



Florida Department of Environmental Protection

Southeast District Office
400 North Congress Avenue, Suite 200
West Palm Beach, Florida 33401-2913

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

MAR 12 2008
CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7006 2150 0000 3045 5345

Ricky's Oil Service, Inc.
P.O. Box 669295
Miami, Florida 32166-9430

RE: Department of Environmental Protection vs. Ricky's Oil Service, Inc.
OGC Case No. 08-0256, Miami-Dade County

Dear Mr. Ricci:

Attached is a Notice of Violation (NOV) issued by the Department in the above-referenced case. The NOV addresses allegations of violations of Florida Statutes and Department rules, which have occurred on your property.

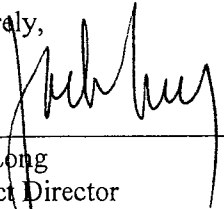
An administrative resolution of this matter must address the issues raised herein, recommended corrective actions, and an appropriate monetary settlement. In accordance with Section 403.121, Florida Statutes, the Department has calculated an appropriate settlement penalty in the amount of \$9,000.00 plus \$500.00 for costs and expenses for a total of \$9,500.00.

The NOV's Notice of Rights section explains what recourse you as the property owner have concerning resolution of the allegations contained in the attached NOV. Please read that section carefully.

Should you have any questions or wish to negotiate a resolution of this NOV, please call Mr. Kathy Winston at 561/681-6756.

Thank you for your cooperation in this matter.

Sincerely,



Date 3/6/08

Jack Long
District Director
Southeast District

JL/JWL/KK/kw

cc: West Palm Beach DEP File/Archboard
Aliko Moncrief, Office of General Counsel
Alan Annicella, EPA Region IV
Roberto Abrahante, Miami-Dade DERM



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CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7006 2150 0000 3045 5338

Mr. Christopher Ricci, President
Ricky's Oil Service, Inc.
2017 NW 182nd Ave.
Pembroke Pines, Florida 33029

RE: Department of Environmental Protection vs. Ricky's Oil Service, Inc.
OGC Case No. 08-0256, Miami-Dade County

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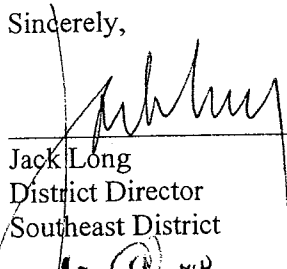
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West Palm Beach, Florida 33401-2913

MAR 12 2008

BEFORE THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

IN THE OFFICE OF THE
SOUTHEAST DISTRICT

Complainant,

v.

OGC File No. 08-0256

CHRISTOPHER RICCI and RICKY'S OIL SERVICE, INC.,

Respondents.

NOTICE OF VIOLATION, ORDERS FOR CORRECTIVE ACTION, AND ADMINISTRATIVE PENALTY ASSESSMENT

Certified Receipt Return No.:
7006 2150 0000 3045 5338

Certified Receipt Return No.:
7006 2150 0000 3045 5345

To: Mr. Christopher Ricci, President
2017 NW 182nd Ave.
Pembroke Pines, Florida 33029

Ricky's Oil Service, Inc.
P.O. Box 669295
Miami, Florida 32166 - 9430

Pursuant to the authority of Section 403.121(2), Florida Statutes ("Fla. Stat."), the State of Florida Department of Environmental Protection ("Department") gives notice to Mr. Christopher Ricci and Ricky's Oil Service, Inc., ("collectively referred to as Respondents") of the following findings of fact and conclusions of law with respect to violations of Chapters 376 and 403, Fla. Stat., and Chapter 62-710, Florida Administrative Code ("Fla. Admin. Code").

FINDINGS OF FACT PARAGRAPHS APPLICABLE TO ALL COUNTS

1. The Department is the administrative agency of the state of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapters 376 and 403, Fla. Stat., and the rules promulgated thereunder in Florida Administrative Code Title 62. To ensure consistency between the state and federal used oil programs, the text of relevant provisions of 40 Code of Federal Regulations ("C.F.R.") Part 279, has been adopted by reference in Chapter 62-710, Fla. Admin. Code.

