FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION
CENTRAL DISTRICT
3319 MAGUIRE BOULEVARD, SUITE 232
ORLANDO, FLORIDA 32803

RICK SCOTT
GOVERNOR

HERSCHEL T. VINYARD JR.
SECRETARY

November 8, 2013

ELECTRONIC MAIL
mkasper@aerc.com

AERC Com, Inc.
Mark Kasper, Chief Operating Officer
4317 Fortune Place, Suite J
Melbourne Florida 32904

CAP HW 13-4337

SUBJECT: **Department of Environmental Protection v. AERC Com, Inc.**
OGC File No.:13-1248
EPA Identification Number: FLD984262782

Mr. Kasper:

The State of Florida Department of Environmental Protection ("Department") finds that AERC Com, Inc. ("Respondent") failed to complete manifests properly [40 CFR 264.71 and 262.20(a)], violated permit conditions [F.S. 403.727(1)(c)], failed to submit a Biennial Report by March 1, 2012 [40 CFR 264.75], and failed to maintain containers closed [62-737.800(9), F.A.C.] Before sending this letter, the Department requested that the Respondent undertake certain actions to resolve the violation(s). These actions have since been completed. However, due to the nature of the violation(s), 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 $9,500 in civil penalties and $500 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of $10,000. The civil penalty in this matter includes 2 violation(s) 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 Central District, 3319 Maguire Blvd, Suite 232, Orlando FL 32803 by November 18, 2013. 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, Mr. Kasper:

RECEIVED
NOV 25 2013
DEP Central Dist.

(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 $ 10,000 in full by December 13, 2013.

(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 Central District, 3319 Maguire, Suite 232, Orlando FL 32803.

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 Janine Kraemer at 407-897-4303 or by email at Janine.Kraemer@dep.state.fl.us.

Sincerely,

Jeff Prather
District Director
Central District

FOR THE RESPONDENT:

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

By: _____ Date: 11-21-13
[Signature]

Title: CHIEF OPERATING Officer
[Type or Print]

FOR DEPARTMENT USE ONLY

DONE AND ORDERED this 26th day of NOVEMBER, 2013, in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

_____
Jeff Prather
District Director
Central District

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

_____ November 26, 2013
Clerk Date

Attachments: Notice of Rights
Warning Letter
Penalty Calculation Worksheet

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

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.

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION
CENTRAL DISTRICT
3319 MAGUIRE BOULEVARD, SUITE 232
ORLANDO, FLORIDA 32803

RICK SCOTT
GOVERNOR

HERSCHEL T. VINYARD JR.
SECRETARY

September 11, 2013

Michael Miliska, Service Coordinator
AERC Com, Inc.
4317 Fortune Place, Suite J
West Melbourne Florida 32904
mmiliska@aerc.com

RE: Warning Letter
AERC Com, Inc.
HW facility ID # FLD984262782
Brevard County
OWL-CAP-13-3200

Dear Mr. Miliska:

A hazardous waste inspection was conducted at your facility on January 24, 2013, under the authority of Section 403.091, Florida Statutes (F.S.). During this inspection, possible violations of Chapter 403, F.S., Chapter 62-737, Florida Administrative Code (F.A.C.), and Title 40 Code of Federal Regulations (CFR) Parts 262 and 264 were observed.

During the inspection Department personnel noted the following:

- Failure to follow permit conditions with drum storage
- Failure to maintain universal waste containers closed
- Failure to complete a manifest correctly with an EPA identification number
- Biennial Report submitted late
- Manifests with missing final destination signatures

Violations of Florida Statutes or administrative rules may result in liability for damages and restoration, and the judicial imposition of civil penalties, pursuant to Sections 403.121 and 403, Part IV, Florida Statutes.

Please contact Janine Kraemer of the Central District Office at 407-897-4303 or via e-mail at Janine.Kraemer@dep.state.fl.us within **15 days** of receipt of this Warning Letter to arrange a meeting to discuss this matter. The Department is interested in receiving any facts you may have that will assist in determining whether any violations have occurred. You may bring anyone with you to the meeting that you feel could help resolve this matter.

