark, an emergency coordinator, was no longer with the company.

f) Regulation: 40 CFR 268.50 (b) – Prohibition on Storage of Restricted Waste

Under 40 C.F.R. § 268.50(b), "[a]n owner/operator of a treatment, storage or disposal facility may store [restricted] wastes for up to one year..." At the time of the

May 24, 2007 inspection, AERC, an owner/operator of a treatment, storage or disposal facility, had failed to process restricted wastes in the form of four drums of crushed bulbs, dated 3/9/06, 4/13/06 (2 drums), and 5/9/06, within the one year time frame as per Part I – General and Standard Conditions 32 of its current permit.

Having reached a resolution of the matter, Respondent and Department mutually agree and it is,

ORDERED:

6. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department \$26,147.00 in settlement of the matters addressed in this Consent Order. This amount includes \$750.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Consent Order. The civil penalty in this case includes 3 violations of \$2,000.00 or more (Exhibit II). Payment shall be made by cashier's check or money order. The instrument shall be made payable to the "Department of Environmental Protection" and shall include thereon the notations "OGC File No. 07-2193" and "Ecosystem Management and Restoration Trust Fund."

7. In lieu of making cash payment of \$26,147.00 in civil penalties as set forth in paragraph 6, Respondent may elect to off-set \$25,397.00 of this amount by implementing an in-kind penalty project, which must be approved by the Department. An in-kind project must be either an environmental enhancement, environmental restoration or a capital/facility improvement project. The Department may also consider the donation of environmentally sensitive land as an in-kind project. The value of the in-kind penalty project shall be one and a half times the civil penalty off-set amount, which

in this case is the equivalent of at least \$38,095.00. If Respondent chooses to implement an in-kind project, Respondent shall notify the Department of its election by certified postal or electronic mail within 15 days of the effective date of this Consent Order. Notwithstanding the election to implement an in-kind project, payment of the remaining \$750.00 in costs must be paid within 30 days of the effective date of the Consent Order.

8. If Respondent elects to implement an in-kind project as provided in paragraph 7, then Respondent shall comply with all of the requirements and time frames in Exhibit III, entitled In-Kind Projects.

9. Effective immediately, Respondent shall comply with all Department rules regarding hazardous waste management. Respondent shall comply with all applicable sections in Fla. Admin. Code Chapter 62-730 and Title 40 Code of Federal Regulations (“C.F.R.”) Parts 260 through 266 and 268. All time periods shall run from the effective date of this Consent Order.

10. Respondent agrees to pay the Department stipulated penalties in the amount of \$100.00 per day for each and every day Respondent fails to timely comply with any of the requirements of Paragraphs 6, 7, 8 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of this Consent Order. Within 30 days of written demand from the Department, Respondent shall make payment of the appropriate stipulated penalties to the “Department of Environmental Protection” by cashier’s check or money order and shall include thereon the notations “OGC File No. 07-2193” and “Ecosystem Management and Restoration Trust Fund.” The Department may make demands for payment at any time after violations occur. Nothing in this

paragraph shall prevent the Department from filing suit to specifically enforce any of the terms of this Consent Order. Any penalties assessed under this paragraph shall be in addition to the settlement sum agreed to in Paragraph 6 of this Consent Order. If the Department is required to file a lawsuit to recover stipulated penalties under this Paragraph, the Department will not be foreclosed from seeking civil penalties for violations of this Consent Order in an amount greater than the stipulated penalties due under this Paragraph.

11. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of Respondent, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department orally within 24 hours or by the next working day and shall, within seven calendar days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which

Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements of this Consent Order.

12. Respondent 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 Consent Order and the rules and statutes of the Department.

13. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.

14. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Fla. Stat. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.727(1), Fla. Stat.

15. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties of up to \$50,000 per day per violation, and criminal penalties.

16. Respondent shall publish the following notice in a newspaper of daily circulation in Brevard County, Florida. The notice shall be published one time only within 15 days after the effective date of the Consent Order.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF CONSENT ORDER

The Department of Environmental Protection gives notice of agency action of entering into a Consent Order with AERC Recycling Solutions pursuant to Section 120.57(4), Florida Statutes. The Consent Order addresses the hazardous waste violations identified at 4317-J Fortune Place, West Melbourne, FL 32904.

The Consent Order 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 Department of Environmental Protection, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803.

The Consent Order can also be accessed through the OCULUS electronic document management system at www.dep.state.fl.us. Once at the DEP home page, click on Programs, and then click on Waste Management, and then click on OCULUS.

Login as netuser and password: netuser. Click the login button. Under Catalog select Hazardous Waste and under Profile select Enforcement_Legal. Enter FLD984262782 in the Facility ID field & the tab button. Click the Search button.

Persons whose substantial interests are affected by this Consent Order have a right to petition for an administrative hearing on the Consent Order. The petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35 Tallahassee, Florida 32399-3000, within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes.

The petition shall contain the following information: (a) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes; the Department's identification number for the Consent Order and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of the Consent Order; (c) A statement of how each petitioner's substantial interests are affected by the Consent Order; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of the facts which petitioner contends warrant reversal or modification of the Consent Order; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order; (g) A statement of the relief sought by petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the

Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

A person whose substantial interests are affected by the Consent Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under Section 120.573, Florida Statutes before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation does not result in a settlement. The procedures for pursuing mediation are set forth below.

Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include the Respondent, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Consent Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.

The agreement to mediate must include the following: (a) The names, addresses, and telephone numbers of any persons who may attend the mediation; (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time; (c) The agreed allocation of the costs and fees associated with the mediation; (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation; (e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen; (f) The name of each party's representative who shall have authority to settle or recommend settlement; (g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference; and (h) The signatures of all parties or their authorized representatives.

