

**From:** [Irwin, Alannah](#)  
**To:** [Lancellotti, Romina](#)  
**Subject:** FW: SED Peer Review Request - Tropical Shipping (EPA ID FLR000095737)  
**Date:** Friday, September 4, 2020 2:22:21 PM  
**Attachments:** [Tropical - Peer Review Checklist.docx](#)  
[Tropical CPAM.docx](#)  
[Tropical Inspection Report.pdf](#)  
[Tropical Peer Review Memo.docx](#)  
[Tropical Penalties Compressed.xlsx](#)  
[image002.png](#)  
**Importance:** High

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**From:** Walker, Kim (Waste) <Kim.Walker@FloridaDEP.gov>  
**Sent:** Friday, September 4, 2020 2:19 PM  
**To:** Andreotta, Jason <Jason.Andreotta@FloridaDEP.gov>; Davila, Sirena <Sirena.Davila@FloridaDEP.gov>  
**Cc:** Bahr, Tim <Tim.Bahr@FloridaDEP.gov>; Booeshaghi, Teresa <Teresa.Booeshaghi@dep.state.fl.us>; Perrigan, Glen <Glen.Perrigan@FloridaDEP.gov>; Irwin, Alannah <Alannah.Irwin@FloridaDEP.gov>  
**Subject:** FW: SED Peer Review Request - Tropical Shipping (EPA ID FLR000095737)  
**Importance:** High

Hi Jason and Sirena,

The Division of Waste Management has completed its review for Tropical Shipping (EPA ID FLR000095737) and concurs with the district's proposed enforcement response and associated penalty calculation. Please let us know if we can assist further.

Have a good weekend,

Kim



**Kim Walker**  
**Program Administrator**  
Florida Department of Environmental Protection  
Permitting and Compliance Assistance Program  
[Kim.Walker@dep.state.fl.us](mailto:Kim.Walker@dep.state.fl.us)  
(850) 245.8934

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**From:** Irwin, Alannah <[Alannah.Irwin@FloridaDEP.gov](mailto:Alannah.Irwin@FloridaDEP.gov)>  
**Sent:** Friday, August 28, 2020 8:46 AM  
**To:** WasteCAP <[WasteCAP@floridadep.gov](mailto:WasteCAP@floridadep.gov)>  
**Cc:** Perrigan, Glen <[Glen.Perrigan@FloridaDEP.gov](mailto:Glen.Perrigan@FloridaDEP.gov)>; Davila, Sirena <[Sirena.Davila@FloridaDEP.gov](mailto:Sirena.Davila@FloridaDEP.gov)>; Lancellotti, Romina <[Romina.Lancellotti@FloridaDEP.gov](mailto:Romina.Lancellotti@FloridaDEP.gov)>  
**Subject:** SED Peer Review Request - Tropical Shipping (EPA ID FLR000095737)  
**Importance:** High

Good morning, WasteCap Team,

For your review and concurrence. The Peer Review Package can be found at the following links:

[Peer Review Memo](#)

[Penalties compressed](#)

[CPAM](#)

The proposed penalty for this case is \$41,150.00, which includes economic benefit calculations for 1 of the 12 violations. The District expects to resolve this case with a Short Form Consent Order. Today is **Day 198**. Please let us know if you have any questions. Thank you!

Regards,



**Alannah Irwin**

Interim Environmental Manager  
Compliance Assurance Program  
Air, Waste, and Emergency Response  
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Southeast District  
3301 Gun Club Road, MSC 7210-1  
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# Warning Letter Peer Review Checklist

## Hazardous Waste

Facility Name: Tropical Shipping & Construction Co Ltd				
EPA ID #: FLR000095737				
Peer Review Conducted By: Letuzia De Oliveira				
Date: 9/3/2020				
		YES	NO	Notes
	<b>FORMAL OR INFORMAL RESPONSE</b>			
	If the facility is a first-time violator, did the facility know or have reason to know actions were illegal?	X		
	If the facility is a first time violator, did the facility refuse to correct the problems?		X	The facility has corrected all violations
	If the facility is a first time violator, did the violations result in harm to public health or the environment?		X	
	If the violations caused no actual harm to human health or the environment this time, did one or more violations create a situation where a significant potential threat to human health (including workers at the facility) or the environment occurred?	X		The facility was operating as a 10-day Hazardous Waste Transfer Facility without notifying the Department of this activity. Additionally, the facility had exceeded the 10-day storage requirements indicating that the facility was operating as a TSDF without a valid permit from the Department.
	Did the violations deviate substantially from the terms of a permit, order, agreement, or from RCRA statutory or regulatory requirements?	X		The facility deviated from RCRA requirements for SQGs
	If the facility has received a CAV/CEI from DEP in the past, were the new violations similar to issues identified in the previous inspection.			N/A
	If the facility has been notified of their waste management responsibilities and provided compliance assistance by the county SQG program (per 403.7234), should the violations have been avoided?			N/A
	Does the facility have a history of recalcitrant or non-compliant behavior?		X	
	Would taking an enforcement action in this situation enhance consistent application and statewide consistency?	X		
	If the violations facilitated an apparent economic benefit for the facility, will enforcement eliminate economic benefits gained by noncompliance?			N/A
	Will enforcement provide a financial disincentive to discourage future violations not only for the violator but also by others contemplating similar activities?	X		
	Did the facility <u>not</u> adequately address all violations within 240 days?		X	The facility completed all required corrective actions and has returned to compliance.

