



Jeb Bush
Governor

Department of
Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

David B. Struhs
Secretary

February 9, 2001

Mary F. Smallwood
Ruden, McClosky, Smith, Schuster & Russell, P.A.
215 South Monroe Street
Suite 815
Tallahassee, Florida 32301

RECEIVED

FEB 12 2001

DIVISION OF AIR
RESOURCES MANAGEMENT

Via facsimile and regular mail

RE: DEP v. NRG/Recovery Group, Inc.
OGC Case No.: 00-1162

Dear Mary:

We have reviewed the letter and information submitted by Nancy Tammi on January 31, 2001. We were encouraged by this response and are hopeful that this matter can be resolved amicably. This letter provides the following: (1) evaluation of the mercury CEMS data; (2) the Department's position on the Company's participation in the USEPA mercury CEMS project; (3) a settlement proposal including: (a) civil penalty demand; (b) civil penalty offsets; (c) carbon monoxide/tube failure minimization plan.

First, the Department has completed a cursory review of the additional mercury CEMS information provided in the January 31, 2001 submittal. Based upon this review, the Company has satisfied the Department's request for mercury CEMS data and information.

Second, the Department is willing to assist and support the Company's efforts in obtaining mercury CEMS test-site status for phase II of USEPA's mercury CEMS pilot project. In the event the Company is selected as a test-site for phase II, the Department agrees that any results obtained as a direct result of the pilot project will be used by the Department for research and demonstration purposes only. Further, the Department will offset documented operation and maintenance costs the Company incurs as a direct result of its test-site status from the civil penalty calculation [see below].

"More Protection, Less Process"

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Third, the Department is concerned about the frequency of tube failures and resulting carbon monoxide emissions at the facility. Therefore, as a part of the settlement of this case, the Department would require the Company to prepare and submit to the Department for review and approval a plan for reducing carbon monoxide emissions and the frequency of tube failures. Upon receiving the Department's approval, the Company would implement this plan.

Finally, the Department has reviewed the civil penalty information contained in the Company's January 31, 2001 and November 17, 1999 letters. The Department has revised its civil penalty demand for purposes of settlement only to \$120,700 [see attachment]. The rationale for this revision is as follows:

A. Units 1 & 2 1998 mercury exceedance: total of \$48,800. The Department reduced the multi-day penalty to 37 days to reflect the internal, engineering tests conducted by the Company in March 1998. However, the Department maintains its position that the violation is a major/major violation as the source is subject to the NSPS emission limits for mercury [see Rules 62-296.416, F.A.C., and 62-204.800(8)(b), F.A.C. incorporating 40 CFR 60.33b(a)(3)] and the deviations were more than 150% [Unit 1's emission rate was 202 ug/dscm with limit of 70 ug/dscm; Unit 2 achieved only 40.5% reduction with an 85% requirement]. The Department believes the history of noncompliance penalty is warranted based upon HCl violations, CO exceedances, numerous boiler tube ruptures, refractory wall problems, etc.

B. 1998 Unit 1 medical waste operating rate: total of \$23,050. The Department eliminated the economic benefit calculation. However, the Department maintains its position that the violation is major-major because the source is a major source and is subject to PSD. The Department believes the history of noncompliance penalty is warranted based upon HCl violations, CO exceedances, numerous boiler tube ruptures, refractory wall problems, etc.

C. Units 1 and 2 1999 mercury exceedance: total of \$28,800 conditioned upon receiving February 1999 internal reference method test results demonstrating compliance. The Department reduced its multi-day calculation to 22 days based upon the Company's assertion that a February 1999 internal test demonstrated compliance with the mercury limits. The Department does not have the results of this test. Therefore, in order to support the reduction in the multi-day penalty, we will need to see the February 1999 reference method test report and data. The Department mitigated the civil penalty by \$4800 to reflect the Company's improvements

to the carbon injection system. As stated in A above, the Department maintains its position that the violation is major/major.

D. 1999 incomplete test data: the Department has eliminated this civil penalty for purposes of settlement only.

E. Unit 2 1998 failure to test with municipal solid waste only: total of \$16,600. The Department did not revise this calculation. It is our belief that the Company did not conduct a stack test with exclusively municipal solid waste until more than 60 days after the deadline. Therefore, it is a major/major violation.

