STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF GENERAL COUNSEL

3900 Commonwealth Boulevard, M.S. 35
Marjory Stoneman Douglas Building
Tallahassee, Florida 32399-3000

FACSIMILE TRANSMITTAL

To: Len Kozlov; Caroline Shine; Garry Kuberski; John Turner
Vivian Garfein
Howard Rhodes

Fax: CFD
Air-Magnolia

From: Trina Vielhauer
Assistant General Counsel

Phone: (850) 921-8875

Fax: (850) 488-2439

Pages: 21 Pages Including Cover **Date: April 9, 2001**

RE: Ogden Martin/Covanta Energy

Comments:

Original WILL follow VIA ☒ United States Postal Service
☐ Federal Express

Original will NOT follow ☐

Permit File Scanning Request from Elizabeth

Priority: ☐-ASAP (Public Records Request, etc.) ☒-Place in Normal Scanning Queue

Facility ID	Project#	Type	PSD #	Submittal Date	Batch #
0690046	021	AV			

☒ File Approved For Disposal ☒ Correspondence ☐ Intent ☐ Permit ☐ Draft

☐ Return File to BAR ☐ Amendment ☐ Application ☒ OGC ☐ Proposed

Document Date 4/9/01

Nancy D. Tammi
Vice President
Assistant General Counsel

Covanta Energy Group, Inc.
A Covanta Energy Company
40 Lane Road
Fairfield, NJ 07004
Tel 973 882 7205
Fax 973 882 7357

COVANTA
ENERGY

April 6, 2001

VIA U.P.S. NEXT DAY AIR

Trina L. Vielhauer, Esq.
Assistant General Counsel
Florida Department of Environmental Protection
Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, FL 32399-3000

Re: DEP v. Covanta Lake, Inc., OGC Case No. 00-1162

Dear Trina:

Enclosed for your review and consideration in preparation for our April 10th meeting are the comments of Covanta Lake, Inc. (formerly NRG/Recovery Group, Inc.) with respect to the draft Consent Order that you provided to our counsel, Mary F. Smallwood, Esq. We have endeavored to provide a detailed markup that reflects our continuing concern regarding certain of the legal positions being taken by the Department of Environmental Protection. We have also noted issues/questions for further exploration. Notwithstanding our rather extensive commentary, we found the draft Consent Order to be a workable template for further productive discussion towards a mutually-acceptable final Consent Order.

As you will see, there are a number of substantive issues that remain in need of further discussion, including, but not limited to: the "Subpart Cb" applicability issue; the biomedical waste "de-rate" issue and associated testing issues; and the Department's expectations with respect to the plan to reduce tube failures and associated carbon monoxide emissions. The legal issues in particular dovetail into further discussion of the proposed penalty amount, which we also wish to pursue at our meeting next week.

Also in need of further discussion and "fine tuning" are the triggers for certain payments or submissions (existing paragraphs 23 through 25) and the need for a Dispute Resolution mechanism in the event of disagreement between Covanta Lake and Department representatives with respect to the implementation/satisfaction of Consent Order requirements.

Finally, I enclose for your review and use, in response to your note in paragraph 16 of the draft Consent Order, the report for the February 1999 mercury emissions tests conducted at the Facility.

If you have any questions about the enclosed in advance of our meeting, please feel free to contact Mary Smallwood, or you may contact me at the number above. I look forward to our discussion on Tuesday.

Sincerely yours,

Nancy D. Tammi

Nancy D. Tammi

cc: Mary F. Smallwood, Esq.

Covanta Lake edit 4/5/01

DEP CERTIFIED MAIL NO.:

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION Complainant,	)	IN THE OFFICE OF THE CENTRAL DISTRICT
vs. COVANTA LAKE, INC. ~~NRG/RECOVERY GROUP, INC.~~ Respondent.	)	OGC FILE NO: 00-1162 New name effective 2/14/01 ✓

CONSENT ORDER

This Consent Order is entered into between the State of Florida Department of Environmental Protection ("Department") and Covanta Lake, Inc. (Formerly NRG/Recovery Group, Inc., c/o Ogden Martin Systems, Inc., d/b/a Ogden Martin Systems of Lake, Inc.) ("Respondent"), to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and the Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes, and the rules promulgated

I'm not agree w/ biomed

boxed biological not biomedical

On February 19, 1988, the Department issued Permit AC 55-111379/PSD-FL-113 (PSD Permit) to Respondent to construct the Facility. The PSD Permit, as amended, limits the maximum individual municipal waste combustor throughput for all fuels (municipal solid waste (including biomedical waste), wood chips, and other wastes) to 288 tons per day per Unit and 69000 pounds steam per hour (3 hour avg)

