



FLORIDA DEPARTMENT OF Environmental Protection

Central District Office
3319 Maguire Blvd., Suite 232
Orlando, Florida 32803

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

April 7, 2022

Thomas Kenyon, Secretary
Covanta Lake II, Inc.
445 South Street
Morristown, NJ 07960
TKenyon@covanta.com

Re: Lake County Resource Recovery
HW Facility ID #FLD984258731 & Air Facility ID #0690046
OGC Case #s 21-1145 & 22-0262

Dear Mr. Kenyon:

Enclosed is the executed Consent Order to resolve the above referenced case. This copy is for your records.

Should you have any questions or comments, please contact Daniel Hall at 407-897-4167 or via e-mail at Daniel.K.Hall@FloridaDEP.gov.

Your cooperation in this matter will be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Watkins".

Aaron Watkins
Director, Central District

Enclosure

cc: Lea Crandall, OGC
Zoey Carr, Central District
Daun Festa, Central District
Miranda Rothenberger, Central District
Mackenzie Black, Central District

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	CENTRAL DISTRICT
)	
v.)	OGC FILE No. 21-1145 & 22-0262
)	
COVANTA LAKE II, INC.)	
_____)	

CONSENT ORDER

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department") and Covanta Lake II, Inc. (Covanta) ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and Respondent neither admits nor denies 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 ("F.S."), and the rules promulgated in Chapter 62-730, Florida Administrative Code ("F.A.C."). The Department has jurisdiction over the matters addressed in this Order.
2. Respondent is a "person" within the meaning of Sections 403.031(5) and 403.703(23), F.S.
3. Respondent is Florida for-profit corporation which operates a mass-burn municipal solid waste combustor providing heat to a steam-turbine electric generator producing up to 15.7 megawatts of electricity on real property located at 3830 Rogers Industrial Park Road, Okahumpka, Florida 34762 ("Facility"). Respondent is the operator of the Facility as defined in Rule 62-730.020, F.A.C.
4. The Facility is operated under EPA ID No. FLD984258731 for hazardous waste. Respondent initially notified the Department of its hazardous waste activities on October 31, 2006 and was issued EPA ID No. FLD984258731 on December 21, 2006 as a conditionally

exempt small quantity generator of hazardous waste, now referred to as a very small quantity generator.

5. The Facility is operated under Air Permit No. 0690046-023-AV, effective April 27, 2021, and expiring April 27, 2026.

6. The Facility is operated under Solid Waste Permit No. 0022982-010-SO-33 issued July 9, 2021 and expiring July 9, 2026.

7. On March 30, 2021, Respondent notified FDEP that they had received and subsequently burned a load containing “unacceptable waste” on March 19, 2021. Respondent received waste material from a customer, Woodfield Distribution, LLC, that included hazardous waste based on an inventory of products provided to Respondent by that customer. Respondent’s 2018 contract with Woodfield Distribution prohibited Woodfield Distribution from sending any hazardous waste to Respondent. Woodfield Distribution submitted to Respondent a certified non-hazardous waste manifest for a March 19, 2021, 7.66-ton shipment of waste confirming that no hazardous waste was included. Separately, Woodfield Distribution provided Respondent with an inventory for the March 19, 2021, shipment that listed approximately 4,148 Ablysinol Dehydrated Alcohol Injection 5ml Ampules (ethyl alcohol; ethanol), which had expired in November 2020 and March 2022. As manufactured, intact, the ampules included in the shipment total 20,740 milliliters of ethyl alcohol or just under 5.5 gallons, which converts to 36 pounds (6.58 pounds per gallon). Dehydrated alcohol, i.e., ethyl alcohol, when generated as a solid waste, is considered a D-001 hazardous waste because it has a flash point less than 140 degrees Fahrenheit (55°F). With complete combustion, the only byproducts from combusting ethyl alcohol (C_2H_5OH) are carbon dioxide (CO_2) and water (H_2O); therefore, the ethyl alcohol at most added a small amount of fuel value but likely posed no concern to the permitted operation of the combustion unit, nor any other health concern when handled or combusted. Respondent’s Air Operation Title V Permit No. 0690046-21-AV¹ and Solid Waste Permit No. No. 0022982-007-SO-33 prohibit receiving and combusting hazardous

¹ Since March 2021, the Department renewed the Title V air operation permit, and the current permit number is 0690046-23-AV.

waste. Rule 62-730.240(1), Florida Administrative Code, prohibits operation of a hazardous waste treatment, storage, and disposal facility without first obtaining a hazardous waste facility permit.

