



Department of Environmental Protection

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MAY 3 2004

Hazardous Waste Regulation

Jeb Bush
Governor

MAY 3 - 2004

Southeast District
400 N. Congress Ave. Suite 200
West Palm Beach, Florida 33401

Colleen M. Castille
Secretary

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Mr. Judd Gilbert, President
Petroleum Management, Inc.
2191 SW 115th Terrace
Davie, FL 33325

Subject: Petroleum Management, Inc., 3650 SW 47th Avenue, Davie, Broward County, Florida
33325 EPA I.D. Number: FLD980709075; OGC File No. 04-0381

Dear Mr. Gilbert:

Attached is a Notice of Violation (NOV) issued by the Department in the above-referenced case. The NOV addresses allegations of violations of Florida Statutes and Department rules which have occurred on your property.

An administrative resolution of this matter must address the issues raised herein, recommended corrective actions, and an appropriate monetary settlement. In accordance with Section 403.121, Florida Statutes, the Department has calculated an appropriate settlement penalty in the amount of \$10,000.00 plus \$500.00 for costs and expenses for a total of \$10,500.00.

The NOV's Notice of Rights sections explains what recourse you as the property owner have concerning resolution of the allegations contained in the attached NOV. Please read that section carefully.

Should you have any questions or wish to negotiate a resolution of this NOV, please call Mr. Stephen E. Brown at 561/681-6722.

Thank you for your cooperation in this matter.

Sincerely,

John F. Moulton, III
Assistant Director of District Management
Florida Department of Environmental Protection
Southeast District Office

4/28/04
Date

JFM/PAW/KW/sb

SR

cc: West Palm Beach DEP File

Larry Morgan, Office of General Counsel

Laurie Benton DiGaetano

Al Gomez, BDPEP

Bill Parker, MS #4560

Waste Management
"More Protection, Less Process"

**BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

IN THE OFFICE OF THE
SOUTHEAST DISTRICT

Complainant,

v.

OGC File No. 04-0381

PETROLEUM MANAGEMENT, INC.
and JUDD GILBERT,

Respondents.

**NOTICE OF VIOLATION, ORDERS FOR CORRECTIVE ACTION,
AND ADMINISTRATIVE PENALTY ASSESSMENT**

To: Mr. Judd Gilbert, President
Petroleum Management, Inc.
2191 SW 115th Terrace
Davie, Florida 33325-4855

Certified Return Receipt No. 7002 0860 0006 870 7139

Pursuant to the authority of Section 403.121(2), Florida Statutes ("Fla. Stat."), the State of Florida Department of Environmental Protection ("Department") gives notice to Judd Gilbert and Petroleum Management, Inc. (collectively referred to as "Respondents") of the following findings of fact and conclusions of law with respect to violations of Chapters 376 and 403, Fla. Stat., and Chapter 62-710, Florida Administrative Code ("Fla. Admin. Code").

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FINDINGS OF FACT
PARAGRAPHS APPLICABLE TO ALL COUNTS

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 Chapters 376 and 403, Fla. Stat., and the rules promulgated thereunder in Title 62 Florida Administrative Code. To ensure the required consistency between the state and federal used oil programs, the texts of relevant provisions of Title 40 Code of Federal Regulations ("C.F.R.") Part 279, has been adopted by reference in Chapter 62-710, Fla. Admin. Code.

2. Respondent Petroleum Management, Inc. ("PMI") is an active Florida for-profit business, organized under the laws of the State of Florida on or about October 25, 1982, and located at 3650 S.W. 47th Avenue, Davie, Broward County, Florida 33325 ("PMI Facility" or "facility").

3. Respondent Judd Gilbert ("Gilbert") is a natural person who is the President, Director, and on-site manager of Petroleum Management, Inc., and is responsible for managing the facility's overall operations, including environmental compliance issues.

