

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

Date: 12-Aug-1996 10:38am EST
From: Paul Wierzbicki WPB
WIERZBICKI P
Dept: Southeast District Offi
Tel No: 561/681-6677 (direct)
SUNCOM: 226-6677 (direct)

TO: Vivek Kamath WPB
TO: Katherine Andrews TAL
TO: Luna Ergas TAL

(KAMATH V)
(ANDREWS_K @ A1 @ DER)
(ERGAS_L @ A1 @ DER)

CC: Lee Martin WPB

(MARTIN_L)

Subject: Rinker

Here is my proposed letter to Rinker. I appreciate your comments, Luna. Since Carlos has been out, this response letter represents only our comments, however, it is an action item. We have not discussed this with either Peggie or Carlos and they may want to take a different case direction. Please review and comment! Thanx,

Paul Wierzbicki

Mr. Geoffrey D. Smith, Esq.
Blank, Rigsby & Meenan, P.A.
Attorneys at Law
204 South Monroe Street
Post Office Box 11068
Tallahassee, Florida 32302-3068

Dear Mr. Smith:

RE: Short Form Consent Order, Rinker Materials Corporation,
Materials Substitution Facility, OGC Case No. 96-2058

Thank you for your letter dated and received August 5, 1996. I appreciate and share your client's sensitivity when any company is faced with a Department Order and asked to pay punitive fines and costs and expenses in order to ensure compliance with the law. In short, your client failed to renew a permit when it expired. Still, Florida Statutes require that facilities have applicable active permits in order to lawfully operate. Recognizing that Rinker maintained compliance with the expired permit, we attempted to resolve the matter quickly and as non-adversarial as possible through the entry of a short form Consent Order with the Department, including payment of penalties and costs and expenses. Your letter appears to discuss three major points, and our response is as follows:

1. The Self Auditing Incentives Directive referenced in your letter is still an evolving policy in the Department, however, we don't know whether the reason Rinker discovered the violation (expiration of permit) was through a periodic evaluation of their tracking system/records. If no environmental audit was conducted by Rinker or systematic periodic evaluation, the Department does not need to waive the penalties under this directive. The Directive specifically states that the Department will waive the penalty only if all conditions under the "Conditions" section are met, and we don't have information that this is the case here. Please provide evidence that Rinker conducts periodic evaluations. Also, if Rinker has been periodically reviewing their records, why wasn't the upcoming permit expiration date discovered before the permit actually expired?

2. With respect to the permit modification, we disagree with your evaluation of Rule 62-4.050(7), Florida Administrative Code. We believe that the rule says that a permittee has to pay the same permit fee over again when he is requesting a substantial

Mr. Geoffrey D. Smith
Page Two of Two

modification to his permit. I do not believe that the rule would allow another five years to be added on to the permit, but rather uses the time distinction as the guide for the fee. A minimum of 30 days prior to permit expiration, a new permit should be applied for, not a modification to the expiring permit.

3. In this case, the original penalties calculated were, at the outset, based on a "minor/minor" (i.e. minor potential for harm/minor extent of deviation) and then it was multiplied to reflect the number of days Rinker was out of compliance. The penalty policy also states "...it is important in using daily penalties...that the amount be sufficient to discourage the violator from continuing a violation by making it more expensive to pay the daily penalty than to come into compliance." Further, the penalty was reduced by 20% in accordance with the penalty policy given the circumstances of this case (i.e. downward adjustment by 20% for voluntary reporting the violation to the Department and maintaining compliance with permit conditions) Rinker should have known of the upcoming expiration date and they simply failed to reapply. Page one of our inspection report format that we send out after an inspection, shows the permit number and date of expiration. Our very next inspection of your facility, conducted at least three times per year, would have discovered the lapse of the permit.

I hope this clarifies the Department's position with respect to this matter and a resolution can be agreed to soon. Please have your client execute the Consent Order previously sent to Rinker.

Should you have questions, please feel free to call me at telephone 561/681-6661.

