



**FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

Southeast District Office
400 N. Congress Avenue, 3rd Floor
West Palm Beach, FL 33401-2913

561-681-6600

RICK SCOTT
GOVERNOR

JENNIFER CARROLL
LT. GOVERNOR

HERSCHEL T. VINYARD JR.
SECRETARY

February 5, 2013

Cliff Berry, Sr., Director and Registered Agent
Cliff Berry, Inc.
P.O. Box 13079
Ft. Lauderdale, Florida 33316

Re: Settlement of Department of Environmental Protection vs. Cliff Berry, Inc.
OGC# 12-1703
EPA ID #FLD058560699

Dear Mr. Berry:

Enclosed for your implementation is a copy of the fully executed and filed Consent Order in the above styled case. The compliance dates and terms of this Consent Order have been accomplished in a timely manner.

Thank you for your cooperation in this matter. If you have any questions concerning this matter, please contact Kathy Winston at 561/681-6756.

Sincerely,

02-05-13

Jill S. Creech, P.E.

Date

Southeast District Director

Cc: Electronic Archboard/OCULUS
Lea Crandall, OGC, DEP Tallahassee (MS#35)
Shirley Richards, SED



**FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

Southeast District Office
400 North Congress Avenue, 3rd Floor
West Palm Beach, FL 33401
561-681-6600

RICK SCOTT
GOVERNOR

JENNIFER CARROLL
LT. GOVERNOR

HERSCHEL T. VINYARD JR.
SECRETARY

December 19, 2012

Cliff Berry, Sr., Director and Registered Agent
Cliff Berry, Inc
P.O. Box 13079
Ft. Lauderdale, FL 33316

RECEIVED DEC 20 2012

SUBJECT: Department of Environmental Protection v. Cliff Berry, Inc.
OGC File No.: 12-1703
EPA ID #FLD058560699

RECEIVED

JAN 14 2013

FL DEP
WEST PALM BEACH

Mr. Berry:

The State of Florida Department of Environmental Protection ("Department") finds that Cliff Berry, Inc. ("Respondent") was in violation of the rules and statutes cited in the attached 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, due to the nature of the violations, the Respondent remains subject to civil penalties. The Respondent is also responsible for costs incurred by the Department during the investigation of this matter.

The Department's Offer

Based on the violations described above, the Department is seeking \$4,000.00 in civil penalties and \$500.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$4,500.00. The civil penalty in this matter includes 2 violations of \$2,000.00 or more.

Respondent's Acceptance

If you wish to accept this offer and fully resolve the enforcement matter pending against the Respondent, please sign this letter and return it to the Department at Florida Department of Environmental Protection, 400 N. Congress Ave., 3rd Floor, West Palm Beach, FL 33401 by December 17, 2012. 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), F.S. and will be effective unless a request for an administrative hearing is filed by a third party in accordance with Chapter 120, F.S. and the attached Notice of Rights.

By accepting this offer you, Cliff Berry, Sr.:

- (1) certify that you are authorized and empowered to negotiate, enter into, and accept the terms of this offer in the name and on behalf of Respondent;
- (2) acknowledge and waive Respondent's right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this offer, once final;
- (3) acknowledge and waive Respondent's right to an appeal pursuant to Section 120.68, F.S.; and
- (4) acknowledge that payment of the above amount does not constitute a waiver of the Department's right, if any, to recover emergency response related costs and expenses for this matter.

The Department acknowledges that the Respondent's acceptance of this offer does not constitute an admission of liability for the violation(s) referenced above.

Respondent's Performance

After signing and returning this document to the Department,

- (1) Respondent must pay \$4,500.00 in full by January 17, 2012.
- (2) The payment(s) must: (a) be in the form of a cashier's check or money order; (b) be payable to the "Department of Environmental Protection"; (c) include the OGC Number assigned above and the notation "Ecosystem Management and Restoration Trust Fund"; and (d) be sent to Florida Department of Environmental Protection, 400 N. Congress Ave., 3rd Floor, West Palm Beach, Florida, Attention: Kathy Winston.

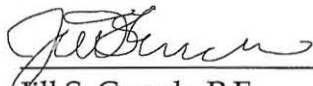
The Department may enforce the terms of this document, once final, and seek to collect monies owed pursuant to Sections 120.69 and 403.121, F.S.

Until clerked by the Department, this letter is only a settlement offer and not a final agency action. Consequently, neither the Respondent nor any other party may request an administrative hearing to contest this letter pursuant to Chapter 120, F.S. 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 the Respondent, whose interests will be substantially affected.


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



If you have any questions, please contact Kathy Winston at (561)681-6756 or at
Kathy.Winston@dep.state.fl.us.

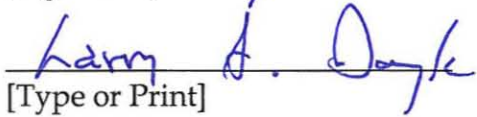
Sincerely,

 12-18-12
Jill S. Creech, P.E. Date
Southeast District Director

FOR THE RESPONDENT:

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


By:  Date: 
[Signature]

Title: 
[Type or Print]

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this 5th day of February, ~~2012~~ ²⁰¹³ in Palm Beach County,
Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Jill S. Creech, P.E.
Southeast District Director

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



Clerk

02/05/2013
Date

Attachments: Notice of Rights
 Warning Letter 12-0065HW13SED
 Inspection Reports from October 27, 2011 & November 11, 2012

Final clerked copy furnished to:
Lea Crandall, Agency Clerk (lea.crandall@dep.state.fl.us)
Electronic Archboard/Oculus

NOTICE OF RIGHTS

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.