4. On February 9, 2004, the Department conducted a routine compliance evaluation inspection at the PMI Facility in order to determine its compliance status with 40 C.F.R. Parts 260-268 and 279, adopted in Chapters 62-710 and 62-730, Fla. Admin. Code. The Department's inspection revealed an unlabeled container of used oil filters and three unlabeled containers of unknown contents. A roll-off dumpster was observed storing oily wastes over a concrete containment. The containment appeared to be full of used oil. Respondent Gilbert indicated to Department personnel that PMI has been transporting, storing, and processing oily waste for off-site shipment.

5. PMI's used oil processing permit renewal application was due to the Department 60 days prior to its October 13, 2003 expiration. A review of Department records indicate that the application was received on February 4, 2004. Hence, PMI operated a used oil processing facility without a valid permit beginning October 13, 2003.

COUNT I

6. On February 9, 2004, the Department observed PMI operating a solid waste facility without adequate financial assurance documentation.

COUNT II

7. On February 9, 2004, the Department observed an oily waste collection and processing operation at the PMI Facility without a valid solid waste permit.

COUNT III

8. On February 9, 2004, the Department observed PMI operating a used oil processing facility without a valid used oil processing permit.

COUNT IV

9. The Department has incurred expenses to date while investigating this matter in the amount of not less than \$500.00.

CONCLUSIONS OF LAW

The Department has evaluated the Findings of Fact with regard to the requirements of Chapters 376 and 403, Fla. Stat., and Fla. Admin. Code Title 62. Based on the foregoing facts, the Department has made the following conclusions of law:

10. Respondents are each a "person" as defined in Sections 376.301(27), 403.031(5), and 403.75(3), Fla. Stat.

11. The PMI facility and on site maintenance facility includes the handling, management, and disposal of solid wastes, including used oil and used oil filters. Furthermore, used oil and used oil filters are considered “pollutants” within the meaning of Section 376.301(34), Fla. Stat.

12. Respondents PMI and Gilbert are “processors” of used oil within the meaning of Fla. Admin. Code R. 62-710.210(2) [adopting 40 C.F.R. Part 279.1].

13. The Department is imposing an administrative penalty, which is equal to \$10,000.00, in this Notice of Violation, as calculated in accordance with Section 403.121, Fla. Stat.

14. The facts in Count I constitute a violation of Fla. Admin. Code R. 62-701.630, which requires a processor of oily waste to provide adequate financial assurance documentation to the Department. The facts also constitute a violation of Section 403.161(1)(b), Fla. Stat., which makes it a violation to fail to comply with Department Rules.

15. The violation in Count I requires the assessment of administrative penalties under Section 403.121(4)(a), Fla. Stat., of \$5,000.00 for failure to comply with a departmental regulatory statute or rule requirement.

16. The facts in Count II constitute a violation of Fla. Admin. Code R. 62-701.300 which requires anyone who stores, processes, or disposes of solid waste to obtain a permit from the Department. The facts also constitute a violation of Section 403.161, Fla. Stat., which makes it a violation to fail to comply with Department rules.

17. The violation in Count II requires the assessment of administrative penalties under Section 403.121(3)(e), Fla. Stat., of \$2,000.00, for unpermitted or unauthorized disposal or storage of solid waste, plus an additional \$1,000.00 for Class I solid waste.

18. The facts in Count III constitute a violation of Section 403.769(1), Fla. Stat., which requires an owner or operator of a facility which processes used oil to obtain a operation or closure permit from the Department.

19. The violation in Count III requires the assessment of administrative penalties under Section 403.121(3)(e) Stat., of \$2,000.00 for unpermitted or unauthorized disposal or storage of solid waste.

20. The administrative penalties assessed for Counts I, II, and III total \$10,000.00.

21. The costs and expenses related in Count IV are reasonable costs and expenses incurred by the Department while investigating this matter, which are recoverable pursuant to Section 403.141(1), Fla. Stat.

ORDERS FOR CORRECTIVE ACTION

The Department has alleged that the activities related in the Findings of Fact constitute violations of Florida law. The Orders for Corrective Action state what you, Respondents, must do in order to correct and redress the violations alleged in this Notice.

