

LEGAL CASE TRACKING SYSTEM ENFORCEMENT CASE ENTRY FORM

TO: KATHY CARTER, OGC - MAIL STATION #35

This form accompanied by:
 Draft Consent Order
 Case Report
 Draft NOV
 Draft Site Access Order
 Executed Consent Order
 Draft Temporary Use Agreement
 Draft Final Order (those which do not use Model Order language)
 Draft License and Permit Revocations

FROM: Caroline Shine, Air Program

DATE: 6-18-01

RECEIVED

JUN 19 2001

Is this a New case? Yes No Current OGC# 00-1162 BUREAU OF AIR REGULATION

DEP Priority Yes No

The following information will be used for entry in the Legal Case Tracking System.

Case Name: Covanta Lake, Inc

Case Alias: _____

Responsible Office: Central District County _____

District Contact: L. T. Kozlov, Program Administrator

Program Area: AIR 2nd Program Area _____

Date Compliance/Enforcement Case Opened by District 6/15/99

COMET Project No. or other system No. (APIS, PWS) _____

Permit/Application Number: _____

Site ID Number: _____ Affected Water Body: _____

Comments: _____

-----FOR OGC USE ONLY-----

OGC NUMBER: _____ Date Case Opened: _____

OGC ATTORNEY ASSIGNED: _____

Send Copies To:
 Originator Other _____

thereunder, Florida Administrative Code ("F.A.C.") Title 62. The Department has jurisdiction over the matters addressed in this Consent Order.

2. The Respondent is a corporation doing business in the State of Florida and is registered with the Florida Department of State. The Respondent is a person within the meaning of Section 403.031(5), Florida Statutes.

3. The Respondent owns and operates two 288 ton-per-day combustors, Unit 1 and Unit 2, at its Waste to Energy Facility ("Facility") located at 3830 Rogers Industrial Park Road, Okahumpka, Lake County, Florida, Latitude 28° 44'22"N and Longitude 81°53' 23"W ("property").

4. At all times relevant to the matters at issue in this Consent Order, the Department mercury emissions standards applicable to the Facility were 70 micrograms per dry standard cubic meter ("ug/dscm") of flue gas, corrected to 7 percent O₂, or 20 percent by weight of the mercury in the flue gas upstream of the mercury control device (80 percent reduction by weight), whichever occurs first.

5. During the period of January 27 through January 29, 1998, the Respondent conducted its annual compliance tests. Both Units 1 and 2 demonstrated emissions in excess of all applicable mercury emissions standards. Unit 1 mercury emissions were 202 ug/dscm with 28% reduction; Unit 2 mercury emissions were 103 ug/dscm with 40% reduction.

6. During the January 1998 tests, Unit 1 was tested at 60% of the permitted biomedical waste capacity and 91% of its permitted municipal waste capacity. Unit 1 was also tested on April 23, 1998 at 52% of its permitted of biomedical waste and 92%

of its permitted capacity of its municipal waste. Rule 62-297.310(2), F.A.C. requires that emissions units tested at less than 90-100% of permitted capacity be operated at no more than 110 percent of the tested rate until a new test is conducted. Respondent did not limit its biomedical waste operation rate following these tests. Respondent disputes the applicability of Rule 62-297.310(2), F.A.C. to limit the biomedical waste operation rate.

7. Respondent retested Unit 1 on April 23, 1998. Unit 1 passed the test with a mercury reduction rate of 88%. Unit 1's mercury emissions were 81.8 ug/dscm.

8. Units 1 and 2 met all applicable mercury emissions standards during Respondent's March 1998 internal engineering tests.

9. Respondent did not demonstrate via a compliance test burning only the permitted waste stream Unit 2's compliance with applicable mercury emissions standards as required by Rule 62-296.416(3)(a)(3), F.A.C., for calendar year 1998. Respondent contends that the Unit 2 stack test conducted April 20-21, 1998, constitutes a compliance test.

10. Respondent conducted its 1999 annual compliance tests during the period of January 26 through 29, 1999. Both Units 1 and 2 exceeded all applicable mercury emissions standards. Unit 1's mercury emissions were 2,994 ug/dscm with 33% reduction. Unit 2's mercury emissions were 258 ug/dscm with 65% reduction.

11. The Respondent conducted internal engineering tests in February 1999, during which both Unit 1 and Unit 2 met all applicable mercury emissions standards.