	Was the facility identified as a Significant Non-Complier (SNC) in data?	X		
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## Memorandum

## Florida Department of Environmental Protection

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To: KIM WALKER  
PROGRAM ADMINISTRATOR  
Division of Waste Management  
[WasteCAP@floridadep.gov](mailto:WasteCAP@floridadep.gov)

Through: Jason Andreotta, District Director  
Sirena Davila, Assistant District Director  
Southeast District, Compliance Assurance Program

From: Alannah Irwin, Interim Environmental Manager  
Romina Lancellotti, CAP Inspector

Date: 8/28/2020

Subject: Peer Review Request for Tropical Shipping USA, LLC in Riviera Beach, FL

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The Southeast District Compliance Assurance Program is requesting a peer review for the following case.

**Division/Program:**

**Facility/Site ID No.** FLR000095737

**Facility/Site Name:** Tropical Shipping USA, LLC.

**Facility Owner:** C T Corporation System /John J Fisher

**Facility Address/Location:** 5 E 11<sup>th</sup> Street, Riviera Beach, FL 33404-6920

**Brief Description of Facility/Site:**

Tropical Shipping USA, LLC (Tropical) transports hazardous waste and other cargo between Puerto Rico, Saint Thomas, Saint Croix, Bahamas, and Riviera Beach via decked barges and vessels. Upon arrival at their respective terminal destinations, the vessels are staged at the facility, pending transport to the final destination.

As result of the activities performed at the facility, the following wastes are generated: used oil, used oil filters, spent sandblast media, spent solvent, spent aerosol cans, oily rags, spent lead acid batteries, and spent mercury lamps.

Tropical commenced operations on 06/23/1962 and notified with the Department as a Small Quantity Generator (SQG) of hazardous waste on 01/13/2003 and was assigned the EPA

Identification (EPAID) Number FLR000095737. The facility most recently notified as a transporter of hazardous waste on 08/28/2019 and is effective until 11/30/2020.

On February 12, 2020 (02/12/2020), Southeast District (SED) personnel conducted a routine compliance evaluation inspection to determine compliance with the State and Federal hazardous waste regulations described in Title 40, Code of Federal Regulations (CFR) Parts 260-268, 273, and 279 adopted and incorporated by reference in Rules 62-710, 730, and 737 Florida Administrative Code (F.A.C.). The inspection report cited a total of 12 violations related to the hazardous waste transporter and transfer facility requirements, universal waste management, and used oil management practices. Most specifically, the facility was operating as a Hazardous Waste Transfer facility, however, is not currently registered under 40 CFR 263.12 and 62 Rule 730.171, F.A.C. Additionally, the facility exceeded the 10-day storage limit for a Hazardous Waste Transfer facility, meaning that the facility was operating as an unpermitted TSD facility during the inspection.

The Department issued the following letters:

- 1) Formal information request on 02/20/2020 - response received on 03/05/2020;
- 2) Warning Letter (WL) dated 04/27/2020 – response received 05/12/2020;

Tropical and the Department met via teleconference on 04/16/2020 and 04/28/2020 to discuss the outstanding violations and the required corrective actions. On 06/03/2020 and 06/15/2020, Tropical representatives and the Department met to discuss options for the facility to comply with siting requirements and the potential of applying for a variance.

The facility completed all required corrective actions by 06/16/2020 and has since returned to compliance. The District expects to resolve this case with a Short Form Consent Order to assess civil penalties. If the settlement offer is not accepted by the Respondent, a Case Report will be submitted to the Office of General Counsel (OGC) to file a complaint with the circuit court by day 360.

### **Violation(s) Classification:**

#### **1. 40 CFR part 262.11 – Waste Determination @ MIN/MIN**

The facility failed to conduct a waste determination for three (3) out of ten (10) waste streams generated at the facility:

- One (1) 55-gallon drum of unknown liquid stored outside the Marine Division Shop
  - Determined to be non-hazardous oily water based on analytical results received on 05/12/2020
- One (1) 55-gallon drum of spent sandblast media in the Marine Division Shop.
  - Determined to be non-hazardous based on the analytical results received on 03/05/2020
- 43 unlabeled 55-gallon drums of an unknown liquid stored outside the Port Maintenance Shop
  - 36 were empty, confirmed on 03/05/2020
  - Three (3) drums contained used antifreeze, confirmed on 03/05/2020
  - Two (2) drums contained used oil, confirmed on 03/05/2020

- One (1) drum contained used oil filters, confirmed on 03/05/2020
- One (1) drum contained used grease, confirmed to be non-hazardous on 03/05/2020

This is less than 50 percent (%) of the total of waste streams. No waste profiles were available for review at the time of inspection. The Potential for Harm and Extent of Deviation were classified as Minor/Minor since the wastes were determined to be non-hazardous.

*Violation Resolved on 05/12/2020.*

## **2. & 3. - 40 CFR part 262.84(b)(1) & 40 CFR part 262.84(c) – Import Requirements @ MIN/MIN**

The Department compressed these two violations because they are related to Import Requirements and no discharge or environmental harm occurred.

- Pursuant to 40 CFR part 262.84(b)(1), the facility failed to comply with notification requirements when importing hazardous waste. The facility did not provide evidence demonstrating that EPA had been notified 60 days in advanced of the transboundary movements.
- Pursuant to 40 CFR part 262.84(c), the facility failed to comply with RCRA manifest instructions for hazardous waste import shipments. Tropical did not complete the manifests as a transporter, nor include the date of acceptance of the waste.

**Violation 40 CFR part 262.84(b)(1) was resolved on 05/12/2020;** the facility provided Standard Operating Procedures (SOP) that Tropical personnel shall follow when importing hazardous waste into the USA. These SOP include the shipper forwarding a copy of the letter of consent from the US EPA for the hazardous waste generator prior to the shipment.

