



Florida Department Of Environmental Protection

Northeast District
8800 Baymeadows Way West, Suite 100
Jacksonville, Florida 32256

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

October 5, 2021

Dann Ocean Towing, Inc.
Stephen Dann
3670 S. Westshore Boulevard
Tampa, Florida 33629
stephend@dannoceantowing.com

Moran Towing Corporation
Alan Marchisotto
50 Locust Avenue
New Canaan, 06840
Alanm@morantug.com

AES Puerto Rico, LP
Jesus Bolinaga, Market Business Leader
Post Office Box 1890
Guayama, Puerto Rico 00785
Jesus.Bolinaga@aes.com

SUBJECT: Department of Environmental Protection v. Dann Ocean Towing, Inc., Moran Towing Corporation, AES Puerto Rico, LP
OGC File No. 21-1009
Warning Letter No. WL21-149 - ERP Site ID: 406599
Duval County – State Lands and Environmental Resources Program

Dear Messrs. Dann, Marchisotto and Bolinaga,

Enclosed is a copy of the executed Consent Order to resolve Case Number 21-1009.

The effective date of this Order is October 4, 2021, and all time frames will be referenced from this date.

As a reminder, a Consent Order is a binding legal document and was voluntarily entered into by both parties.

Should you have any questions concerning the Consent Order, please contact me via email at Jim.Maher@FloridaDEP.gov, or by phone at (904) 256-1650. Your continued cooperation in the matter is appreciated.

Sincerely,

A handwritten signature in blue ink that reads "James R. Maher".

James R. Maher, PE
Assistant Director

Enclosure: Executed Consent Order

cc: FDEP-OGC: Lea Crandall, Agency Clerk
FDEP-NED: Arlene Wilkinson, DEP_NED



FLORIDA DEPARTMENT OF Environmental Protection

Northeast District
8800 Baymeadows Way West, Suite 100
Jacksonville, Florida 32256

Ron DeSantis
Governor

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September 24, 2021

Dann Ocean Towing, Inc.
Stephen Dann
3670 S. Westshore Boulevard
Tampa, Florida 33629
stephend@dannoceantowing.com

Moran Towing Corporation
Alan Marchisotto
50 Locust Avenue
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Duval County – State Lands and Environmental Resources Program

Dear Messrs. Dann, Marchisotto and Bolinaga,

The State of Florida Department of Environmental Protection (“Department”) found (and Respondents dispute) that the Respondents Dann Ocean Towing, Inc., Moran Towing Corporation, and AES Puerto Rico, LP (“Respondents”) are in violation of Section 403.708(1)(a), Florida Statutes (Fla. Stat.), and Rules 62-330.020(2)(a), 62-701.300(1)(a), 62-701.300(2)(d) and 18-14.003(5), Florida Administrative Code (Fla. Admin. Code), which prohibits the deposit and/or disposal of solid waste in or upon the land or any body of water or wetlands located within the state without the approval of the Department, and the disposal of solid waste at an unauthorized location on sovereign submerged lands. Our understanding is that the coal combustion residuals (CCR) released was generated by AES Puerto Rico, LP, transported on a barge owned by Moran Towing Corporation, and towed by Dann Ocean Towing, Inc.

The Department further finds that the violations are not continuing and did not cause adverse effects to the environment that required further corrective action beyond natural attenuation. The Department has not issued a Notice of Violation in this proceeding for the allegations enumerated herein and in the above-referenced Warning Letter.

Before sending this letter, the Department requested that the Respondent undertake certain actions to resolve the violations. These actions have since been completed. However, the Department, due to the nature of the violations, has assessed certain civil penalties and costs in connection with this matter. The Department acknowledges that the payment of these civil penalties is a compromise of a disputed claim as set forth in the Respondents' position below.