12. Respondent retested Unit 2 on April 22, 1999. Unit 2 passed the April 1999 test. The mercury emissions were 4 ug/dscm with 94% reduction.

13. Respondent re-tested Unit 1 on June 3, 1999. Unit 1 passed the test with 25 ug/dscm mercury emissions and 95% reduction.

14. The Department informed Respondent of the Respondent's alleged violations of Chapter 403, Florida Statutes, and Department Rules in Warning Letter OWL-AP-99-413, dated June 15, 1999. By letters dated July 15, 1999, and November 17, 1999, Respondent provided comments and responses to the Department's June 15, 1999 Warning Letter and civil penalty calculations.

15. From at least April 19, 1999 through present, there have been seven boiler tube ruptures at Respondent's facility causing excess carbon monoxide emissions. On May 15, 2000, the Department issued Warning Letter OWL-AP-00-475 seeking additional information concerning three boiler tube failures at Respondent's Facility during March and April 2000 and alleging violations of Chapter 403, Florida Statutes, and Department Rules. By letter dated June 1, 2000, Respondent submitted the requested documentation and opposed the allegations in the Department's May 15, 2000 Warning Letter.

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

ORDERED:

16. Respondent agrees to pay the Department a civil penalty of one hundred four thousand one hundred dollars (\$104,100) in settlement of the matters addressed in

this Consent Order (\$100,650 plus Department costs of \$3,450). Payment shall be made by cashier's check, money order or wire transfer. The instrument shall be made payable to the Department of Environmental Protection and shall include thereon the OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the Department of Environmental Protection, Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767. Respondent shall have the following options for payment of the civil penalty:

a. Option 1: Use best efforts to secure pilot project status for Phase 2 of the United States Environmental Protection Agency's mercury continuous emission monitoring verification test program.

Respondent may choose to use its best efforts to secure pilot project site status for Phase 2 of the United States Environmental Protection Agency's ["USEPA"] mercury continuous emission monitoring system ["CEMS"] verification test program ["Program"]. If Respondent chooses this option, Respondent shall submit a letter to the Department's Central District Office within ten days of the effective date of this Consent Order indicating this option has been elected.

i. In the event Respondent is not chosen by USEPA as a Program site, or the Program is cancelled or postponed by USEPA for more than one year, the civil penalty payment of one hundred four thousand one hundred dollars (\$104,100) shall be due in full thirty days from the date USEPA announces its test site(s), Program cancellation or postponement ; or

ii. In the event Respondent is chosen by USEPA as a Program site, the civil penalty payment of one hundred four thousand one hundred dollars (\$104,100), less any offsets described in paragraph 16a(2) and/or paragraph 16c below, shall be due in full thirty days from the date that Program testing at Respondent's Facility is completed. Respondent shall complete the Program requirements regardless of the availability of any outside funding other than that addressed in paragraph 16a(2), below.

1. Respondent shall provide a copy of all data, analyses and studies obtained from the Program to the Department's Central District Office within forty-five days from the date that Program testing at Respondent's Facility is completed, unless prohibited from doing so by USEPA. The Department will not use the data, analyses and studies resulting from the Program as a basis for an enforcement action against Respondent.

2. The Department will offset documented capital, operation and maintenance costs Respondent incurs as a direct result of its participation in the Program from the civil penalty. In no event shall such offset exceed the amount of the civil penalty identified in paragraph 16. Documentation of such costs shall include receipts, purchase orders, timesheets and/or other information which clearly identifies

the costs incurred and establishes the costs were incurred as a direct result of Respondent's participation in the Program. Documentation shall be submitted to the Department's Central District Office within seven days of incurring such costs or expenses; or

b. Option 2: Respondent may choose not to pursue project site status for the Program.

Respondent may choose not to pursue project site status for the Program. Respondent shall submit a letter to the Department's Central District Office within ten days of the effective date of this Consent Order indicating this option has been elected. The civil penalty of one hundred four thousand one hundred dollars (\$104,100) shall be due in full within thirty days of the effective date of this Consent Order except as set forth in paragraph 16c, below.

c. In-kind penalty projects.