As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within 60 days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of receipt of this notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.

17. The Department hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder, that are not specifically addressed by the terms of this Consent Order, including but not limited to undisclosed releases, contamination, or polluting conditions.

18. The Department, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Consent Order, hereby waives its right to seek judicial imposition of damages or civil penalties for alleged violations outlined in this Consent Order; provided, however, that should the Department conclude that clean up of the contaminated area to site rehabilitation levels is not feasible; or should Respondent not completely implement the remedial or corrective action plan (however denominated) as approved by the Department; the Department expressly reserves its right to seek restitution from Respondent for environmental damages. Within 20 days of receipt of Department's written notification of its intent to seek said restitution, Respondent may pay the amount of the damages or may, if it so chooses, initiate negotiations with the Department regarding the monetary terms of restitution to the state. Respondent is aware that should a negotiated sum or other compensation or environmental damages not be agreed to by the Department and Respondent within 20 days of receipt of Department written notification of its intent to seek restitution, the Department may institute appropriate action, either administrative through a Notice of Violation, or judicial, in a court of competent jurisdiction through a

civil complaint, to recover Department assessed environmental damages as provided by law.

19. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Fla. Stat., on the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Fla. Stat., and waives that right upon signing this Consent Order.

20. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by both Respondent and the Department.

21. All submittals and payments required by this Consent Order to be submitted to the Department shall be sent to:

Waste Program Administrator
Florida Department of Environmental Protection
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803

22. In the event of a sale or conveyance of the Facility or of the real property upon which the Facility is located, if all of the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the property or Facility: (1) notify the Department of such sale or conveyance, (2) provide the name and address of the purchaser, or operator, or person(s) in control of the Facility, and (3) provide a copy of this Consent Order with all attachments to the new owner. The sale or conveyance of the Facility, or the real property upon which the Facility is located shall not relieve the Respondent of the obligations imposed in this Consent Order.

23. This Consent Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law.

24. This Consent Order is a final order of the Department pursuant to Section 120.52(7), Fla. Stat., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Fla. Stat. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the Department.

FOR THE RESPONDENT:

DATE

NAME
TITLE
AERC Recycling Solutions

DONE AND ORDERED this ____ day of _____, 2008, in _____,
Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Vivian F. Garfein
Director, Central District

Filed, on this date, pursuant to Section 120.52, Fla. Stat., with the designated
Department Clerk, receipt of which is hereby acknowledged.

Clerk

Date

Exhibits:

- I. Warning Letter, OWL-HW-07-027, and RCRA Inspection Report
- II. Revised Penalty Computation Worksheet, December 4, 2007
- III. In-Kind Penalty Projects

cc:

Debby Valin, FDEP P2 Coordinator
Lea Crandall, Agency Clerk



Florida Department of Environmental Protection

Central District
3319 Maguire Boulevard, Suite 232
Orlando FL 32803-3767

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

September 20, 2007

ELECTRONICALLY MAILED
tdepaola@aercrecycling.com

Ms. Tracy DePaola
AERC Recycling Solutions
4317-J Fortune Place
West Melbourne, FL 32904

WARNING LETTER
OWL-HW-E-07-027

Brevard County - HW
AERC Recycling Solutions - FLD984262782
Warning Letter

Dear Ms. DePaola:

The purpose of this letter is to advise you of possible violations of law for which you may be responsible, and to seek your cooperation in resolving the matter. A hazardous waste compliance inspection was conducted at your facility on May 24, 2007. The inspection was conducted under the authority of Section 403.091, Florida Statutes, and Chapter 403, Part IV, Florida Statutes in order to determine the compliance status of your facility with 40 CFR 260-268, adopted in Florida Administrative Code Chapter 62-730 and 40 CFR 279, adopted in Florida Administrative Code Chapter 62-710.

During the inspection, possible violations of Florida Statutes and Rules regarding hazardous waste and used oil management were noted. These violations are set forth in "Summary of Potential Noncompliance Items and Corrective Actions" of the attached inspection reports.

The activities observed during the Department's field inspection and any activity at your facility that may be contributing to violations of the above described statutes and rules should be ceased immediately.

Please contact Danielle Bentzen, Hazardous Waste Section, by telephone at (407) 893-3323 or by e-mail at Danielle.Bentzen@dep.state.fl.us within 10 days of receipt of this letter to schedule an informal conference concerning resolution of this matter. The Department is interested in reviewing any facts you may have that will assist in determining whether any violations have occurred and whether any penalties are appropriate. You may bring anyone with you to the meeting that you feel could help resolve this matter.

This Warning Letter is part of an agency investigation preliminary to agency action in accordance with Section 120.57(4), Florida Statutes. The Department looks forward to your cooperation in completing the investigation and resolution of this matter.

