



Cliff Berry, Incorporated
Environmental Services

Florida Dept. of Environmental Protection
c/o Kathy Winston, CHMM
400 N. Congress Ave., 3rd Fl
West Palm Beach, FL 33401-2319

December 23, 2013

RECEIVED

DEC 30 2013

FL DEP
WEST PALM BEACH

Ref: Warning Letter #WL13-0017HW06SED of November 22, 2013

Ms. Winston,

Cliff Berry Inc. (CBI) is in receipt of your November 22, 2013 which includes a copy of a Hazardous Waste Inspection Report dated 10/11/2012. The report includes a list of potential violations of federal law citing 40 CFR regulations and cites a request by FDEP for results of the CBI investigation.

Investigation:

On August 14, 2012 Cliff Berry Inc. responded to a request for services from Proline Cargo, Miami, FL to repack and dispose of several boxed containers of a cleaner labeled Mintach Renalin 100 for Novis Pharmaceutical. Upon arrival the driver and field technician were informed that Proline Cargo's forklift operator had been attempting to move a pallet of the material when the load shifted and was dropped, causing a small spill (less than 25 gallons). The CBI employees saw a pallet containing cardboard boxes and a few of the boxes on the bottom were wet indicating internal leakage of product while other boxes were open showing they contained plastic jugs. Due to their hazardous materials emergency responder training they immediately recognized this was now an emergency response and not a routine pick-up. Due to the emergent nature and immediate need to protect the environment the technicians placed wet boxes into approximately two metal open top drums. They separated the dry boxes and placed them into five metal open top drums. While loading the drums with boxes their understanding was that the sturdy dry boxes, ones that were legal performance oriented packaging (POP), would be sufficient for transport while inside the metal drums. Damaged boxes were also placed into drums to stop their release into the environment. Seven drums were loaded in total with boxes of product.

CBI personnel also responded to spilled material on the ground. They placed dry absorbent onto the spilled product then scooped up the absorbent and earth. They placed this material into an eighth drum. Two minutes later it began to rain heavily. Had not CBI acted quickly the spill would have spread.

All CBI activity was in full view of Proline Cargo personnel who were in a position of oversight of the procedures and processes employed by CBI. Under the law the shipper is responsible for the method of packaging, marking and labeling these drums prior to offering them to CBI for shipment. Proline Cargo or Novismed Corp. were responsible for the condition of the packed drums as offerer of the material for shipment. All of the drummed product was loaded onto the truck.

As a value-added service for CBI clients a manifest was partially completed with information provided by Proline Cargo, who cited Novis Pharmaceutical as the generator, including contact information. Proline

Cargo then made pen and ink changes to Block 5 Generator's Site Address from Novis Pharmaceutical to Proline Cargo and confirmed the manifest by signing Block 15 Generator's/Offereors Certification. The notation of FLCESQG in Block 1 corresponding to a conditionally exempt small quantity generator remained unchanged as this corresponded to Proline Cargo's hazardous waste generator status. If this should have been completed citing an EPA ID number it should have been obtained by Proline Cargo or Novismed Corp. and entered onto the form. CBI as the transporter is not required by law to obtain EPA ID numbers for its clients. The manifest and any errors it may contain are the sole responsibility of the shipper.

The drums were transported to CBI's Miami Facility where they were placed at the transfer facility for four days (within the facility 10-day permit) and then further transported to EQ of Florida, Tampa, FL. Upon placement on EQ of Florida property and properly received as evidenced by signature in Block 20 Designated Facility Owner or Operator, EQ personnel discovered that several drums showed signs of internal reaction of the product with the metal drum. The drums were opened and it was discovered that several plastic jugs had disintegrated during transportation which allowed the product to come into direct contact with the drum. We are grateful to EQ of Florida for acting swiftly to contain the situation and make immediate notification to FDEP as required by regulation.

Subsequent to the incident Cliff Berry Inc. met with FDEP on October 11, 2012 at which time Cliff Berry Inc. was still conducting an investigation. On October 12, 2012 Cliff Berry Inc. responded to the FDEP with a brief letter outlining the preliminary facts and indicating the investigation was still ongoing. Some members of the investigation team did not realize that FDEP was awaiting the results of the investigation, which have been provided above, and regret any inconvenience.

Cliff Berry Inc. is devoting the remainder of this letter to discussion of the alleged violations as outlined in the Hazardous Waste Inspection Report dated October 11, 2012.