Sincerely,

Carlos Rivero-deAguilar Date
Director of District Management
Southeast District

CRA/VK/paw

cc: Mike Vardeman, Rinker Materials Corporation
Metro-Dade Environmental Resources Management
Katherine Andrews, DEP, OGC, Tallahassee
Luna Ergas, DEP, OGC, Tallahassee
Vivek Kamath, DEP, West Palm Beach
West Palm Beach DEP files

DRAFT

ENFORCEMENT TRACKING	
DRAFT <u>PAW</u>	
Initial	Date
<u>PAW</u>	<u>8/12/96</u>
<u>mm</u>	<u>8/12/96</u>

Mr. Geoffrey D. Smith, Esq.
Blank, Rigsby & Meenan, P.A.
Attorneys at Law
204 South Monroe Street
Post Office Box 11068
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2. With respect to the permit modification, we disagree with your evaluation of Rule 62-4.050(7), Florida Administrative Code.

Mr. Geoffrey D. Smith
Page Two of Two

We believe that the rule says that a permittee has to pay the same permit fee over again when he is requesting a substantial modification to his permit. I do not believe that the rule would allow another five years to be added on to the permit, but rather uses the time distinction as the guide for the fee. A minimum of 30 days prior to permit expiration, a new permit should be applied for, not a modification to the expiring permit.

3. In this case, the original penalties calculated were, at the outset, based on a "minor/minor" (i.e. minor potential for harm/minor extent of deviation) and then it was multiplied to reflect the number of days Rinker was out of compliance. The penalty policy also states "...it is important in using daily penalties...that the amount be sufficient to discourage the violator from continuing a violation by making it more expensive to pay the daily penalty than to come into compliance." Further, the penalty was reduced by 20% in accordance with the penalty policy given the circumstances of this case (i.e. downward adjustment by 20% for voluntary reporting the violation to the Department and maintaining compliance with permit conditions) Rinker should have known of the upcoming expiration date and they simply failed to reapply. Page one of our inspection report format that we send out after an inspection, shows the permit number and date of expiration. Our very next inspection of your facility, conducted at least three times per year, would have discovered the lapse of the permit.

I hope this clarifies the Department's position with respect to this matter and a resolution can be agreed to soon.

Should you have questions, please feel free to call me at telephone 561/681-6661.

Sincerely,

DRAFT

Carlos Rivero-deAguilar Date
Director of District Management
Southeast District

CRA/VK/paw

cc: Mike Vardeman, Rinker Materials Corporation
Metro-Dade Environmental Resources Management
Katherine Andrews, DEP, OGC, Tallahassee
Luna Ergas, DEP, OGC, Tallahassee
Vivek Kamath, DEP, West Palm Beach
West Palm Beach DEP files

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

Date: 07-Aug-1996 05:09pm EST
From: Luna Ergas TAL
ERGAS_L@A1@DER
Dept: Office General Counsel
Tel No: 904/921-8875 GIC 735
SUNCOM:

TO: Paul Wierzbicki WPB

(WIERZBICKI_P@A1@WPB1)

Subject: rinker penalty

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

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

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

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

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

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

BLANK, RIGSBY & MEENAN, P.A.

ATTORNEYS AT LAW

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204 SOUTH MONROE STREET
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TIMOTHY C. SCHOENWALTER
GEOFFREY D. SMITH

LEGAL ASSISTANT
JOHN A. DICKSON, J.D.

*Florida Bar Certified in Health Law

August 5, 1996

Carlos Rivero-deAguilar
Director of District Management
Florida Department of Environmental Protection
Southeast Florida District
Post Office Box 15425
West Palm Beach, Florida 33416

ACTION ITEM	
TO <u>VK</u>	DUE <u>8/21</u>
Via Facsimile (561) 681-6755	
<input checked="" type="checkbox"/> RESPOND FOR <u>CL</u> SIGNATURE	
<input type="checkbox"/> INVESTIGATE & REPORT	
OTHER <u>96-087</u>	

Re: Proposed Settlement of Rinker Materials Corporation, Soil Thermal Treatment Facility,
OGC File No. 96-2058

Dear Mr. Rivero-deAguilar:

I have been retained by Rinker Materials Corporation ("Rinker") concerning the issues raised in a proposed "short form Consent Order" and settlement offer from the Department dated July 23, 1996. The Department proposes a civil penalty plus costs totaling \$8,180.00 for a minor clerical paperwork mistake which was self reported by Rinker to the Department and was promptly corrected when discovered. While Rinker's long standing company policy is to work cooperatively with the Department, we strongly believe that a civil penalty under the circumstances of this case is entirely inappropriate and will serve no useful regulatory purpose. The proposed penalty is inconsistent with the Department's published permit modification rules, the civil penalty policy, and the "Incentives for Self-Evaluation by the Regulated Community" issued by Secretary Wetherell earlier this year. In light of the unique and extenuating circumstances of this case, we request that the proposed civil penalty be withdrawn.