Sincerely,



Vivian F. Garfein
Director, Central District

Date September 20, 2007

VFG/jk

Enclosures:
RCRA Inspection Report
Penalty Computation Worksheet

cc: Mike Redig, FDEP, Tallahassee, michael.redig@floridadep.net
Alan Annicella, EPA Region 4, annicella.alan@epa.gov
Debby Valin, FDEP, Central District, debby.valin@floridadep.net



Florida Department of
Environmental Protection
Central District
3319 Maguire Boulevard, Suite 232
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HAZARDOUS WASTE INSPECTION REPORT

1. **INSPECTION TYPE:** Routine Complaint Follow-Up Permitting Pre-Arranged

FACILITY NAME AERC Recycling Solutions EPA ID # FLD984262782

STREET ADDRESS 4317-J Fortune Place, West Melbourne, FL 32904

E-MAIL ADDRESS tdepaola@aercrecycling.com

COUNTY Brevard PHONE 321-952-1516 DATE 5/24/07 TIME 10:40

NOTIFIED AS: N/A

CURRENT STATUS:

- Non Handler
- CESQG (<100 kg/mo.)
- SQG (100-1000 kg/mo.)
- Generator (>1000 kg/mo.)
- Transporter
- TSD Facility
- Unit Type (s): Storage and Treatment
- Used Oil:

- Non Handler
- CESQG (<100 kg/mo.)
- SQG (100-1000 kg/mo.)
- Generator (>1000 kg/mo.)
- Transporter
- TSD Facility
- Unit Type (s): Storage and Treatment
- Used Oil:

2. **APPLICABLE REGULATIONS:**

- | | | | |
|---------------------------------------|--|---|---|
| <input type="checkbox"/> 40 CFR 261.5 | <input checked="" type="checkbox"/> 40 CFR 262 | <input checked="" type="checkbox"/> 40 CFR 263 | <input checked="" type="checkbox"/> 40 CFR 264 |
| <input type="checkbox"/> 40 CFR 265 | <input type="checkbox"/> 40 CFR 266 | <input checked="" type="checkbox"/> 40 CFR 268 | <input checked="" type="checkbox"/> 40 CFR 273 |
| <input type="checkbox"/> 40 CFR 279 | <input type="checkbox"/> 62-710, FAC | <input checked="" type="checkbox"/> 62-730, FAC | <input checked="" type="checkbox"/> 62-737, FAC |

3. **RESPONSIBLE OFFICIAL(s):**

Tracy DePaola, District Branch Manager, AERC
Recycling Solutions

4. **INSPECTION PARTICIPANTS:**

Danielle Bentzen, FDEP
Lu Burson, FDEP
John Kroske, USEPA
Tracy DePaola, District Branch Manager,
AERC Recycling Solutions

5. **LATITUDE/LONGITUDE:** 28°5'39"N/80°41'47"W

6. **SIC Code:** 4214-Local Trucking with Storage

7. **TYPE OF OWNERSHIP:** Private Federal State County Municipal

8. **PERMIT #:** 0072959-003-HO **ISSUE DATE:** June 27, 2007 **EXP. DATE:** December 20, 2011

9. INTRODUCTION:

On May 24, 2007, Danielle Bentzen and Lu Burson, Florida Department of Environmental Protection (FDEP), accompanied by John Kroske, United States Environmental Protection Agency (EPA), and Tracy DePaola, AERC, conducted an inspection of AERC Recycling Solutions (AERC), for compliance with state and federal hazardous waste standards. AERC was inspected as a generator, transporter, universal waste generator/handler, and hazardous waste storage facility.

The facility has operated at this location since November 1993 and employs approximately 18 people who work Monday through Friday from 7:00AM to 11:00PM. City of West Melbourne provides potable water and sewer. The facility owns three trucks and leases two trucks for transportation of universal waste.

The facility was originally named Mercury Technologies International (MTI) but changed its name to Advanced Environmental Recycling Company (AERC) in 2001. The initial RCRA mercury recycling permit, HO05-275169, was issued December 30, 1996.

10. HISTORY:

On September 30, 1998, MTI was inspected by the Department and was in compliance at the time of the inspection.

On September 24, 1999, MTI was inspected by the Department and was in compliance at the time of the inspection.

On July 28, 2000, MTI was inspected by the Department and was not in compliance at the time of the inspection. The facility was cited for failure to label universal waste containers and failure to have adequate aisle space for containers. The case was resolved by a Short Form Consent Order and a civil penalty of \$1,300.00.

On March 15, 2001, Mercury Technologies International changed their name to AERC and re-notified as a TSD, LQG and Universal Waste Handler. AERC was issued a permit on December 3, 2001. Additionally, the facility was inspected by the Department and was in compliance at the time of the inspection.

On August 26, 2002, AERC notified as a TSD, LQG, Universal Waste Handler and Hazardous Waste Transporter. The facility was inspected by the Department and was in compliance at the time of the inspection.

On September 4, 2003, AERC was inspected and was not in compliance at the time of the inspection. The facility was cited for: storage of waste over 90 days; failure to label two corrosive waste drums with accumulation start date; failure to provide adequate aisle space; failure to provide annual training to staff; incomplete contingency plan; failure to date universal waste containers; failure to keep mercury containers closed; and failure to file a manifest discrepancy report within the required time frame. The case was resolved by a Short Form Consent order, which included a Supplemental Environmental Project and a civil penalty of \$4,200.00.

On September 30, 2004, AERC was inspected and found to be in compliance.

On January 10, 2005, AERC was inspected and found to be in compliance.

On May 16, 2006, AERC was inspected and found to be in compliance.

11. PROCESS DESCRIPTION:

The facility receives spent mercury containing bulbs and devices for the purpose of crushing or dismantling and separating the lamps or devices in a manner as to produce separated individual recyclable components such as glass, scrap metal and mercury containing powder (phosphor powder). A lamp recycler (LSS-1) separates the end caps, glass, shatter shields, and filaments from the phosphor powder. The metal and phosphor powder is sent to a sister company in Pennsylvania for thermal retort. At times when the LSS-1 is not working properly, the glass is put through the machine twice and then sent off to the Brevard County landfill. Samples are taken daily of the glass and end caps. Those samples are then composited and sent for testing.

The facility cannot process lamps or devices containing liquid mercury. Lamps or devices containing liquid mercury are consolidated and sent to the Pennsylvania facility.