Respondent may pursue in-kind penalty projects in addition to or in lieu of paragraphs 16a and 16b above, in accordance with the Department's in-kind penalty guidelines. Specifically, in-kind penalties must be in an amount 1 ½ times the cash civil penalty and approved by the Department's Central District Office. The Department will offset from the \$104,100 civil penalty payment \$1.00 for every \$1.50 of documented in-kind penalty project costs as set forth in the Department's in-kind penalty guidelines. Within 10 days of completion of an in-kind penalty project, Respondent shall submit its

documented costs to the Department for review. All in-kind penalty projects must be completed within one year from the effective date of this Consent Order.

i. Proposed in-kind penalty project proposal deadlines

Proposed in-kind penalty project proposals ("proposal") must be submitted to the Department's Central District Office by the following dates:

1. If Respondent selects the option in subsection 16a above, on or before July 15, 2001; or
2. If Respondent selects the option in subsection 16b above, within 10 days of the effective date of this Consent Order.

In the event the Department approves the proposal, Respondent shall begin implementing the proposal within 30 days of receipt of the Department's approval. In the event the Department rejects the proposal, Respondent shall submit any new proposals to the Department for review and approval within 30 days of receipt of the Department's rejection. In the event the Department approves the new proposal, Respondent shall begin implementing the new proposal within 30 days of receipt of the Department's approval.

ii. Termination of in-kind penalty project(s)

The Department may terminate a proposal or new proposal at any time during the development or implementation of it if Respondent: fails to comply with the Department's in-kind penalty policy, fails to act in good faith in preparing and/or implementing the proposal or new proposal or fails to develop and implement the proposal or new proposal in a timely manner in which case the civil penalty becomes

due and owing in accordance with paragraph 16ciii below. In the event the Department terminates a proposal or new proposal, the parties may proceed pursuant to paragraph 19 in the event Respondent has already spent or committed funds to implement the proposal or new proposal.

Respondent may terminate the proposal or new proposal at any time during its development or implementation, in which case the civil penalty becomes due and owing in accordance with paragraph 16ciii below. Respondent shall notify the Department's Central District Office of the termination of the proposal or new proposal within 10 days of the termination.

iii. In-kind penalty project's affect on civil penalty due dates and amount

1. The proposal is rejected or terminated by the Department.

In the event the Department rejects or terminates Respondent's proposal as set forth in paragraphs 16ci or 16cii, above, Respondent shall make the civil penalty payment of \$104,100 according to either paragraph 16a, above if applicable, or within 10 days of receipt of the Department's rejection or termination.

2. The proposal is terminated by Respondent.

In the event Respondent terminates a proposal as set forth in paragraph 16cii above, Respondent shall make the civil penalty payment of \$104,100 according to either paragraph 16a, above if applicable, or within 10 days of termination of the proposal.

3. The proposal is completed.

In the event the proposal is completed as approved by the Department in paragraph 16ci above, Respondent shall make the civil penalty payment of \$104,100 less the offsets allowed by paragraph 16 and its subsections, in accordance with paragraph 16a, above if applicable, or within 30 days of completion of the proposal.

17. Within 30 days of the effective date of this Consent Order the Respondent shall submit to the Department for approval a plan to limit carbon monoxide exceedances and boiler tube failures at the Facility ("Plan"). The Respondent shall implement the Plan within 30 days of receipt of the Department's written approval. If the Department does not approve the Plan, the Department will provide written comments to Respondent. Respondent shall submit an acceptable Plan to the Department within 30 days of receipt of the Department's comments and shall implement the plan within 30 days of receipt of the Department's written approval.

18. Respondent agrees to pay the Department stipulated penalties in the amount of \$400.00 per day for each and every day the Respondent fails to timely comply with any of the requirements of paragraph 16 or 17 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of paragraphs 16 or 17 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 OGC number assigned to this Consent Order and the notation "Ecosystem Management and Restoration Trust Fund." Payment shall be sent to the Department of Environmental Protection, Central District Office, 3319 Maguire

Boulevard, Suite 232, Orlando, Florida 32803-3767. 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 16 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.