Respondents' Position

Neither this letter nor actions taken hereunder shall constitute an admission by the Respondents, collectively or individually, of any fact, legal conclusion, or liability regarding any of the events leading up to the signing of the letter, including but not limited to, the events described in the Warning Letter referenced above or this letter. Accordingly, the Respondents do not admit, by signing this letter or otherwise, that they have violated any statute or rule referenced thereunder and do not admit liability or fault under any statutory or common law. Except as provided in Respondents' Acceptance sections (2) and (3) below, the Respondents specifically reserve the right to contest any determinations, allegations, findings and conclusions in any administrative or judicial proceeding regarding the events described in the Warning Letter referenced above or this letter, or in any other proceeding or forum. The Respondents are entering into this letter, without a Notice of Violation having to be issued, to enable this matter to be resolved without resorting to litigation, which could delay such resolution.

The Department's Offer

Based on the violations described above, the Department is seeking \$37,500.00 in civil penalties and \$1,000.00 for certain costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$38,500.00. The civil penalties are apportioned as follows: \$7,500.00 for violation of Sections 258.42 and 258.46, Fla. Stat., and \$30,000.00 for violation of Sections 403.141 and 403.161.

Respondents' Acceptance

If you wish to accept this offer and fully resolve this pending enforcement matter, please sign this letter and return it to the Department at 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida, 32256, within 7 days of receipt of this offer. The Department will then countersign it and file it with a designated clerk of the Department. Once the document is filed with the designated clerk, it will constitute a final order of the Department pursuant to Section 120.52(7), Fla. Stat., and will be effective unless a request for an administrative hearing is filed by a third party in accordance with Chapter 120, Fla. Stat., and the attached Notice of Rights.

By accepting this offer Respondents:

- (1) certify that Stephen Dann, Alan Marchisotto, and Jesus Bolinaga are authorized and empowered to negotiate, enter into, and accept the terms of this offer in the name and on behalf of the respective Respondents;
- (2) acknowledge and waive Respondents' right to an administrative hearing pursuant to Sections 120.569 and 120.57, Fla. Stat., on the terms of this offer, once final, but Respondents do not waive any rights pertaining to the Department's enforcement of any matter not addressed in this offer; and
- (3) acknowledge and waive Respondents' right to an appeal pursuant to Section 120.68, Fla. Stat., but Respondents do not waive any rights pertaining to the Department's enforcement of any matter not addressed in this offer.

The Department acknowledges that the Respondents' acceptance of this offer is consistent with the Respondents' position set forth above.

Respondents' Performance

After signing and returning this document to the Department,

- (1) The Department must receive payment in full of \$38,500.00 in civil penalties and costs within 30 days of the effective date of the Order.
- (2) Payments required by this Order shall be by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the Facility number assigned to this Order and the notation "'Water Quality Assurance Trust Fund.'" Online payments by e-check can be made by going to the DEP Business Portal at: <http://www.fldepportal.com/go/pay/> . It will take several days after this order is final, effective and filed with the Clerk of the Department before ability to make online payment is available.
- (3) Respondents shall publish the attached Notice of Rights in a newspaper of daily circulation in Duval County, Florida. The notice shall be published one time only within 10 days after the effective date of the Order by the Department.
- (4) Upon the Department's receipt of the payment of \$38,500.00, the Department shall (i) deem Respondents to have fully performed, complied with, and satisfied the terms of this offer, (ii) release Respondents from the Order, and (iii) subsequently close the instant matter as to Respondents.

The Department may enforce the terms of this document, once final, and seek to collect monies owed pursuant to Sections 120.69 and 403.121, Fla. Stat.


Until clerked by the Department, this letter is only a settlement offer and not a final agency action. Consequently, neither you nor any other party may request an administrative hearing to contest this letter pursuant to Chapter 120, Fla. Stat. Once this letter is clerked and becomes a final order of the Department, as explained above, the attached Notice of Rights will apply to parties, other than you, whose interests will be substantially affected.