The Underlying Facts

This case concerns Rinker's soil thermal treatment facility which is operated in conjunction with the company's cement mill in Dade County. In accordance with Chapter 62-775, Florida Administrative Code, Rinker notified the Department in 1991 that it would operate its soil thermal treatment facility in compliance with the General Permit requirements. The department approved the use of the General Permit for a five year duration commencing April 1991.

Carlos Rivero-deAguilar

August 5, 1996

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In the fall of 1993, Rinker sought Department approval for a modification of its soil thermal treatment operations. A new General Permit fee of \$500 was submitted along with the required General Permit notice and modification documents. On November 22, 1993, the Department approved the requested modifications and re-issued the General Permit. Rinker's personnel assumed that the re-issued General Permit would remain in effect for the full 5 years, and the information was accordingly entered into the company's permit and regulatory tracking system to renew the General Permit again in 1998.

In late May 1996, Rinker, through its own due diligence, discovered that the expiration date of the General Permit was April 4, 1996, rather than 1998, as previously believed. Rinker promptly self-reported this to the Department, assembled the necessary documentation to submit a new notice for use of General Permit, and subsequently received the new General Permit, June 7, 1996.

At all times, Rinker has maintained compliance with General Permit requirements. The Department's proposed civil penalty is for the temporary lapse in the General Permit notification due to the clerical mistake described above. Rinker's operations were subject to Department inspections during this time and no violations of General Permit requirements were identified. Rinker received no economic benefit from the temporary lapse in the General Permit notification.

The Permit Modification Rule: Rinker's General Permit Should Have Been Extended as Effective Through 1998

When Rinker modified its General Permit in 1993, it paid a full permit application fee, and assumed that the request would be processed by the Department for a new 5-year permit term. The Department's permit rules support Rinker's interpretation. Rule 62-4.050(7), Florida Administrative Code, provides:

Modifications to existing permits proposed by the permittee which require substantial changes to the existing permit or require substantial evaluation by the Department of potential impacts of the proposed modification shall require the same fee as a new application for the same time duration

Rule 62-4.080(3), Florida Administrative Code, also supports Rinker's assumption that the modification request in 1993 would act as an extension of the General Permit for the full five year period. If the permit was to remain in effect for only two years, Rinker would have requested a lesser "minor modification" permit fee in accordance with Rule 62-4.050(4)(f), Florida Administrative Code.

Given the fact that a full permit fee was paid and the fact that Rinker's operations were subject to a complete General Permit review in November 1993, the Department's rules would seem

Carlos Rivero-deAguilar
August 5, 1996
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to authorize the full 5 year duration for the modified permit. Had Rinker noticed the shorter duration specified on the General Permit letter issued by the Department at the time, a request would likely have been made for the permit to be extended to the full 5 years. In any event, imposition of civil penalties does not seem appropriate under these circumstances.

The Department's Civil Penalty Policy Does Not Support Imposition of Civil Penalties Under the Circumstances of this Case

The legislative purpose of the Department's authority to seek civil penalties is set forth in Section 403.161(6), Florida Statutes, which provides:

It is the intent of the legislature that the civil penalties and criminal fines ... be of such amount as to ensure immediate and continued compliance with this section.

In implementing this statutory authority, the Department's "Settlement Guidelines for Civil Penalties" provide the prosecutorial discretion to waive civil penalties where the statutory purpose ("ensuring compliance") would not be served. This is certainly a situation where an imposition of an \$8,180 settlement is not necessary to "ensure immediate and continued compliance". Rinker voluntarily *self reported* the clerical mistake in its tracking of the General Permit expiration date. Rinker needed no prompting or punitive measures to ensure compliance with the Department's requirements: as soon as the problem was discovered, it was immediately reported to the Department and was corrected.