High Intensity Discharge (HID) lamps are dismantled in order to remove mercury containing ampoules from the bases. The consolidated ampoules are sent to the Pennsylvania facility.

The facility is also a universal waste handler. All types of batteries are brought to the facility then sorted and consolidated into 55-gallon drums or onto pallets. The batteries are shipped off-site for reclamation.

AERC accepts PCB and non-PCB lighting ballasts for sorting and shipment to other recycling facilities, as well as electronic scrap for demanufacturing or remanufacturing. Most electronics are managed at AERC's facility located at 4301 Woodland Park Drive, Suite 105, West Melbourne, Florida.

AERC also operates a 10-day transfer facility for hazardous waste destined for the AERC Pennsylvania TSD facility.

12. INSPECTION:

Production Area

LSS-1 (Figures 1-5) was not operation at the time of the inspection. The LSS-1 had been down for approximately one week prior to the inspection and AERC had just received the necessary parts. AERC was in the process of replacing the parts at the time of the inspection. Eight 55-gallon drums of phosphor powder, the oldest drum dated 4/17/07, were waiting to be shipped for disposal (Figure 6).

Lamps coated in a plastic shatter shield are sorted and stored separately from regular lamps because of the plastic. The shatter shield is manually removed from the lamps prior to crushing.

HID lamps contain liquid mercury; therefore, the lamps cannot be processed at this facility and must be shipped to the Pennsylvania facility. HID lamps are sorted, mercury ampoules removed, and stored separately from regular lamps until transported. At the time of the inspection, there was one 55-gallon drum of mercury ampoules (Figure 9), which was labeled and dated properly.

Outside next to the loading dock is the area for the roll off containers used to store glass from the mercury lamp processing operation. At the time of the inspection, these roll offs were being emptied.

This area also contained the air filtering unit for the LSS-1. Three sets of air filters are used, pre-filters, HEPA-filters, and carbon filters. The filters are monitored on a regular basis and when the

levels of Mercury reach a certain level, the filters are changed. The bank of Pre-Filters have been tested and determined to be non-hazardous. The HEPA-filters and carbon filters are disposed of as hazardous waste.

Warehouse

Bulb Storage Area

At the time of the inspection two rows of containers storing crushed bulbs were waiting to be processed. There were a total of sixty-four 55-gallon drums waiting to be processed. All of the containers were labeled properly, however there were four drums that were over the 1-year processing limit [40 CFR 268.50 (b)]. The dates on these drums were 3/9/06, 4/13/06 (2), 5/9/06.

There were seven rows of various lamps waiting to be processed (Figure 11). All containers were properly labeled and within the appropriate time limit.

90-Day Storage Area

This area was for containers of mercury containing devices that are sent to the Pennsylvania facility for final disposal (Figures 7-8). Inspection of this area was difficult to conduct due to lack of aisle space [40 CFR 265.35].

Battery Storage Area

At the time of the inspection approximately one third of the warehouse was being used for waste batteries managed as universal waste. Batteries are sorted and consolidated by type. There were three 55-gallon drums used for satellite accumulation of oils, sodium hydroxide, and sulfuric acid (Figure 10). All drums were closed and properly labeled.

Loading Dock

This area contained non-PCB ballasts (Figure 12). At the time of the inspection, there were fourteen 55-gallon drums waiting to be sorted.

Record Review

Records were reviewed for 2006 and 2007. The records included daily inspection logs, daily container count logs, contingency plan, position descriptions, training records, land disposal restriction notifications, twelve week rolling average of mercury levels of end caps and glass, biennial report, and manifests.

The facility is using Cintas to launder shop towels. The facility is sending all of the mercury containing material, including batteries, to their Allentown, Pennsylvania facility for further processing. Alkaline Batteries are shipped to Excide for recycling. All other batteries are shipped to Metal Conversions in Georgia. Forklift batteries are shipped back to the supplier for repair.

Daily inspection logs, position descriptions, land disposal restriction notifications, twelve week rolling average of mercury levels of end caps and glass, and the biennial report were in compliance.

The daily container count log had not been completed since 2/15/07 [40 CFR 264.15].

The contingency plan needs to be updated to remove Heath Clark as an Emergency Contact and to update the phone numbers for the Central District and after hours number [40 CFR 265.54(d)].

Incoming manifests for AERC were in compliance. Originals from three manifests of AERC's waste shipments to the Pennsylvania facility were missing [40 CFR 262.40(a)]. The manifest numbers for the missing originals were 452559, 452565, and 452547.

Training records indicate that Hazardous Waste management training had not been conducted on an annual basis. LQG's are required to conduct training annually [40 CFR 265.16(c)].

13. SUMMARY OF NONCOMPLIANCE ITEMS AND CORRECTIVE ACTIONS:

a) Regulation: 40 CFR 262.40(a) - Recordkeeping

"A generator must keep a copy of each manifest signed in accordance with 262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter." Specifically, AERC failed obtain the original manifests for manifest numbers 452559, 452565, 452547.

Corrective Action: AERC must immediately contact the final destination facility and obtain these originals.

b) Regulation: 40 CFR 264.15 – General Inspections

The facility must comply with the inspection plan of current permit, Part II – Operating Conditions 20 (f). Specifically, AERC failed to document daily container count log since February 15, 2007.

Corrective Action: Within 30 days of receipt of this Warning Letter, AERC shall submit to the Department written notification that all employees involved with daily inspections have been properly trained.

c) Regulation: 40 CFR 264.16(c)/265.16(c) - Personnel training

Facility personnel must take part in an annual review of their initial training. Specifically, AERC had not provided training in hazardous waste management procedures for facility personnel as specified in Part II – Operating Conditions 2.