**Violation 40 CFR part 262.84(c) was resolved on 05/12/2020;** the facility provided uniform hazardous waste manifests with all dates and signatures, including transporter and designated facility. Additionally, the facility provided an SOP to be followed to complete the uniform hazardous waste manifests.

## **4. 40 CFR part 263.12, Section 403.727(1)(b) Florida Statutes (F.S.), and Rule 62-730.171(1), F.A.C.- Permit Conditions @ MOD/MAJ**

The facility failed to comply with the 10-day hazardous waste storage requirement for transfer facilities. Based on records review, Tropical exceeded the 24-hour storage time limit with a shipment received on 06/14/2018 and exceeded the 10-day storage time limit in 15 different occasions during 2017, 2018, 2019 and 2020, for hazardous waste transporters and transfer facilities, respectively. This violation is classified as Significant Non-Compliance (SNC).

On 05/18/2020, the facility submitted the 8700-FL Notification form notifying as a hazardous waste transfer facility. However, DWM and SED determined that the area suggested by Tropical

to operate as the hazardous waste transfer facility does not meet the 1,000 and 1,500-yard “Siting Requirements,” described under Section 403.7211, Florida Statutes (F.S.). The facility submitted an SOP to the Department on 06/16/2020 describing steps Tropical will take in operating the facility in order to comply with the 24-hour storage requirement.

*Violation resolved on 06/16/2020.*

#### **5. 40 CFR part 265.174 and Rule 62-730.171, F.A.C. – Unit Management @ MOD/MOD**

The facility failed to conduct weekly inspections of areas where containers are stored, in which the operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

On 05/15/2020, the facility provided documentation demonstrating it implemented weekly inspections of areas where containers are stored.

*Violations resolved on 05/15/2020.*

#### **6. & 7. 40 CFR parts 265.52(a), (b), (d), (e), & (f), and 265.52(c) – Preparedness and Prevention @ MIN/MIN**

The Department compressed these two violations because they are related to Preparedness and Prevention and no discharge or environmental harm occurred.

- Pursuant to 40 CFR part 265.52(a), (b), (d), (e), & (f), the facility failed to include the following in the Contingency Plan:
  - A description of actions facility personnel must take in response to fires, explosions, or any unplanned release of HW constituents to air, soil, or surface water at the facility;
  - A list of names, addresses, and phone numbers (office and home) of all persons to act as emergency coordinator;
  - A list of all emergency equipment at the facility, and the location and a physical description of each item on the list; and
  - An evacuation plan.
- Pursuant to 40 CFR parts 265.52(c), the facility failed to demonstrate that the appropriate arrangement with the local police, fire department, hospital, and local emergency response agencies had been made.

**Violation 40 CFR part 265.52(a), (b), (d), (e), & (f) was resolved on 05/14/2020;** the facility provided a Spill Prevention, Control, and Countermeasure Plan, issued on 04/15/2020, that included all required elements.

**Violation 40 CFR parts 265.52(c) was resolved on 03/05/2020;** the facility provided documentation demonstrating that emergency arrangements had been made on 03/03/2020 with local authorities.



**8. & 9. 40 CFR part 273.13(d)(1) & 40 CFR part 273.14(e), and Rule 62-737.400(5)(b), F.A.C. – Universal Waste @ MIN/MOD**

The Department compressed these two violations because they are related to Universal Waste Mercury Lamps and no discharge or environmental harm occurred.

- Pursuant to 40 CFR part 273.13(d)(1), the facility failed to store 45 spent mercury lamps in a structurally sound and closed container.
- Pursuant to 40 CFR part 273.14(e) and Rule 62-737.400(5)(b), F.A.C., the facility failed to label 45 spent mercury lamps with the words “Universal Waste Lamps.”

**Violation 40 CFR 273.13(d)(1) was resolved on 03/12/2020**, when the facility provided pictures demonstrating that the 49 spent mercury lamps were provided with a structurally sound and closed container.

**Violation 40 CFR part 273.14(e), Rule 62-737.400(5)(b), F.A.C. was resolved on 03/05/2020**; the facility provided pictures demonstrating that the spent lamps have been stored in a closed box, labeled with the words " Universal Waste-Lamps," and dated with the accumulation start date 02/10/2020."

**10. 40 CFR part 279.22(c)(1) and Rule 62-710.401(6), F.A.C. - Used Oil General @ MIN/MIN**

- Pursuant to 40 CFR part 279.22(c)(1) and Rule 62-710.401(6), F.A.C., the facility failed to label one 55-gallon drum and one 250-gallon tank with the words "Used Oil."

*Violation resolved during the inspection on 02/12/2020.*

**11. 40 CFR 62-710.850(5)(a) F.A.C.- Used Oil Filter Management @ MIN/MIN**

- Pursuant to 62-710.850(5)(a) F.A.C., the facility failed to label one 55-gallon drum of used oil filters with the words “Used Oil Filters”.

*Violation was resolved on 03/12/2020.* The facility provided a picture demonstrating that the 55-gallon drum for used oil filters was properly labeled with the words "used oil filters."

**12. Rule 62-730.171(2), F.A.C.- Notification Violation @ MOD/MAJ**

- Pursuant to Rule 62-730.171(2), F.A.C., the facility failed to notify as a hazardous waste transfer facility to the Department at least 30 days before the storage of hazardous waste is to begin at a transfer facility (greater than 24 hours).

**This violation is considered to be a duplicate violation and will not be pursued. The violation pertaining to notification as a Hazardous Waste Transfer facility is described under violation #4, 40 CFR part 263.12, 403.727(1)(b) Florida Statutes, and Rule 62-730.171(1), F.A.C.**

**Proposed Enforcement & Penalty Calculation In lieu of Compliance Assistance:**

The District has calculated a total penalty of **\$41,150.00**, including civil penalty, economic benefit, and Department costs for this case in accordance with the attached penalty calculation work sheet.