The Department's civil penalty policy is designed to calculate consistent penalty settlements which are appropriate for the magnitude and seriousness of the alleged violation of law. The civil penalty matrix categorizes violations according to "the potential for environmental harm" and "the extent of deviation from requirements." (Major- Moderate-Minor) In calculating a penalty in this case, the Department staff correctly identified this as a situation which warranted only a "Minor/ Minor" penalty assessment. Under the civil penalty matrix such a minor, paperwork type violation, should yield a penalty of no more than \$100 to \$199. By contrast a "Major/Major" violation would yield a penalty of \$8,000 to \$10,000. However, because of the staff's decision to use "multi-day penalties", the end result in this case is an \$8,000 penalty which would fall into the most serious matrix range for a single day "Major/Major" violation. Surely, this result is not warranted under the circumstances.

Assessment of multi-day penalties is not appropriate in this case. The use of multi-day penalty calculations is entirely discretionary, and is normally applied only where the amount of penalty under the matrix range is considered too low to achieve the goal of ensuring immediate and continued compliance. The Department's civil penalty policy provides:

Carlos Rivero-deAguilar
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Multi-day penalties are appropriate when daily advantage is being gained by the violator for an ongoing egregious violation; or where the violator knew or should have known of the violation after the first day it occurred and either failed to take action to mitigate or eliminate the violation or took action that resulted in the violation continuing; or when economic benefit is being gained on a daily basis.

None of these stated reasons for using a multi-day penalty assessment applies in this case. Rinker gained no daily advantage from the clerical oversight; the clerical mistake cannot be characterized as an "ongoing egregious violation;" the clerical lapse in the General Permit was discovered and immediately self reported by Rinker; and Rinker gained absolutely no economic benefit.

For the reasons discussed throughout this letter, we request that the Department exercise its discretion and seek no penalties in this matter. However, if the Department determines that some penalty assessment should be made, then the magnitude and seriousness of an honest paperwork/clerical error should be categorized in the "Minor/Minor" matrix range with a penalty of no more than \$199.

The Proposed Civil Penalty Assessment is Not Consistent with the Department's Policy on Incentives for Self-Evaluation by the Regulated Community"

In March 1996, Secretary Withereff approved the Department's policy statement entitled "Incentives for Self Evaluation by the Regulated Community." (Copy enclosed) This policy is designed to "enhance protection of human health and the environment by encouraging regulated entities to voluntarily disclose, correct and prevent violations of Florida's environmental requirements". The policy specifically provides that civil penalties should not be imposed in situations where a company, through exercise of due diligence, discovers that a violation of environmental requirements has occurred, and voluntarily self reports and corrects the problem. The situation in this case falls squarely within the spirit of this policy to encourage self reporting and voluntary compliance efforts by regulated industry.

It should be noted that the Department's policy for "self reporting" would waive civil penalties in many instances where far more egregious violations of environmental protection standards have occurred (even violations which have resulted in violation of air or water quality standards). In this case, Rinker at all times maintained full substantive compliance with the requirements of Chapter 62-775, Florida Administrative Code, and no violation of air or water quality occurred. The only "violation" was the clerical lapse of a General Permit for a short period due to an honest, good faith, mistake in tracking.

Carlos Rivero-deAguilar

August 5, 1996


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Conclusion

Rinker strongly urges that the decision to seek a civil penalty assessment in this matter be reconsidered. Under the circumstances, no useful purpose would be served by the imposition of civil penalties; particularly the excessive penalty amount presently proposed. In addition to the purely monetary considerations, Rinker is also deeply concerned with the stigma attached to being identified as a "violator" of the state's environmental protection requirements. Rinker strives to maintain its reputation as a responsible corporate citizen that voluntarily complies with environmental regulations. This reputation is undeservedly tarnished when the company is deemed a "violator" who must pay punitive fines in order to ensure compliance with the law.

As always Rinker pledges its full cooperation with Department to bring this matter to a close. Please consider our request and let me know your response. I am available to discuss any questions, comments or concerns you may have. Thank you for your consideration.

Sincerely,



Geoffrey D. Smith

GDS\bss

cc: Mike Vardeman, Rinker Materials Corp.
Katherine Anderson, DEP-OGC

Enclosure

gds\rinker\8200\penalty.ltr

FROM: DEP LEGAL

TO:

904+224+8551

MAR -1. 1996 4:29PM #077 P.02

State of Florida
Department of Environmental Protection
Administrative Directive

DEP
Effective:
March 31, 1996
Approved

INCENTIVES FOR SELF-EVALUATION BY THE REGULATED COMMUNITY

A. PURPOSE

This policy is designed to enhance protection of human health and the environment by encouraging regulated entities to discover voluntarily, disclose, correct and prevent violations of Florida environmental requirements.