COPY

Please be advised that this Warning Letter is part of an agency investigation, preliminary to agency action in accordance with Section 120.57(5), Florida Statutes. We look forward to your cooperation in completing the investigation and resolving this matter.

Sincerely,

Jeff Prather, District Director
Central District
Florida Department of Environmental Protection

JP/jk

Enclosures: Inspection Report (with attachments)

cc: Maryann Civil, Brevard County Natural Resources Management, maryann.civil@brevardcounty.us

COPY

PENALTY COMPUTATION SUMMARY

Facility's Name: AERC Com, Inc EPA ID #: FLD984262782

Facility Address: 4317 Fortune Pl Ste J, West Melbourne, Florida 32904-1509 DATE: 9/18/2013

Regulatory Citation		Environmental Harm	Deviation from Rules	Matrix Range	Multi-Day	Economic Benefit	Other Adjustments	Total
a.	F.S. 403.727(1)(c)	Moderate	Minor	$7,090-4,250				$5,250
b.	262.20(a)	Moderate	Minor	$7,090-4,250				$4,250

TOTAL PENALTY AMOUNT FOR ALL VIOLATIONS: $9,500.00

Prepared by:

Janine Kraemer, CHMM
Environmental Consultant

9/18/13
Date

Jeff Prather
Director, Central District

November 08, 2013
Date

PENALTY COMPUTATION WORKSHEET

Company Name: AERC EPA ID #: FLD984262782

PENALTY JUSTIFICATION:
Environmental Harm and Extent of Deviation were determined using guidance documents provided by the Department, including the Department's "Guidelines for Characterizing Hazardous Waste Violations", dated June 28, 2013, and DEP Directive 923, dated February 14, 2013.

Regulations Violated:

a. Florida Statute 403.727(1)(c): 62-737.800(9) and 264.1- Failure to comply with permit condition Part I-General and Standard Conditions. Specifically, AERC stated in their permit application that they would limit storage of drums to 1 or 2 drums high (no higher than 9 feet). This is because stacking drums higher than 2 drums high poses a significant safety threat. Additionally, AERC stored universal waste in an area that was reserved for supplies and failed to maintain containers closed, which resulted in a release of the drum contents to the immediate area posing a threat to employees and the environment.

Environmental Harm: **Moderate**
AERC failed to meet several permit conditions, which could actually or reasonably be expected to result in pollution in a manner that represents a significant threat to human health or the environment.

Extent of Deviation from the regulation: **Minor**
AERC deviated somewhat from the requirements of the law but most of the requirements were met.

Multi-day Penalty Justification: Multiday penalties were not calculated as it was not possible to determine the number of days out of compliance at this time.

Economic Benefit: Economic benefit was not calculated because the reason for the excess storage is due to a lack of space at AERC's facility. At this time the Department does not have the resources to determine rent/lease space prices.

Adjustment Factors:
History of Noncompliance: The facility has a history of non-compliance with failure to follow permit conditions; however, no adjustment to the penalty is being made due to the length of time since the last Consent Order, OGC No.: 07-2193.

b. 40 CFR 262.20(a): A generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility must prepare a Manifest on EPA Form 8700-22. Specifically, AERC transported hazardous waste without correctly completed manifests.

Environmental Harm: **Moderate**
AERC transported hazardous waste without properly completing manifests, which could actually or reasonably be expected to result in pollution in a manner that represents a significant threat to human health or the environment.

Extent of Deviation from the regulation: **Minor**
The violation resulted in waste not being tied to a specific generator location.

Multi-day Penalty Justification: Multiday penalties were not calculated as it was not possible to determine the number of days out of compliance at this time.

Economic Benefit: Economic benefit was not calculated because the amount of time required to acquire an EPA identification number is unknown.

Adjustment Factors:
History of Noncompliance: The facility has a history of non-compliance with failure to follow permit conditions; however, no adjustment to the penalty is being made due to the length of time since the last Consent Order, OGC No.: 07-2193.