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

Please be aware that if you decline to respond to the Department's offer, the Department will assume that you are not interested in resolving the matter and will proceed accordingly.

If you have any questions, please contact James Maher, at (904) 256-1650, or via e-mail at Jim.Maher@FloridaDEP.gov.

Sincerely,



James R. Maher, P.E.
Assistant Director

FOR THE RESPONDENT DANN OCEAN TOWING, INC.:

I, STEPHEN W. DANN [Type or Print Name], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By:  [Signature] Date: 9/23/21

Title: PRESIDENT

FOR THE RESPONDENT MORAN TOWING CORPORATION:

I, _____ [Type or Print Name], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: _____ [Signature] Date: _____

Title: _____

FOR THE RESPONDENT AES PUERTO RICO, LP:

I, _____ [Type or Print Name], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: _____ [Signature] Date: _____

Title: _____

FOR THE RESPONDENT DANN OCEAN TOWING, INC.:

I, _____ [Type or Print Name], **HEREBY ACCEPT**
THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.

By: _____ Date: _____
[Signature]

Title: _____

FOR THE RESPONDENT MORAN TOWING CORPORATION:

I, ALAN PARENISOTTO [Type or Print Name], **HEREBY ACCEPT**
THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.

By: Alan Parenisotto Date: 9.28.2021
[Signature]

Title: VP/GC

FOR THE RESPONDENT AES PUERTO RICO, LP:

I, _____ [Type or Print Name], **HEREBY ACCEPT**
THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.

By: _____ Date: _____
[Signature]

Title: _____

FOR THE RESPONDENT DANN OCEAN TOWING, INC.:

I, _____ [Type or Print Name], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: _____ Date: _____
[Signature]

Title: _____

FOR THE RESPONDENT MORAN TOWING CORPORATION:

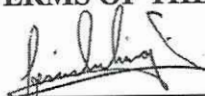
I, _____ [Type or Print Name], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

By: _____ Date: _____
[Signature]

Title: _____

FOR THE RESPONDENT AES PUERTO RICO, LP:

I, Jesus Bolinaga _____ [Type or Print Name], **HEREBY ACCEPT THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.**

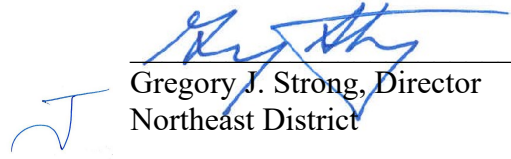
By:  _____ Date: Sep 30, 2021
[Signature]

Title: President

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this 4th day of October 2021, in Duval County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Gregory J. Strong, Director
Northeast District

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



Clerk

October 4, 2021

Date

Attachments: Notice of Rights

Copies furnished to:

FDEP-OGC: Lea Crandall, Ron Hoenstine
FDEP-NED: Matt Harris, Matthew Kershner, Arlene Wilkinson, Joni Petry
George Gramling - george@gramlinglaw.com
Bill Preston - bill@wprestonpa.com
David McCreadie - dmccreadie@laulane.com
Danna Walsh - dwalsh@laulane.com
Jim Moseley - jmoseleyjr@mppkj.com
Timothy Webster - twebster@sidley.com

NOTICE OF RIGHTS

The State of Florida Department of Environmental Protection gives notice of agency action of entering into an Order with Dann Ocean Towing, Inc., Moran Towing Corporation, and AES Puerto Rico, LP pursuant to Section 120.57(4), Florida Statutes, in OGC File No: 21-1009, ERP Site ID: 406599.

Persons who are not parties to this Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Order means that the Department's final action may be different from the position it has taken in the Order.

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

- a) The OGC Number assigned to this Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Order;
- d) A statement of when and how the petitioner received notice of the Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Order.

The petition 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 this notice. A copy of the petition must also be mailed at the time of filing to the District Office at the address indicated above. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under Sections 120.569 and 120.57, Florida Statutes. Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.