2. Respondent Ricky's Oil Service, Inc., ("Ricky's") is an active Florida for-profit business, organized under the laws of the state of Florida on or about November 16, 1983. Ricky's Oil Service, Inc. operates as a used oil and used oil filter transporter and transfer facility, a used oil processing facility, a used oil first claimant, and a used oil marketer on a parcel of real property located at 7209 NW 66th Street, Miami, Miami-Dade County, Florida, 33012 ("Facility").

3. Respondent Christopher Ricci ("Ricci") is a natural person who is the President and on-site manager of Ricky's Oil Service, Inc., and is responsible for managing the facility's overall operations, including environmental compliance issues.

4. Respondents operate a used oil transport and processing facility known as "Ricky's Oil Service" on the parcel of real property located at 7209 NW 66th Street, Miami, Miami-Dade County, Florida, 33012.

5. Respondent Ricky's Oil Service, Inc. holds the record title to the real property located at 7209 NW 66th Street, Miami, Miami-Dade County, Florida, 33012 and has owned the property since approximately January 1990.

6. On November 25, 2007, Respondents allowed their Used Oil Processor permit (61835-HO-002) to expire. The Department did not receive the facility's permit renewal application on or before November 25, 2007, or any indication from the facility that they had ceased operation.

COUNT I

7. From November 25, 2007 to November 27, 2007, Respondents continued to operate a used oil processing facility at a time when its most current permit had expired. Ricky's did not submit the facility's permit renewal up to 60 days prior to the expiration date. The facility operated a used oil processing facility without a permit for three days.

COUNT II

8. The Department has incurred expenses to date while investigating this matter in the amount of not less than \$500.00.

CONCLUSIONS OF LAW

The Department has evaluated the Findings of Fact with regard to the requirements of Chapters 376 and 403, Fla. Stat., and Fla. Admin. Code Title 62. Based on the foregoing facts the Department has made the following conclusions of law:

9. Respondents are each a "person" as defined in Sections 376.301(28), 403.031(5), and 403.75(3), Fla. Stat.

10. Respondents' used oil processing facility operating under the name "Ricky's Oil Service" includes the handling, management, transfer, transport, processing of solid wastes, including used oil and used oil filters. Furthermore, used oil and used oil filters are considered "pollutants" within the meaning of Section 376.301(36), Fla. Stat.

11. Respondents are "processors" of used oil within the meaning of Fla. Admin. Code Rule 62-710.210 (3)(adopting 40 C.F.R. Part 279.1).

12. The Department is imposing an administrative penalty of less than or equal to \$10,000.00 in this Notice of Violation as calculated in accordance with Section 403.121, Fla. Stat.

13. The facts in Count I constitute a violation of Fla. Admin. Code Rule 62-710.800(4) which requires that the permit renewal application be submitted to the Department at least 60 days prior to the date of expiration of the existing permit in accordance with Fla. Admin. Code Rule 62-4.090. The facts constitute a violation of Section 403.121(4)(c) which prohibits the operation of a facility before obtaining the required permit. The facts also constitute a violation of Section 403.161, Fla. Stat., which makes it a violation to fail to comply with Department rules.

14. The violation in Count I requires the assessment of administrative penalties under Section 403.121(4)(c), Fla. Stat., of \$3,000.00 for failure to obtain a required permit before construction or modification. Pursuant to Section 403.121(6), Fla. Stat., the Department is assessing the penalty for the three days that the Respondent failed to submit a permit renewal, as alleged in Count I, for a total of \$9,000.00 in administrative penalties.

15. The administrative penalties assessed for Count I and Count II total \$9,500.00.

16. The costs and expenses related in Count II are reasonable costs and expenses incurred by the Department while investigating this matter, which are recoverable pursuant to Section 403.141(1) Fla. Stat.