- a) Respondent accepted hazardous waste in violation of Solid Waste Permit No. 0022982-007-SO-33, Section 2, Specific Condition C.3., in violation of Section 403.161(1)(b), F.S.;
- b) Respondent burned hazardous waste during the period 3/19/2021-03/22/2021 in violation of Rule 62-730.240(1), F.A.C.
- c) Respondent burned unauthorized hazardous waste fuel in violation of Air Permit No. 0690046-21-AV², Specific Condition A.5.b(1)(c).

8. It is the Respondent's position that:

- a) This waste, had it been included in the actual shipment and not just listed on the inventory (and contrary to the certified non-hazardous waste manifest), would constitute D001 (characteristic ignitable) waste (there is no listing). While Respondent visually checks each shipment, Woodfield Distribution shipped the ampules in small boxes shrink-wrapped on a pallet, which Respondent did not disturb for safety reasons pursuant to its standard waste acceptance protocols (which calls for inspection of a certain percentage of shipments, and not all shipments).
- b) The Woodfield Distribution did not properly certify, label, identify, or segregate the hazardous waste in this shipment, which represented prohibited waste under their contract. Again, pursuant to its standard waste acceptance procedures which call for inspection of percentages of waste received, Respondent was unaware that the waste load from Woodfield Distribution may have included hazardous waste and unknowingly loaded all of the waste received on March 19, 2021, from Woodfield Distribution into the waste combustors.

² Since March 2021, the Department renewed the Title V air operation permit, and the current permit number is 0690046-23-AV.

c) There is no proof that these expired dehydrated alcohol ampules were actually included in the shipment, or if included, whether they continued to contain dehydrated alcohol. Had any amount of D001 characteristic waste actually been combusted, even if not posing a threat to human health or the environment (or any violation of air permit emission limits), the event would constitute a technical violation of the general hazardous waste prohibition contained in these two permits as well as Florida law, which requires a special permit to combust hazardous waste.

d) After completing an internal investigation into receiving unacceptable materials, Respondent took immediate corrective actions. As of March 20, 2021, Respondent temporarily suspended shipments from all pharmaceutical reverse distributors supplying materials to Respondent while it completed its investigation. Since that time, Respondent has allowed the pharmaceutical reverse distributors to conduct very careful reviews of their inventories prior to shipment by using computer software programs (e.g., BirdsEye Technologies™ or equivalent) designed to identify potentially hazardous waste. Alternatively, Respondent will perform its own thorough internal review of inventory lists provided by pharmaceutical reverse distributors to verify loads as free of hazardous waste prior to reception at the Facility. Respondent has completed this corrective action.

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

ORDERED:

9. Effective immediately, Respondent shall comply with all Department rules regarding hazardous and solid waste management and its air operation permit. Respondent shall correct and redress all violations within the time periods stated below and shall comply with all applicable sections in Chapter 62-730, F.A.C. and Title 40, Code of Federal Regulations

("C.F.R.") Parts 260 through 266 and Part 268. All time periods shall run from the effective date of this Order.

a) By October 31, 2022, Respondent shall complete and submit to the Department a one-time report documenting the effectiveness of the program described in paragraph 8.d above.

10. Within 30 days of the effective date of this Order, Respondent shall pay the Department \$12,955 in settlement of the matters addressed in this Order. This amount includes \$ 1,000.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order.

11. Respondent agrees to pay the Department stipulated penalties in the amount of \$1,000.00 per day for each and every day Respondent fails to timely comply with any of the requirements of Paragraph 9 of this Order. A separate stipulated penalty shall be assessed for each violation of this Order, and the Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment, and shall do so as further described in Paragraph 15, below. Nothing in this Paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this Paragraph shall be in addition to the civil penalties agreed to in Paragraph 10 of this 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 Order in an amount greater than the stipulated penalties due under this Paragraph.

12. Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at:

<http://www.fldepportal.com/go/pay/>. It will take a number of days after this order

becomes final, effective and filed with the Clerk of the Department before ability to make online payment is available.

13. In lieu of making cash payment of \$11,955 in civil penalties as set forth in Paragraph 10, Respondent may elect to off-set the amount of \$11,955 by implementing a Pollution Prevention (P2) Project, which must be approved by the Department. P2 is a process improvement that reduces the amount of pollution that enters the environment; by conserving resource (including water, raw materials, chemicals, and energy) use, or by minimizing waste generation (including domestic and industrial wastewater, solid and hazardous waste, and air emissions). A P2 Project must reduce pollution or waste within the process beyond what is required by federal, state, or local law, in order to be eligible for civil penalty offset under this Order. If Respondent chooses to implement a P2 Project, Respondent shall notify the Department of its election by certified mail within 15 days of the effective date of this Order. Within 30 days of the effective date of this Order, Respondent must pay a total of \$1,000 for costs and expenses incurred by the Department, during the investigation of this matter, and the preparation and tracking of this Order.