19. With regard to any agency action taken by the Department concerning Respondent's submittals or in-kind penalty project terminations pursuant to paragraphs 16 and 17 or the Department's assessment of stipulated penalties pursuant to paragraph 18, Respondent may request a determination by the District Director or the Director of the Division of Air Resource Management on the adequacy of such submittals or the appropriateness of such stipulated penalties. In the event such determination is unsatisfactory, Respondent may file a Petition for Formal or Informal Administrative Hearing. If Respondent objects to the Department's agency action pursuant to Sections 120.569 and 120.57, Florida Statutes, Respondent shall have the burden to establish the inappropriateness of the Department's agency action. The petition must contain the information set forth below in paragraph 20 and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of receipt of the Department's agency action the Respondent intends to challenge and must conform with the requirements of Florida Administrative Code Rule 28-106.201 or Rule 28-

106.301. Failure to file a petition within this time period shall constitute a waiver by Respondent of its right to request an administrative proceeding under Sections 120.569 and 120.57, Florida Statutes. The Department's determination, upon expiration of the 21 day time period if no petition is filed, or the Department's Final Order as a result of the filing of a petition, shall be incorporated by reference into this Consent Order and made a part of it. All other aspects of this Consent Order shall remain in full force and effect at all times. If both parties agree, the Department and Respondent may mediate the dispute as provided in Section 120.573, Florida Statutes. If the parties agree to mediation, the time for filing a petition pursuant to this paragraph is tolled until such time as the mediation is unsuccessful. Upon notice from the Department that the mediation is unsuccessful, the Respondent shall have 21 days to file its petition as provided herein. If Respondent seeks an administrative proceeding pursuant to this paragraph, the Department may file suit against Respondent in lieu of or in addition to holding the administrative proceeding to obtain judicial resolution of all the issues unresolved at the time of the request for administrative proceeding.

20. Respondent shall publish the following notice in a newspaper of daily circulation in Lake County, Florida. The notice shall be published one time only within 10 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 Covanta Lake, Inc., formerly known as NRG/Recovery Group, Inc. and doing business as Ogden Martin Systems of Lake, Inc.,

pursuant to Section 120.57(4), Florida Statutes. The Consent Order addresses the air pollutant emissions violations at its waste to energy facility located at 3830 Rogers Industrial Park Road, Okahumpka, Lake County, Florida. 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, Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, FL 32803-3767.

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 Department's 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 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 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; and

(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.

(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 sixty 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.

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

22. 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, Florida Statutes. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.161(1)(b), Florida Statutes.

23. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties up to \$10,000.00 per day per violation and criminal penalties.

24. 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 of the Department.

25. All plans, applications, penalties, stipulated penalties, costs and expenses, and information required by this Consent Order to be submitted to the Department should be sent to Florida Department of Environmental Protection, Central District Office, 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803-3767.

26. 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.

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

28. The provisions of this Consent Order shall apply to and be binding upon the parties, their officers, their directors, agents, servants, employees, successors, and assigns and all persons, firms and corporations acting under, through or for them and upon those persons, firms and corporations in active concert or participation with them.

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

30. In the event of a change in ownership or control of the Facility or of the 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 change in ownership or control of the property or Facility, (1) notify the Department of such pending change in ownership or control, (2) provide to the Department 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, operator and/or person(s) in control of the Facility. The change in ownership or control of the Facility or the property upon which the Facility is located shall not relieve the Respondent of the obligations imposed in this Consent Order unless the new owner or


operator or person(s) in control agrees in writing to fulfill the obligations of this Consent Order and the Department approves such agreement to release the Respondent.

31. This Consent Order is a settlement of the Department's civil and administrative authority arising from Chapters 403 and 376, Florida Statutes, to resolve the allegations 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.

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

FOR THE RESPONDENT:



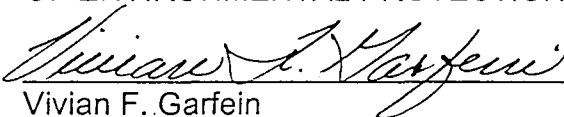
Anthony J. Orlando ^{not}
Executive Vice President
Covanta Lake, Inc.
40 Lane Road
Fairfield, NJ 07007

6/12/01

Date

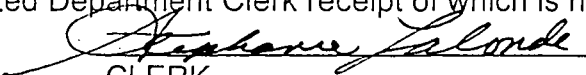
Done and ordered this 13th day of June, 2001 in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Vivian F. Garfein
Director of District Management
Central District Office
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

FILING AND ACKNOWLEDGMENT FILED, on this date, pursuant to §120.52, Florida Statutes, with the designated Department Clerk receipt of which is hereby acknowledged.



CLERK 6/13/2001
Date

cc: Larry Morgan