As discussed above, the Department will offset documented operation and maintenance costs the Company may incur as a direct result of its test-site status from the civil penalty calculation. In addition, the Department has not foreclosed the option of in-kind penalties; however, such projects would have to meet the Department's guidelines for project approval.

We request a response to this proposal on or before February 16, 2001. If you have any questions, please contact me at 850/921-8875.

Sincerely,



Trina L. Vielhauer
Assistant General Counsel

Enclosure

Pc: Vivian Garfein, Len Kozlov, Caroline Shine, Garry Kuberski, John Turner, CFD
Kirby Green
Howard Rhodes, Jim Pennington, Martin Costello, DARM

OGDEN PENALTY COMPUTATION WORKSHEET

Violation Type	Type	Base	Multi-day	History Noncompliance/ Economic Benefit	Total
<u>Unit 1 1998 Mercury Exceedance</u> Std 70 ug/dscm 35% reduction Ogden 202 ug/dscm 28% reduction	<u>Emission</u> Major source subject to NSPS emission limiting standards for the specific pollutant violation.	<u>(\$8,000)</u> Emissions greater than or equal to 150% of allowable. Health/human Major Source	<u>(\$14,800)</u> \$ 400/day for 37 days	<u>(1,600)</u> History of Noncompliance 2 violation/5 years	<u>(\$24,400)</u>
<u>Unit 2 1998 Mercury Exceedance</u> Std 70 ug/dscm 85% reduction Ogden 103 ug/dscm 40.5 reduction	<u>Emission</u> Major source subject to NSPS emission limiting standards for the specific pollutant violation.	<u>(\$8,000)</u> Emissions greater than or equal to 150% of allowable. Health/human Major Source	<u>(\$14,800)</u> \$ 400/day for 37 days	<u>(1,600)</u> History of Noncompliance 2 violation/5 years	<u>(\$24,400)</u>
<u>1998 Unit 1 Medical Waste Operating > 30% Process Rate</u> 1.12 tons Allowable. Company did not de-rate operation after testing low. Company operated about tested range.	<u>Other</u> Major source, PSD, exceedance process weight limitations	<u>(\$8,000)</u>	<u>13,450</u> 40 days: 31 days at \$400; 6 days at \$160; 1 day at \$30.	<u>(1,600)</u> History of Noncompliance 2 violation/5 years	<u>(\$23,050)</u>
<u>Unit 1 1999 Mercury Exceedance</u> Std 70 ug/dscm 85% reduction Ogden 2994 ug/dscm 42% reduction	<u>Emission</u> Major source subject to NSPS emission limiting standards for the specific pollutant violation.	<u>(\$8,000)</u> Emissions greater than or equal to 150% of allowable.	<u>(\$8,800)</u> 22 days.	<u>(\$2,400)</u> carbon system improvements	<u>(\$14,400)</u>
<u>Unit 2 1999 Mercury Exceedance</u> Std 70 ug/dscm 85% reduction Ogden 258 ug/dscm 62% reduction	<u>Major</u> Major source subject to NSPS emission limiting standards for the specific pollutant violation.	<u>(\$8,000)</u> Emissions greater than or equal to 150% of allowable.	<u>(\$8,800)</u> 22 days.	<u>(\$2,400)</u> carbon system improvements	<u>(\$14,400)</u>
<u>Unit 2 1998 Failure to Test MSW only</u> Permit required testing with MSW only. Company commingled msw and medical waste to conduct test for a special permitting request project rather than required testing	<u>Major</u> Major Source fails to conduct test	<u>(\$8,000)</u> Test not conducted or >60 days late		<u>(\$8,600)</u> History of Noncompliance 2 violation/5 years \$7,000 Eco Ben saved cost of test	<u>(\$16,600)</u>
<u>PLUS Department cost</u> <u>3,450</u>					
		\$48,000	\$60,650	\$8,600	\$120,700

XC: CLAIR
AL

Kennedy, Pat

From: Vielhauer, Trina
Sent: Friday, January 26, 2001 9:25 AM
To: Green, Kirby
Cc: Garfein, Vivian; Rhodes, Howard
Subject: Response letter from Mary Smallwood

1/26

I received a letter from Mary Smallwood yesterday in response to my earlier letter. I am forwarding it to all of you as it raises some interesting issues. I will be giving her a call later today to try to clarify and answer her questions.

Thanks and have a good weekend.

