



# Florida Department of Environmental Protection

Southeast District Office  
400 N. Congress Avenue, Suite 200  
West Palm Beach, FL 33401  
561-681-6600

Rick Scott  
Governor

Jennifer Carroll  
Lt. Governor

Herschel T. Vinyard Jr.  
Secretary

October 29, 2012

**VIA ELECTRONIC MAIL: [LDoyle@cliffberryinc.com](mailto:LDoyle@cliffberryinc.com)**

Cliff Berry, Sr., Director and Registered Agent  
C/O Larry Doyle, Executive Vice President  
Cliff Berry, Inc  
P.O. Box 13079  
Ft. Lauderdale, FL 33316

RE: Penalty Disclosure - Warning Letter #WL12-0065HW13SED  
Cliff Berry, Inc. - Miami Terminal, 3033 NW North River Dr., Miami, Florida 33142-6304  
EPA ID # FLD058560699

Dear Mr. Berry:

The purpose of this letter serves as confirmation of our enforcement meeting held on October 18, 2012 to discuss the alleged violations in Warning Letter #WL12-0065HW13SED dated September 11, 2012. The Department has reviewed your submittals and the facts of this case and has determined that a civil penalty is appropriate in this case.

In accordance with the Department's July 17, 2007 "Settlement Guidelines for Civil and Administrative Penalties", the U.S. EPA RCRA Civil Penalty Policy, the Department's Guidelines for Characterizing RCRA Violations (May 2008), and the Department's Guidelines for Characterizing Used Oil Violations (May 2008) the penalty proposed in this case is \$6,200.00 plus \$500.00 for Department's cost and expenses. The attached civil penalty worksheets are formulated and tendered only in the context of settlement negotiations in order to attempt to reach a cooperative settlement.

You are requested to contact Kathy Winston of this office at (561) 681-6756 within 10 days of receipt of this letter to discuss resolution of this matter through entry of a Consent Order. We look forward to your cooperation in completing the investigation and resolution of this matter.

Sincerely,

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

10-25-12  
Date

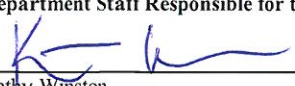
JSC/JWL/KK/kw


cc: Electronic Archboard/OCULUS  
Glen Perrigan, DWM  
Karl Markeset, PERA ([markek@miamidade.gov](mailto:markek@miamidade.gov))

## PENALTY COMPUTATION WORKSHEET

Facility Name: Cliff Berry, Inc. - Miami Terminal  
Facility Address: 3033 NW North River Dr., Miami, FL33142

Department Staff Responsible for the Penalty Computations:

  
Kathy Winston

  
Roger Carman


  
Karen Kantor

Date: 10/23/2012

### PART I - Class A Penalty Determinations

	Alleged Violation Type	Potential for Harm	Extent of Dev.	Matrix Amount	Multi-day	Adjustmen ts	Economic Benefit Calculation	Total
1	40 CFR Part 265.35 Failure to maintain aisle space	Minor	Moderate	\$710				\$710
2	40 CFR Part 279.54(f) Failure to label Used Oil tanks	ELRA	403.121(5)	\$500				\$500
3	40 CFR Part 263.22(a) Failure to correctly fill out a manifest	Minor	Minor	\$150				\$150
4	40 CFR Part 265.177(c) Failure to segregate incompatibles	Minor	Major	\$2,130				\$2,130
5	40 CFR Part 265.176 Failure to store ignitable waste at least 50 ft from property line	Minor	Moderate	\$710				\$710
6	Chapter 62-710.800(2), F.A.C. Failure to notify Department of modification of the facility pursuant to the permit	ELRA	403.121(3)(e), F.S.	\$2,000			Unable to calculate	\$2,000
* See attached Ranking System for Potential for Harm Worksheets						Penalties Subtotal:		\$6,200
						Department Costs:		\$500
						Total:		\$6,700

All penalty calculations are based on the Florida Department of Environmental Protection Hazardous Waste Regulation Section's "Guidelines for Characterizing RCRA Violations" and "Guides for Characterizing Used Oil Violations" both revised as of May 2008. Certain violations require Potential for Harm Ranking System characterization and have been utilized where applicable; refer to the attached Ranking System for Potential for Harm worksheet. The attached civil penalty worksheets are formulated and tendered only in the context of settlement negotiations in order to attempt to reach a cooperative settlement.