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"). On January 29, 1992, the Department issued the Permit AO35-193817 ("AO Permit") to the Respondent to operate the Facility. On April 14, 1995, the Department issued Permit AC35-264176 ("AC Permit") to the Respondent to construct the Facility's activated carbon storage silo. The AO Permit limits Unit 1 to incinerate biomedical waste at a rate of 2.15 tons per hour and 288 tons per day municipal solid waste. The AO Permit limits Unit 2 to the incineration of municipal solid waste; Unit 2 is not permitted to burn biomedical waste.

limiting Unit 1 to 1.12 tons/hr.

process (51.6 tons per day) , as amended, does not authorize the processing of biomedical waste in Unit 2.

4. The Facility uses post-combustion control equipment designed to remove mercury from flue gases. The Department mercury emissions standards for the Facility were 70 micrograms per dry standard cubic meter ("ug/dscm") of flue gas, corrected to 7 percent O_2, 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. The Federal limitations of mercury emissions are 80 ug/dscm or 85% reduction.

At all times relevant to matters at issue in this Consent Order, applicable to Florida Administrative Code Rule 62-296.496(3)(a)(1); AC Permit, Specific Condition 3.C.

NOTE: Covanta Hake continues to dispute Cb applicability, as per the attached documents and our prior submissions to DEP on this issue.

while continuing to limit the total maximum throughput of the Unit to 288 tons per day and 69000 pounds per hour steam (3 hour avg.).

5. During the period of January 27 through January 29, 1998, the Respondent conducted its annual tests to demonstrate compliance with the current AO Permit and AC Permit conditions. Units 1 and 2 were tested for mercury emissions as well as other air pollutants listed in the permits. ~~The units were required to be tested at 90-100% of the permitted capacities.~~

NOTE: See below re: capacity issue, which continues to be a point of dispute

6. The Respondent contacted the Department on or near February 29, 1998 and advised that both Units 1 and 2 mercury tests referenced in Paragraph 5 of this Consent Order ~~failed to meet the Department~~ demonstrated emissions in excess of applicable and Federal mercury limitations. The Department received the report of the tests on March 11, 1998. The Department reviewed the test reports and confirmed the mercury emission ~~failures~~ exceedances.

7. ~~The test reports indicated that 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. Because the Respondent did not test at 90-100% of the permitted capacity, it was required to limit subsequent emissions unit operation to 110 percent of the tested rate until a new test was conducted. The Respondent did not limit its operation rate following the January 1998 tests and did not retest Unit 1 until April 23, 1998. The Respondent's failure to limit the subsequent operation rate is a violation of Florida Administrative Code Rule 62-297.310(2).~~

NEED TO DISCUSS

NOTE: This allegation remains in dispute re: legal basis, as do similar allegation below for other test dates

8. The test report indicated that during the January 1998 tests, Unit 1 mercury emissions were 202 ug/dscm with 28% reduction, while ~~processing co-mingled~~ at a mercury emissions rate biomedical and municipal waste. The Respondent's operation of Unit 1 above 70 micrograms per dry standard cubic meter or ~~85%~~ 80% reduction is a violation of Florida

NOTE: The 85% reduction standard only comes into play when Cb becomes applicable, and thus didn't apply for 98 and 99 tests at issue herein.

Administrative Code Rule 62-296.416 ~~(1) and~~ (3)(a)(1), AC Permit, Specific Condition 3.c., ~~and 40 Code of Federal Regulation ("CFR"), Part 60, Subpart Cb.~~

9. The test report indicated that during the January 1998 tests, ~~Unit 2 was tested at 91% of its permitted capacity of municipal solid waste.~~ The mercury emissions for Unit 2 were 103 ug/dscm with ~~46%~~ reduction. The Respondent's operation of Unit 2 above 70 ug/dscm or ~~85%~~ reduction is a violation of Florida Administrative Code Rule 62-296.416 ~~(1) and~~ (3)(a)(1), AC Permit, Specific Condition 3.c., ~~and 40 CFR, Part 60, Subpart Cb.~~

10. The Respondent conducted internal, engineering tests in March of 1998 during which both Unit 1 and Unit 2 met the mercury emissions limits and the percent reduction requirements.