Potential violation of 40 CFR 262.12(a)

FDEP: "Cliff Berry Inc. picked up waste in excess of 1000 kgs from a generator where the facility should of obtained a temporary EPA ID number. CBI indicated on the manifest that the facility was a CESQG."

Answer from Cliff Berry Inc.: 40 CFR 262.12(a) "requires all generators to obtain an EPA identification number before offering hazardous waste for transport." As a result of FDEP investigation the generator was found to be Novismed Corp. and not Novis Pharmaceutical nor Proline Cargo. Cliff Berry Inc., as the transporter, was not the generator of the waste and therefore 40 CFR 262.12(a) does not appear applicable.

Potential violation of 40 CFR 263.30.

FDEP: "CBI improperly packaged hazardous waste and when the shipment was received at it's end designation, the corrosive liquids they had packaged were corroding the drums and one of the seven drums was producing vapors."

Answer from Cliff Berry Inc.: 40 CFR 263.30(a) requires that "in the event of a discharge of hazardous waste during transportation, the transporter must take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, dike the discharge area)".

The first question is whether the drums were still in transportation at the time of the release. As the drums had already been signed for by EQ of Florida and on their property prior to opening, the drums were no longer "in transportation". This renders the citation moot.

If it can be determined that the discharge occurred while on the truck, then the question is whether reporting met the requirement. EQ of Florida responded to take appropriate immediate action on their property which was on behalf of Cliff Berry Inc. as well as EQ of Florida. There was no need for two identical reports. Their appropriate immediate actions are evidenced by diking and further management of the containers, their Incident Report of September 9, 2012, and telephone report to FDEP. Therefore, if the drums were still in transportation, Cliff Berry Inc. complied with the requirements of 40 CFR 263.30 through EQ of Florida.

Potential violation of 40 CFR 263.20.

FDEP: "Cliff Berry picked up waste from a generator located in Miami and took the waste to their transfer facility in Miami. Six days later the waste arrived at the designated facility; however, the manifest doesn't indicate a second transporter or that CBI was the second transporter."

Answer from Cliff Berry Inc.: 40 CFR 263.20 does not require Cliff Berry Inc. to list itself twice when using its own transfer facility for temporary storage in transit. One purpose of a transfer facility is to allow a company to secure a load for a period of time and still have that load be considered as in transportation; for example, to allow a driver to rest or change truck or driver and then continue delivering the same load. A driver would not be required to relist himself, or relist another driver of the same company, as a second transporter when continuing on with that same load. As long as the load remained at a transfer facility within the permitted 10-day limit, as was done in this instance, the load does not require notation of Cliff Berry Inc. as a second transporter. Therefore, Cliff Berry Inc. was in compliance with the requirements of 40 CFR 263.20. A copy of the log page showing the arrival and departure of the load from the CBI Miami Facility transfer facility is attached as requested.

Potential violation of 40 CFR 263.20.

FDEP: "Cliff Berry Inc. filled out a manifest for waste it picked up using the wrong name for the generator and the wrong mailing address."

Answer from Cliff Berry Inc.: The generator is responsible under 40 CFR 263.20 to offer the manifest to the transporter. Cliff Berry Inc. assisted in completing the manifest with information provided by Proline Cargo at the time, but the law specifically requires the generator to fulfill this legal requirement. It was only after extensive investigation that FDEP determined the generator to be Novismed Corp. not Proline Cargo nor Novis Pharmaceutical (as outlined in FDEP letter of November 22, 2013). Cliff Berry Inc. is not accountable for receiving misinformation nor for fulfilling the legal requirements of the generator. Cliff Berry Inc. will remit a revised copy of the manifest noting Novismed Corp. as the generator as requested by FDEP and redistribute copies to the involved parties.

Conclusion

CBI does not understand the FDEP assertion throughout the Warning Letter that the drums were not properly packaged. The shipper is responsible for packaging, not the transporter. If the state has issue with the packaging then it should take up that discussion with Proline Cargo or Novismed Corporation. CBI relied on information from Proline Cargo as to the condition of the materials. Each drum was packaged using the original cardboard shipping boxes which meet a rigorous DOT testing regimen prior to use in commerce (performance oriented packaging). CBI relied on the integrity of those boxes in packaging the materials into drums. The boxes are rated for shipment without any exterior packaging required and could have been legally placed inside a van for transport. Instead, CBI over-packed them into drums. CBI likely averted an environmental disaster by placing them inside drums. Asserting that CBI improperly transported these boxes is at the very least disingenuous if not wholly inaccurate. The fact that the original containers failed is not the fault of Cliff Berry Inc.

