



Florida Department of Environmental Protection

Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Noah Valenstein
Secretary

June 22, 2017

Bryan Jones, Area EH&S Manager
Clean Earth, Inc.
402 Webster Chapel Road
Glencoe, Alabama 35905
bjones@cleanearthinc.com

SUBJECT: Department of Environmental Protection v. AERC.Com, Inc., OGC File
No.: 17-0859
EPA ID Number FLD984262782

Mr. Jones,

The State of Florida Department of Environmental Protection ("Department") finds that AERC.Com, Inc. ("Respondent") failed to properly manage hazardous waste and Universal Waste in violation of Florida Administrative Code (F.A.C.) Rules 62-730 and 62-737. 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 \$1,140.00 in civil penalties and \$250.00 in Department costs for a total of \$1,390.00. The civil penalty in this matter includes \$710.00 for violations of F.A.C. Chapter 62-737.800(9) and 40 CFR 264.31, as adopted by F.A.C. 62-730.180(1), and \$430 for violation of 40 CFR 262.34(a)(2), as adopted by F.A.C. 62-730.160(1).

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 3319 Maguire Boulevard, Suite 232, Orlando, Florida 32803 by July 10, 2017. 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, Mark Kasper, CEO:

- (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 \$1,390.00 in full by July 28, 2017.
- (2) Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at: <http://www.fldepportal.com/go/pay/>
It will take a number of days after this order is final and effective filed with the Clerk of the Department before ability to make online payment is available.

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.

Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

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 Christine Daniel at (407)897-2911 or at Christine.Daniel@dep.state.fl.us.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff Prather", written over a horizontal line.

Jeff Prather
Director, Central District

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 _____ day of _____, 2017, in Orange County,
Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Jeff Prather, 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.

Clerk

Date

Attachments: Notice of Rights
Penalty Calculation Form

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.

PENALTY COMPUTATION SUMMARY

Facility Name: AERC Com Inc

EPA ID Number: FLD984262782

Facility Address: 4317 Fortune Place, W Melbourne, Florida 32904

Staff Responsible for Penalty Computations: John White

Date: 06/01/2017

	Regulatory Citation	Potential for Harm	Extent of Deviation	Matrix Range	Multi-Day	Economic Benefit	Other Adjustments	Total
a.	403.727(1)(c) / 264.31 / 62-737.800(9)	Minor	Moderate	\$2,130- 710				\$710
b.	262.34(a)(2)	Minor	Minor	\$710 - \$150				\$430

TOTAL PENALTY AMOUNT FOR ALL VIOLATIONS: \$1,140.00

Estimated Department Costs: \$250.00

PENALTY JUSTIFICATION:

Potential for Harm and Extent of Deviation for the above violations were determined using guidance documents provided by the Department, including the Department's Guidelines for Characterizing Hazardous Waste Violations, and DEP Directive 923, dated February 14, 2013.

- a. **Regulation(s) Violated:** 403.727(1)(c), F.S / 62-737.800(9), F.A.C. / 40 CFR 264.31

Violation:

Facilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. Specifically, during the inspection on March 21, 2017, phosphor powder was observed in the air within the processing room. Based on information provided, the release was due to operation of the LSS-1 processing machine using open top hoppers to accumulate processed glass generated by the machine

Owners and operators shall store processed and unprocessed materials in closed containers; ... Separated glass and metal that is stored outdoors shall be stored in covered, watertight containers or in a manner that otherwise prevents contact with water and prevents the release of hazardous materials into the environment, located within portions of the facility with controlled access limited to authorized persons only, and stored in compliance with any applicable hazardous waste storage requirements adopted under Chapter 62-730, F.A.C. Specifically, during the inspection on March 21, 2017, a 20-cubic yard container storing processed glass was found without a cover. The container is stored outside the warehouse and was not protected from rain or wind.

Potential for Harm:

Phosphor powder was observed in the air within the processing room. Air monitoring conducted during this period did not detect any exceedances of OSHA air limits for mercury.

A 20-cubic yard container storing processed glass was found without a cover. While the processed glass contains mercury, weekly sampling of the processed glass has documented the glass does not exhibit a hazardous waste characteristic of toxicity for mercury.

Based on the information presented above, a Minor Potential for Harm is warranted.

Extent of Deviation from the regulation:

The facility operated the LSS-1 processing machine and accumulated processed glass in hoppers without ensuring lids were in place to prevent phosphor powder from being released into the air within the processing room. The facility has the proper equipment on-hand but it was not in place at the time of this inspection. The roll-off container storing processed glass requires a tarp or cover be placed on the container to prevent rain from causing a release of mercury to the environment. This issue has been noted during several prior inspections.

Based on the information presented above, a Moderate Extent of Deviation from the regulations is warranted.

Multi-day Penalty Justification:

The release of phosphor powder to the air within the processing room occurred the day prior to the inspection. The issue was resolved and the area cleaned the day of the inspection. The roll-off container storing processed glass had a tarp that was found on the ground adjacent to the container during the

inspection. The tarp was placed on the container. Based on this information, multi-day penalties were not calculated for these violations.

Economic Benefit:

In this instance, Economic Benefit is an avoided cost related to the time required for personnel to place a lid on the glass hopper and the tarp on the processed glass roll-off container. Based on this, no Economic Benefit was derived from these violations.

EB = Economic Benefit AC = Avoided Costs DC = Delayed Costs
T = Corporate Tax Rate (35%) I = IRS Interest Rate for Delinquent Accounts (3%)

$$EB = AC(1-T) + DC(I) \qquad EB = (\$0)(1-.35) + 0(.03) \qquad EB = \$0$$

Adjustment Factors:

An adjustment is not being added for these violations.

b. **Regulation(s) Violated:** 40 CFR 264.34(a)(2)

Violation:

...A generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that: (2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container. Specifically, a container of hazardous waste phosphor powder stored in the 90-day accumulation area was not marked with an accumulation start date.

Potential for Harm:

Based on the Department's Potential for Harm Ranking System, a Minor Potential for Harm is warranted.

Extent of Deviation from the regulation:

The facility has documentation that hazardous waste containers stored in the 90-day accumulation area are shipped off-site on a regular basis and hazardous waste is not stored for greater than 90-days. Therefore, a Minor Extent of Deviation from the regulations is warranted.

Multi-day Penalty Justification:

During the inspection, it was determined the drum of hazardous waste had possibly been placed into the 90-day accumulation area the prior evening. Based on this information, a multi-day penalty is not warranted.

Economic Benefit:

In this instance, Economic Benefit is an avoided cost related to placement of a "hazardous waste" label on a single container. Based on this, no Economic Benefit was derived from this violation.

Adjustment Factors:

An adjustment is not being added for this violation.