11. The Respondent re-tested Unit 1 only on April 23, 1998 ~~at 52% of its permitted capacity of biomedical waste and 92% of its permitted capacity of its municipal waste~~. The mercury emission during this test was 81.8 ug/dscm, but passed the test because the reduction rate was 88%. ~~The Respondent informed the Department that the test was conducted at 52% of the permitted capacity because it did not have a sufficient quantity of medical waste because of previous special testing activities. Because Unit 1 was not tested at 90-100% of its permitted capacity, the Respondent should have then limited its process rate for biomedical waste to 1.2 tons/hour. The Respondent's records indicated the Respondent continued to operate at a biomedical waste process rate in excess of 1.2 tons/hour through April 30, 1999.~~

~~The Respondent's failure to limit the biomedical waste process rate is violation of Florida Administrative Code Rule 62-297.310(2).~~

12. The Respondent ~~conducted a special test of~~ re-tested Unit 2 during the period of April 20-21, 1998 ~~to obtain a permit modification to allow incineration of both biomedical and municipal waste. The test results for co-firing biomedical waste indicated~~ that the Unit 2 mercury emissions were 16 ug/dscm and 97.9 percent reduction. ~~The Respondent did not conduct a re-test of Unit 2 incinerating only municipal solid waste to demonstrate compliance with the AO permit. Prior to this time, the Respondent's last compliance demonstration of Unit 2, incinerating only municipal solid waste in accordance with its permit, was conducted in January 1997. The Respondent's failure to demonstrate compliance of Unit 2 with the AO permit is a violation of Florida Administrative Code Rule 62-296.416(3)(a)(2).~~

NOTE: See ¶ 7, above

13. The Respondent conducted its 1999 annual compliance tests, including the mercury tests, during the period of January 26 through 28, 1999. The Respondent's representative contacted the Department by phone on February 27, 1999 and advised that the mercury tests ~~failed~~ exceeded applicable limits for both Units 1 and 2. The report of the test results was received on March 12, 1999.

14. The test report indicated that during the January 1999 tests, Unit 1 mercury emissions were 2994 ug/dscm with 33% reduction ~~while processing biomedical and municipal waste.~~ The Respondent's operation of Unit 1 at a mercury emissions level above 70 ug/dscm or ~~85%~~ 80 reduction is a violation of Florida Administrative Code Rule 62-296.416 ~~(1) and~~ (3)(a)(1) and AC Permit, Specific Condition 3.c. ~~and 40 CFR, Part 60, Subpart Cb.~~

15. The test report indicated that during the January 1999 tests, Unit 2 mercury emissions were 258 ug/dscm with 65% reduction while processing municipal waste. The Respondent's operation of Unit 2 above 70 ug/dscm or 85% reduction is a violation Florida Administrative Code Rule 62-296.416(1) and (3)(a)(1); AC Permit, Specific Condition 3.c.; and, 40 CFR, Part 60, Subpart Cb.

16. The Respondent conducted internal, engineering tests in February 1999 during which both Unit 1 and Unit 2 met the mercury emissions limits and the percent reduction requirements. *[The Department must receive Respondent's February 1999 internal reference method test results demonstrating compliance]*

17. The Respondent began retesting Unit 2 on April 22, 1999. The Respondent advised the Department's test observer that the Respondent found thermometers on the tipping floor that morning; therefore, material was not processed during the test. The Unit 1 re-test was delayed because of the cleanup of the tipping floor. Unit 1 was not re-tested until June 3, 1999.

18. The test report indicated that Unit 2 passed the April 1999 tests, with 4 ug/dscm mercury emission and 94% reduction.

19. The Respondent conducted the re-test of Unit 1 on June 3, 1999. The test report indicated that Unit 2 passed the tests with 25 ug/dscm mercury emission and 95% reduction.

20. The Department informed Respondent of the Respondent's violations of Chapter 403, Florida Statutes, and applicable Department Rules in Warning Letter OWL-AP-99-413, dated June 15, 1999.

INSERT 6

INSERT 6

COVANTA LAKE COMMENTS ON DRAFT CONSENT ORDER

(Insert new paragraphs after existing paragraph 20)

#. On July 15, 1999, Respondent provided a detailed written response in opposition to the allegations in the June 15, 1999 Warning Letter. On November 17, 1999, Respondent provided additional comments in response to that Warning Letter and the Department's proposed administrative penalty assessment.

#. 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.

#. On June 1, 2000, Respondent submitted a written response in opposition to the allegations in the May 15, 2000 Warning Letter, and also provided documentation requested by the Department.

21. From at least April 19, 1999 through present, there have been at least seven boiler tube ruptures at Defendant's facility causing excess carbon monoxide emissions.

