

F.Y.I

MORGAN, LEWIS & BOCKIUS

COUNSELORS AT LAW

5300 SOUTHEAST FINANCIAL CENTER
200 SOUTH BISCAYNE BOULEVARD
MIAMI, FLORIDA 33131-2339

TELEPHONE: (305) 579-0300

FAX: (305) 579-0321

90 APR 26 11 0 49

MIAMI
WASHINGTON
NEW YORK
LONDON
FRANKFURT

PHILADELPHIA
LOS ANGELES
HARRISBURG
SAN DIEGO
BRUSSELS
TOKYO

LUIS RENE FIGUEREDO
DIAL DIRECT (305) 579-0364

April 24, 1990

VIA FEDERAL EXPRESS

Dr. Alexander Padva, Ph.D.
Waste Programs Administrator
Florida Department of Environmental
Regulation
Southeast District
1900 South Congress Avenue
Suite A
West Palm Beach, Florida 33406

Re: Integrated Resource Recovery Inspection

Dear Dr. Padva:

If I have offended you in any way with respect to my letter to Mr. Benyon dated January 26, 1990, please accept my apology. I have worked on many cases which involved the Department of Environmental Regulation and, as a result, have come to know the department as a reasonable agency which always looks to resolve a problem by means of cooperation wherever possible. I am sure you will agree that if there is a disagreement as to the manner in which an inspection or other activity has been conducted by the department, there should be a forum for purposes of voicing those concerns.

While the department conducts unannounced inspections for facilities guilty of past violations, I am aware of situations through this law firm where the department schedules routine compliance inspections in spite of existing enforcement activity. I am unaware of the criteria under which the department conducts unannounced inspections and, in order to properly advise my clients in the future, I am seeking your guidance regarding the department's inspection policy. It has been our impression that such an inspection must still be reasonable as to times and circumstances.

The fact that the inspection was unannounced did not cause my client much concern. Integrated Resource Recovery did indicate to the department that it would in fact

Mr. Alexander Padva
Page -2-
April 25, 1990

cooperate but respectfully requested that the inspection be rescheduled because the facility was in the midst of its annual Christmas party. I understand and to some degree agree with your position that the failure to cooperate on the part of a facility may be indicia that the facility is not in full compliance. However, I hope you can understand that my client was upset to be in the midst of such a party and not be able to postpone the disruption the inspection proposed.

While Mr. Motamedi has for the most part always been a gentleman, I can assure you that I have not misquoted Mr. Motamedi's statement which was made to me on that day. Please understand that I would not risk my credibility with the department for the sake of winning a minor point on behalf of a client. Perhaps Mr. Motamedi and I misunderstood each other's motives and it was not Mr. Motamedi's intent to make the statement referred to in my letter to Mr. Benyon. However, I can assure you that I would not intentionally make a misrepresentation to the department.

However, I must respectfully disagree with your position regarding an inspector's inability to "get tough" with a facility. The department personnel, in an effort to resolve problems often grant extensions of times, and allow for corrections to be made before a penalty is assessed. Moreover, while the assessed penalty is subject to a calculation matrix there still remains a significant amount of discretion with the department personnel. Hence, a department inspector, without deriving any personal benefit can make the regulatory experience very tough for a facility.


With respect to the third point in your letter, I would concur that I am aware of the time frames and that there is no legitimate excuse for Integrated Resource Recovery's late submittal. My intent was to merely point out that Mr. Van Dooren was under the impression that Mr. Motamedi had granted Integrated Resource Recovery a longer period of time within which to submit the requested records.

MORGAN, LEWIS & BOCKIUS

Mr. Alexander Padva
Page -3-
April 25, 1990

Once again, please accept my apologies if I have offended you. However, if I reach an impasse with a department inspector I am sure that you will agree that I must have someone to turn to. Thank you for your consideration.

Respectfully submitted,



Luis R. Figueredo

LRF/go

c.c. Office of General Counsel - DER, Tallahassee
Richard A. Pettigrew, Esq.
Mr. Larry Van Dooren, Integrated Resource
Mr. Scott Benyon, DER South District