B. DEFINITIONS

For purposes of this policy, the following definitions apply:

"Environmental Audit" is a systematic, documented, periodic and objective review by regulated entities of facility operations and practices related to meeting environmental requirements.

"Due Diligence" encompasses the regulated entity's systematic efforts, appropriate to the size and nature of its business, to prevent, detect and correct violations through all of the following:

- a) Compliance policies, standards and procedures that identify how employees and agents are to meet the requirements of laws, regulations, permits and other sources of authority for environmental requirements;
- b) Assignment of overall responsibility for overseeing compliance with policies, standards, and procedures, and assignment of specific responsibility for assuring compliance at each facility or operation;
- c) Mechanisms for systematically assuring that compliance policies, standards and procedures are being carried out, including monitoring and auditing systems reasonably designed to detect and correct violations, periodic evaluation of the overall performance of the compliance management system, and a means for employees or agents to report violations of environmental requirements without fear of retaliation;
- d) Efforts to communicate effectively the regulated entity's standards and procedures to all employees and other agents;

Received from Larry Morgan, DEP, on March 1, 1996

FROM: DEP LEGAL

TO:

904-224-0551

MAR 1, 1996 4:29PM #077 P.03

e) Appropriate incentives to managers and employees to perform in accordance with the compliance policies, standards and procedures, including consistent enforcement through appropriate disciplinary mechanisms; and

f) Procedures for the prompt and appropriate correction of any violations, and any necessary modifications in the regulated entity's program to prevent future violations.

"Environmental audit report" means the analysis, conclusions, and recommendations resulting from an environmental audit, but does not include data obtained in, or testimonial evidence concerning, the environmental audit.

"Gravity-based penalties" are that portion of a penalty over and above the economic benefit, i.e., the punitive portion of the penalty, rather than that portion representing a defendant's economic gain from non-compliance.

"Regulated entity" means any entity, including a federal, state or municipal agency or facility, regulated under federal environmental laws.

C. INCENTIVES

1) No Gravity-Based Penalties: Where it is established that all of the conditions of Section D of the policy have been satisfied, DEP will not seek gravity-based penalties for violations of Florida environmental requirements.

(2) No Routine Request for Audits: DEP will not request or use an environmental audit report to initiate a civil or criminal investigation of the entity. For example, DEP will not request an environmental audit report in routine inspections. If the Agency has independent reason to believe that a violation has occurred, however, DEP may seek any information relevant to identifying violations or determining liability or extent of harm.

D. CONDITIONS

1) Systematic Discovery: The violation was discovered through:

a) an environmental audit; or

b) an objective, documented, systematic procedure or practice reflecting the regulated entity's due diligence in preventing, detecting, and correcting violations. The regulated entity must provide accurate and complete documentation to the Agency as to how it exercises due diligence to prevent, detect and correct violations according to the criteria for due diligence outlined in Section B. DEP may require as a condition of penalty mitigation that a description of the regulated entity's due diligence efforts be made publicly available.

FROM: DEP LEGAL

TO:

924+224+8551

MAR 1, 1996 4:29PM #277 P.04

2) **Voluntary Discovery:** The violation was identified voluntarily, and not through a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement. For example, the policy does not apply to:

- a) emissions violations detected through a continuous emissions monitor (or alternative monitor established in a permit) where any such monitoring is required;
- b) violations of National Pollutant Discharge Elimination System (NPDES) discharge limits detected through required sampling or monitoring;
- c) violations discovered through a compliance audit required to be performed by the terms of a consent order or settlement agreement.

3) **Prompt Disclosure:** The regulated entity fully discloses a specific violation within 10 days (or such shorter period provided by law) after it has discovered that the violation has occurred, or may have occurred, in writing to DEP;

4) **Discovery and Disclosure Independent of Government or Third Party Plaintiff.** The violation must also be identified and disclosed by the regulated entity prior to:

- a) the commencement of a federal, state or local agency inspection or investigation, or the issuance by such agency of an information request to the regulated entity;
- b) notice of a citizen suit;
- c) legal complaint by a third party;
- d) the reporting of the violation to DEP (or other government agency) by a "whistleblower" employee, rather than by one authorized to speak on behalf of the regulated entity; or
- e) imminent discovery of the violation by a regulatory agency;