Cliff Berry Inc. appreciates the opportunity to address this incident and looks forward to continued dialogue with the Florida Department of Environmental Protection.

Best regards,



Steve Collins

Manager Health, Safety and Regulatory Affairs

Encl: (1) CBI Miami Facility transfer facility log book page
(2) Revised copy of manifest 008955322JJK

FRIDAY

2012 258th day - 708 days follow

Саминдр

21.05.15

21 PSC
24 PSC

✓ Pic

17 PJO

31 pjc

11 CBI

81CB1

Copy from CBI logbook Miami Facility - December 2013

183805

Please print or type. (Form designed for use on off (12-pitch) typewriter.)

Form Approved. OMB No. 2050-0039

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator ID Number FLCESQG	2. Page 1 of	3. Emergency Response Phone 1 3E @ 800-451-8346	4. Manifest Tracking Number 008955322 JJK	
5. Generator's Name and Mailing Address Novismed Corporation 11965 SW 142nd Terr., Ste 108 Miami, FL 33186 Generator's Phone: 305-768-8810		-NOV PHARMACEUTICAL- -3730 W GREEN TRAIL- TALLAHASSEE, FL 32344		Generator's Site Address (if different than mailing address) -NOV PHARMACEUTICAL 16800 SW 70 AVENUE 7758 NW 46th St. MIAMI, FL 33176		
6. Transporter 1 Company Name CLIFF BERRY, INC. (DANIA)		U.S. EPA ID Number FLR000083071		7. Transporter 2 Company Name		
8. Designated Facility Name and Site Address E. Q. OF FLORIDA INC. 2002 N. ORIENT RD, TAMPA, FL 33619 Facility's Phone:		U.S. EPA ID Number FLD981932494				
9a. HM	9b. U.S. DOT Description (including Proper Shipping Name, Hazard Class, ID Number, and Packing Group (if any))	10. Containers No. Type		11. Total Quantity	12. Unit Wt./Vol.	13. Waste Codes
X	1. UN3098, WASTE, Oxidizing liquid, corrosive, n.o.s. (Contains Peroxyacetic acid and Hydrogen peroxide), 5.1, PG-II (HW OXIDIZER, CORROSIVE)	7 DM		1100	g P	D001, D002
X	2. UN3085, WASTE, Oxidizing solid, corrosive, n.o.s. (contains peroxyacetic acid and hydrogen peroxide) 5.1(6) PG-II	1 DM		100	P	D001, D002
	3.					
	4.					
14. Special Handling Instructions and Additional Information 1. 7 x 55 gal DM Labeled as 1 gallon jug - 194, 175, 14A, 89P, 54P, 101P, 76A, 152P. 2. 1 x 55 gal DM oil dry, boxes 175P						
15. GENERATOR'S/OFFEROR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent. I certify that the waste minimization statement identified in 40 CFR 262.27(a) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true.						
Generator's/Offeror's Printed/Typed Name Novis Pharmaceuticals Alan A. P. (PLC)		Signature [Signature]		Month Day Year 10 9 14 12		
16. International Shipments <input type="checkbox"/> Import to U.S. <input type="checkbox"/> Export from U.S. Port of entry/exit: Date leaving U.S.:						
17. Transporter Acknowledgment of Receipt of Materials Transporter 1 Printed/Typed Name Ben Hill Signature Ken Hill Month Day Year 10 9 14 12 Transporter 2 Printed/Typed Name Signature Month Day Year						
18. Discrepancy 18a. Discrepancy Indication Space <input type="checkbox"/> Quantity <input type="checkbox"/> Type <input type="checkbox"/> Residue <input type="checkbox"/> Partial Rejection <input type="checkbox"/> Full Rejection 18b. Alternate Facility (or Generator) Manifest Reference Number: U.S. EPA ID Number Facility's Phone: 18c. Signature of Alternate Facility (or Generator) Month Day Year						
19. Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems) 1. H141 2. H141 3. 4.						
20. Designated Facility Owner or Operator: Certification of receipt of hazardous materials covered by the manifest except as noted in item 18a Printed/Typed Name Michael Brumfield Signature Month Day Year 9 20 12						