Economic Benefit was calculated for two of the twelve violations [i.e. for the violations of 40 CFR part 262.11 and 40 CFR 263.12, Section 403.727(1)(b), F.S., and Rule 62-730.171(1), F.A.C.]. As calculated in the attached civil penalty worksheet, the total economic benefit for this case was calculated to be **\$15,820.00**. It is recommended to pursue economic benefit for this case since the total amount of the economic benefit is greater than 10% of the total civil penalty.

**Why compliance without enforcement is not an appropriate alternative:**

The violations pertaining to 40 CFR 263.12, Section 403.727(1)(b) F.S., and Rules 62-730.171(1) and 62-730.171(2), F.A.C. are potential Significant Non-Complier (SNC) violations.

The District expects to resolve this case with a Short Form Consent Order (SFCO) to assess civil penalties.

## CIVIL PENALTY AUTHORIZATION

### SOUTHEAST DISTRICT

Investigator: Romina Lancellotti

Date Submitted: 08/28/2020

1. VIOLATOR(S): Tropical Shipping USA, LLC. (EPA ID FLR000095737)
2. LOCATION OF VIOLATION: 5 E 11<sup>th</sup> Street, Riviera Beach, FL 33404
3. NATURE OF VIOLATIONS:

Tropical Shipping USA, LLC (Tropical) transports hazardous waste and other cargo between Puerto Rico, Saint Thomas, Saint Croix, Bahamas, and Riviera Beach via decked barges and vessels. Upon arrival at their respective terminal destinations, the vessels are staged at the facility, pending transport to the final destination.

Tropical commenced operations on 06/23/1962, initially notified with the Department as a Small Quantity Generator (SQG) of hazardous waste on 01/13/2003 and was assigned the EPA Identification (EPAID) Number FLR000095737. The facility most recently notified as a transporter and as a non-handler of hazardous waste on 08/28/2019 and is effective until 11/30/2020.

On 02/12/2020, Southeast District (SED) personnel conducted a routine inspection to evaluate compliance with the regulatory standards of a Hazardous Waste Transporter. The inspection report cited a total of 12 violations related to the requirements of a hazardous waste transporter, a universal waste handler, and a used oil generator. During the inspection, the facility was operating as a 10-day Hazardous Waste Transfer Facility without notifying the Department of this activity. Additionally, the facility had exceeded the 10-day storage requirements described in 40 CFR part 263.12, indicating that the facility was operating as a Treatment, Storage, or Disposal Facility (TSDF) without a valid permit from the Department.

On 04/27/2020, a Warning Letter (WL) was issued with a request for additional information.

The facility has completed the required corrective actions and has since returned to compliance. The District expects to resolve this case with a Short Form Consent Order to assess civil penalties.

#### 4. PENALTY RATIONALE:

In accordance with the Department's Guidelines for Characterizing Hazardous Waste Violations, revised June 28, 2013, it has been determined that eleven (11) of the twelve (12) violations discovered during the inspection were valid. The eleven (11) valid violations for which civil penalties are being sought against Tropical involve the following characterizations:

##### **1. Waste Determination @MIN/MIN**

##### **40 CFR part 262.11 – Violation Resolved**

The facility failed to conduct a proper waste determination for one 55-gallon drum of unknown liquid stored outside the Marine Division Shop, one 55-gallon drum of spent sandblast media in the Marine Division Shop, and 43 unlabeled 55-gallon drums of an unknown liquid stored outside the Port Maintenance Shop. The facility is comprised of 10 waste streams and the aforementioned waste streams account for 30% of the facility's total waste streams.

This violation involves a "minor potential for harm" and a "minor extent of deviation" from the applicable hazardous waste regulations, placing the violation in the \$150 - \$710 matrix cell range. "Minor potential for harm" was chosen because the Hazardous Waste Harm Ranking Tool, which was generated to complement the Guidelines and help with better identifying the potential for harm of each violation, places the failure of a person who generates a solid waste, as defined in 40 CFR 261.2, to determine if that waste is a hazardous waste as reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment. Furthermore, the Department's Guidelines for Characterizing Hazardous Waste Violations places the failure to perform a hazardous waste determination on more than 25% but less than 75% of waste streams as a moderate extent of deviation; however, minor extent of deviation was chosen because the wastes were determined to be non-hazardous.

##### **2. & 3. Import Requirements @ MIN/MIN**

##### **40 CFR part 262.84(b)(1) & 40 CFR part 262.84(c) – Resolved Violation**

The facility failed to notify EPA 60 days in advanced of the transboundary movements when importing hazardous waste. Additionally, the facility failed to comply with RCRA manifest instructions for hazardous waste import shipments.

Since the violations all pertain to Hazardous Waste Import Requirements under 40 CFR part 262, Subpart H, the two violations were compressed.

These violations involve “minor potential for harm” and “minor extent of deviation” from the applicable hazardous waste regulations, placing the violation in the \$150 - \$710 matrix cell range. “Minor potential for harm” was chosen because the Hazardous Waste Harm Ranking Tool, which was generated to complement the Guidelines and help with better identifying potential for harm of each violation, places the failure to properly comply with the recordkeeping requirements of transboundary movements of hazardous waste as reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment.