The Department will adopt the Orders for Corrective Action as part of its Final Order in this case unless Respondents either file a timely petition for a formal hearing or informal proceeding, pursuant to Section 403.121(2)(c), Fla. Stat., or file written notice with the Department opting out of this administrative process, pursuant to 403.121(2)(c), Fla. Stat. (See *Notice of Rights* below.) If Respondents fail to comply with the corrective actions ordered by the Final Order, the Department is authorized to file suit seeking judicial enforcement of the Department's Order pursuant to Sections 120.69, 403.121, and 403.131, Fla. Stat.

Pursuant to the authority of Sections 403.061(8) and 403.121, Fla. Stat., the Department proposes to adopt in its *Final Order* in this case the following specific corrective actions that will redress the alleged violations:

22. The corrective actions identified in this section apply to each Respondent.

Liability between Respondents PMI and Gilbert is joint and several. Respondents will be referred to collectively in the sections below.

23. Respondents shall forthwith comply with all Department rules regarding solid waste and used oil management. Respondents shall correct and redress all violations in the time periods required below and shall comply with all applicable rules in Fla. Admin. Code R. 62-710.210(2) [adopting 40 C.F.R. Part 279], and Chapter 62-710, Fla. Admin. Code.

24. **Commencing immediately and henceforth**, Respondents shall obtain proper financial responsibility for the oily waste operation and submit documentation of the same to the Department. Respondents shall comply with all applicable requirements of Chapters 376 and 403, Fla. Stat., Chapters 62-710 and 62-770, Fla. Admin. Code and in the event hazardous constituents are found to be present at the PMI Facility, Respondents shall comply with 40 C.F.R. Part 206-266 and 268, adopted by reference in Chapter 62-730, Fla. Admin. Code.

25. **Commencing immediately and henceforth**, Respondents shall apply for all necessary permit modifications to include processing oily wastes, or cease the oily waste processing operation.

26. **Commencing immediately and henceforth**, Respondents shall apply for all future permit renewals within 60 days of the permit expiration date as required by Fla. Admin. Code R. 62-710.800(7).

27. **Within 30 days of the effective date of this Order**, Respondents shall pay \$10,000.00 to the Department for the administrative penalties imposed above. Payment shall be made by cashier's check or money order payable to the "State of Florida Department of Environmental Protection" and shall include thereon the notations "OGC Case No. 04-0381 and "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the State of Florida Department of Environmental Protection, Southeast District, 400 North Congress Avenue, Suite 200, West Palm Beach, Florida 33401.

28. **Within 30 days of the effective date of this Order**, and in addition to the administrative penalties, Respondents shall pay \$500.00 to the Department for costs and expenses incurred while investigating this matter. Payment shall be made by cashier's check or money order payable to the "State of Florida Department of Environmental Protection" and shall include thereon the notations "OGC Case No. 04-0381" and "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the State of Florida Department of Environmental Protection, Southeast District, 400 North Congress Avenue, Suite 200, West Palm Beach, Florida 33401.

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NOTICE OF RIGHTS

Respondents' rights to negotiate, litigate, or transfer this action are set forth below.

Right to Negotiate

29. This matter may be resolved if the Department and Respondents enter into a Consent Order, in accordance with Section 120.57(4), Fla. Stat., upon such terms and conditions as may be mutually agreeable.

Right to Request a Hearing

30. Respondents have the right to a formal administrative hearing pursuant to Sections 120.569, 120.57(1), and 403.121(2), Fla. Stat., if Respondents dispute issues of material fact raised by this Notice of Violation, Orders for Corrective Action, and Civil Penalty Assessment ("Notice"). At a formal hearing, Respondents will have the opportunity to be represented by counsel, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of fact and orders, and to file exceptions to any order or administrative law judge's recommended order.

31. Respondents have the right to an informal administrative proceeding pursuant to Sections 120.569 and 120.57(2), Fla. Stat., if Respondents do not dispute issues of material fact raised by this Notice. If an informal proceeding is held, Respondents will have the opportunity to be represented by counsel, to present to the agency written or oral evidence in opposition to the Department's proposed action, or to present a written statement challenging the grounds upon which the Department is justifying its proposed action.