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

ORDERED:

23. Respondent agrees to pay the Department a civil penalty of one hundred twenty thousand, seven hundred dollars ($120,700) in settlement of the matters addressed in this Consent Order. Payment shall be made by cashier's check or money order. 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. Respondent may choose to use its best efforts to secure pilot project site status for phase 2 of USEPA's mercury CEMS pilot project. If Respondent chooses this option, Respondent shall submit a letter to the Department's Central District Office within ten days of the Consent Order indicating this option has been elected.

i. In the event Respondent is not chosen by USEPA as a phase 2 mercury CEMS pilot project site, the civil penalty payment shall be due in full thirty days from the date USEPA announces its pilot project test site(s); or

NOTE:
Until such time that we'd see an EPA test program protocol, it's hard to say "when" EPA project would objectively be said to be "done"

ii. in the event Respondent is chosen by USEPA as a phase II verification test mercury CEMS ~~pilot project~~ site, the civil penalty payment shall be due in full thirty days from the date ~~of the last test run~~ that Phase 2 verification testing at Respondent's Facility is completed.

1. Respondent shall provide a copy of all data, analyses and studies obtained from USEPA's ~~pilot~~ Phase 2 verification test project to the Department's Central District Office unless prohibited from doing so by USEPA. The Department agrees that ~~will not use the~~ data, analyses, and studies resulting from the USEPA mercury CEMS pilot project ~~on a basis~~ shall not be used as a basis for, or admissible as evidence in, ~~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 USEPA's mercury CEMS ~~pilot~~ verification test project ~~site status~~ from the civil penalty. Documentation of such ~~operation and maintenance~~ 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 USEPA's mercury CEMS ~~pilot project test site status~~ verification tests. Documentation shall be submitted to the Department's Central District Office within seven days of incurring such costs or expenses; or

NOTE:
We need to discuss "dispute resolution" in event C.D. Office "rejects" costs Colorado Lake believed to be legitimate

NOTE
We need to discuss whether this works... eg, do you really want timesheets on a daily/weekly basis?

b. Respondent may choose not to pursue ~~pilot~~ project site status for phase II verification test of USEPA's mercury CEMS ~~pilot~~ project. Respondent shall submit a letter to the

Need to find a workable schedule.

effective date of this

Department's Central District Office within ten days of the Consent Order indicating this option has been elected. The civil penalty shall be due in full within thirty days of the effective date date of the Consent Order except as set forth in 23cii, below.

c. In addition to either a or b above, Respondent may pursue in-kind penalty projects 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. Proposed in-kind penalty project proposals ("proposal") must be submitted to the Department's Central District Office by the following dates:

i. if Respondent selects the option in subsection a above, on or before May 30, 2001 or

ii. if Respondent selects the option in subsection b above, within 10 days of the effective date of the Consent Order. The Respondent's submittal of a proposal will extend the civil penalty due date established in subsection b, above, until May 30, 2001.

NOTE: whether this date works will depend on how quickly we get this Order finalized

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. In the event the Department rejects the new proposal, the

Respondent shall make the cash civil penalty payment according to either subsection a, above or subsection cii, above whichever is applicable.

24. Within 30 days of the effective date of this Consent Order the Respondent shall submit to the Department for approval a plan to reduce carbon monoxide exceedences 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.

NOTE: Need to discuss DEP expectations and also what happens in event of dispute re: adequacy of Plan

25. 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 23 or 24 of this Consent Order. A separate stipulated penalty shall be assessed for each violation of paragraphs 23 or 24 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

Again, we need to discuss dispute resolution

A unilateral demand w/no recourse not acceptable

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 23 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.

26. 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:

COVANTA LAKE INC. (FORMERLY)

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 NRG/Recovery Group, Inc. pursuant to Section 120.57(4), Florida Statutes. The Consent Order addresses the air 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 Florida District, 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 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.

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

NOTE: Last numbered ¶ above was 36 – should this follow in sequence?

32. 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.

33. Respondent are 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. The provisions of this Consent Order shall apply to and be binding upon the parties, their officers, their directors, agents, servants, employees, successors, and

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.

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.

39. 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.

40. In the event of a ~~sale~~ 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 ~~sale or conveyance~~ change in ownership or control of the property or Facility, (1) notify the Department of such ~~sale or conveyance~~ 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. The ~~sale or conveyance~~ 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. or operator or person(s) in control.

41. 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.

42. 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:

~~NRG/Recovery Group, Inc.~~ Covanta Lake, Inc. Date
~~Gary K. Crane, Ph. D., Executive Vice President~~
~~Ogden Martin Systems of Lake, Inc.~~
~~40 Lane Road~~
~~Fairfield, N. J. 07007-2615~~

(NOTE: Signatory to be identified / Insert complete signature block w/ correct address)

Done and ordered this _____ day of _____, 2001 in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Vivian F. Garfein
Director of District Management
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 Date

cc: Larry Morgan