Corrective Action: AERC shall develop a personnel training plan and schedule training in hazardous waste management for the appropriate facility employees. In addition, within 30 days of receipt of this Warning Letter, AERC shall provide written documentation to the Department that all employees managing hazardous waste have been properly trained.

*****This violation was cited previously during the 2003 inspection.**

d) Regulation: 40 CFR 264.35/265.35 – Container Aisle Space

Large quantity generators shall maintain adequate aisle space between containers of hazardous waste to allow for inspection of the condition and labels of the individual containers. Specifically, AERC did not provide proper aisle space for containers of hazardous waste.

Corrective Action: AERC shall allow sufficient aisle space to allow access for regulatory personnel to inspect all containers and for the unrestricted movement of emergency fire personnel spill control equipment, and decontamination equipment in the event of an emergency.

*****This violation was cited previously, during inspections in 2000 and 2003.**

e) **Regulation: 40 CFR 265.54(d) – Amendment of contingency plan**

“The contingency plan must be reviewed and immediately amended whenever the list of emergency coordinators changes.” Specifically, AERC failed to amend the contingency plan when Heath Clark was no longer with the company.

Corrective Action: AERC shall amend the facility contingency plan. In addition, within 30 days of receipt of Warning Letter, AERC shall submit to the Department a copy of the amended contingency plan developed. The completed plan shall be provided to the Department within 90 days of receipt of the Warning Letter.

f) **Regulation: 40 CFR 268.50(b) – Prohibition on storage of restricted wastes**

“An owner/operator of a treatment, storage or disposal facility may store such wastes for up to one year...” Specifically, AERC failed to process four drums of crushed bulbs, dated 3/9/06, 4/13/06 (2), and 5/9/06, within the one year time frame as per Part I – General and Standard Conditions 32.

Corrective Action: Within 30 days of receipt of this Warning Letter, AERC shall submit to the Department written notification that all employees involved with hazardous waste management and/or practices have been properly trained.

14. **CONCLUSION:**

AERC was inspected as a permitted storage/mercury recovery facility, LQG of hazardous waste, and an LQH of universal waste, and was not in compliance at the time of the inspection.

Report Prepared By: 
Danielle Bentzen, Environmental Specialist

Date: 9/12/07

Report Reviewed By: 
Lu Burson, Environmental Manager

Date: 9/12/07

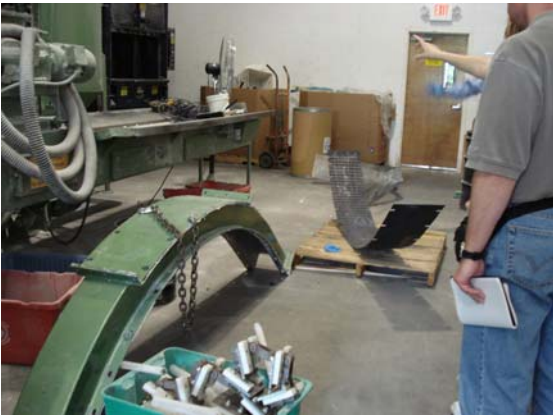


Figure 1: LSS-1 lamp recycler



Figure 2: Drums of phosphor powder



Figure 3: LSS-1 recycler



Figure 4: End caps separated by machine



Figure 5: Glass separated by machine



Figure 6: Phosphor powder hazardous waste drums



Figure 7: 90-day storage area



Figure 8: 90-day storage area



Figure 9: Hazardous waste drum for HID ampoules



Figure 10: Satellite area for batteries

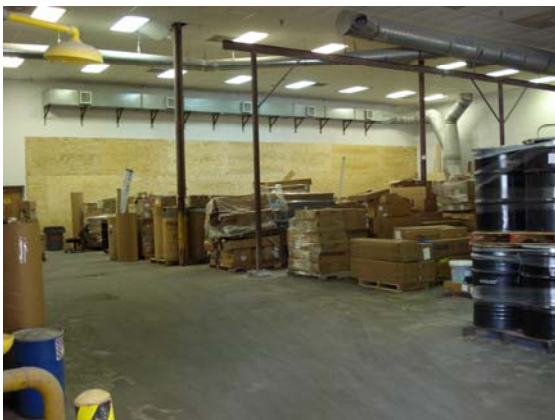


Figure 11: Lamp processing area



Figure 12: non- PCB ballast area

PENALTY COMPUTATION WORKSHEET

Violator's Name: AERC Recycling Solutions

Identify Violator's Facility: 4317-J Fortune Place, West Melbourne, FL 32904

Name of Staff Responsible for the Penalty Computations: Danielle Bentzen Date: 5/24/07

	Violation Type	Manual Guide	Potential for Harm	Extent of Deviation	Matrix Range	Other Adjustments	Penalty for Other Adjustments	Total
a.	262.40(a) Recordkeeping	HW 8.1	Minor	Minor	\$500-\$644 (\$644)	Multi-event 3 manifests x \$129	\$387	\$1,031
b.	264.15 General Inspections	HW 15.1	Minor	Minor	\$500-\$644 (\$644)			\$644
c.	264.16(c)/265.16(c) Personnel Training	HW 9.5	Moderate	Moderate	\$6,448-\$10,315 (\$10,315)	25% History of Non-Compliance plus Economic Benefit	\$2,579 \$2,730	\$15,624
d.	264.35/265.35 Aisle Space	HW 10.3	Moderate	Moderate	\$6,448-\$10,315 (\$10,315)	25% History of Non-Compliance	\$2,579	\$12,894
e.	265.54 (d) Amendment of Contingency Plan	HW 11.2	Minor	Moderate	\$645-\$1,933 (\$1,933)			\$1,933
f.	268.50(b) Prohibition on Storage of Restricted Waste	HW 16.5	Minor	Moderate	\$645-\$1,933 (\$1,933)	Multi-day event 173 days x \$129	\$22,317	\$24,250

TOTAL PENALTY AMOUNT FOR ALL VIOLATIONS: \$56,376

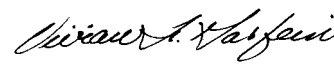
Multi-day penalties were not calculated for item **b** due to the fact that only a portion of the information required in the general Inspections was not completed. Multi-day penalties could not be calculated or were not appropriate for items **c**, **d**, and **e**.