ORDERS FOR CORRECTIVE ACTION

The Department has alleged that the activities related in the Findings of Fact constitute violations of Florida law. The Orders for Corrective Action state what you, Respondents, must do in order to correct and redress the violations alleged in this Notice.

The Department will adopt the Orders for Corrective Action as part of its Final Order in this case unless Respondents either file a timely petition for a formal hearing or informal proceeding, pursuant to Section 403.121(2)(c), Fla. Stat., or file written notice with the Department opting out of this administrative process, pursuant to 403.121(2)(c), Fla. Stat. If Respondents fail to comply with the corrective actions ordered by the Final Order, the Department is authorized to file suit seeking judicial enforcement of the Department's Order pursuant to Sections 120.69, 403.121, and 403.131, Fla. Stat.

Pursuant to the authority of Sections 403.061(8) and 403.121, Fla. Stat., the Department proposes to adopt in its Final Order in this case the following specific corrective actions that will redress the alleged violations:

17. The corrective actions identified in this section apply to each Respondent. Liability between Christopher Ricci and Ricky's Oil Service, Inc., is joint and several. Respondents will be referred to collectively in the sections below.

18. Respondents shall forthwith comply with all Department rules regarding solid waste and used oil management. Respondents shall correct and redress all violations in the time periods required below and shall comply with all applicable rules in Fla. Admin. Code Rule 62-710.800(4) and Fla. Admin. Code Chapters 62-710 and 40 Code of Federal Regulations Part 279.

19. **Within 10 days of the effective date of this Order**, Respondents shall pay \$9,000.00 to the Department for the administrative penalties imposed above. Payment shall be made by cashier's check or money order payable to the "State of Florida Department of Environmental Protection" and shall include thereon the notations "OGC Case No. 08-0256" and "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the State of Florida Department of Environmental Protection, Southeast District, 400 N. Congress Ave., Ste.200, West Palm Beach, Florida, 33401.

20. In addition to the administrative penalties, **within 10 days of the effective date of this Order**, Respondents shall pay \$500.00 to the Department for costs and expenses. Payment shall be made by cashier's check or money order payable to the "State of Florida Department of Environmental Protection" and shall include thereon

the notations "OGC Case No. 08-0256" and "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the State of Florida Department of Environmental Protection, Southeast District, 400 N. Congress Ave., Ste. 200, West Palm Beach, Florida, 33401.

NOTICE OF RIGHTS

Respondents' rights to negotiate, litigate or transfer this action are set forth below.

Right to Negotiate

21. This matter may be resolved if the Department and Respondents enter into a Consent Order, in accordance with Section 120.57(4), Fla. Stat., upon such terms and conditions as may be mutually agreeable.

Right to Request a Hearing

22. Respondents have the right to a formal administrative hearing pursuant to Sections 120.569, 120.57(1), and 403.121(2), Fla. Stat., if Respondents dispute issues of material fact raised by this Notice of Violation, Orders for Corrective Action, and Administrative Penalty Assessment ("Notice"). At a formal hearing, Respondents will have the opportunity to be represented by counsel or other qualified representative, to present evidence and argument on all issues involved, and to conduct cross-examination and submit rebuttal evidence.

23. Respondents have the right to an informal administrative proceeding pursuant to Sections 120.569 and 120.57(2), Fla. Stat., if Respondents do not dispute issues of material fact raised by this Notice. If an informal proceeding is held, Respondents will have the opportunity to be represented by counsel or other qualified representative, to present to the agency written or oral evidence in opposition to the Department's proposed action, or to present a written statement challenging the grounds upon which the Department is justifying its proposed action.