Since this specific violation is not described in the OGC Guidelines for Characterizing Hazardous Waste Violations, the District used the “Settlement Guidelines for Civil and Administrative Penalties,” DEP Directive 923, effective February 14, 2013, to determine the extent of deviation. According to DEP Directive 923, a violation is classified as “minor” when the violator deviates somewhat from the requirements of law but most of the requirements are met. Since the facility was registered as a transporter and transported the waste to a registered TSDF, the compressed violations have been characterized as a “minor” extent of deviation.

**4. Notification Requirements (Permit Conditions) @ MOD/MAJ  
40 CFR part 263.12, 403.727(1)(b) Florida Statutes, and Rule 62-730.171(1),  
F.A.C.- Resolved Violation**

The facility failed to comply with the 24-hour and 10-day hazardous waste storage requirements for transporter and transfer facilities, meaning Tropical failed to notify the Department as a TSDF and/or transfer facility.

This violation involves a “moderate potential for harm” and a “major extent of deviation” from the applicable hazardous waste regulations, placing the violation in the \$11,330 - \$15,580 matrix cell range. “Moderate potential for harm” was chosen because the Hazardous Waste Harm Ranking Tool, which was generated to complement the Guidelines and help with better identifying the potential for harm of each violation, places the failure to notify the Department as a TSDF or transfer facility as reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment. Furthermore, the Guidelines for Characterizing Hazardous Waste Violations characterize the failure to notify the Department as a TSDF or transfer facility as a major extent of deviation.

**5. Unit Management @ MOD/MOD**

**40 CFR part 265.174 and Rule 62-730.171, F.A.C.- Resolved Violation**

The facility failed to conduct weekly inspections of areas where containers are stored, in which the operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

The violation involves a “moderate potential for harm” and a “moderate extent of deviation” from the applicable hazardous waste regulations, placing the violation in the \$7,090 - 11,330 matrix cell range. “Moderate potential for harm” was chosen because the Hazardous Waste Harm Ranking Tool, which was generated to complement the Guidelines and help with better identifying the potential for harm of each violation, places the failure of the facility to perform any container/tank inspections (more than 1,375 gallons) as reasonably expected to result in pollution in a manner that represents a significant threat to human health or the environment. Furthermore, the Guidelines for Characterizing Hazardous Waste Violations characterize the failure of a facility to perform any hazardous waste container/tank inspections as a moderate extent of deviation.

**6. & 7. Contingency Plan and Emergency Procedures @ MIN/MIN****40 CFR parts 265.52(a), (b), (d), (e), & (f), and 265.52(c) – Revolved Violations**

The facility failed to include all elements required in the contingency plan and failed to make emergency arrangements with local authorities.

Since both violations pertain to preparedness and prevention under the Department’s Guidelines for Characterizing Hazardous Waste Violations, the violations were compressed. These violations involve “minor potential for harm” and “minor extent of deviation” from the applicable hazardous waste regulations, placing the violation in the \$150 - 710 matrix cell range.

“Minor potential for harm” was chosen because the Hazardous Waste Harm Ranking Tool which was generated to complement the Guidelines and help with better identifying the potential for harm of each violation, places the failure to have a complete contingency plan and the failure to submit the plan to local authorities as reasonably expected to result in pollution in a manner that represents minimal threat to human health or the environment. Pursuant to the Guidelines for Characterizing Hazardous Waste Violations, the failure to have a complete contingency plan and submit the plan to the local authorities results in a minor extent of deviation.

**8. & 9. Universal Waste Mercury Lamps @ MIN/MOD****40 CFR part 273.13(d)(1) & 40 CFR part 273.14(e), Rule 62-737.400(5)(b), F.A.C. – Resolved Violations**

The facility failed to store 45 spent mercury lamps in a structurally sound and closed container and label them with the words “Universal Waste Lamps.” Since

both violations pertain to Universal Waste Mercury Lamps under the Department's Guidelines for Characterizing Hazardous Waste Violations, the violations were compressed.

These violations involve "minor potential for harm" and "moderate extent of deviation" from the applicable hazardous waste regulations, placing the violation in the \$710 - 2,130 matrix cell range. "Minor potential for harm" was chosen because the Hazardous Waste Harm Ranking Tool which was generated to complement the Guidelines and help with better identifying the potential for harm of each violation, places the failure to responsibly manage universal waste mercury lamps as reasonably expected to result in pollution in a manner that represents minimal threat to human health or the environment. Pursuant to the Guidelines for Characterizing Hazardous Waste Violations, the failure to properly store greater than 10, but less than 100 universal waste lamps and properly label them is categorized as a moderate extent of deviation.

#### **10. Used Oil General @ MIN/MIN**

##### **40 CFR part 279.22(c)(1), Rule 62-710.401(6), F.A.C. - Resolved Violations**

The facility failed to label one 55-gallon drum and one 250-gallon tank with the words "Used Oil." This violation involves a "minor potential for harm" and a "minor extent of deviation" from the applicable hazardous waste regulations, placing the violation in the \$500 matrix cell range.

"Minor potential for harm" was chosen because the Hazardous Waste Harm Ranking Tool which was generated to complement the Guidelines and help with better identifying the potential for harm of each violation, places the failure to responsibly manage used oil as reasonably expected to result in pollution in a manner that represents a minimal threat to human health or the environment. Pursuant to the Department's Guidelines for Characterizing Used Oil Violations, the failure to store used oil in above-ground containers that are clearly labeled with the words "used oil" and are in good condition with no visible oil leakage, and ensure the containers are double walled or stored on an impermeable surface and have secondary containment, is categorized as a minor extent of deviation.

#### **11.Used Oil Filter Management @ MIN/MIN**

##### **Rule 62-710.850(5)(a), F.A.C.- Resolved Violation**

The facility failed to label one 55-gallon drum of used oil filters with the words "Used Oil Filters.