32. If Respondents desire a formal hearing or an informal proceeding, Respondents **must** file a written responsive pleading entitled "Petition for Administrative Proceeding" within 20 days of receipt of this Notice. The petition must be in the form required by Fla. Admin. Code

R. 62-110.106 and by Fla. Admin. Code R. 28-106.201 or 28-106.301. A petition is filed when it is received by the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida, 32399-3000. The Department will not entertain a request for extension of time to file a Petition for Administrative Proceeding.

Right to Mediation

33. If Respondents timely file a petition challenging the Notice, the Respondents have the right to mediate the issues raised in the Notice. If requested, a mediator will be appointed to assist the Department and Respondents reach a resolution of some or all of the issues. The mediator is chosen from a list of mediators provided by the Florida Conflict Resolution Consortium ("FCRC"). The FCRC will provide up to eight hours of free mediation services to the Respondents. A mediator cannot require the parties to settle the case. If mediation is unsuccessful, both parties retain their full rights to litigate the issues before an administrative law judge. The Respondents must select the mediator and notify the FCRC within 15 days of receipt of the list of mediators. The mediation process does not interrupt the time frames of the administrative proceedings and the mediation must be completed at least 15 days before the date of the final hearing.

34. The written request to appoint a mediator must be made within 10 days after receipt of the Initial Order from the administrative law judge appointed to hear the case. The request must be received by the Florida Conflict Resolution Consortium, Shaw Building, Suite 132, 2031 E. Paul Dirac Drive, Tallahassee, Florida 32310. Once the request is timely received, the FCRC will provide the parties with a list of mediators and the necessary information.

Right to Opt Out of the Administrative Proceeding

35. If Respondents do not wish to contest the issues before an administrative law

judge, Respondents may file a notice with the Department opting out of the administrative process. Respondents must file their written opt out notice within 20 days after service of the Notice. The written notice to opt out is filed when it is received by the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000.

36. Once the Respondents opt out of the administrative process, the Department may sue the Respondents for injunctive relief, damages, costs and expenses, and civil penalties. If the Respondents opt out of the administrative process, the Department may ask the judge to assess civil penalties in excess of the amounts in this Notice up to \$10,000.00 per day, per violation. The election to opt out of the administrative process is permanent and once the election is made the administrative process cannot be restarted.

Waivers

37. Respondents will waive the right to a formal hearing or an informal proceeding if either:

- a. a petition for a formal hearing or informal proceeding is not filed with the Department within 20 days of receipt of this Notice, or
- b. a notice opting out of the administrative proceeding is not filed with the Department within 20 days of receipt of this Notice.

These time limits may be varied only by written consent of the Department.

General Provisions

38. The Findings of Fact and Conclusions of Law of this Notice together with the Orders for Corrective Action will be adopted by the Department in a Final Order, if Respondents fail to timely file a petition for a formal hearing or informal proceeding, pursuant to Section

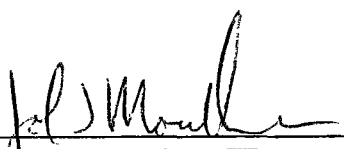
403.121, Fla. Stat. A Final Order will constitute a full and final adjudication of the matters alleged in this Notice.

39. If Respondents fail to comply with the Final Order, the Department is authorized to file suit in circuit court seeking a mandatory injunction to compel compliance with the Order, pursuant to Sections 120.69, 376.303, 403.121, and 403.131, Fla. Stat. The Department may also seek to recover damages, all costs of litigation including reasonable attorney's fees and expert witness fees, and civil penalties of not more than \$10,000 per day for each day that Respondents have failed to comply with the Final Order.

40. Copies of Department rules referenced in this Notice may be examined at any Department Office or may be obtained by written request to the Southeast District Office.

DATED this 3rd day of May, 2004.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


John F. Moulton, III
Assistant Director of District Management
Florida Department of Environmental Protection
Southeast District Office

4/29/04 Date