Economic Benefit could not be calculated or was not applicable for items **a**, **b**, **d**, **e**, and **f**. Economic benefit calculations for item **c** are outlined in the following worksheet.

Prepared by:



Danielle Bentzen
 Environmental Specialist



Vivian Garfein
 Director, Central District

WORKSHEET
RANKING SYSTEM FOR POTENTIAL FOR HARM
**ONLY VIOLATIONS IN WHICH A "POTENTIAL FOR HARM" SCORE IS REQUIRED
 ARE LISTED ON THIS PAGE.**

FACILITY NAME: AERC Recycling Solutions Date: 5/24/07

	Violation	Description	Nature of Waste	Amount of Waste	Release	People	Total Points
c.	264.35/265.35	Aisle Space	4	8	1	1	14
f.	268.50(b)	Prohibition on Storage of Restricted Waste	4	2	1	1	8

SCORING SYSTEM

NATURE OF WASTE	AMOUNT OF WASTE	RECEPTORS	
		Releases	Affected Population
8 - High hazard wastes	8 - > 5,000 kg (25 drums)	4 - Release	4 - > 1,000
	5 - 1,000 to 5,000 kg	4 - High potential for release	3 - 100 - 1,000
4 - typical hazardous waste	2 - < 1,000 kg (5 drums)		2 - 10 - 100
		1 - No release	1 - <10

MAJOR POTENTIAL FOR HARM: 19-24
 MODERATE POTENTIAL FOR HARM: 13-18
 MINOR POTENTIAL FOR HARM: 8-12

ECONOMIC BENEFIT OF NON-COMPLIANCE FOR FAILURE TO CONDUCT TRAINING

Economic Benefit (EB) = (Avoided Costs)(1-C) + (Delayed Costs)(T)

C = Current Corporate Tax Rate = .38

T = IRS Interest Rate = 6% per year

AC = Avoided Costs = \$700

DC = Delayed Costs = \$700

Violation: Based on an estimate of \$700 for training of Tracy DePaola, and two employees and not training these individuals for an estimated 3 years.

EB (per employee) = (\$700)(1-.38)(2 previous years) + (\$700)(.06)(1 current year) =
\$434 (2 year) + \$42 (current year) = \$910.00.00
EB for 3 Employee = \$2,730

TOTAL Economic Benefit for Avoided and Delayed Cost of Training = \$2,730.00

PENALTY COMPUTATION WORKSHEET

Violator's Name: AERC Recycling Solutions

Identify Violator's Facility: 4317-J Fortune Place, West Melbourne, FL 32904 – FLD984262782

Name of Staff Responsible for the Penalty Computations: Danielle Bentzen Revised Date: 12/4/07

	Violation Type	Manual Guide	Potential for Harm	Extent of Deviation	Matrix Range	Other Adjustments	Penalty for Other Adjustments	Total
a.	262.40(a) Recordkeeping	HW 8.1	Minor	Minor	\$500-\$644 (\$500)	Multi-event 3 manifests x \$129	\$387	\$887
b.	264.15 General Inspections	HW 15.1	Minor	Minor	\$500-\$644 (\$500)			\$500
c.	264.16(c)/265.1 6(c) Personnel Training	HW 9.5	Moderate	Moderate	\$6,448-\$10,315 (\$6,448)	25% History of Non-Compliance plus Economic Benefit	\$1,612 \$2,730	\$10,790
d.	264.35/265.35 Aisle Space	HW 10.3	Moderate	Moderate	\$6,448-\$10,315 (\$6,448)	25% History of Non-Compliance	\$1,612	\$8,060
e.	265.54 (d) Amendment of Contingency Plan	HW 11.2	Minor	Moderate	\$645-\$1,933 (\$645)			\$645
f.	268.50(b) Prohibition on Storage of Restricted Waste	HW 16.5	Minor	Moderate	\$645-\$1,933 (\$645)	Multi-day event 30 days x \$129	\$3,870	\$4,515

TOTAL PENALTY AMOUNT FOR ALL VIOLATIONS: \$25,397


Multi-day penalties were not calculated for item **b** due to the fact that only a portion of the information required in the general Inspections was not completed. Multi-day penalties could not be calculated or were not appropriate for items **c**, **d**, and **e**.

Economic Benefit could not be calculated or was not applicable for items **a**, **b**, **d**, **e**, and **f**. Economic benefit calculations for item **c** are outlined in the following worksheet.