This violation involves a "minor potential for harm" and a "minor extent of deviation" from the applicable hazardous waste regulations, placing the violation in the \$500 matrix cell range. "Minor potential for harm" was chosen

because the Hazardous Waste Harm Ranking Tool which was generated to complement the Guidelines and help with better identifying the potential for harm of each violation, places the failure to responsibly manage one 55-gallon drum of used oil filters as reasonably expected to result in pollution in a manner that represents minimal threat to human health or the environment. Pursuant to the Guidelines for Characterizing Used Oil Violations, the failure of a generator to properly label less than 10 container for used oil filters results in a minor extent of deviation.

**12.Notification Violation @ MOD/MAJ**

**Rule 62-730.171(2), F.A.C.- Not Pursued**

This violation will not be pursued. Based on the information provided to the Department, the failure to comply with the 24-hour storage limit required for hazardous waste transporters is cited under Violation #4 and will not be duplicated for penalty calculation purposes.

5. PENALTY RECOMMENDATION:

As calculated in the attached civil penalty worksheets, I recommend that **\$41,150.00** in civil penalties, economic benefit, and Department costs be sought against Tropical Shipping, USA.

6. ECONOMIC BENEFIT RATIONALE:

Economic Benefit was calculated for two of the twelve violations [i.e. for the violations of 40 CFR part 262.11 and 40 CFR 263.12, Section 403.727(1)(b), F.S., and Rule 62-730.171(1), F.A.C.]. The total economic benefit for this case was calculated to be **\$15,820.00**. As calculated on the attached civil penalty worksheets, it is recommended to pursue economic benefit.

7. ECONOMIC BENEFIT RECOMMENDATION:

According to Page 28 of the RCRA Civil Penalty Policy Manual, when the gravity-based and multi-day total penalty is \$30,000 to \$49,999, Economic Benefit should be pursued if it totals at least 10% of the proposed penalty. Based on this guidance, Economic Benefit should be pursued.

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Director of District Management



The violations have legal merit, and the penalty calculations are consistent with the Settlement Guidelines for Civil and Administrative Penalties.

\_\_\_\_\_  
Kirk White  
Deputy General Counsel  
Office of General Counsel

\_\_\_\_\_  
Yes

\_\_\_\_\_  
No

Date: \_\_\_\_\_

\_\_\_\_\_  
John Truitt  
Deputy Secretary, Regulatory Programs

\_\_\_\_\_  
Approved

\_\_\_\_\_  
Disapproved

Date: \_\_\_\_\_

PENALTY COMPUTATION WORKSHEET  
SUBJECT TO FINAL APPROVAL

Violator's Name: Tropical Shipping USA, LLC. EPA ID FLR000095737

Address: 501 Avenue P, Riviera Beach, FL 33404

Name of Department Staff Responsible for the Penalty Computations:  
Romina Lancellotti

Date: \_\_\_\_\_

PART I - PENALTY DETERMINATIONS

	Violation Type and description	RCRA Guideline	ELRA Schedule	ENVIRON- MENTAL Harm	Extent of Dev.	Matrix Amount	Adjust-ments	Total
1	40 CFR 262.11 - Waste Determination	HW Page #4, Line #1		Minor	Minor	\$150	\$20.00	\$170.00
2 & 3	40 CFR 262.84(b)(1) & 262.84(c) - Import Requirements	DEP 923		Minor	Minor	\$150	\$0.00	\$150.00
4	40 CFR 263.12, 403.727(1)(b) F.S., 62-730.171(1)F.A.C. - Permit Conditions	HW Page 5, Line #2		Moderate	Major	\$15,580	\$15,800.00	\$31,380.00
5	40 CFR 265.174, 62-730.171 F.A.C.- Unit Management	HW Page #7, Line #3		Moderate	Moderate	\$7,090	\$0.00	\$7,090.00
6 & 7	40 CFR 265.52(a), (b), (d), (e), (f) & 265.52 (c)- Preparedness and Prevention	HW Pages 6, Line #1,		Minor	Minor	\$150	\$0.00	\$150.00
8&9	40 CFR 273.13(d)(1) & 40 CFR 273.14(e), 62-737.400(5)(b) F.A.C - Universal Waste Mercury Lamps	HW Page 11, Line #6		Minor	Moderate	\$710	\$0.00	\$710.00
10	40 CFR 279.22(c)(1), 62-710.401(6) F.A.C.- Used Oil General	UO Page #6, Line#1		Minor	Minor	\$500	\$0.00	\$500.00
11	62-710.850(5)(a) F.A.C. - Used Oil Filter Management	UO Page #7, Line #2		Minor	Minor	\$500	\$0.00	\$500.00
12	62-730.171(2) F.A.C. - Notification Violations	HW Page #4, Line #2		Moderate	Major	\$15,580	\$0.00	Not pursued

Subtotals: \$40,410 \$15,820.00

**Total Penalties for all violations: \$40,650.00**

Department Costs: \$500.00

Total \$41,150.00

\_\_\_\_\_  
, District Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Michael Halpin

\_\_\_\_\_  
Date

Assistant Deputy Secretary, Regulatory

Peer Reviewed by Division: Yes ( ) No ( )

**PART II - MULTI-DAY PENALTIES AND ADJUSTMENTS**

<u>Adjustments</u>	<u>Amount</u>
Good faith prior to discovery:	\$0
Justification:	
Good faith after discovery:	\$0
Justification:	
History of non-compliance:	\$0
Justification:	
Economic benefit of non-compliance:	Refer to descriptions and calculations below. \$15,820.00
Justification:	Refer to descriptions and calculations below.
Ability to pay:	\$0

**EB = AC(1-T) + DC(I)** / AC = Avoided Costs – expenditures that will never be incurred for violator's noncompliance. / DC = Delayed Costs – expenditures deferred by violator's failure to comply.