5) **Correction and Remediation:** The regulated entity corrects the violation as expeditiously as possible, certifies in writing that violations have been corrected, and takes appropriate measures as determined by DEP to remedy any environmental or human harm due to the violation. Where appropriate, DEP may require that to satisfy conditions 5, 6 and 8, a regulated entity enter into a written agreement, administrative consent order or judicial consent decree, particularly where compliance or remedial measures are complex or a lengthy schedule for attaining and maintaining compliance or remediating harm is required;

6) **Prevent Recurrence:** The specific violation (or closely related violation) has not occurred previously within the past three years at the same facility, or is not part of a series of federal, state or local violations by the facility's parent organization (if any), which have occurred within the past five years. For the purpose of this section, a violation is:

FROM: DEP LEGAL

TO:

904+224+8551

MAR 1, 1996 4:30PM #077 P.05

a) any violation of federal, state or local environmental law identified in a judicial or administrative order, consent agreement or order, or notice of violation, conviction or plea agreement; or

b) any act of omission for which the regulated entity has previously received a penalty from DEP or a local agency.

8) **Other Violations Excluded:** The violation is not one which (i) resulted in serious actual harm, or may present imminent and substantial endangerment to, human health or the environment, or (ii) violates the specific terms of any judicial or administrative order, or consent agreement.

9) **Cooperation:** The regulated entity cooperates as requested by DEP and provides such information as is necessary and requested by DEP to determine applicability of this policy. Cooperation includes, at a minimum, providing all requested documents and access to employees and assistance in any further investigations into the violation and other related compliance problems of the regulated entity.

E. ECONOMIC BENEFIT:

DEP will retain its full discretion to recover any economic benefit gained as a result of noncompliance to preserve a "level playing field" in which violators do not gain a competitive advantage over regulated entities that do comply. However, DEP may forgive the entire penalty for violations which meet conditions 1 through 9 in section D and, in the Agency's opinion, do not merit any penalty due to the insignificant amount of any economic benefit.

F. APPLICABILITY

1) This policy applies to violations under all of the Florida environmental statutes that DEP administers, and supersedes any inconsistent provisions in penalty or enforcement policies.

2) To the extent that existing DEP enforcement policies are not inconsistent, they will continue to apply in conjunction with this policy.

3) This policy sets forth factors for consideration that will guide the Agency in the exercise of its prosecutorial discretion. It states the Agency's views as to the proper allocation of its enforcement resources. The policy is not final agency action, and is intended as guidance. It does not create any rights, duties, obligations, or defenses, implied or otherwise, in any third parties.

4) This policy should be used whenever applicable in settlement negotiations for both administrative and civil judicial enforcement actions. It is not intended for use in pleading, at hearing or at trial. The policy may be applied at DEP's discretion to the settlement of

FROM: DEP LEGAL

TO:

904+224+8551

MON 1. 1996 4:30PM #077 P.06

administrative and judicial enforcement actions instituted prior to, but not yet resolved, as of the effective date of this policy.

5) This policy does not apply to any deliberate and knowing acts or decisions to violate the law made by any company or individual.

G. PUBLIC ACCOUNTABILITY

1) Within 3 years of the effective date of this policy, DEP will complete a study of the effectiveness of the policy in encouraging:

- a) changes in compliance behavior within the regulated community;
- b) prompt disclosure and correction of violations, including timely and accurate compliance with reporting requirements;
- c) corporate compliance programs that are successful in preventing violations.

2) DEP will make publicly available the terms and conditions of any compliance agreement reached under this policy, including the nature of the violation, the remedy, and the schedule for returning to compliance.

II. EFFECTIVE DATE

This policy is effective thirty days from today.

TELEFAX

copy to Paul W. Vink

BLANK, RIGSBY & MEENAN, P.A.
204 South Monroe Street
Tallahassee, Florida 32301
Fax: (904) 681-6713

TO: Carlos Rivcro-deAguilar CLIENT: 82.00FROM: Geoff SmithDATE: August 5, 1996 TIME: _____FAX NO. (561) 681-6755 PHONE NO. _____OPERATOR: BeckyTotal number of pages including cover letter: 11

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (904) 681-6710 AS SOON AS POSSIBLE.

MESSAGE: *The original of this document will be sent via U.S. Mail.*

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