  
Jill S. Creech, P.E.  
Southeast District Director  
Florida Department of Environmental Protection

10-25-12

Date

## **PENALTY COMPUTATION WORKSHEET**

(continued)

Facility Name: Cliff Berry, Inc. - Miami Terminal  
Facility Address: 3033 NW North River Dr., Miami, FL33142

### **Part II - Multi-day Penalties and Adjustments**

**Adjustments:**

**Dollar Amount:**

Good Faith/lack of good Faith prior to Discovery:

Justification:

Good Faith/lack of good Faith after Discovery:

Justification:

History of Non-Compliance:

Justification:

Economic Benefit of Non-Compliance: Failure to modify permit

\$0

Justification: Penalty guidelines indicate an economic benefit should be considered; however, unable to calculate.

Ability to pay:

Justification:

**Multi-Day Penalties:**

**Dollar Amount:**

Number of days adjustment factor(s) to be applied:

Justification:

Number of days matrix amount is to be multiplied:

\$0

Justification:

### **Part III-Other Adjustments Made After Meeting With Responsible Party**

**Adjustments:**

**Dollar Amount:**

Relative Merits of the Case:

Resource Consideration: In the interest of obtaining an amicable settlement and considering Department resources, the matrix amounts were taken from the bottom of the box and ELRA was used wherever possible.

Other Justification:

Jill S. Creech, P.E.  
Southeast District Director  
Florida Department of Environmental Protection

Date

# RANKING SYSTEM FOR POTENTIAL FOR HARM WORKSHEET FOR HAZARDOUS WASTE VIOLATIONS

FACILITY NAME: Cliff Berry, Inc. - Miami Terminal

Violation No.	Alleged Violation Type	Nature of Waste	Amount of Waste	RECEPTORS		Total Score	Potential for Harm
				Discharges	Affected Population		
4	40 CFR 265.177(c)  Failure to segregate incompatibles	4	5	1	2	12	Minor
5	40 CFR 265.176  Failure to store ignitable waste at least 50 ft from property line	4	2	1	2	11	Minor

Assigned by: \_\_\_\_\_

Kathy Winston

Date: 10/23/2012

\_\_\_\_\_  
Roger Carman

\_\_\_\_\_  
Karen Kantor

## HAZARDOUS WASTE SCORING SYSTEM

Nature of Waste	Amount of Waste	Receptors	
		Discharges	Affected Population
CATEGORY A = 8 (High hazard wastes)	> 25 drums = 8	Discharge = 4	> 1000 People = 4
	6 - 25 drums = 5	Potential Discharge = 4	100 - 1000 People = 3
CATEGORY B = 4 (Typical hazardous wastes)	< 6 drums = 2	No Discharge = 1	10 - 100 People = 2
			< 10 People = 1

If the Total Score is      Then the Potential for Harm is

19-24

MAJOR

13-18

MODERATE


8-12

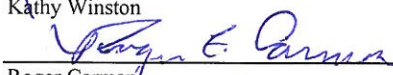
MINOR

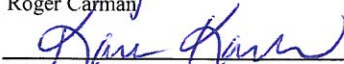
# RANKING SYSTEM FOR POTENTIAL FOR HARM WORKSHEET FOR USED OIL VIOLATIONS

FACILITY NAME: Cliff Berry, Inc. - Miami Terminal

Item Number	Alleged Violation Type	Nature of Waste	Amount of Waste	RECEPTORS		Total Score	Potential for Harm
				Discharges	Affected Population		
2	40 CFR part 279.54(f) Failure to label Used Oil tanks	4	8	1	2	15	Moderate

Assigned by:   
Kathy Winston

  
Roger Carman

  
Karen Kantor

Date: 10/23/12

## USED OIL SCORING SYSTEM

Nature of Waste	Amount of Waste	Receptors	
		Discharges	Affected Population
Category 1 Used Oil = 4	> 10 drums = 8	Discharge = 6	> 1000 People = 4
	3 - 10 drums = 5	Potential Discharge = 4	100 - 1000 People = 3
Category 2 Used Oil Filters = 2	< 3 drums = 2	No Discharge = 1	10 - 100 People = 2
			< 10 People = 1

If the Total Score is

19-24

13-18

6-12

Then the Potential for Harm is

MAJOR

MODERATE

MINOR