14. If Respondent elects to implement a P2 Project as provided in Paragraph 13, Respondent shall submit a completed P2 Project Plan (Plan) within 60 days of the effective date of this Order. The Plan must be completed using Exhibit 1, "P2 Project Plan" template.

15. In the event the Department requires additional information to process the Plan described in Paragraph 13, Respondent shall provide a modified Plan containing the information requested by the Department within 30 days of the date of the request.

16. If any balance remains after the entire P2 credit 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 Respondent that the balance is due.

17. Except as otherwise provided, all submittals and payments required by this Order shall be sent to DEP_CD@FloridaDEP.gov and copied to Daniel Hall, Compliance Manager (Daniel.K.Hall@FloridaDEP.gov), Department of Environmental Protection, 3319 Maguire Blvd., Ste. 232, Orlando, FL 32803.

18. Respondent shall allow all authorized representatives of the Department access to the Facility and the Property at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

19. Respondent shall use all reasonable efforts to obtain any necessary access to implement the terms of this Order. If necessary access cannot be obtained, or if obtained, is revoked by owners or entities controlling access to the properties to which access is necessary, Respondent shall notify the Department within five business days of such refusal or revocation. The Department may at any time seek to obtain access as is necessary to implement the terms of this Order. Respondent shall reimburse the Department for any damages, costs, or expenses, including expert and attorney fees, that the Department is ordered to pay, or that the Department incurs in connection with its efforts to obtain access that is necessary to implement the terms of this Order. Respondent shall pay these sums to the Department or arrange a payment schedule with the Department within 30 days of written demand by the Department.

20. In the event of a sale or conveyance of the Facility or of the Property upon which the Facility is located, if all of the requirements of this Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Facility or Property, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility, and (c) provide a copy of this Order with all attachments to the purchaser, operator, or person(s) in control of the Facility. The sale or conveyance of the Facility or the Property does not relieve Respondent of the obligations imposed in this Order.

21. 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 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. Neither economic circumstances nor 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 (unless the cause of the contractor's late performance was also beyond the contractor's control) shall be considered circumstances beyond the control of Respondent. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department by the next working day and shall, within seven calendar days 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. The agreement to extend compliance must describe the provision or provisions extended, the new compliance date or dates, and the additional measures respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this Paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

22. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for alleged violations up to the date of the filing of this Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

23. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or the rules administered by the Department that are not specifically resolved by this Order. Nothing herein shall be construed to limit the Department's authority to take any action against Respondent in response to or to recover the costs of responding to conditions at or from the Facility that require Department action to abate an imminent hazard to the public health, welfare, or the environment.

24. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This 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. Entry of this Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

25. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties up to \$15,000.00 per day per violation, and criminal penalties.

26. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this Order. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to Section 120.68, F.S.

27. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order shall be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

28. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Order shall constitute a violation of Section 403.161(1)(b), F.S.

29. This Consent Order is a final order of the Department pursuant to Section 120.52(7), F.S., 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, F.S. Upon the timely filing of a petition, this Order will not be effective until further order of the Department.

30. Persons who are not parties to this Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate

final agency action, the filing of a petition concerning this Order means that the Department's final action may be different from the position it has taken in the Order.

The petition for administrative hearing must contain all of the following information:

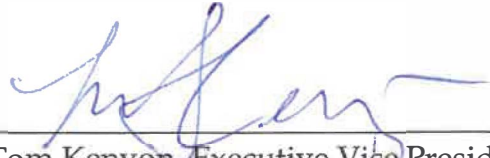
- a) The name and address of each agency affected and each agency's file or identification number, if known;
- b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- c) A statement of when and how the petitioner received notice of the agency decision;
- d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000, or received via electronic correspondence at Agency_Clerk@floridadep.gov, 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 at the address indicated in Paragraph 17, below. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under Sections 120.569 and 120.57, Florida Statutes.

Before the deadline for filing a petition, a person whose substantial interests are affected by this Order may choose to pursue mediation as an alternative remedy under Section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in Section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

31. Rules referenced in this Order are available at
<http://www.dep.state.fl.us/legal/Rules/rulelist.htm>.

FOR THE RESPONDENT,
COVANTA LAKE II, INC.:



Tom Kenyon, Executive Vice President,
General Counsel and Secretary

DATE: _____

DONE AND ORDERED this 7th day of April, 2022, in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Aaron Watkins
District Director
Central District

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



Clerk

April 7, 2022

Date

Copies furnished to:

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Consent Order, OGC No. 21-1145
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Lea Crandall, Agency Clerk
Mail Station 35