T = Corporate Tax Rate = 21% (in 2018) / I = Interest rate charged by IRS for delinquent accounts = 4% (in 2018)

**1. Violation of 40 CFR 262.11– Waste Determination**

1. The inspectors observed one unlabeled 55-gallon drum of unknown liquid stored outside the Marine Division Shop that was identified as oily water mixed with paint, one 55-gallon drum of spent sandblast media in the Marine Division Shop with not waste profile available, and 43 unlabeled 55-gallon drums of an unknown liquid stored outside the Port Maintenance Shop. Facility staff suggested the contents were used antifreeze, degreaser, and empty containers.

The average cost to TCLP for metals is \$250 per sample. The facility conducted a TCLP for metals for the unknown content of the 55-gallon drum and the spent sandblast media. The 43 55-gallon drums were identified as empty of nonhazardous waste.

AC = Avoided Costs = 0

DC = Delayed Costs = 2 waste streams x \$250.00 (TCLP for metals) = \$500

EB = AC(1-T) + DC(I)

EB = AC(1-0.21) + DC(0.04)

EB = (\$0) (1-0.21) + (\$500)(0.04)

EB = \$0 + \$20

For Violation # 1, Economic Benefit was calculated as \$20.

**4.Violation of 40 CFR 263.12, 403.727(1)(b) FS, 62-730.171(1) F.A.C.- Storage Permit Requirement**

Tropical exceeded the 24-hour and 10-day storage time limit for hazardous waste transporters and transfer facilities, respectively. Therefore, the facility is subject to the permitting requirements for a hazardous waste storage facility, pursuant to 62-730.171(1) F.A.C. and 40 CFR 263.12(a).

Facility failed to apply for a hazardous waste storage permit. Current application fees for a construction and an operating permit is \$20,000.

AC = Avoided Costs = \$20,000

DC = Delayed Costs = \$0

EB = AC(1-0.21) + DC(0.04)

EB = (\$20,000)(1-0.21) + (0)(0.04)

EB = \$15,800

For Violation # 4, Economic Benefit was calculated as \$15,800.

**Total Economic Benefit was calculated \$15,820.**

**MULTI-DAY PENALTIES**

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

Justification: \$ -

Or

Number of days matrix amount is to be multiplied:

Justification: \$ -

Comments:

-

PART III - OTHER ADJUSTMENTS MADE AFTER MEETING WITH THE RESPONSIBLE PARTY

ADJUSTMENT

Dollar Amount

Relative merits of the case:

\_\_\_\_\_

Resource Considerations:

\_\_\_\_\_

Other Justification:

\_\_\_\_\_  
Date

\_\_\_\_\_  
, District Director

## Harm and Potential for Harm Ranking System

FACILITY NAME: Tropical Shipping & Construction						Date: 03/17/2020	
EPA ID No.: FLR000095737						Case #:	
Violation	Description	Nature of Waste	Amount of Waste	Discharge	People	Threat	Total Points
262.11	Failure to make a proper waste determination of 8 55-gallon drums	3	5	0	3	0	11
263.12/ 62-730.171(1)	Transporter storage of hazardous waste for greater than 10 days	4	8	0	3	0	15
265.174 & 62-730.171(4)(a)	At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.	4	8	0	3	0	15
62-710.850(5)(a)	1 unlabeled 55-gallon drum of used oil filters	2	2	0	3	0	7
279.22(c)(1)	1 unlabeled 55-gallon drum of used oil, and 1 250-gallon tank improperly labeled as "waste oil"	3	5	0	3	0	11
Nature of Waste							Score
High Hazard (acutely toxic or reactive)							6
Other HW/Universal Waste							4
Used Oil							3
Used Oil Filters							2
Amount of Waste							
> 5,000 kg/1,375 gal (25 drums) of Waste							8
1,000 to 5,000 kg/275 gal to 1,375 gal (5 to 25 drums) of Waste OR 2.2lbs or > of acutely toxic waste							5
>100 kg to 1,000 kg/25 gal to 275 gal (5 drums) OR <2.2lbs of acutely toxic waste							2
<100 kg /<25 gal of Waste							1
Discharge							
Discharge to surface water or off site discharge.							12
Discharge to ground water							10
Discharge to soil							8
Discharge to air or Impervious Surface/Containment							6
Discharge-de minimus cleanup per 62-780 FAC							2
No Discharge							0
Potential Exposures							
>1,000 people							4
101 - 1,000 people							3
10 - 100 people							2
<10 people							1
Additional Threat Factors (select all that apply for a specific violation-Use if NO discharge observed) (use sliding scale 0 = no risk, 1-4 depending on severity)							
Fire or Explosion Risk							0-4
Incompatible Waste Storage							0-4
Risk of Employee Exposure above PELs							0-4
Container Integrity							0-4
Inadequate Provisions for Detecting and Preventing Releases							0-4
						SUBSTANTIAL (Major)	Above 20
						SIGNIFICANT (Moderate)	13-20
						MINIMAL (Minor)	Under 13

PENALTY COMPUTATION WORKSHEET  
SUBJECT TO FINAL APPROVAL

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11	62-710.850(5)(a) F.A.C. - Used Oil Filter Management	UO Page #7, Line #2		Minor	Minor	\$500	\$0.00	\$500.00
12	62-730.171(2) F.A.C. - Notification Violations	HW Page #4, Line #2		Moderate	Major	\$15,580	\$0.00	Not pursued