Trina

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To: Vivian Garfein
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From: Trina Vielhauer
Assistant General Counsel

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Fax: (850) 488-2439

Pages: 3 Pages Including Cover **Date:** January 26, 2001

RE: Ogden response letter

Comments:

FYI: I received this yesterday from Mary in response to my letter. I am forwarding a copy to Kirby also.

Original WILL follow VIA United States Postal Service

Federal Express

Original will NOT follow



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January 25, 2001

Via Facsimile

Trina Vielhauer, Esquire
Office of General Counsel
Department of Environmental Protection
3900 Commonwealth Blvd, M.S. 35
Tallahassee, FL 32399-3000

Re: DEP v. NRG Recovery Group, Inc.
OGC Case No. 00-1162

Dear Trina:

Thank you for your letter of January 24, 2001, regarding the ongoing discussions between the Department and Ogden Martin Systems of Lake, Inc. to resolve potential enforcement action by the Department. I appreciate your efforts in setting out the verbal conversations in writing for us, particularly since there has been some confusion in the past. It is our desire to provide the Department with the type of information that it would find most helpful in evaluating the situation. With that in mind, I would like to clarify some of the statements in your letter.

1. **Penalty Counterproposal** – It is Ogden's intent to provide you with a specific counterproposal for a penalty assessment in the enforcement action which will be based on prior substantive comments the company has made in writing on the penalty matrix. I would note that the ultimate penalty agreed to should take into consideration other actions taken by Ogden to resolve this matter, including, but not limited to, the possible involvement of the Lake County facility in any pending study by the U.S. Environmental Protection Agency (EPA) of continuous mercury monitors.

2. **Use of Lake County Facility as Test Site** – At our January 22 meeting, it was suggested that Ogden would be willing to investigate the possibility of offering EPA the option of installing and testing continuous monitoring equipment at the Lake County facility in conjunction with what we understand to be an pending EPA study. As I mentioned to you in our telephone call on January 23, we are trying to reach the appropriate staff at EPA to determine (1) whether that agency is still looking for industry participants, and, if so, (2) what type of participation would be expected or required. Obviously, Ogden would have to consider the various impacts of participation, including direct and indirect financial costs and effects on the

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Trina Vielhauer, Esquire
January 25, 2001
Page 2

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daily operation of the facility. We have not yet heard back from EPA on that issue but will continue to research that option. I am not clear about the second part of your request, however, that we provide an alternative proposal if participation in the EPA study is not feasible. It would be helpful to us if you would be more specific with respect to your expectations. For example, do you see the alternative proposal tied specifically to the amount of the penalty?

3. Feasibility of Continuous Monitoring Devices - I appreciate your comments with respect to the type of information the Department is seeking from Ogden on continuous mercury monitoring devices, but it seemed to be somewhat inconsistent with my understanding when we met with you and Kirby Green on January 22. We are actively trying to compile manufacturer data on devices that are presently available, with a focus on those that we understand will be evaluated by EPA in its study. To the extent possible in the short timeframe available, we will give information on equipment, operating and maintenance and other costs of such devices. However, I did not understand that the Department wanted Ogden's "analysis" of that information. Rather, I thought you wished to do your own analysis. Presumably, such an analysis is also part of the EPA study. In addition, and just as significant, we are unclear about how Ogden could effectively evaluate whether the monitoring systems would "address the Department's concerns related to mercury emissions." Please understand that we are not trying to be obstructionist; however, we do not want there to be a misunderstanding that results in the Department being dissatisfied with our submission yet again.

With respect to the EPA study, we are continuing to compile information as quickly as possible. Based on our inquiries, we understand that the scope of the initial pilot scale testing has been reduced since several vendors independently determined that their equipment was not ready to be tested. It appears, however, that there are still three vendors involved in the first phase of the testing, one from the United States, one from Great Britain and one from Japan. We have tried to initiate contacts with the overseas vendors, but that may take longer than getting information from the American vendor. At this point, I not clear how this new development will affect the second phase of testing on representative operating facilities.

We look forward to continuing to work with you on this project. In light of the time constraints in responding to your request, I anticipate that you may well have further questions about the information we are able to provide to you next week. I would suggest that a technical staff discussion in follow-up to our correspondence might be helpful.

Sincerely,

RUDEN, McCLOSKEY, SMITH,
SCHUSTER & RUSSELL, P.A.



Mary F. Smallwood

MFS/

cc: Nancy Tammi