24. If Respondents desire a formal hearing or an informal proceeding, Respondents must file a written responsive pleading entitled "Petition for Administrative Proceeding" within 20 days of receipt of this Notice. The petition must be in the form required by Fla. Admin. Code Rule 28-106.2015 and include the following:

- (a) The Department's Notice identification number and the county in which the subject matter or activity is located;
- (b) The name, address, and telephone number, and facsimile number (if any) of each petitioner;

- (c) The name, address, telephone number, and facsimile number of the attorney or qualified representative of respondent, if any, upon whom service of pleadings and other papers shall be made;
- (d) A statement of when petitioner received the Notice; and
- (e) A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate.

A petition is filed when it is received by the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida, 32399-3000. The Department will not entertain a request for extension of time to file a Petition for Administrative Proceeding.

Right to Mediation

25. If Respondents timely file a petition challenging the Notice, the Respondents have the right to mediate the issues raised in the Notice. If requested, a mediator will be appointed to assist the Department and Respondents reach a resolution of some or all of the issues. The mediator is chosen from a list of mediators provided by the Florida Conflict Resolution Consortium ("FCRC"). The FCRC will provide up to eight hours of free mediation services to the Respondents. A mediator cannot require the parties to settle the case. If mediation is unsuccessful, both parties retain their full rights to litigate the issues before an administrative law judge. The Respondents must select the mediator and notify the FCRC within 15 days of receipt of the list of mediators. The mediation process does not interrupt the time frames of the administrative proceedings and the mediation must be completed at least 15 days before the date of the final hearing.

26. The written request to appoint a mediator must be made within 10 days after receipt of the Initial Order from the administrative law judge appointed to hear the case. The request must be received by the Florida Conflict Resolution Consortium, Morgan Building, Suite 236, 2035 East Paul Dirac Drive, Tallahassee, Florida, 32310, (850) 644-6320, flacrc@fsu.edu. Once the request is timely received, the FCRC will provide the parties with a list of mediators and the necessary information.

Right to Opt Out of the Administrative Proceeding

27. If Respondents do not wish to contest the issues before an administrative law judge, Respondents may file a notice with the Department opting out of the administrative process. Respondents must file its written opt

out notice within 20 days after service of the Notice. The written notice to opt out is filed when it is received by the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000.

28. Once the Respondents opt out of the administrative process, the Department may sue the Respondents for injunctive relief, damages, costs and expenses, and civil penalties. If the Respondents opt out of the administrative process, the Department may ask the judge to assess civil penalties in excess of the amounts in this Notice up to \$10,000.00 per day per violation. The election to opt out of the administrative process is permanent and once the election is made the administrative process cannot be restarted.

Waivers

29. Respondents will waive the right to a formal hearing or an informal proceeding if either:

- a. a petition for a formal hearing or informal proceeding is not filed with the Department within 20 days of receipt of this Notice, or
- b. a notice opting out of the administrative proceeding is not filed with the Department within 20 days of receipt of this Notice.

These time limits may be varied only by written consent of the Department.

General Provisions

30. The Findings of Fact and Conclusions of Law of this Notice together with the Orders for Corrective Action will be adopted by the Department in a Final Order if Respondents fail to timely file a petition for a formal hearing or informal proceeding, pursuant to Section 403.121, Fla. Stat. A Final Order will constitute a full and final adjudication of the matters alleged in this Notice.

31. If Respondents fail to comply with the Final Order, the Department is authorized to file suit in circuit court seeking a mandatory injunction to compel compliance with the Order, pursuant to Sections 120.69, 376.303, 403.121 and 403.131, Fla. Stat. The Department may also seek to recover damages, all costs of litigation including reasonable attorney's fees and expert witness fees, and civil penalties of not more than \$10,000 per day for each day that Respondents have failed to comply with the Final Order.

32. Copies of Department rules referenced in this Notice may be examined at any Department Office or may be obtained by written request to the District Office.

DATED this 6 day of March, 2008.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Jack Long
District Director
Southeast District

Date

3/6/08

Copies furnished to:
Lea Crandall, Agency Clerk MS #35
Michael Redig, via Oculus