Prepared by:


 Danielle Bentzen
 Environmental Specialist

Date: 12/4/07


 Vivian Garfein
 Director, Central District

Date: 4/1/08

WORKSHEET
RANKING SYSTEM FOR POTENTIAL FOR HARM
**ONLY VIOLATIONS IN WHICH A "POTENTIAL FOR HARM" SCORE IS REQUIRED
 ARE LISTED ON THIS PAGE.**

FACILITY NAME: AERC Recycling Solutions Revision Date: 5/24/07

	Violation	Description	Nature of Waste	Amount of Waste	Release	People	Total Points
c.	264.35/265.35	Aisle Space	4	8	1	1	14
f.	268.50(b)	Prohibition on Storage of Restricted Waste	4	2	1	1	8

SCORING SYSTEM

NATURE OF WASTE	AMOUNT OF WASTE	RECEPTORS	
		Releases	Affected Population
8 - High hazard wastes	8 - > 5,000 kg (25 drums)	4 - Release	4 - > 1,000
4 - typical hazardous waste	5 - 1,000 to 5,000 kg	4 - High potential for release	3 - 100 - 1,000
	2 - < 1,000 kg (5 drums)		2 - 10 - 100
		1 - No release	1 - <10

MAJOR POTENTIAL FOR HARM: 19-24
 MODERATE POTENTIAL FOR HARM: 13-18
 MINOR POTENTIAL FOR HARM: 8-12

ECONOMIC BENEFIT OF NON-COMPLIANCE FOR FAILURE TO CONDUCT TRAINING

Economic Benefit (EB) = (Avoided Costs)(1-C) + (Delayed Costs)(T)

C = Current Corporate Tax Rate = .38

T = IRS Interest Rate = 6% per year

AC = Avoided Costs = \$700

DC = Delayed Costs = \$700

Violation: Based on an estimate of \$700 for training of Tracy DePaola, and two employees and not training these individuals for an estimated 3 years.

EB (per employee) = (\$700)(1-.38)(2 previous years) + (\$700)(.06)(1 current year) =
\$434 (2 year) + \$42 (current year) = \$910.00.00
EB for 3 Employee = \$2,730

TOTAL Economic Benefit for Avoided and Delayed Cost of Training = \$2,730.00

Exhibit III

In-Kind Penalty Projects

I. Introduction

An In-Kind (IK) Project allows a Respondent to offset a portion of the civil penalty by undertaking and satisfactorily completing an environmental project that has been previously approved by the Department. Descriptions of the kinds of projects that can be approved, the criteria for approval, and the approval process are described in the following sections. For every creditable \$1.50 spent on the approved IK Project, the Respondent shall receive a credit of \$1.00 against the portion of the civil penalty that can be offset. The amount that can be offset (\$25,397.00) is set forth in paragraph 7 of the Consent Order.

In the event, Respondent fails to timely submit any requested information to the Department, fails to complete implementation of the in-kind project or otherwise fails to comply with any provision of this paragraph, the in-kind penalty project option shall be forfeited and the entire allowable offset amount of civil penalties (\$25,397.00) shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the \$25,397.00 penalty, no additional penalties shall be assessed under paragraph 10 (stipulated penalties) of the Consent Order for failure to complete the requirement of this paragraph.

II. Approvable Projects

1. The following approvable Projects are described in more detail below:

- a. Material and/or Labor Support for Environmental Enhancement or Restoration Projects.
- b. Environmental Information and/or Education Projects.
- c. Capital or Facility Improvements.
- d. Property Donation.
- e. The value of Projects proposed by non-governmental entities under b, c, or d must exceed \$15,000.00.

2. Material and/or Labor Support for Environmental Enhancement or Restoration Projects. The Department prefers proposals that involve participation in existing or proposed government-sponsored environmental enhancement or restoration projects such as SWIM, city or county projects. These projects involve a minimum amount of planning and can usually be easily accomplished satisfactorily.

- a. The Respondent shall place appropriate signs at the Project site during the implementation of the Project indicating that the Respondent's involvement with the Project is the result of a Department enforcement action. The sign and lettering shall be sufficiently sized so that it can be read easily from 50 feet away. Once the Project has been completed as required by the Consent Order, the sign may be taken down. However, the Respondent should not be allowed to post a sign at the site after the Project has been completed indicating that the reason for the Project being completed was anything other than a DEP enforcement action.

b. For all environmental enhancement or restoration Projects conducted on private property, the Respondent must ensure that a conservation easement free and clear of all encumbrances for the land on which the restoration Project took place is granted to the Board of Trustees of the Internal Improvement Trust Fund or other entity approved by the Department. The form of the conservation easement must be approved by the Department in advance. For an environmental enhancement or restoration Project on public land, the Respondent may need to provide a conservation easement to the Department for private land adjoining the environmental enhancement or restoration Project if it is required to protect the completed restoration Project.

3. Environmental Information/Education Projects. Any proposed information or education Project must directly enhance the Department's pollution control activities. Examples of acceptable information or education Project include training, workshops, brochures, public service announcements, or handbooks on what generators of hazardous waste need to do to comply with RCRA. The information or education Projects cannot include recognition of the development of the Projects by the responsible parties.

4. Capital or Facility Improvements. Any capital or facility improvement Project proposed must directly enhance the Department's pollution control activities. An example of an acceptable capital or facility improvement Project is one that involves the construction of a sewer line to hook up a failing package plant that is owned and operated by an insolvent third party to a regional sewage treatment plant. An example of an unacceptable capital or

facility improvement Project is one that involves the planting of upland trees and shrubs.

5. Property Donation. A Respondent may propose to donate environmentally sensitive land to the Board of Trustees of the Internal Improvement Trust Fund as an IK penalty. Any proposals concerning the donation of land to the Board of Trustees of the Internal Improvement Trust Fund must receive prior approval from the Department's Division of State Lands. The Department may require that a conservation easement also be donated to the Board of Trustees of the Internal Improvement Trust Fund if the Respondent proposes to donate land to another government entity or non-profit organization.