Subtotals: \$40,410 \$15,820.00

Total Penalties for all violations: \$40,650.00

Downward Adjustment: -\$4,065.00

Department Costs: \$500.00

Total with Department: \$37,085.00

Jason Andreotta, District Director

10/07/2020

Date

Michael Halpin  
Assistant Deputy Secretary, Regulatory

Date

Peer Reviewed by Division: Yes ( ) No ( )

**PART II - MULTI-DAY PENALTIES AND ADJUSTMENTS**

<u>Adjustments</u>	<u>Amount</u>
Good faith prior to discovery:	\$0
Justification:	
Good faith after discovery:	A downward adjustment of 10 percent for good faith - \$4,065
Justification:	Facility followed and accomplished all the Department requests and quickly returned to compliance with Federal and Florida state regulations. The facility acted in good faith and also implemented practices beyond requested to ensure compliance and protection of the environment.
History of non-compliance:	\$0
Justification:	
Economic benefit of non-compliance:	Refer to descriptions and calculations below. \$15,800.00
Justification:	Refer to descriptions and calculations below.
Ability to pay:	\$0

**ECONOMIC BENEFIT CALCULATIONS**

**EB = AC(1-T) + DC(I)** / AC = Avoided Costs – expenditures that will never be incurred for violator's noncompliance. / DC = Delayed Costs – expenditures deferred by violator's failure to comply.

T = Corporate Tax Rate = 21% (in 2018) / I = Interest rate charged by IRS for delinquent accounts = 4% (in 2018)

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EB = AC(1-0.21) + DC(0.04)

EB = (\$20,000)(1-0.21) + (0)(0.04)

EB = \$15,800

For Violation # 4, Economic Benefit was calculated as \$15,800.

**Total Economic Benefit = \$15,820**

**MULTI-DAY PENALTIES**

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

Justification: \$ -

Or

Number of days matrix amount is to be multiplied:

Justification:

\$ -

Comments:

-

PART III - OTHER ADJUSTMENTS MADE AFTER MEETING WITH THE RESPONSIBLE PARTY

ADJUSTMENT

Dollar Amount

Relative merits of the case:

\_\_\_\_\_

Resource Considerations:

\_\_\_\_\_

Other Justification:

10/07/2020

Date



Jason Andreotta, District Director



## Harm and Potential for Harm Ranking System

FACILITY NAME: Tropical Shipping & Construction						Date: 03/17/2020	
EPA ID No.: FLR000095737						Case #:	
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Nature of Waste							Score
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Used Oil							3
Used Oil Filters							2
Amount of Waste							
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>100 kg to 1,000 kg/25 gal to 275 gal (5 drums) OR <2.2lbs of acutely toxic waste							2
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Discharge to surface water or off site discharge.							12
Discharge to ground water							10
Discharge to soil							8
Discharge to air or Impervious Surface/Containment							6
Discharge-de minimus cleanup per 62-780 FAC							2
No Discharge							0
Potential Exposures							
>1,000 people							4
101 - 1,000 people							3
10 - 100 people							2
<10 people							1
Additional Threat Factors (select all that apply for a specific violation-Use if NO discharge observed) (use sliding scale 0 = no risk, 1-4 depending on severity)							
Fire or Explosion Risk							0-4
Incompatible Waste Storage							0-4
Risk of Employee Exposure above PELs							0-4
Container Integrity							0-4
Inadequate Provisions for Detecting and Preventing Releases							0-4
				SUBSTANTIAL (Major)		Above 20	
				SIGNIFICANT (Moderate)		13-20	
				MINIMAL (Minor)		Under 13	

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(Hazardous Waste & Universal Waste Cases)

**EXTENT OF DEVIATION FROM REQUIREMENT**

	MAJOR	MODERATE	MINOR
MAJOR	\$37,500 to \$28,330 <b>(\$32,915)</b>	\$28,330 to \$21,250 <b>(\$24,790)</b>	\$21,250 to \$15,580 <b>(\$18,415)</b>
MODERATE	\$15,580 to \$11,330 <b>(\$13,455)</b>	\$11,330 to \$7,090 <b>(\$9,210)</b>	\$7,090 to \$4,250 <b>(\$5,670)</b>
MINOR	\$4,250 to \$2,130 <b>(\$3,190)</b>	\$2,130 to \$710 <b>(\$1,420)</b>	\$710 to \$150 <b>(\$430)</b>

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(Used Oil Cases)

**EXTENT OF DEVIATION FROM REQUIREMENT**

	MAJOR	MODERATE	MINOR
MAJOR	\$10,000 to \$8,000 <b>(\$9,000)</b>	\$7,999 to \$6,000 <b>(\$7,000)</b>	\$5,999 to \$4,600 <b>(\$5,300)</b>
MODERATE	\$4,599 to \$3,200 <b>(\$3,900)</b>	\$3,199 to \$2,000 <b>(\$2,600)</b>	\$1,999 to \$1,200 <b>(\$1,600)</b>
MINOR	\$1,199 to \$500 <b>(\$850)</b>	\$500	\$500

Guidelines for Characterizing HW, Used Oil, Universal Waste and Dry Cleaner Violations

[https://fldeploc.dep.state.fl.us/appdata/rcra\\_epa/Guidance/Draft\\_HW\\_Crosswalk\\_8\\_15\\_2019.xlsx](https://fldeploc.dep.state.fl.us/appdata/rcra_epa/Guidance/Draft_HW_Crosswalk_8_15_2019.xlsx)

Enforcement Manual

<https://florhttps://floridadep.gov/ogc/ogc/content/enforcement-manual>

Deviation Choices

**Minor**

**Moderate**

**Major**

**Threat**

- 0
- 1
- 2
- 3
- 4