III. The In-Kind Project Approval Process

1. Not all IK proposals are approved. An IK proposal must provide adequate environmental benefit for the amount of money spent. It cannot offset the costs of complying with any legal requirement to meet environmental standards or involve the purchase or lease of equipment for the Department. All other things being equal, the Department prefers IK Projects that incur less upfront and planning costs, have the potential for long-term, sustainable success without long-term maintenance. The Respondent should consult with the Department in the approval process, because the Department may be aware of appropriate Projects in the area.

2. The IK Project is typically implemented in a four-step process. First, the Respondent must prepare and obtain the approval of an IK Project Plan (Project Plan). Second, the Respondent must construct or implement the

approved Project Plan. Third, the Respondent must submit an IK Final Report (Final Report) to the Department that summarizes the in-kind Project, its benefits, and allowable costs. Finally, the Department approves or disapproves the offset of the penalty. All of these steps and the timeframes are discussed in detail below.

3. It is important for the Respondent to review the Project costs listed in Section E below that can be offset by the Project. If the Respondent has any questions, it should clarify whether expected costs can be offset before proceeding with the Project plan.

A. In-Kind Project Plan

1. Within 60 days of the effective date of the Consent Order, the Respondent shall submit a detailed Project Plan that includes:

- a. A. description of Project including its location and size,
- b. Any environmental benefits of the Project,
- c. Any permitting or authorizations needed to implement the Project and a description of how the Respondent plans to obtain these permits or authorizations,
- d. Expected costs of implementing the Project (These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the in-kind project.),
- e. Expected long term costs of operating and maintaining the Project once it is complete, and

f. A schedule for implementation of the Project Plan including a brief discussion of the steps necessary to implement the Project and expected dates of completion. The schedule shall include milestones, anticipated problems and options, and the Project completion date. The completion of the Project Plan should typically take no longer than six months from approval of the Project Plan.

2. The Department will review the Project Plan and either approve or disapprove with comments. If the Department disapproves the Project Plan, the Respondent shall resubmit a Project Plan within 30 days of disapproval that is responsive to the comments. If after one re-submittal the Project Plan is not approved or if the Respondent does not timely resubmit, the Respondent shall pay the allowable penalty off-set amount (\$25,397.00) in accordance with paragraph 6 of the Consent Order.

B. Implementation of the In-Kind Project Plan

1. Within 30 days of Department approval of the Project Plan, the Respondent shall begin implementation of the Project in accordance with the approved schedule.

2. If the Project takes longer than 6 months to complete, the Respondent shall submit progress reports to the Department every 90 days commencing on the date of implementation. The progress reports shall describe the Respondent's progress in implementing the Project and meeting the requirements in the Project Plan, including tasks completed and any anticipated problems in timely completing the Project.

C. Final Report

1. Within 15 days of completing the Project, the Respondent shall submit a Final Report to the Department that includes the following:
 - a. Supporting information verifying that the project was completed in accordance with the approved Project Plan; and
 - b. An accounting of the actual costs that the Respondent wants to apply toward the IK penalty. These costs shall not include those incurred in developing the proposal or obtaining approval from the Department for the project.
4. If the Project Plan approved by the Department is properly implemented, a \$1.00 credit for each \$1.50 spent on applicable costs will be applied against the portion of the civil penalty that can be offset.
5. If upon review of the Final Report, the Department determines that the project cannot be accepted due to a substantially incomplete notification of completion or due to substantial deviations from the approved in-kind project plan, Respondent shall be notified, in writing, of the reason(s) which prevent the acceptance of the project. Respondent shall correct and redress all of the matters at issue and submit a new notification of completion within 15 days of receipt of the Department's notice. If upon review of the new submittal, the Department determines that the in-kind project is still incomplete or not in accordance with the approved proposal, the in-kind penalty project option shall be forfeited and the entire allowable offset amount of civil penalty shall be due from the Respondent to the Department within 30 days of Department notice. If the in-kind penalty project is terminated and Respondent timely remits the

\$25,397.00, no additional penalties shall be assessed under paragraph 10 (stipulated penalties) for failure to complete the requirements of this paragraph.

D. Final Accounting and Civil Penalty Offset

1. The following costs are allowable to offset the allowable amount of the civil penalty. Not all of these costs will be applicable to every Project:

- a. Preparation of the Project proposal;
- b. Design of the Project;
- c. Installation of equipment for the Project;
- d. Construction of the Project;
- e. Testing of the Project; and
- f. Capital equipment needed for the Project.

2. The following costs shall not apply toward IK offset:

- a. Costs incurred in conducting an audit;
- b. Maintenance and operation costs involved in implementing the Project;
- c. Monitoring and reporting costs;
- d. Salaries of employees who perform their job duties;
- e. Costs expended to bring a facility into compliance with current law, rules and regulations;
- f. Costs associated with a Project that is not implemented;
- g. Costs associated with a Project that has not been approved by the Department; and
- h. Legal costs.

3. If any balance remains after the entire IK off-set is applied to the allowable portion of the civil penalty, Respondent shall pay the difference within 30 days of written notification by the Department to the Respondent that the balance is due.

4. The Department may terminate the IK Project at any time during the development or implementation of it, if the Respondent fails to comply with the requirements in this document, act in good faith in preparing and implementing the Project, or develop and implement the IK Project in a timely manner. The Respondent may terminate the IK Project at any time during its development or implementation.

5. If the Project is terminated for any reason, Respondent shall pay the full balance of the allowable portion of the civil penalty within 30 days of written demand by the Department.

6. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the Project Plan shall include the following language, "This Project was undertaken in connection with the Florida Department of Environmental Protection for violations of Florida's environmental laws."